



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

Appeal Number: DA/00356/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13 November 2014**

**Determination
Promulgated
On 20 January 2015**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

AAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Collins of Counsel instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia born on 1 February 1984.
2. By a decision letter (undated) but served under cover of a letter of 15 January, the Respondent made a deportation order under Section 32(5) of the UK Borders Act 2007. The decision was a detailed one. That claim was refused and was also certified under Section 72(6) of the 2002 Act. It was not considered that the appellant would face the requirement of humanitarian protection. In that connection consideration was given to

the situation in Somalia and in particular the risk from Al-Shabaab. So far as humanitarian protection was concerned, that was excluded under paragraph 339D of the Immigration Rules.

3. Consideration was also given in respect of Article 3 and Article 8 of the ECHR. It was not considered that a removal would in any circumstances act in breach of the obligations imposed thereunder.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Blackford and Mrs V Street (non-legal member) on 28 June 2013 and 18 October 2013. It was a detailed determination. The appeals were dismissed.
5. The appellant sought to appeal against that decision. Permission to appeal was granted and the matter came before me in pursuance of that permission. There was a hearing before me on 16 May 2014.
6. The Tribunal, having upheld the Section 72 certificate in relation to asylum and humanitarian protection, the live issue in the appeal before me was essentially whether the Tribunal had given proper consideration to the issues raised under Sections 2 and 3 of the ECHR. It seems to me that there were obvious factors as being relevant to the issue of vulnerability of the appellant returning. Such being his long term residence in the United Kingdom, his mental illness, and his lack of community ties. It was my finding that the issue of vulnerability was not one that had been specifically considered by the Tribunal and was in those circumstances a significant omission.
7. It was upon that narrow basis that the decision was set aside to be remade.
8. It was made clear in my judgement on that matter dated 26 June 2014, and attached as an appendix to this decision, that I found no reason to set aside the other findings of the Tribunal nor indeed to reopen the issue of Article 8. The matter was to be retained within the jurisdiction of the Upper Tribunal.
9. The rehearing on the limited aspect came before me on 16 August 2014. The hearing was however adjourned in the light of a new country guidance case being imminent. Given that adjournment was opposed by Mr Collins who represents the appellant, I set out the reasons for that adjournment in my decision of 21 August 2014.
10. Eventually the matter did come for hearing. I have regard to a large volume of material. I note the background material and statements that were before the First-tier Tribunal.
11. There are various other bundles which I have marked as bundle A and B. In addition to the country guidance case of **AMM and Others (Conflict -**

humanitarian crisis: returnees; FGM) Somalia [2011] UKUT 4445 (IAC) there was the more recent decision of MOJ and Others (Returning to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC).

12. In addition my attention was drawn to the Operational Guidance Note on Somalia of September 2013 and to medical reports relating to the appellant, particularly those prepared by the Camden Islington NHS Trust dated 3 October 2014 and 29 October 2014.
13. As I have indicated, the determination of the First-tier Tribunal was a detailed one. Much evidence was considered and findings of fact were made.
14. It is a claim of the appellant, although not accepted by the respondent, that he came to the United Kingdom in October 1995 to avoid the war in Somalia which he had witnessed first hand as a minor. He came with his family. He had first come to the attention of the Home Office in March 2001 and he had applied for a Home Office travel document. On 14 July 2003 the appellant was granted indefinite leave to remain as a dependant of his sister.
15. On 22 June 2009 the appellant was convicted at Blackfriars Crown Court of two counts of rape and sentenced to five years' imprisonment. He was ordered to sign on the Sex Offenders Register indefinitely. The deportation order was signed on 25 January 2011 he being assessed as constituting a high risk of harm to children and adults in the community. He was issued with a notice of liability for deportation on 5 September 2011 and refused to sign an acknowledgement of that receipt. Following completion of his sentence he was detained under immigration powers until granted bail by the Tribunal on 12 October 2011. On 7 February 2014 he had lodged an appeal against the decision to deport him, which appeal had been allowed and remitted to the Secretary of State for reconsideration. He was interviewed in connection with his claim for asylum on 5 July 2011.
16. Thus it was that the decision of January 2013 which is the operable decision for the purposes of this appeal.
17. The First-tier Tribunal considered and upheld the Section 72(2) certificate.
18. The family history of the appellant is that of the arrival of a number of his siblings into the United Kingdom from 1973 onwards. There were some seven siblings including the appellant, the last being his sister Faduma who arrived in 2003. His mother arrived in 1999. It was an important part of his claim, particularly that of private and family life, that all his close family members are now said to be in the United Kingdom and most have British citizenship or are in the process of applying for the same. The father had also been in the United Kingdom but died in October 2006. It is said that his mother has particular needs to be cared for and that he, the

appellant, among others provides that need for her. The appellant did not live at home in the latter stages of his residence in the United Kingdom but kept in close touch with his family. A number of siblings have now children of their own and the family has a taxi company business which the appellant has from time to time assisted with.

19. The appellant himself is single having no children. The appellant in his evidence to the First-tier Tribunal stressed that he had been out of Somalia since he was 5 and knew little about the Somali culture nor could he speak the language properly. He had been living in the United Kingdom since he was 10 years old and started school in year 7. He spoke broken Somalia and could speak the basics with his mother.
20. The Tribunal had regard to a number of statements from the family members of the appellant particularly a statement from his mother and sisters as well as brothers.
21. So far as his education was concerned he indicated that he had gone to the South Camden Community School, obtaining a pass in business and IT. He worked part-time at a sports centre for two years and did courses at the Jobcentre in plumbing, painting and decorating. He described the jobs that he did also in prison and the courses taken to prepare himself for release. On his release from prison in 2011 he had been in a probation hostel following which he went to live with his mother in February 2012 in a two bedroom flat. She had problems with arthritis and diabetes and had difficulty in undertaking her daily household work.
22. A feature of the appeal before the First-tier Tribunal was whether or not there was anyone in the immediate family who could care for his mother were he to be removed from the jurisdiction. It was the finding that there would be some support for her. Considerable regard was given to her condition and to that issue. It was accepted in paragraph 162 of the determination that the appellant's mother had a real dependency upon the appellant as he cares for her in many ways. The Tribunal found, however that she would not be left without support if he returned to Somalia for the reasons as set out in paragraph 165 of that determination. The finding by the Tribunal that the appellant was capable was significant. Aat paragraph 168 of that determination it was noted that although there was a letter referring to post-traumatic stress disorder from Roxanne Timmies, a forensic mental health practitioner, that aspect of the case was not pressed at the hearing and thus it is understandable that the Tribunal gave little weight to the mental health aspect of the appellant.
23. The starting point for a consideration of vulnerability lies indeed in the head note to **AMM** which provides as follows:-
 - “(i) Despite the withdrawal in early August 2011 of Al-Shabaab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the

majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply. The significance of this category should not, however, be overstated and, in particular, is not automatically to be assumed to exist, merely because a person has told lies.

- (ii) 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. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having 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.”

24. The head note perhaps reflects the findings of the Tribunal in paragraphs 366 and 369 of **AMM**, in particular that someone with family connections in Mogadishu or who is **AMM** fit for work could avoid the IDP camps where the risk of Article 3 harm currently pertains. In that connection the First-tier Tribunal had repeated its findings at paragraph 177 of the determination that the appellant was fit for work.

25. To some extent **AMM** has been subsumed in a number of respects into the decision of **MOJ and Others**. Once again it may be helpful to set out the relevant passages in the head note to that decision. It is recognised that not all the issues addressed in **MOJ** are identical to those in **AMM**.

- “(ii) Generally, a person who is ‘an ordinary civilian’ (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organization) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al-Shabaab or by Al-Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.

- (iii) There has been durable change in the sense that the Al-Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. This was

not the case at the time of the country guidance given by the Tribunal in **AMM**.

- (vii) 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.
- (viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.
- (ix) 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 of 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 United Kingdom;
 - Why is the ability to fund the journey to the west no longer enabling an appellant to secure financial support on return.”
- (x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.
- (xi) 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.”

26. As is made clear, relocation to Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be a realistic , in the absence of means to establish a home and some form of ongoing financial support. There will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is still a real possibility of living in conditions falling below acceptable humanitarian standards.
27. It is the burden of the submissions made by Mr Collins, on behalf of the appellant, that he is such a person who falls within the category of someone having no family or clan support and no means of working or having money sent to him and a person who by his mental condition, simply would not be able to cope in a new environment and particularly one that he has had very little experience of work indeed.
28. Mr Collins invites me to find that, although the appellant may speak some Somali language it is extremely basic, particularly as he has been away from the country for so long. He will certainly stand out as a stranger to Mogadishu by the way that he speaks. In that connection my attention was drawn to paragraph 199 of the decision in **MOJ**.
29. My attention was also drawn to paragraphs 214 and 215 of **MOJ** where consideration is given to the view of the UNHCR, who considers that return to Mogadishu is only reasonable where an individual can expect to benefit from a meaningful nuclear and/or extended family support or from clan protection mechanisms. It is to be noted that the traditional extended family and community structures of Somali society no longer constitute a stronger protection and coping mechanism in Mogadishu as they did in the past.
30. He invites me to find that in reality there is no such support for the appellant in Mogadishu. All his close family and meaningful family connections are in the United Kingdom and there is no suggestion that he has any family members or extended family members in Mogadishu such as to give help and assistance to him. Although it was not found by a previous Tribunal that the appellant was a minority clan member, it is submitted that even where he to be a majority clan member the advantage of clan membership is less significant than perhaps once it was.
31. On returning to the issue of the 2014 UNHCR report the Tribunal in **MOJ** at paragraph 244 highlighted the particular risk categories in that particular report. The most relevant for the purposes of this immediate appeal is that of “persons with a mental disability or suffering from mental illness”.
32. It is to be noted that **MOJ** is a detailed judgment and much of it records the arguments made by one side and then the other. It is clear that Miss Gill, who represented one or more of the appellants in that appeal relied very heavily upon the UNHCR reports for her submissions.

33. For example, in paragraph 252 it is noted that she seeks to draw a sharp distinction between business people and investors seeking economic and business opportunities and those who have neither family nor clan connections nor access to economic resources. It is the latter category that is the most vulnerable to marginalisation in an IDP camp. Her position is that there is also inadequate facilities for treating those with mental health difficulties, there only being some five health centres in the country. Thus it is her submission as recorded particularly in paragraph 254 of **MOJ** that a returnee with mental health problems would be unable to access appropriate treatment.
34. Essentially it is therefore at paragraph 404 onwards that there is a detailed consideration by the Tribunal of the issues facing those who return with the importance of considering the individual circumstances of those who return. Such is mirrored in the head note to which reference has already been made. The Tribunal noted that there was no reliable figures available as to the number of people living in conditions of destitution in IDP camps in Mogadishu.
35. Clearly in assessing the issue of destitution the prospect of financial support is something also to be borne in mind as a significant factor.
36. It was noted by the Tribunal, particularly in relation to the appellant MOJ himself, that he had employment in the United Kingdom and had undertaken courses whilst serving his sentence. It is not accepted therefore that he had no prospects of obtaining suitable employment on return. The case of **MAA** was considered by the Tribunal that he would be able to call upon the support network of the majority clan in re-establishing contact with relatives with whom he was living before his departure. As to **SSM**, the Tribunal did not accept that he would not find employment, particularly as he is in good health and it was not immediately obvious what would disqualify him from seeking a low level job in one of the many new enterprises spawned by the economic explosion of entrepreneurship that Mogadishu has seen. **SSM** was also a member of a majority clan.
37. In the course of his submissions to me Mr Collins places considerable reliance upon the medical reports now submitted. The first in time was that from the Camden Islington NHS of 3 October 2014 prepared by Dr Mohammed Abdelghani who is a consultant psychiatrist. He sets out his experience with complex depression, anxiety and trauma.
38. The history of the appellant was noted in the report, particularly that at the time of the offences in 2008 he was taking illicit drugs and drinking excessively. It was noted that whilst in prison and from that time his mental state started to deteriorate and the appellant began to feel depressed, showing symptoms of PTSD related to traumatic events witnessed during the war in Somalia. Whilst in prison he received counselling and was placed on anti-depressant medication. In 2012 upon

his release he was placed on a waiting list to receive trauma focused psychological work and referred to the teams CDAT at the end of 2013 since when he has been in regular contact with that team. The author of the report was part of that team and had direct contact with the appellant noting that, following certain medication his depressive symptoms had responded although there was still active depression symptoms. The appellant reported feeling stressed about his court case and although there was still active depression symptoms. The appellant reported feeling stressed about his court case and the possibility of his being deported. The appellant spoke of mood swings and particularly insomnia and nightmares which he attributed to the war. He had a poor appetite and was losing weight, complaining of poor concentration and low energy levels.

39. His medical history was essentially a whiplash injury in 2004 and a head injury sustained during a fight in 2006. He said that in 1992 when he was 8 years old he was separated from his parents and most of his siblings in the war. His aunt took him and his younger brother and fled to Ethiopia, arriving in the United Kingdom in 1995. He said that he went to school in the United Kingdom and set out a number of schools that he had attended. He said that he had done one part-time job for a year and a half in 2003 and 2004 and he worked in a sports centre for three hours a week. He applied for many jobs but was never successful because he was under-qualified. He spoke of the fear of being injured and killed were he to return to Somalia.
40. There are a number of other reports that were presented as a bundle for my consideration. One that was dated September from Dr Kayal, also from the Camden Islington NHS. He was a specialist clinical psychologist. The date is not entirely clear but seemingly 17 December 2013 was when the assessment was conducted.
41. The appellant complained that his worst memories were those at a time when he was in Somalia. He attributes much of his mental disorder to those years. He has had a history of drink and alcohol abuse since early adolescence.
42. Significantly, the appellant denied any suicidal ideas or intention and indicated to Dr Kayal that he had never had such thoughts.
43. A psychological report was prepared by Dr Laura Kennis dated 29 October 2014. It was prepared at the request of the solicitors acting on behalf of the appellant. She sets out her qualifications, particularly in clinical psychology.
44. The appellant indicated that he was separated from his parents and siblings at the time the war started in 1992. His aunt helped him and two brothers leave Somalia and live in Ethiopia. He came to the United Kingdom in 1995. He has contact with their aunt. The appellant found it

difficult to adjust to life in the United Kingdom, particularly he struggled to make friends at school and to learn the language. It is a matter of sadness to the appellant that two of his close friends made in the United Kingdom have died, one was murdered and one from natural causes. He expressed feeling anxious, lonely and afraid during his school years. He became clinically obese and suffered bullying about his weight as a result. He failed all his GCSEs but went on to study a course of business and management at a college and he was able to pass that and subsequently completed maths and English courses whilst in prison.

45. He was introduced to cannabis when he was 14 years of age. He felt angry and upset that he had lost his father and his close friends. He feels remorse for his crimes.
46. His symptoms of PTSD became more evident as he was detoxed from alcohol and drugs and was observed to be experiencing nightmares and flashbacks attributable to his time in Somalia. Following completion of his prison sentence he was followed up by the probation office and referred to the Traumatic Stress Council in July 2013, being diagnosed with severe major depressive disorder (MDD).
47. He has been receiving treatment and counselling particularly at the stress clinic.
48. Reference is also made to an assessment by scoring to show a diagnosis of PTSD. A score above 20 is indicative of severe depression and fulfilling the criteria for major depressive disorder. It was said that he scored a total of 24/27. A concern was his reporting experience and thoughts he would be better off dead or thoughts of hurting himself. He denied having active plans to harm himself due to his family but did not know how he would cope were he to be deported to Somalia and would be likely to commit suicide without the support of his family.
49. It was by the appellant said that his emotional health problems impacted significantly on his ability to complete day-to-day tasks, stressing an ability to work due to high levels of anxiety and experience when leaving the house and feeling socially isolated.
50. A model for recommended treatment is set out in the report. It is said that he requires ongoing treatment for his PTSD and for MDD. The importance of a family network is also stressed in the report. A safe environment is necessary to overcome the feelings of anxiety and stress.
51. The appellant is currently being treated with sertraline 200 which is anti-depressant medication. The view of the doctor quoting various reports from the World Health Organisation is that there would be insufficient facilities to treat the appellant in Mogadishu.

52. Mr Tufan, who represents the respondent, invited me to find that there was little if any evidence to support the contention that the appellant arrived in the United Kingdom in 1995. He invited my attention to the fact that at one stage he had described coming in 1992 when aged 8 yet when he claimed for a travel document in March 2001 he had claimed to have been resident for seven years and three months, which indicated an arrival in 1993. Although the appellant seeks to indicate that he has been studying, there was little if any evidence of his presence in the United Kingdom prior to 2001. It is not accepted that the appellant was without family in Somalia particularly his aunt and other relatives. There is no reason simply to accept what the appellant said at face value.
53. He invited me to be wary of the nature of the mental illness which he claims. This is particularly so given that, although he claims to have been in the United Kingdom since 1995, there has been no indication prior to 2009 or later that he has had any mental health difficulties. He invites me to find that had there been such depressive incidents as is described by the various experts, such would have manifested itself well before the event. He invites me to find that the reality of the matter is that it is his anxiety to resist removal that is the underlying factor of his mental health difficulties and which is now being relied upon by him to resist removal. He submits that it is significant that, although the nature of his mental illness is described as severe, it was not a matter relied upon at the previous Tribunal hearing which undermines, he submits, the credibility of what is now proposed.
54. He submits that the appellant lives within an extended family in the United Kingdom with many brothers and sisters with no reason at all why remittances could not be made to him in Somalia. He has worked in the past and has acquired qualifications in prison. There is no reason at all why he cannot work and support himself in Mogadishu.
55. He invites me therefore to find that the threshold of Article 3 has not been made out. He also submits that there was a finding that he was a majority clan member on a previous occasion and that there is no reason at all why he cannot obtain some clan support. In terms of **MOJ** and the decision thereof he invites me to look at the three personal profiles of the appellants set out therein and the approach taken by the Tribunal to them, particularly at paragraphs 435, 440, 452, 463, 467, 477 and 481.
56. Given the issue of clan membership I raised the issue as to whether that could be clarified at the hearing. Mr Collins took instructions and upon those instructions indicated that the appellant's mother is a member of a majority clan, namely the Hawiye whereas his father was a member of a minority clan, the Midgan. It was accepted, however, that in the claim for asylum no case had been put forward as to minority clan membership.
57. In considering whether or not a return to Mogadishu would expose the appellant to a section 3 breach of his rights, the starting point is to look at

the factors as highlighted by the Tribunal in **MOJ**, particularly at head note (ix).

58. It was the case for the appellant that he had for a few years been living in Mogadishu thereafter living with his aunt in a camp in Ethiopia. There seems to be little to indicate that that account is not generally one that can be accepted, applying as I do the test of reasonable likelihood or a serious possibility. That the appellant came to the United Kingdom in 1995 would accord with the general context in which other members of his family came to arrive in the United Kingdom. Although the Secretary of State has challenged that arrival to some extent, I find little basis upon which to conclude otherwise. Thus the appellant has been away from Somalia and Mogadishu for approaching nineteen years, having left as a child and having not experienced living in Somalia as an adult.
59. Given the history of his family migration to the United Kingdom it is generally to be understood that there are no close family members in Somalia. His last association with his aunt was in the context of her fleeing into Ethiopia. There has been little in the evidence to indicate the presence of family members in Mogadishu and indeed the generality of the witness statements from the appellant's family members, as set out in bundle B, would indicate that there are none.
60. The aspect of his clan membership was not actively pursued nor has that aspect been considered in any depth. Certainly his mother is of the Hawiye and it may be that some clan assistance in helping the appellant adjust to life in Mogadishu might be forthcoming. That of course should be read within the context of a very large number of people; of returning diaspora members and the many people uprooted from their previous existence in the conflict. He would be competing with many others for assistance and help. It would be surprising indeed if the appellant were unable to access any substantial assistance particularly either from clan members or from a developing infrastructure of support.
61. Generally speaking the appellant is physically healthy. He has worked in the past and has acquired qualifications in prison. There would seem to be little reason at all why he could not gain some employment. It is not suggested that he speaks fluently the language but has some basic understanding of it. Indeed, the aspect of business and financial support was one which occupied considerable time with the Tribunal. Paragraph 195 a Norwegian Land Info and Immigration Service Report of 2013 was looked at in terms of its contention that it will be extremely difficult to return to Mogadishu if there is no one to rely on in that city. As the Tribunal commented, however, that did not accurately convey the essence of what is being said in the section of the report from which those words were taken. Looking at the report in its proper context of the diaspora returning from abroad, it is said that many are in fact returning to Mogadishu because of the good business opportunities. The report speaks of the increasing freedom of movement and that many resourceful people

have seen business opportunities in the return. Not all who return however were able to find a job in Mogadishu. The report noted that the evidence as a whole pointed towards a very significant economic activity in Mogadishu. There was an effective mobile phone network enabling contact not only within Mogadishu but between those who live in Mogadishu and family members elsewhere. Thus the link between the appellant and his family in the United Kingdom could be established both for contact and for guidance.

62. As was noted in paragraph 209 of **MOJ** there would seem to be quite a visible “economic boom” in Mogadishu said to be led by the diaspora. An article in the New York Times published in April 2012 indicated that more than 300,000 residents had returned into the city that in the previous six months of that article. There was an economic boom fuelled by an infusion of tens of millions of dollars, most of it from Somalis flocking from overseas spawning thousands of jobs that are beginning to absorb the young militia men eager to get out of the killing business. There is therefore a huge opportunity presented.
63. In paragraph 211 of **MOJ** the Tribunal noted the contrast in evidence presented on this matter. Dr Hoehne indicated that only about 1% to 2% of the population of Mogadishu had benefited from the economic boom. The Secretary of State on the other hand had indicated that there were tens of millions of dollars poured into Mogadishu and referred to the evidence from the Department for International Development in Somalia - Autumn Update 2013 in which it asserted that some 56,900 jobs had been created since May 2011 and a further 45,000 new private sector jobs had also been created. It gave examples of people who had been found employment upon return were set out in paragraph 225 of **MOJ**.
64. On the face of the matter therefore there is little reason to suppose that were the appellant to return to Mogadishu that he could not find work there.
65. He is a member of a large family of brothers and sisters with their families in turn and is part of the Somali community in his home area. Although it was not specifically canvassed, there is no reason to suppose that some financial support from his extended family could be made available to him to assist him in setting himself up in Mogadishu.
66. The real issue in this case, it seems to me, is the factor of the appellant's mental health.
67. The appellant clearly is someone who has spent his life within his extended family and the evidence is that he relies upon them for support and he in turn seeks to give support to his mother. Thus it is said that he would feel matters very keenly if he were without support of any kind in Mogadishu. Clearly he requires support from the professionals in terms of counselling and assisting him to deal with his depression and PTSD. If he

were put in a strange environment without such support would potentially make his condition worse rather than better. The relevance of his mental health being his general ability to adjust to change and to a new environment and more particularly his ability to manage his own affairs and accommodation, hold down a job and generally cope. Suffering from severe depression as is the evidence would be an important factor in that consideration as to whether or not the appellant could function as an economic entity if returned.

68. Mr Collins relied upon the fact that his foreign accent might be noticeable in Mogadishu. That was an aspect considered by the Tribunal in **MOJ** and it was not a significant factor in the overall analysis as can be seen from the judgment.
69. The evidence would seem to be that the appellant does require some medication although for the most part it is counselling and therapy which are most effective for him. It is submitted to the Tribunal on **MOJ** by Mr Gill, as can be seen in paragraph 253, that as many as one in three Somalis are affected by some form of illness largely due to prolonged exposure to conflict and instability. There are few health centres in the country. An issue arises as to whether a returnee with mental health problems would be able to access appropriate treatment. Thus the appellant would not be unusual in having symptoms of PTSD arising from flashbacks to his life in the conflict.
70. The Tribunal considered evidence as to the population of Mogadishu varying, it seems, from 1,500,000 to 2,500,000 with some 339,000 people IDPs. There has been analysis of course as to how many of those with mental difficulties succeed in keeping out of the camps. Certainly the estimate by Dr Hoehne as to the limited number of those benefiting from the economic development was not accepted by the Tribunal.
71. Essentially the real issue that is said to distinguish the case of the appellant is whether or not, by reason of his mental difficulties, he falls within the vulnerable category of individual that would in reality have little prospect of securing access to a livelihood on return. He would find it difficult to make his way in the society in the absence of family or social support.
72. In connection with the mental difficulties which have been described, namely of severe depression and PTSD it is said by Mr Tufan, on behalf of the respondent that the cause is uncertain. In relation to the claimed experiences and flashbacks in Somalia it is perhaps surprising that such symptoms did not manifest themselves earlier than is claimed. It would seem to be at the time when the appellant was detained that the symptoms began to manifest themselves.
73. A further report to which I had regard is that of Les Davies, a chartered forensic psychologist, dated 10 May 2011. Essentially it is an independent

risk assessment report for use in immigration proceedings but it is a detailed account of matters in or around that time. It was prepared upon the appellant shortly before his release on licence on 25 June 2011. It was a report based upon the interview with the appellant together with consideration of presentence reports and probation reports together with a number of OASys Reports particularly those dated 21 February 2011 and 12 January 2010. The appellant spoke of bad memories in Somalia and bullying at school although he said that he had extra help with classes and spoke positively about his schooling and his relationship with his teachers. The index offence involved drink and cannabis. He exercised emotional coping strategies in response to problems in his life. It was noted by the author of the report that at the time of the report the appellant was on antidepressant medication and had a diagnosis of PTSD and depressive disorder.

74. I regard that as a significant feature because it is also suggested understandably by Mr Tufan that the difficulties which the appellant now experiences are in reality his concern at deportation rather than any deeper manifestation of cognitive difficulties. No doubt there was very much stress at the detention of the appellant. However it seems to be at a stage prior to the formulation of his deportation that there is still this diagnosis of difficulty. Significantly at page 29 of the report is a timetable highlighting major mental illness indicating that it was not a risk factor at the present or a year ago. It was not to be relevant to the development of future risk management strategies. It was not entirely clear what that means. It was, as I indicated, however, as report more focused upon the risk of reoffending and identifying the causes of offending rather than the analysis of the appellant's mental difficulties themselves.
75. That his illness is not of recent origin is borne out by the statement of Dr Kennis, who seems to attribute the manifestation of the PTSD in early life as comfort eating and other coping strategies including the use of alcohol or cannabis. His diagnosis of PTSD and severe major depressive disorder (MDD) seem to be one made by a number of professionals based upon their experience of the appellant and their involvement with him. Such an assessment must in the circumstances of this case be given very serious consideration indeed. It was noted in the report at 6.3.1 his mental health problems impact upon his ability to complete day-to-day tasks. He rarely leaves the home and feels isolated, avoiding social activities. That has an impact upon his ability to work or indeed his willingness to do so. At present he has the support of his family members but were he to be removed to Mogadishu that degree of support would not be available to him.
76. From reading the reports of as a whole there is little indication that his symptoms have been exaggerated to the medical practitioners who have dealt with him.
77. Dr Kennis, in her report, perhaps ventures somewhat inexpertly to areas of credibility and country conditions and is of the opinion that because of his

mental health difficulties the appellant would not be unable to cope with the stress of living in a tense and unstable environment filled with constant reminders of his past traumas.

78. Reference is made to suicidal ideation. Significantly that is denied by the appellant that he has any intention of killing himself except on occasions when he is very depressed he expresses a feeling of hopelessness. The threat of suicide however is made by the appellant particularly if returned. Dr Kennis recommends that he continues to receive specialist mental health treatment in the UK.
79. I remind myself that my focus is and should remain upon Article 3 rather than Article 8 and that there is for every appellant a high threshold to meet in that connection. Nevertheless I do find, having considered the medical evidence as a whole, that his severe depression and mental difficulties will as a matter of commonsense materially affect his ability to function as an individual, particularly one within a social context.
80. I find that that factor should be taken together with a lack of family or social support; with a lack of familiarity with customs and traditions in Somalia and the absence of any practical family or sibling support. I find those matters in combination with one another are such as to render the appellant to be properly considered vulnerable within the terms of **MOJ** such that there is a reasonable likelihood that he would end up in an IDP camp not being able to look after himself or to survive economically in those circumstances.
81. In the light of such matters therefore the appeal is allowed on the basis that if returned there is a real risk that the appellant would suffer harm such as to engage Article 3 of the ECHR. In those circumstances his appeal on that issue alone is allowed.

Signed

Date **16 January 2015**

Upper Tribunal Judge King TD