



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: RP/00072/2018**

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On the 1 September 2022**

**Decision & Reasons Promulgated  
On the 08 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MSC**

**(Anonymity direction made)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: no appearance.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** In a decision promulgated on 14 July 2022 the Upper Tribunal set aside a decision of the First-tier Tribunal and directed the matter listed for a Resumed Hearing to enable the Upper Tribunal to consider aspects of the appeal afresh in light of the recent country guidance relating to Somalia.
- 2.** Notice of the date, time, and place of hearing was sent to all parties on 25 July 2022. Mr Bates confirmed that the address to which the appellant's notice was sent is the same address as that held by the Secretary of State. There is no notice on the Tribunal filed of an alternative address for service having been provided.

- 3.** Neither the appellant nor a representative on his behalf attended the hearing. As I am satisfied that he has been given proper notice of the same, and in the absence of any explanation for his failure to attend and there being no notification of the hearing being adjourned, I am satisfied it is in accordance with the overriding objectives and the principle of fairness to proceed with the hearing in the appellant's absence.
- 4.** It has also been noted that the appellant failed to attend on a previous occasion when notices had been properly served upon him, although he did attend in person at the error of law hearing before me in Birmingham on 14 June 2022.

### **Discussion**

- 5.** The findings of the First-tier Tribunal that the dismissal of the appellant's protection claim, including the findings relating to the cessation of the appellant's refugee status, are preserved findings. There is nothing before me to support the claim the appellant will be entitled to a grant of international protection on any basis or that he is entitled to still be recognised as a refugee.
- 6.** The appellant is a foreign criminal having been convicted on 6 April 2017 of two counts of causing serious injury by dangerous driving for which he was sentenced to 18 months imprisonment on 18 May 2017.
- 7.** The appellant has not provided any further documentary evidence, despite the direction in the error of law decision providing that the same should be provided, but I do have before me the appellants original witness statement of 9 August 2018 and other documents relied upon for the purposes of the hearing before the First-tier Tribunal.
- 8.** In his original witness statement the appellant claims he came to the United Kingdom in July 2003. He is now in his early 30s. The appellant appealed the decision to deport him on human rights grounds; claiming he met the private life exception to deportation as well as the Refugee Convention, humanitarian protection provisions and article 8 ECHR.
- 9.** The appellant claims he is fully integrated into life in the UK and will face very significant obstacles to integration to Somalia. He has worked in the UK, speaks fluent English, claims to have no ties to Somalia as his family members with whom he shares a family life are in the UK, apart from one sister who resides in Holland.
- 10.** The appellant claims his biological mother was killed in Somalia as were his two older brothers and his father and two younger sisters disappeared. He claims not to know where they are.
- 11.** The appellant also claims he will be persecuted in Somalia as he is from the minority Ashraf clan and claims have no knowledge of the lifestyle and culture and no means to start afresh.
- 12.** The appellant speaks of problems within his UK households where one member of the family had a stroke in 2015, another suffers from paranoid schizophrenia, and other family members are studying full-time and working part-time.

13. I have considered that written evidence together with the evidence provided in a statement from the appellant's cousin dated 4 September 2018 along with all the available material, including the skeleton argument filed on the appellant's behalf in 2018.
14. As the appellant has been sentenced to 18 months imprisonment he is a 'medium level' offender.
15. Part 5A of the Nationality, Immigration Asylum Act 2002 is applicable, with particular reference to section 117 C, which reads:

**117C Article 8: additional considerations in cases involving foreign criminals**

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) 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.
- (4) 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.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
- (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

16. In relation to Exception 1, section 117C(4), it is accepted the appellant has been lawfully resident in the UK for most of his life and is socially and culturally integrated into the United Kingdom, but it is not made out there will be very significant obstacles to his integration into Somalia.
17. As noted in the error of law hearing the up to date country guidance case, which was not available to the First-tier Tribunal, is OA (Somalia) CG [2022] UKUT 00033 (IAC).
18. It has not been made out there are substantial grounds for believing the general humanitarian situation in Mogadishu is so severe that there is a real risk of serious harm because conditions amount to torture, or inhuman or degrading treatment as set out in paragraphs 339C and 339CA(iii) of the Immigration Rules. It is not made out there are particular factors relevant to the appellant's individual circumstances which might nevertheless place him at risk.
19. Although the appellant claims to have no contact with any family members in Somalia it was recognised in OA that Somali culture is such that family and social ties are, in general, retained between the diaspora and those living in Somalia. It was found in that case that Somali family networks are very extensive and the social ties between different branches of the family very tight. A person returning with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan or extended family in Mogadishu through friends of friends, if not through direct contact.
20. Even if the appellant came to the UK as he did as a child there are other family members and the evidence is insufficient to show that the family with whom the appellant lives, has contact with in the UK ,or otherwise, will not have contact with family members in Somalia or will not be able to re-establish such contact which the appellant will be able to make use. The appellant's claim that he has no such contact as all the family are in the UK has not been shown to be so, on the basis of the evidence.
21. The appellant also fails to make out he will be unable to establish contact with fellow members of his clan. In relation to minority clan assistance, there is reference to the findings in OA in the Country policy and information note (CPIN): security and humanitarian situation in Mogadishu, Somalia, May 2022 at 2.4.6

'We also accept that, as a general rule, minority clans may struggle to offer significant levels of practical assistance (although, as we set out below, clan-specific additional considerations may apply, as may be the case with the Reer Hamar)...

'[However] [t]he evidence before us does not support the contention that a network or connections in a minority clan would be of no assistance at all. Rather, it may be an issue where some positive, practical or otherwise costly contribution would be required on the part of the clan. Where there is a dispute requiring resolution, or where some form of practical provision from the clan is required in order to access accommodation or services, in those circumstances, and as a general rule, the assistance provided by a

minority clan may rank below that which would be provided by a majority clan in corresponding circumstances. But there is no evidence to support the view that a member of a minority clan would be unable to act as a guarantor, whether formal or informal...' (paragraph 241)

2.4.7 And: '...even a minority clan would, in principle, be able to provide some assistance to a returnee seeking accommodation, primarily in the form of vouching for the individual concerned.' (paragraph 259)

22. There is no evidence the appellant is anything other than a fit and healthy single male who has been employed in the United Kingdom and who has transferable skills. In addition, the appellant has language skills in that he is able to speak Somali and English. It is not made out he could not use his English language skills when seeking employment.
23. In terms of job prospects within Somalia, there is insufficient evidence to show it is unreasonable to find, as was noted in OA, that the economic boom continues with a consequence that casual and day labour positions are available. It is not made out the appellant would be unable to obtain employment from which he could earn an income sufficient to meet his basic needs.
24. The appellant has maintained contact within some members of the diaspora in the UK (which must include his family) will be aware of Somali culture from family members with whom he resides. It is not made out that he will be such an outsider that he will not be able to adapt to life within Mogadishu, especially as he has not established that he has no family contacts.
25. There is within the evidence reference to a family member in Holland and it was not made out the appellant would not be able to be assisted by remittances from the UK or otherwise. There is insufficient evidence available at the date of this hearing to show that the family will be unwilling or unable to do so. Mr Bates referred to the Facilitated Return Scheme which will provide the appellant with sufficient funds for the period between his initial reception in Mogadishu for up to several weeks whilst he obtains employment. It is also the case that the original statements refer to family members being in education, including University back in 2018, but those courses must have finish by now enabling those family members to obtain employment. Again, it is not made out they will be unwilling or unable to provide financial support to assist the appellant.
26. The primary finding is that the appellant had not established very significant obstacles to integration to Somalia.
27. So far as the claimant's statement that he will end up in one of the IDP camps is concerned, which was the basis on which his claim was allowed by the First-tier Tribunal pursuant to article 3 ECHR. I find that even if the appellant did end up in an IDP camp the current country evidence does not indicate that he is entitled to succeed on this basis. As with the appellant's claim to face a real risk based on clan membership, which has changed as a result of there being no evidence of clan violence to the extent that prevailed when the family

came to the UK, the situation with regard to the IDP camps has also improved.

28. In OA it was recognised there is a spectrum of conditions across the IDP camps and now many feature conditions that are adequate by Somali standards.
29. It is not made out that with the assistance of the Facilitated Return Scheme the appellant would be without any prospect of initial accommodation or support, or that there is no other base from which to begin establishing himself within Mogadishu. That is so without remittances with assistance from family who it is not made out would effectively abandoned him.
30. It is not made out there are particular features of the appellant's circumstances or character that mean there are substantial grounds for concluding he has no means available of establishing himself within Mogadishu, as a resident of the camp or otherwise, that will be entail a real risk of article 3 being breached. As noted in OA, such cases are likely to be rare in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps. I find the appellant has not made out there will be a breach of article 3 on the basis of the evidence currently available to the Upper Tribunal.
31. In relation to the question of whether there are very compelling circumstances sufficient to outweigh the Secretary of State's decision, sufficient to make the decision disproportionate, the inability of the appellant to succeed under the statutory provisions and immigration rules is one factor. Another issue is that there is nothing known to the Tribunal that shows that any impact upon the appellant or any other person would of be such a degree as to make deportation disproportionate.
32. I have commented above upon the lack of up-to-date evidence concerning current conditions or family circumstances.
33. I accept Mr Bates submission of there being a strong public interest and deterrent factor in deportation in this case.
34. Reference was made by Mr Bates in his submissions to an earlier decision referring to family members in Saudi Arabia, but I have no further evidence on this and can say nothing further. If such family members exist that is another potential source of remittances.
35. Having considered all the information that is available with the required degree of anxious scrutiny, I find the appellant has failed to discharge the burden of proof upon him to the required standard to show he is entitled to any leave to remain in the United Kingdom on any basis.
36. I find Secretary of State has discharged the burden of proof upon her to the required standard to show that the appellant's deportation from the United Kingdom is proportionate to any interference that will result in a protected right, on the basis of the legitimate aim of the prevention of crime within the UK which includes the deterrent factor.

## **Decision**

37. **I dismiss the appeal.**

Anonymity.

**38.** The anonymity order made by the Upper Tribunal in the Error of Law decision dated 22 June 2022 shall stand.

Signed.....  
Upper Tribunal Judge Hanson

Dated 2 September 2022