



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-002568  
(PA/52358/2021)

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 7 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Deir Hasan Abdi**  
**(anonymity not ordered)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr C. Holmes, Counsel instructed by Ashwood Solicitors  
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 30 May 2023**

**DECISION AND REASONS**

1. The Appellant is a national of Somalia born in 1962. He appeals with permission against the decision of the First-tier Tribunal (Judge Symes) to dismiss his appeal on protection grounds.
2. The facts of this case are somewhat unusual. The Appellant is a member of the Ogaden clan, who although Somali by nationality, was born and raised in Ethiopia. He remained in Ethiopia for much of his life until fighting there forced him to flee. He went to Saudi Arabia to find work. In 2015 he was deported from Saudi Arabia to Somalia. That was the first time he had set foot on Somali soil.
3. He was not there long. He was initially supported by a fellow deportee from Saudi, and then set off for Kismayo where he hoped to be able to find distant relatives. On the journey he was stopped at a checkpoint by members of Al-Shabaab who took offence at his long hair and the fact that he was sitting with a woman to whom he was not related. Fortunately for the Appellant her husband turned out to be a member of Al Shabaab, and when she intervened in his defence he was allowed to pass. One consequence of this was that the Appellant subsequently found himself detained by the Somali military in Jubaland, who

could not work out how he had managed to safely traverse territory held by Al-Shabaab. Finding life in Somalia to be intolerable, and having failed to locate relatives to assist him, the Appellant headed for Europe where he was eventually granted asylum in Italy. It was however hard to survive there so he moved on, spending time variously in Germany, France and the Republic of Ireland before arriving in the UK.

4. The Appellant was refused protection in the UK. The Secretary of State was however prepared to grant him limited leave to remain, of 30 months duration. I am told that the reason for that grant is that the Appellant is married to a British woman with whom he has two children.
5. The issue before Judge Symes was whether the Appellant should be recognised as a refugee. Having heard the evidence and submissions, Judge Symes found as fact that the Appellant a Somali national, not Ethiopian. The evidence given by the Appellant about the few weeks that he had spent in Somalia were found to be credible. The Tribunal accepted that he had faced problems with Al-Shabaab, and with soldiers in Jubaland. It also accepted that the Appellant had apparently failed to establish “much by way of clan connection” in Somalia, that he had no family associations to call upon in Mogadishu, and only limited access to financial resources. All of that went in the Appellant’s favour. Judge Symes then says this:

35. On the other hand, of course, his brief spell in Somalia was some years ago, when Al Shabaab’s presence was far more firmly established than is the case now. His case falls to be considered against the Country Guidelines for returnees generally, and his past experiences are relevant, but by no means decisive, given the changed country conditions. The grant of status in Italy necessarily bows to the UK’s system of Country Guidelines, as well as the *Ravichandran* principle which requires an assessment at the hearing date. He previously found assistance from a fellow deportee from Saudi Arabia: it is possible that the same person could act as a guarantor in the future now conditions in Mogadishu have greatly improved. Or that individual’s assistance may simply demonstrate the kind of assistance available to a majority clan member who persistently searches for it. Relevant considerations are the economic boom to which MOJ alludes and which OA indicates is continuing, and the presumptive clan connections that are available both on a basis of one’s own links and also “family and diaspora links in this country”. The Appellant potentially has links via his Somali partner in the UK, as to whose circumstances the evidence put forward discloses very little. His sister in the USA may have remitted funds to relatives in Somalia that would themselves enliven kinship obligations. He might also, particularly as a majority clan member, be able to find extended family in Somalia if he had more time to do so, absent (in Mogadishu) the pressures from Al Shabaab that previously caused him problems. Ultimately the burden is on the Appellant to put a positive case on each of these issues.

36. I accept Mr Holmes’s submission that it would not be feasible to travel to Kismayo given that the most recent maps in the CPIN Somalia: Al Shabaab (Version 3.0; November 2020) indicate that

the route from Mogadishu to Kismayo crosses territory that is either Al Shabaab held or contested. He could survive on the funds provided under the Respondent's facilitated returns scheme pending re-establishing himself. The Country Guidelines indicate that a returnee can survive economically in Mogadishu. He should be able to follow the lead of other "recent arrivals who have secured or crafted roles in the informal economy." There is no real risk of the Appellant entering a refugee camp in the foreseeable future such as to engage obligations under Article 3 ECHR.

37. The Appellant would be returning to Somalia alone given that his partner's past grant of refugee status indicates she would not be able to return there. I note that AMM (Somalia) (headnote (11)) held that risks arising from a person's family's hypothetical return alongside them should be assessed in an international protection appeal. I accept that were the Appellant's wife relocating to Somalia with him and their two young children the risk analysis would doubtless play out rather differently. I understand she has now acquired British citizenship, though that would not necessarily dissipate the risks of persecution underlying her asylum claim, depending on its basis; her circumstances may or may not have changed depending on the facts of her case, of which I am not aware. But I can see no evidence to suggest that she would return abroad with the Appellant to Somalia. The fact he travelled to the UK to be with her indicates that that is the only country where she could realistically raise their children in safety. So "the hypothetical basis (if the facts so demonstrate) that family members would be reasonably likely to return" of which AMM (Somalia) speaks does not arise – for the facts do not point in the direction of a likelihood of return".

6. On this basis the appeal was dismissed.
7. The Appellant now has permission to appeal on three grounds. I deal with each in turn.

#### **Ground (i): 'Failure to Apply Binding Authority'**

8. Judge Symes accepted that the Appellant would not be able to safely reach his home area of Kismayo because of al-Shabaab activity in the area: see his paragraph 36. As such, the case turns on relocation, in this instance, to Mogadishu. Mr Holmes agrees that this is the case. Where he contends that Judge Symes went wrong was at his paragraph 37 (set out above) where he discounts the relevance of the Appellant's family members in the UK; his risk assessment was conducted on the basis that the Appellant would be returning to Somalia alone instead of with his wife and children. Mr Holmes seeks to show that this was the wrong approach with reference to the decision in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC).
9. He begins his argument by establishing that in this case, AMM continues to be applicable country guidance, despite its age. That is because both of the

intervening country guidance decisions on Somalia, OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC) and MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), were concerned with those returning to directly to Mogadishu. As the latter expressly acknowledges in its headnote, the effect of this is that for returns elsewhere in Somalia, it is the 2011 country guidance that remains good law:

*(i) The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC). Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.*

10. At its §237 the Tribunal in AMM addresses the argument advanced by one of the appellants that the risk assessment in her case had to be made on the basis that she would be accompanied by her minor daughter, who was said to be at risk of FGM:

“The hypothesis which a tribunal is required to make, in determining the entitlement of a person to refugee status or other international protection, is, however, not limited to assuming the return to the country of origin only of the appellant. On the contrary, on a daily basis, judicial fact-finders determine appeals by reference to the hypothetical return along with the appellant of other persons, whether or not these are British citizens. There is, accordingly, no impediment to appellant MW pursuing her claim to be entitled to refugee status or subsidiary protection, on the basis that, if compelled to return to Somalia, it is reasonably likely that she would take her children, including her daughter, and that she would suffer serious harm.”

11. Mr Holmes relies on this passage as authority for the proposition that the reasonableness of the Appellant’s proposed ‘internal flight’ to Mogadishu had to be assessed as if he were returning with his wife and minor children. It was common ground that the presence of children would probably make the proposed alternative unreasonable. He takes issue with Judge Symes’ conclusions to the contrary, set out at his §37. He submits that AMM remains binding authority, and that the First-tier Tribunal should have followed it.
12. For my part I would be slow to interpret what is said in AMM as laying down any binding legal principle. It does not seem to me that the Refugee Convention imposes any obligation on its signatories to assess risk in the context of a claimant’s preferred travelling companions. In some factual situations, that is indeed the hypothetical scenario that decision makers do consider - for instance where a minor child is dependent to a claim - but that is not the same thing as it being a legal requirement. My views on the matter are not however here relevant. That is because Judge Symes rejects the argument on the facts, not the law. In AMM the appellant MW was a mother of three young children and the Tribunal found as fact that her maternal instincts would lead her to take the children with her should she be returned to Somalia: see its §626. Here there was no evidence at all that the Appellant’s partner or children, who are all now British, would

accompany him into the challenging environment of Somalia. The children's mother was recognised as a refugee long ago, and she was settled here before she ever married the Appellant. The Respondent has, by his grant of discretionary leave, recognised that there would be insurmountable obstacles to family life continuing in Somalia and against that background Judge Symes was not persuaded that the Appellant's partner would elect to go with him:

"I can see no evidence to suggest that she would return abroad with the Appellant to Somalia. The fact he travelled to the UK to be with her indicates that that is the only country where she could realistically raise their children in safety".

13. I do not accept that this was a conclusion on the evidence that lay outwith the range of reasonable responses.

### **Ground (ii): Mistake of Fact**

14. This ground amounts to a semantic quibble with the First-tier Tribunal's use of the terms "return" and "returnee", which on the facts of the case were, I agree, arguably misplaced given that the Appellant has only ever spent about three weeks in Somalia. Reading the decision as a whole, however, it is clear that Judge Symes well understood that factual matrix and there is nothing in his reasoning to indicate that he might have forgotten it.

### **Ground (iii): Procedural Unfairness**

15. At his §35 Judge Symes sets out a number of matters which are submitted by Mr Holmes to be new forensic points, of which his client had no previous notice. These include the 'possibilities' that the man who assisted the Appellant upon his arrival in Somalia in 2015 would do so again, or that the Appellant's in-laws could host him. Neither of these points were taken by the HOPO, and so, argues Mr Holmes, the Appellant should have been given an opportunity to answer them.
16. I am not satisfied that there is any merit in this ground. The matters recited by the Tribunal at its §35 are simply a list of the obvious points arising from the country guidance decisions on Mogadishu, and as Judge Symes rightly says, "ultimately the burden is on the Appellant to put a positive case on each of these issues". Further it seems to me that the decision to dismiss the appeal turns on none of the rhetorical questions about who might offer the Appellant, a healthy adult male, support:

"36..... He could survive on the funds provided under the Respondent's facilitated returns scheme pending re-establishing himself. The Country Guidelines indicate that a returnee can survive economically in Mogadishu. He should be able to follow the lead of other "recent arrivals who have secured or crafted roles in the informal economy." There is no real risk of the Appellant entering a refugee camp in the foreseeable future such as to engage obligations under Article 3 ECHR".

### **Notice of Decision**

17. The decision of the First-tier Tribunal is upheld, and the appeal is dismissed.
18. There is no order for anonymity.

Upper Tribunal Judge Bruce  
18th July 2023