



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00026/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7 January 2019

Decision & Reasons Promulgated  
On 23 January 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Appellant**

And

KOB

(ANONYMITY ORDER MADE)

**Respondent**

**Representation:**

For the Appellant: Mr. S. Kotas, Home Office Presenting Officer

For the Respondents: Mr. F. Habtemariam, legal representative, Immigration Advice Service

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Respondent is a national of Somalia. He entered the United Kingdom with his mother and four siblings on 11 July 2001, when he was ten years old. His mother's application for asylum was refused but she and her children were granted exceptional leave to remain for a year on

24 August 2001. She applied for further leave to remain, but her application was refused in February 2004. Her appeal against this decision was allowed on 6 September 2004 and on 19 October 2006 she and her children were granted asylum until 17 October 2011 and on 24 November 2011 they were all granted indefinite leave to remain in the United Kingdom.

2. Between 16 October 2012 and 14 July 2014, the Respondent had nine convictions for 13 offences. and 6 February 2017 he was convicted of 3 public order offences. These included two counts of possession of a Class B drug and one count of possession of a Class A drug, namely heroin. In addition, on 14 July 2014 he was convicted of one count possession of a Class A drug, namely crack cocaine, with intent to supply, one count of possession of a Class A drug, namely heroin, and also of having a bladed article in a public place. He was sentenced to 3 years imprisonment in total for these three offences.
3. The Respondent was served with a decision to make a deportation order on 3 June 2015 and 7 March 2016 he asserted that his deportation would amount to a breach of his human rights. His human rights claim was refused and the decision to deport him was maintained on 22 December 2017. He appealed against this decision and First-tier Tribunal Judge Blundell allowed his appeal on human rights grounds in a decision promulgated on 14 August 2018. However, when doing so he found that the Appellant had not rebutted the presumption that he represented a danger to the community for the purposes of section 72 of the Nationality, Immigration and Asylum Act 2002. He also found that it was lawful for the Appellant to cease his entitlement to Refugee status.
4. The Appellant sought permission to appeal against this decision. First-tier Tribunal Judge Saffer refused him permission to appeal on 29 August 2018. However, Upper Tribunal Judge Gill granted him permission to appeal on 16 November 2018.

## **ERROR OF LAW HEARING**

5. The Home Office Presenting Officer submitted that the grounds of appeal raised a narrow but determinative issue and that First-tier Tribunal Judge Blundell had failed to give sufficient weight to the factual findings made by the Upper Tribunal in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC) in relation to access to financial support and the existence of a Facilitated Return Scheme. The Respondent's legal representative took

me through the relevant paragraphs of the decision before submitting that the decision reached by First-tier Tribunal Judge Blundell was one which was open to him on the evidence before him.

## **ERROR OF LAW DECISION**

6. As the Respondent had been sentenced to at least 12 months imprisonment, he was liable to deportation under section 32 of the UK Borders Act 2007.

7. Section 117C (1) of the Nationality, Immigration and Asylum Act 2002 states that:

“the deportation of foreign criminals is in the public interest”

8. Section 117 C (2) states that:

“The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal”

9. Section 117C (3) states that:

“in the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.

10. Section 117C (4) states that:

“Exception 1 applies where-

- (a) C has been lawfully resident in the United Kingdom for most of C’s life,
- (b) C is socially and culturally integrated in the United Kingdom, and
- (c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported”.

11. Paragraph 398 of the Immigration Rules states that:

“Where a person claims that their deportation would be contrary to the UK’s obligations under Article 8 of the Human Rights Convention, and ...

- (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have

been convicted of an offence for which they have been sentenced for a period of imprisonment of less than 4 years but at least 12 months ...

the Secretary of State in assessing the claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are other very compelling circumstances over and above those described in paragraphs 399 and 399A”

12. In a very detailed and cogent decision, First-tier Tribunal Judge Blundell correctly upheld the certificate issued under section 72 of the Nationality, Immigration and Asylum Act 2002, found that the Appellant was entitled to cease the Respondent’s refugee status and that he was not entitled to Humanitarian Protection. He also found that his deportation would not amount to a breach of Article 3 of the European Convention on Human Rights. The Respondent has not sought to cross appeal any of these decisions.
13. I have also noted that, in paragraph 58 of his decision, having found that the Respondent had established that he met the requirements of Exception 1, he stated that he reached “that conclusion with no particular enthusiasm – not least because I have concluded that the appellant represents a danger to the community of the UK” but added “but it is the result required by statute”.
14. It was not disputed that the Respondent had been lawfully resident in the United Kingdom for most of his life. He entered when he was ten years old and he was twenty-seven years old at the date of the appeal hearing and, whilst in the United Kingdom, he had had temporary admission following his mother’s application for asylum, exceptional leave to remain or indefinite leave to remain.
15. The Home Office Presenting Officer relied on the finding in paragraph (x) of *MOJ* that:
 

“...it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom [in Somalia], especially as there is evidence that returnees are taking jobs at the expense of those who have never been away”.
16. When granting permission to appeal, Upper Tribunal Judge Gill stated that:
 

“It is arguable that, in reaching [his finding about whether there would be very significant obstacles to the Appellant’s integration into Mogadishu] the judge may have erred to take

into account the fact that the appellant would be able to take advantage of a reintegration package”. She added that it was arguable “that this omission is material given the judge’s other findings (e.g. that the appellant has some experiences in the UK job market and may, given time, be able to secure employment in Mogadishu”.

17. As the Home Office Presenting Officer submitted, there was a box at the bottom of the letter sent by the Appellant to the Respondent, dated 4 December 2017, which drew the Respondent’s attention to the Facilitated Return Scheme by which a person who was making a voluntary return may be entitled to a reintegration package worth £1500 or £750.
18. However, when reaching the decision under appeal, the Respondent did not rely on the existence of such an integration package or paragraph 423 of *MOJ & Ors (Return to Modadishu) Somalia CG* [2014] UKUT 00442 (IAC). In addition, at the appeal hearing the Home Office Presenting Officer did not rely upon the availability of such a package and the Respondent was not asked any questions about his ability to access any such package or what level of entitlement he may be able to apply for. Therefore, the Respondent was not provided with any opportunity to respond to any assertion that he would be able to rely on such a package and was deprived of his proper opportunity to respond to this part of the case now being made against him.
19. Furthermore, the head note in *MOJ & Ors*, which summarises the country guidance being provided by the Upper Tribunal, does not refer to this package and paragraph 423 does not go any further than to state that:

“... Financial assistance from the Home Office may be available to voluntary returnees, in the form of a grant of up to £1,500 and may of significant assistance to a returnee”.
20. There was no suggestion that such financial assistance would be available in all cases or in a case similar to that of the Respondent.
21. Therefore, the failure by First-tier Tribunal Judge Blundell to refer to this package was not a material error of law in the context of the country guidance or the case argued before him.
22. Upper Tribunal Judge Gill did not grant permission to appeal on any wider basis. But at the hearing before me the Home Office Presenting Officer sought to rely on other parts of the grounds of appeal. For the purposes of completeness, I have considered his arguments relating

to the ability of the Respondent to access employment in Mogadishu as someone with skills acquired in the United Kingdom.

23. In paragraph 56 of his decision First-tier Tribunal Judge Blundell gave consideration to whether the Respondent would be able to re-integrate into Somalian society and, when doing, he relied on *Secretary of State for the Home Department v SC (Jamaica) t* [2017] EWCA Civ 2112 where the Senior President of the Tribunals found that:

“61. The same broad approach should apply to the analysis of a foreign criminal’s integration into the country to which he is proposed that he be deported. In *Kamara v Secretary of State for the Home Department* [2016] 4 WLR 152 Sales LJ (with whom Moore-Bick LJ agreed) held at [14] that:

“[T]he concept of a foreign criminal’s “integration” into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private or family life”.

24. In paragraph 63, he added that:

“The Secretary of State is right to point out that financial dependency and criminal convictions, if evaluated, may indicate a lack of integration. The FtT was equally entitled to find facts about SC’s traumatic history, the duration of his lawful residence, his attendance at school in the UK, his recent progress to turn his life around and the family life that he had enjoyed in the UK. Those are all relevant to social and cultural integration. Likewise, the FtT’s findings of fact about the age that SC left Jamaica, the torture he experienced and his need for specialist mental health therapy are relevant to whether there would be very significant obstacles to his integration in Jamaica”.

25. In paragraph 57 of his decision First-tier Tribunal Judge Blundell followed the Court of Appeal’s guidance closely and found that:

“... [the Respondent] has some experience in the UK job market and he may, given time, be able to secure employment there. [But] given the [Respondent’s] complete lack of familiarity with Mogadishu and his status as a minority clansman, he will be in a particularly difficult position. He cannot call on financial support from the UK and there is no one in Somali who would be in a position to provide any such support. It is more likely than not that the [Respondent] would find himself in an IDP camp for the foreseeable future on return. Whilst the conditions in such a camp do not reach the high threshold required to establish a breach of Article 3, I do consider that the [Respondent] would encounter very significant obstacles to integration into Somali”.

26. I have reminded myself that in *Kamara* the core test was that:

“The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private or family life”

27. Furthermore, in a well-structured decision First-tier Tribunal Judge Blundell distinguished between a right to protection which may arise from Article 3 of the European Convention on Human Rights or article 15C of the Qualification Directive and which was the subject of the country guidance provided in *MOJ & Ors* and whether he had been able to establish that there would be very significant obstacles to his integration into life in Mogadishu for the purposes of Article 8 of the European Convention on Human Rights.

28. As a consequence, I find that the decision reached by First-tier Tribunal Judge Blundell was one which was open to him in the light of the evidence and the relevant case law.

### **Decision**

- (1) The appeal is dismissed.
- (2) The decision of First-tier Tribunal Judge Blundell stands.

*Nadine Finch*

Signed

Date 7 January 2019

Upper Tribunal Judge Finch