



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04696/2013

THE IMMIGRATION ACTS

Heard at : Field House  
On : 30 October 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMS  
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms E Martin, Senior Home Office Presenting Officer  
For the Respondent: Mr A Masood of Aden & Co Solicitors

DECISION AND REASONS

1. This matter comes before me following a grant of permission by myself on 12 August 2013. Although this is an appeal by the Secretary of State, I have, for the avoidance of

confusion, referred to the parties by the names used before the First-tier Tribunal, with the Secretary of State referred to as the “respondent” and AMS as the “appellant”.

2. The appellant is a citizen of Somalia born in September 1971. He claims to have entered the United Kingdom on 19 or 20 January 2009 and on 23 January 2009 he claimed asylum. His claim was refused some six years later, on 1 April 2013, after his file had been mislaid by the Home Office, and a decision was made on 2 May 2013 to remove him to Somalia.

3. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal before Judge Thomas on 17 June 2013. Judge Thomas found the appellant’s account of events in Somalia to be credible. She accepted that he was a member of the minority Ashraf clan and that he had previously lived in Hamar Weyne, Mogadishu; that his father had run a shop until 2001 when it was looted and he was forced to close it; that his father and brother died as a result of that incident; that he had married a member of the Abgaal clan in 2001 and had had two sons and that during his married life he was accepted by his wife’s clan and was able to live a more stress free life and worked in a garage; that his sons were killed in 2005 and 2005 when caught in cross-fire between Al-Shabab and others and that his wife died in a similar situation in 2007; that Al-Shabab took over his area after his family died; that he and his mother moved to Hamar Weyne in Mogadishu in 2007 and lived in one of the refugee camps and that he worked as a mechanic; and that he experienced no problems between 2007 and 2009 until he came to the United Kingdom. The judge noted that it was accepted by the appellant that he did not qualify for refugee status on account of his membership of a minority clan and she did not accept that he would be at risk of persecution or harm under Articles 2 and 3 of the ECHR. She accordingly dismissed the appeal on asylum and human rights grounds.

4. However, with regard to humanitarian protection under Article 15(c) of the Qualification Directive, the judge found, after considering the country guidance in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG and the background information before her:

“Whilst the latest information indicates that the situation in Mogadishu has improved following the withdrawal of Al-Shabab, given the continuing difficulties outlined above, I do not find that the information demonstrates that the changes resulting from that withdrawal are sufficiently durable to cause me to come to a different conclusion to that of the Tribunal in the country guidance case of AMM.”

5. Accordingly, she found that the appellant was entitled to humanitarian protection and she allowed the appeal on that basis.

6. The respondent sought permission to appeal against Judge Thomas’s decision on the grounds that there had been durable change in Mogadishu since the decision in AMM and that the judge had erred in her assessment of the situation and had failed properly to engage with the question of durability and to consider the situation in Mogadishu as of 2013. The grounds asserted further that the judge had failed to engage with the appellant’s own evidence as to whether he had connections in Mogadishu.

7. Permission to appeal was initially refused, but was subsequently granted by myself on 12 August 2013 on a renewed application on the same grounds.

### **Appeal hearing and submissions**

8. The appeal came before me on 30 October 2013. I heard submissions as to the error of law.

9. Ms Martin submitted that the judge had ignored the evidence in the refusal letter showing that the situation in Mogadishu had changed since 2011. She referred to that evidence, quoted at paragraphs 58, 61 and 64 of the letter, and submitted that the judge had failed to weigh up the two sides to the evidence and to engage with the changes that had taken place. When I asked her if she was still relying on the ground relating to the appellant's own circumstances, she said that she was and that it was essentially the same point, namely the failure to engage with the facts of the case and the country situation.

10. Mr Masood submitted that the judge had not erred in law and was entitled to follow the country guidance. In that respect he relied upon the case of SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 in which Lord Justice Stanley Burton stated at paragraph 67:

“In my judgment a Country Guidance determination of the Upper Tribunal (Immigration and Asylum Chamber) remains authoritative unless and until it is set aside on appeal or replaced by a subsequent Country Guidance determination.”

11. It was Mr Masood's submission that the judge had looked at all the evidence before her and had noted that the reports referred to the situation in Mogadishu improving but that risks remained. The finding the judge made regarding the durability of the situation was one that was open to her and was in accordance with paragraph 363 of the decision in AMM. The grounds were no more than a disagreement with the judge's decision. With regard to the appellant's own circumstances, it was found in AMM that clan-based violence was no longer relevant and that following the arrival of Al-Shabab the majority clans who were previously powerful were no longer powerful. The appellant's experiences related to his circumstances previously when there was a distinction between the minority and majority clans. The judge adequately addressed the appellant's personal circumstances.

12. Ms Martin made no further submissions in response.

### **Consideration and findings**

13. It is the case that the country guidance in AMM, in particular that relating to humanitarian protection as regards the situation in Mogadishu, is to be reviewed in an appeal listed for hearing in December 2013. Nevertheless, AMM currently remains authoritative guidance and, as found in SG (Iraq), the Tribunal was entitled to follow it.

14. Judge Thomas was fully aware, as she stated at paragraph 17 of her determination, that the latest information indicated that the situation in Mogadishu had improved following the withdrawal of Al-Shabab. She was fully aware of the Upper Tribunal's view, expressed in paragraph 363 of AMM, that it was open to judicial fact-finders to conclude that the necessary element of durability had been satisfied, on the basis of new evidence arising since the guidance was given. Accordingly, she gave careful consideration to that evidence and, at paragraph 16, assessed the background information before her. She referred to several reports in the documentary evidence before her and considered not only those relied upon by the appellant, but also, as is apparent from her comment at the end of paragraph 16, those relied upon by the respondent. Whilst she did not quote extensively from the latter, it is clear that she took into account all the evidence from both parties. It is not the case, as asserted by the respondent, that she failed to engage with the changes that had taken place in Mogadishu. As such, it was open to her to conclude, in the light of the background information to which she referred, that the changes resulting from Al-Shabab's withdrawal were not sufficiently durable to cause her to depart from the country guidance in AMM. I would agree with Mr Masood that the grounds of appeal are, in that respect, no more than a disagreement with her findings on the evidence before her.

15. With respect to the ground relating to the appellant's personal circumstances, that was not a matter particularly emphasised by Ms Martin as an independent and discrete issue and indeed I had to enquire whether that ground was pursued. It is the case that the judge did not set out in paragraph 17 an in-depth analysis of the appellant's circumstances. However it is plain, from her findings at paragraph 15 that that was a matter to which she had full regard. It is also plain, from her findings at paragraph 17, that she was fully aware of the guidance in AMM, as set out at paragraph 1 of the head-note and in paragraph 594 of the main body of the decision, and quoted at paragraph 12 of her determination, of the exceptions to the general risk of Article 15(c) harm for those returning to Mogadishu after a significant period of time abroad, namely for those persons connected with powerful actors or belonging to a category of middle class or professional persons. That was a matter to which she gave specific consideration and upon which she made reasoned findings. Although not a matter specifically referred to by the judge, Mr Masood made the further, valid point that the appellant's circumstances prior to leaving Mogadishu arose as a result of the distinction at that time between majority and minority clans, a distinction that the Upper Tribunal found in AMM was no longer of significance following the arrival of Al-Shabab. Accordingly, it seems to me that the judge's findings at paragraph 17 adequately addressed the question of risk on the basis of the appellant's own, individual circumstances.

16. For all of these reasons I do not consider that the grounds are made out. I find that they amount in essence to little more than a disagreement with the judge's findings and that they disclose no errors of law in her decision.

## DECISION

17. The Secretary of State's appeal is dismissed.

18. The original Tribunal did not make a material error of law. The decision, to allow the appeal on humanitarian protection grounds, still stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Upper Tribunal Judge Kebede