



IAC-AH-DP-V1

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

Appeal Number: AA/05617/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford Upper Tribunal  
On 25<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 10<sup>th</sup> December 2015**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**AMY**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R O’Ryan of Counsel instructed by Bankfield Heath Solicitors

For the Respondent: Mr McVeety, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant’s appeal against the decision of Judge Kempton made following a hearing at North Shields on 28<sup>th</sup> April 2015.

**Background**

2. The appellant is a citizen of Somalia. He entered the UK via Belfast on 27<sup>th</sup> May 2013 and claimed asylum a month later. He was refused by letter on 17<sup>th</sup> March 2015. The respondent accepted that the appellant was a citizen of Somalia, and that he was from the Ashraf clan and had

experienced conflict with other clans, but not that he had experienced problems with Al Shabab as claimed.

3. The Judge similarly rejected the appellant's account of the events which led him to leave Somalia on the grounds that there were a number of inconsistencies in his story and there is no challenge to her credibility findings in the grounds.
4. The Judge considered the risk on return. She recorded that the appellant said that he and nine others left Somalia for abroad. The appellant had some money saved and others in the group who were all also Ashraf, similarly had funds. The appellant gave evidence that when they arrived in Addis Ababa they received money from abroad and his expenses were paid.
5. The Judge wrote as follows:

"In his oral evidence there is the same pattern of other members of the Ashraf clan looking out for each other when he was in Italy and Norway. It was through other members of the Ashraf that he was able to afford to travel to Belfast and subsequently claim asylum in the UK."
6. The Judge considered the country guidance of MOJ and Others (return to Mogadishu) Somalia CG [2014] UKUT 442.
7. She concluded:

"According to (xii) return to Mogadishu as proposed by the respondent in this case may not be a real possibility for a person such as him who is from a minority clan as accepted by the respondent with no former links to the city, no access to funds and no other clan or family or social support and an absence of means to establish a home and ongoing support. Such a person would be likely to have to live in a makeshift camp where there is a real possibility of having to live in conditions which fall below acceptable humanitarian standards.

Accordingly on looking at this appellant's circumstances, he was only in Mogadishu when he was born, as his mother went there, he said, when he was due to be born and then he returned home. I am not sure why she did this or if there was some family in Mogadishu at that time. He says he has no family contact and no family support there now. However his evidence is that even if he is from the Ashraf clan, he has in fact had funds to leave the country and he has received financial help over the years from other members of the Ashraf clan. His evidence is that they help each other.

I note that there is an expert's report from Dr Bekalo which states at paragraph 2.1 that it would be extremely difficult if not impossible for the appellant to access meaningful support and protection either in the IDPs in Mogadishu or outside. Hence destitution is more likely. Aid agencies struggle to meet basic human requirements as it is a war torn and resource stretched country (2.2). Paragraph 3.4 of Dr Bekalo's report concludes that there is a lack of a strong central law enforcement force and credible judicial system coupled with the centuries old Somali clan discriminatory system and this put people with no clan or family support network at greater risk of persecution. Dr Bekalo also expresses concern at the extremism of Al

Shabab which has now spread to Kenya and so the inference is clear that it is not yet a spent force in the whole area.

I take into account the decision of MOJ and Dr Bekalo's report. I also consider that the appellant has not given at all times an entirely consistent account. However given that the respondent accepts that he is from the Ashraf minority clan and that he would be returned to Mogadishu, I consider that in the absence of any evidence of family support in Mogadishu, that the appellant, on the face of it, would struggle financially in Somalia. However he has received help all these years from other members of the Ashraf clan who are abroad. There is no reason why this would not continue if he were to be returned to Somalia."

8. On that basis she dismissed the appeal.

### **The Grounds of Application**

9. The appellant sought permission to appeal on the grounds that the Judge had erred in her assessment of the evidence. Whilst the appellant received assistance from members of the Ashraf clan, the financial support was limited. She had taken an act of kindness and treated it as meaningful support since there was no evidence that the appellant was still in contact with the nine members of the Ashraf clan or that they will be able to continue to provide support or whether it would stretch to allowing the appellant to live safely in Mogadishu. Moreover she had failed to assess the evidence in the light of the expert report from Dr Bekalo.
10. Permission to appeal was granted by Judge Levin on 8<sup>th</sup> June 2015 for the reasons stated in the grounds.
11. On 23<sup>rd</sup> June 2015 the respondent served a reply opposing the appeal. The Judge had found that the appellant received funds from others in his clan which ameliorates the suggestion in MOJ that minority clan members would have no access to funds and the conclusion of the expert that it would be extremely difficult if not impossible for him to access meaningful support.

### **Submissions**

12. Mr O'Ryan relied on his grounds. Essentially, he argued that the Judge had drawn conclusions which were not properly founded on the evidence.
13. He submitted that the appellant had given examples in his screening interview and in his oral evidence of how difficult his living circumstances were in Italy. In his SEF interview he had described nine people who had pooled their resources for the sole purpose of escape. Even if he had had assistance to come to Belfast, that was a single occasion and insufficient to base a conclusion that the appellant would be able to access help from the Ashraf on return to Somalia. The Judge had simply exaggerated the level of financial support to which the appellant had had access.
14. Second, the claim that there were significant remittances from the Ashraf into Mogadishu was contrary to the known evidence as analysed in MOJ. The Judge should have given detailed reasons for reaching the unusual

conclusion that minority clan members would offer assistance to the appellant on return, and he asked me to reverse the decision.

15. Mr McVeety defended the determination, and relied heavily upon the fact that there was evidence before the Judge that the appellant had been able to pay for an agent to bring him to the UK, which must have been expensive. The Immigration Judge was correct to question where the money had come from. There was clear evidence that the appellant was being helped not only on departure from Somalia in 2007 but also in 2013 when he entered the UK. He accepted that she had not undertaken a forensic examination of the evidence but submitted that she was entitled to conclude that the appellant had been in receipt of financial support for some time and there was no reason why this should not continue.
16. If the decision were to be remade, he submitted that it was clear that the Ashraf clans in the diaspora had been able to provide funds to support the appellant's illegal entry in the past and it was not implausible that they should do so in the future.

### **Consideration of whether the Judge erred in law.**

17. In MOJ the Tribunal concluded that an ordinary civilian would face no real risk of persecution on return and that any ordinary citizen of Mogadishu would be able to reduce personal exposure to risk.
18. At (vii) the Tribunal said:

“A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.”
19. At (ix) the Tribunal said:

“If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all the circumstances. These considerations will include, but are not limited to:

  - circumstances in Mogadishu before departure;
  - length of absence from Mogadishu;
  - family or clan associations to call upon in Mogadishu;
  - access to financial resources;
  - prospects of securing a livelihood, whether that be employment or self-employment;
  - availability of remittances from abroad;
  - means of support during the time spent in the UK;
  - why his ability to fund the journey to the west no longer enables an appellant to secure financial support on return.”

20. It was therefore incumbent upon the Judge to conduct a careful analysis of the appellant's circumstances. She was assessing the risk to someone whom was accepted to be a minority clan member without family support in Mogadishu.
21. There is no such analysis in this determination. Most of the matters referred to in (ix) were not addressed by the Judge. She focused on his ability to fund the journey to the west but did not consider the other factors referred to in that sub-paragraph.
22. Moreover I accept the submission that the Judge's conclusion that the appellant had received help "all these years from other members of the Ashraf clan who are abroad" is not founded firmly in the evidence.
23. In his SEF interview the appellant was asked how he was able to pay for his exit from Somalia. The reply was  

"In the first place we were nine in number and I saved some money but the people I had been with had money and we are the same clan so we owe each other. When we got to Addis Ababa we received money from overseas and they paid my expenses."
24. Whilst there was evidence of a pooling of resources when he and nine others left in 2007, the appellant's evidence was that he actually had funds of his own which he had saved (question 122). In any event his reply is not a basis for a proper finding that that support would be available to the appellant on return. He left Somalia some nine years ago.
25. The appellant gave details of his travels through Europe at his screening interview. At 2.1 the appellant said:  

"I came through other country. I left Somalia 6/2007. I left by motor vehicle in Hamar in Mogadishu into Djibouti. I left Djibouti and went to Eritrea and then to Sudan and then to Libya. Then I caught a boat from Libya. Then I came to Italy on 27/3/09. I was in a refugee camp. I was there for a long time then I went to Norway not sure of date possibly May. I was there for a year and nine months. Then they returned me back to Italy (February 2012). Stayed Italy for two years two months ... I fled from Italy and came here to Belfast. Came Belfast on 27/5/13 I travelled by air."
26. During cross-examination the appellant was asked who had helped him when he was in Norway, and whether the people who had helped were from the Somali community. He agreed that he had been supported by Somalis. The appellant also accepted that members of the Somali community had financed his journey from Italy to Belfast.
27. So far as Italy was concerned he told the Judge that he had been in need of help in Italy because he was unwell and beaten by alcoholics. A young man had helped him and he was from the Ashraf clan, also living on the streets. According to the Judge's note of the oral evidence, he was helped by a fellow member of the clan after he had been beaten up but that clan member was also living rough on the streets.

28. The above evidence is not an adequate foundation for the conclusion that he would be able to access support on return.
29. Furthermore whilst the Judge refers to Dr Bekalo's report it is not at all clear that she engages with his conclusions that the appellant was not likely to get any meaningful support in terms of security and building livelihood from clan members and even if he had maintained or re-established fresh contacts with his clan the Ashrafs are simply too poor and powerless to provide the necessary support.
30. Accordingly the Judge erred in law in failing to give adequate reasons for her conclusions that members of the diaspora would be willing to support the appellant on return to Somalia. The determination is set aside.

### **Findings and conclusions**

31. Applying the Judge's findings to the criteria set out by the Tribunal in MOJ, the appellant had been found to be untruthful in his claims to have been sought by Al Shabab but, at paragraph 31, she accepts that the appellant has no former links to Mogadishu. He has been absent from there for nine years. He does not have family there and his clan associations are the Ashraf whom the Tribunal found may have little to offer. That is a finding confirmed by the report of Dr Bekalo who concluded that the Ashraf would not be in a position to assist him to build a livelihood in Mogadishu.
32. In MOJ at (xi) the Tribunal said:
  - (i) It will therefore only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms."
33. I do not accept that the fact that the appellant received assistance from a fellow street sleeper after an assault suggests in any way that financial support would be available in Mogadishu. Whilst the appellant had the ability to pay an agent to come to the UK was helped to do so, the assistance was limited and from people whom he had met and in response to a particular situation. It cannot properly be characterised as continuous or reliable. In fact there is no evidence that the appellant is even in contact with anyone who might have helped him in the past.
34. Accordingly I conclude that the appeal should therefore be allowed on humanitarian protection grounds.

### **Notice of Decision**

The decision of the Judge is set aside. It is remade as follows. The appeal is dismissed on asylum grounds but allowed on humanitarian protection grounds.

~~No anonymity direction is made.~~

Signed

Date

Upper Tribunal Judge Taylor