**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00925/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham** **Determination Promulgated**
**On 20 February 2014** **On 10 March 2014**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**AHMED MOHAMED JAYLANI MAHAMUD**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs V James, instructed by Sultan Lloyd Solicitors
For the Respondent: Mr Smart, a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Ahmed Mohamed Jaylani Mahamud, born on 1 January 1995 is a citizen of Somalia. The appellant appealed to the First-tier Tribunal against the decision of the respondent dated 24 April 2013 to deport him under Section 3(5)(a) of the Immigration Act 1971. On 8 April 2010, the appellant had been convicted of

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wounding with intent and sentenced at Nottingham Crown Court to detention for a period of three years. The Tribunal dismissed the appeal on asylum and humanitarian protection grounds but allowed it "on immigration and human rights grounds". The Tribunal also upheld the certificate under Section 72(2) of the Nationality, Immigration and Asylum Act 2002, finding that the appellant had been convicted of a particularly serious crime and consequently a danger to the community of the United Kingdom. The appeal was allowed on the basis that the appellant would face a real risk of Article 3 ECHR harm if he were returned to Somalia. As regards Article 8 ECHR, the appeal was allowed on that ground also, the Tribunal giving its reasons at [54-57].

2. There are cross appeals in this matter. The appellant appeals on the basis that the Section 72 Certificate should not have been upheld by the Tribunal. The respondent asserts that the panel failed to give adequate reasons for allowing the appeal on Article 3 and 8 ECHR grounds.

3. Having heard the oral submissions of the representatives of both parties, I directed that the determination of the First-tier Tribunal promulgated on 12 September 2013 be set aside and the matter heard again by the First-tier Tribunal which shall remake the decision. My reasons for reaching that finding are as follows.

4. Allowing the appeal under Article 3 ECHR, the Tribunal wrote this:

> 45. We find a number of factors which put this appellant at risk. He would be returned to Mogadishu where he has no family, indeed there was no evidence he has any family in Somalia now. He is from Lower Shabelle, not Mogadishu itself and travel out of Mogadishu is dangerous especially if through insurgent held territory – Al Shabab operates on the outskirts of Mogadishu. In any event the appellant would have no where to go in his home area – no home, family or support.
>
> 46. He is from a minority clan, the Benadiri, acknowledges a vulnerable group in the background evidence and less under the protection of more powerful actors – the appellant would return having no-one to protect himself. He is young and fit but without support, contacts or protection. It is difficult to see how he could avoid ending up in a refugee camp. He left the country as a young child well before the rise of Al Shabab and would be perceived and identifiable as a returnee from the west. We find that the security situation is still volatile given insurgent attacks in the Mogadishu area. IDP camps in Mogadishu continue to grow and humanitarian operations are hampered by insecurity, fighting and restricted access.

5. One difficulty with the Tribunal's determination is that many of the circumstances of the appellant which the Tribunal accepted as facts had been disputed by the respondent in her refusal letter. In that letter, which is dated 24 April 2013, the respondent took issue with the appellant's claim that he would be without support and effectively destitute upon return to Somalia (see refusal letter, page 18 of 32). It is clear from the passage of the determination which I have quoted from above that the Tribunal accepted that the appellant would be without support. However, it is

also clear from the determination that, although there was written evidence relating to the appellant's asylum/Article 3 ECHR claim, most of the oral evidence concentrated upon the appellant's Article 8 ECHR appeal. I consider that the Tribunal has not adequately explained why it accepted those parts of the appellant's evidence which were in dispute. Its determination of the appellant's credibility is short to say the least and appears at [20]:

> We found no material inconsistencies in the evidence and found the witnesses and the evidence credible subject to certain qualifications indicated below. However, we interpreted aspects of the evidence differently from both sides as indicated below.

Neither Ms James nor Mr Smart were able to explain to me what those "certain qualifications", might be or how the Tribunal had interpreted aspects of the evidence "differently from both sides as indicated below". Paragraph [20] is wholly inadequate as an analysis of the credibility of the appellant's evidence; indeed, most of the paragraph refers to qualifications to its acceptance of the appellant's credibility which the Tribunal has completely failed to explain later in the determination. Proper findings of fact regarding the circumstances which the appellant will encounter upon return to Somalia are necessary because those circumstances will determine whether or not he is entitled to Article 3 ECHR protection. In the country guidance decision of *AMM & Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 00445 (IAC) the Tribunal observed that:

> The armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city regardless of circumstances. Humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid him to live in such a camp. A returnee may nevertheless face a real risk of Article 3 harm by reason of his or her vulnerability.

I do not say that the Tribunal could not have concluded that the appellant would be at real risk of Article 3 harm upon return to Somalia but I do find that the Tribunal has failed to deal adequately with the matter of the credibility of the appellant's account.

6. I find that the determination should be set aside in its entirety. However, I would also make the following observations. As regards the Section 72 Certificate, the Tribunal noted [41] that the appellant asserted that he was "now leading a hardworking positive life whereby he presented no danger to the community". The Tribunal, however, also found that his offence of wounding was "very serious" and further that the appellant had had "disciplinary issues in prison in particular he was involved in several fights in different institutions". The Tribunal noted that the appellant presented a low risk of reoffending "but this does not mean no risk and if he reoffends, there is a medium risk of harm to the community. We therefore uphold the Section 72 Certificate". Later in the determination [55] when dealing with the appeal on Article 8 grounds, the Tribunal observed that

> The appellant engaged well on licence and has good relationships with his family, his girlfriend and his colleagues we find him reliable and helpful. He is at low risk of reoffending we find he has done well in re-establishing himself after coming out of custody.

Those were all factors which the Tribunal considered weighed in the appellant's favour in the Article 8 assessment. Ms James, for the appellant, submitted that the Article 8 findings and those concerning the Section 72 certificate were contradictory. I agree. The Tribunal needed to consider all the evidence and then make comprehensive findings of fact so as to establish a complete assessment of the appellant and his current and past circumstances. It should then have applied the same factual matrix to the matter of the Section 72 Certificate and all the grounds of the appeal, including Article 8 ECHR. The determination gives the impression that the Tribunal has adopted one view of the appellant's behaviour and circumstances when dealing with the Section 72 Certificate and another in determining the Article 8 appeal. It is an approach that obscures the Tribunal's reasoning and renders the determination unsatisfactory.

7. I observe also that, whilst the Tribunal refers to the authority at [53], there was no attempt in the determination to apply the principles of *Maslov* [2008] ECHR 546 to the particular facts of this appeal. Those principles are clearly relevant in a case where the appellant has been living in the United Kingdom for a number of years and the index offence was committed whilst he was a minor; the respondent's refusal letter discusses *Maslov* at length. I find that the Tribunal has failed properly to apply the principles of the relevant jurisprudence.

8. In the light of the fact that the appellant and other witnesses many need to give oral evidence, I consider it appropriate for the First-tier Tribunal to remake the decision.

**DECISION**

9. The determination of the First-tier Tribunal which was promulgated on 12 September 2013 is set aside. None of the findings of fact shall stand. I direct that the appeal shall be heard again in the First-tier Tribunal (not Judge Lloyd/Mr G F Sandall) and the decision remade in that Tribunal.

Signed Date 5 March 2014

Upper Tribunal Judge Clive Lane