



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00786/2013

THE IMMIGRATION ACTS

Heard at Field House

On 9 December 2013

Determination

Promulgated

On 23 December 2013

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

RAGE MAHMOUD SHARIF ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal instructed by Wilson Solicitors LLP

For the Respondent: Miss A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant who is a national of Somalia born 1 January 1983 appeals with permission the decision of First-tier Tribunal Judge Carey who for reasons given in his determination dated 23 September 2013 dismissed the appellant's appeal against the deportation order dated 11 April 2013

made pursuant to section 32(4) of the UK Borders Act 2007 as the appellant being a foreign criminal is defined by section 32(1).

2. The First-tier Tribunal dismissed the appeal which was based on the sole remaining issue in dispute: whether the appellant was entitled to humanitarian protection under 15(c) of the Qualification directive as transposed in paragraph 339C of the Immigration Rules. There was no reliance on the Human Rights Convention, in particular Article 8.
3. The challenge in the grounds of application refers to the tribunal's conclusion that the appellant originated from central or southern Somalia and that there was nothing to suggest if returned there via Mogadishu International Airport he would face a real risk of suffering serious harm particularly in non-AI-Shabab controlled areas.
4. Having directed itself that it would follow the country guidance decision in *AMM (Somalia) CG [2011] UKUT 445*, despite new evidence, the tribunal had nevertheless reached a conclusion that was inconsistent with that guidance which provided that the majority of those in Mogadishu faced a real risk of serious harm within the meaning of Article 15(c) and there was no suggestion that the appellant came within any of the exceptions identified. The grounds specifically state:

“Mogadishu International Airport is in Mogadishu. The start of any journey that the appellant might take to another part of Somalia is thus in Mogadishu”.

5. It is argued that the judge was therefore bound to find that removal of the appellant would expose him to a real risk of serious harm or was bound to explain why this would not be the case.
6. Permission to appeal by Designated First-tier Tribunal Judge Macdonald was based on the judge's finding that the appellant “would be returned to Mogadishu”. Although this suggests the judge may have misunderstood the findings by the First-tier Tribunal nevertheless permission to appeal has been granted and I heard submissions from the representatives on the relatively narrow basis of the scope of the challenge.
7. The determination of the First-tier Tribunal indicates a thorough and carefully reasoned approach to the new evidence relied on by the appellant as to its origins as well as the evidence that had gone before reflected in determinations promulgated in 2006 and 2010. The appellant continued to maintain that he is from Mogadishu and called witnesses who had not appeared before the earlier tribunals in support of this claim including an expert, Ms Mary Harper. The conclusion reached is set out in [77] of the determination as follows:

“77. I therefore place little weight on Ms Harper's report insofar as it purports to assist in a determination as to whether the appellant originates from Mogadishu. It is my view that the decision of IJ

Corben on the appellant's origin was correct. Indeed I note that when the appellant's solicitors wrote to the respondent on October 1 2007 to make a fresh claim on his behalf they concentrated in their 6 page letter on the general position in Somalia making particular reference to southern Somalia. I conclude that it is reasonably likely that the appellant originates from central or southern Somalia. There is nothing to suggest that if he is returned there via Mogadishu International Airport he would face a real risk of suffering serious harm particularly in a non Al-Shabab controlled area. There is nothing to suggest that he falls within any of the risk categories identified in **AMM** and in particular would face any travel difficulties. It would appear from **AMM** and the Danish/Norwegian report that Al-Shabab are no longer the force they once were in central or southern Somalia.

78. Mr Toal quite rightly conceded that whether the appellant was a member of a minority clan was no longer of relevance in view of what was said in **AMM**. He sought to rely on no other grounds under Section 33 of the 2007 Act. In those circumstances in view of my finding on humanitarian protection it is inevitable that the appellant's appeal should be dismissed."
8. There is no challenge to the finding as to the appellant's origins and his prospect of safety once there. Mr Toal clarified his concession recorded at [78] above as that being a member (of a minority clan) was not of itself a basis for entitlement to refugee protection and he did not seek to argue that there was error of law on this basis. Mr Toal also acknowledged that there was no evidence before the tribunal of the distance of Mogadishu International Airport from Mogadishu itself but maintained his challenge that as part of his reasoning, the judge needed to turn his mind to how the appellant would be able to travel to central or southern Somalia without passing through Mogadishu. I reminded Mr Toal that the appellant was well aware of the challenge to his place of origin and that it was for him to produce evidence that it was not open to him to return to southern or central Somalia in the event that it was found he was not from Mogadishu without having to pass through that city. He had not done so but instead had based his case solely as someone from Mogadishu.
9. Mr Toal and Miss Holmes directed me to various passages from the tribunal's determination as well as the decision in *AMM* to throw light on the core of Mr Toal's argument that it was not open to the appellant to make his way from MIA to his home area without passing through metropolitan Mogadishu.
10. Miss Holmes reminded me that at [10] of the determination Mr Toal was recorded as having accepted that the appellant would not be at risk at Mogadishu International Airport or en route from the airport. To his credit Mr Toal did not seek to resile from that in his submissions.

11. At [350] of its determination in *AMM* the tribunal concluded that an Article 15(c) risk existed as a general matter in respect of the majority of those in Mogadishu and as a general matter as to those returning there from the United Kingdom.
12. At [87] and [88] the Tribunal in *AMM* noted the assessment by the ECtHR in *Sufi & Elmi v the UK* [2011] ECHR 1045 under the heading “the risk in transit or upon settling elsewhere in southern and central Somalia”. The Tribunal observed at [87] in particular:

“The court held that the situation in the airport was not such as to give rise to a real risk of ill-treatment to somebody arriving there. They had also noted that certain journeys to places in central and southern Somalia from the airport did not involve having to go to Mogadishu”.
13. The tribunal in *AMM* further observed at [88]:

“It was therefore possible for a returnee to travel from Mogadishu International Airport to another place of ‘central and southern Somalia’ without being exposed to a real risk of treatment prescribed by Article 8 solely on account of the situation of general violence”
14. Further at [520] the tribunal found:

“The overwhelming message from the evidence before us is that it is sufficiently safe to travel from Mogadishu International Airport into the city. TFG/AMOSOM control the roads. Although there was some evidence of problems, including IEDs, the risk run in travelling along the road, in any form of transport, does not constitute a real risk of serious harm including Article 15(c) risk. The latter risk arises by reason of *being* in the city.”
15. After observing that air travel within Somalia was common with reference to the UKBA’s fact-finding Mission at [524] the Tribunal observed:

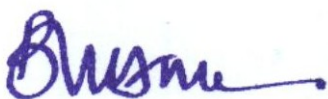
“If, in a hypothetical case, the respondent is able to point to evidence that the returnee can fly from Mogadishu International Airport to a town in central and southern Somalia, the focus of the appeal may well be upon the person’s hypothetical situation in that town, rather than any problems accessing it by an overland route. This was not, however, the position in the present appeals, where there is no suggestion that the appellant *AMM* could fly to Jowhar or appellant *MW* to Merka (both of which are, in any event, currently controlled by Al-Shabab). Nor was it suggested that either they or appellants *FM* and *AF* (who come from Mogadishu) could fly to some other place in central or southern Somalia.”
16. As I have observed above, the possibility of the appellant being found to be from central or southern Somalia was not an issue that was sprung upon him in the light of the previous litigation and the question mark over

his claimed place of origin. As observed by Sir John Dyson in *MA (Somalia) v SSHD* [2010] UKSC 49 with reference to the judgment of Laws LJ in an earlier decision *GM (Eritrea) v SSHD* [2008] EWCA Civ 833 at 31:

17. "What Laws LJ was saying at para 54 was that, where a claimant tells lies on a central issue, his or her case will not be saved by general evidence unless that evidence is extremely strong. It is only evidence of that kind which will be sufficient to counteract the negative pull of the lie. But much depends upon the bearing that the lie has on the case...".
18. The lie told by the appellant before the First-tier Tribunal was that he was from Mogadishu. Cogent and sustainable reasons were given for finding otherwise. The Strasbourg Court in *Sufi & Elmi* and the tribunal in *AMM* found it was possible to travel safely from Mogadishu International Airport to elsewhere in Somalia other than Mogadishu and accordingly there was no general evidence which the appellant could rely on to support his assertion on which he now seeks to challenge the tribunal's decision. In particular there was no evidence before the First-tier Tribunal that apart from flying which in any event was a possibility open to the appellant (subject to his place of origin), there was no possibility of him being able to travel elsewhere without passing through Mogadishu itself.
19. Accordingly I am not persuaded that the tribunal erred in law in its determination. This appeal is dismissed.

Signed

Date 13 December 2013



Upper Tribunal Judge Dawson