



IAC-FH-AR-V1

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

Appeal Number: DA/01895/2014

THE IMMIGRATION ACTS

Heard at Field House
On 13 October 2015 and 25 November 2015

Decision & Reasons Promulgated
On 9 December 2015

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**ABDIRAHIN CIISE MAXAMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Lams, counsel, instructed by Oaks Solicitors

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This appeal comes before me by way of a transfer order dated 07 September 2015 made pursuant to the Senior President of Tribunals' Practice Statements. In a determination signed on 21 July 2015 Upper Tribunal Judge Grubb identified material errors of law in the determination of Judge of the First-tier Tribunal Perry's decision promulgated on 07 January 2015 dismissing the Appellant's asylum, Article

3 and Humanitarian Protection claims against the Respondent's decision of 29 August 2014 to make a deportation order against him by virtue of section 32(5) of the UK Borders, Citizenship and Immigration Act 2009 Act 2007, but allowing the appeal under Article 8.

2. The Appellant is a national of Somalia, date of birth 17 August 1994. He entered the United Kingdom on 20 March 2002 with his mother and younger siblings. He was 7 years old. His father was already in the United Kingdom and had been granted indefinite leave to remain as a refugee on 24 February 2001.
3. On 24 April 2002 the Appellant's mother made an asylum application but this was subsequently withdrawn and an application for indefinite leave to remain made instead. On 03 October 2005 the Appellant and his family were granted 3 years Discretionary Leave until 02 October 2008. Despite making applications for further Discretionary Leave on 02 October 2008 the application was refused due to non-payment of fees. A further application made on 05 February 2009 was refused for the same reason. The Appellant has subsequently remained in the United Kingdom without leave.
4. On 23 August 2011 the Appellant was convicted of possessing controlled drugs with intent to supply. He received a 12 month Detention and Training Order on 13 September 2011. On 09 May 2012 he was convicted of possession of a class B drug and fined £50. On 16 May 2012 he was convicted of failing to comply with a Detention and Training Order and sentenced to two months detention in a young offender's institution. On 29 October 2012 the Appellant was convicted of possession of a class A drug and remanded in prison. On 14 January 2013 and 18 February 2013 the Appellant was convicted of failing to comply with the requirements of a Community Order and received periods of unpaid work. On 13 December 2013 the Appellant was convicted at Isleworth Crown Court of two counts of unlawful wounding and violent disorder and was sentenced to 30 months detention in a young offender's institution in respect of the first count and to 8 months in respect of the second count, to run concurrently.
5. The Appellant was originally served with notice of liability to deportation on 03 October 2011 and on 20 April 2012 he was served with a notice to a person liable to removal. He claimed asylum on 01 October 2012. He underwent a screening interview on 02 November 2012. His asylum claim was refused on 13 May 2013. On 16 June 2014 the Appellant was again notified that he was liable to deportation under the United Kingdom Borders Act 2007 and that section 72 of the Nationality, Immigration and Asylum Act 2002 applied on the basis that he had been convicted of a particularly serious offence and that his continued presence in the United Kingdom constituted a danger to the community. On 29 August 2014 the Respondent refused the Appellant's claim for asylum and humanitarian protection and under Articles 3 and 8 ECHR and certified the Appellant's asylum claim under section 72.

The decision of the First-tier Tribunal

6. The Appellant appealed to the First-tier Tribunal. The First-tier Tribunal heard evidence from the Appellant and his various family members. The First-tier Tribunal dismissed the appeal on asylum, humanitarian protection grounds and under Article 3. The First-tier Tribunal Judge however allowed the appeal under Article 8. The Respondent sought permission to appeal the decision to allow the appeal under Article 8 and also the First-tier Tribunal's finding that section 72 of the Nationality, Immigration and Asylum Act 2002 did not apply. Permission was granted by the First-tier Tribunal. Following a misguided attempt by the Appellant to cross-appeal the First-tier Tribunal's Article 3 findings in a rule 24 response, the Upper Tribunal adjourned the appeal to enable the Appellant's permission application to be considered by the First-tier Tribunal. On 05 June 2015 the First-tier Tribunal granted the Appellant permission to appeal against the dismissal of the appeal under Article 3.

The error of law hearing

7. At the Upper Tribunal hearing held in Newport on 10 July 2015 Upper Tribunal Judge Grubb found the First-tier Tribunal failed to engage with the Appellant's claim under Article 3 relying on *MOJ & Ors (return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC) where, at (xii), it was recognised that a person from a minority clan (such as the Appellant) returning to Mogadishu without means of support was at risk of having to live in an IDP (Internally Displaced Person) camp where there was a real possibility that the conditions would fall below acceptable humanitarian standards and breach Article 3. Judge Grubb found that, without proper findings, the Appellant's claim under Article 3 was arguable.
8. Judge Grubb found there had additionally been a material error of law in the First-tier Tribunal Judge's consideration of the Appellant's family and private life. The First-tier Tribunal failed to apply the immigration rules as they were after the 28 July 2014 and this error was not vitiated by the First-tier Tribunal's assessment of section 117C of the Nationality, Immigration and Asylum Act 2002 as the Judge had not made any findings of fact in relation to this provision. The First-tier Tribunal also failed to apply paragraph 398 as in force at the date of the hearing to its consideration of whether there were very compelling circumstances over and above those described in paragraphs 399 and 399A so as to outweigh the public interest. Moreover, the First-tier Tribunal's error in applying the wrong version of paragraph 399A necessarily infected its consideration of Article 8. The First-tier Tribunal Judge also failed to consider Article 8 through the lens of the immigration rules which amounted to a complete code in respect of deportation, and it was not clear that the Judge had in mind the approach to family life between adult children and their siblings and parents identified in *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 630. None of the evidence as set out by the Judge in his determination specifically dealt with the issue of whether there was 'mutual dependency', not just economic but otherwise, between the Appellant on the one hand and his siblings on the other. The First-tier Tribunal's findings that the

Appellant had established family life with his siblings was not sustainable. Judge Grubb indicated that it would be a matter for the Appellant at the resumed hearing to establish that he enjoyed family life with his family in the United Kingdom.

9. It emerged from a discussion between Judge Grubb and the representatives that, in principle, the positive finding made in respect of the Appellant in relation to the absence of support which his family would be able to offer him in Somalia should be preserved as set out in Mr Lams skeleton argument at paragraph 2.

The transferred hearings on 13 October 2015 and 25 November 2015

10. At the outset of the hearing on 13 October 2015 Ms Isherwood was granted permission to serve an additional background bundle of materials consisting of the March 2015 COIS report on minority and majority clans in south and central Somalia. She indicated that page 34 of the 39 page bundle related to the Benadiri clan. She relied on paragraphs 1.3.7, 2.2.7, 2.3.1, 2.5.11, 2.5.12 and 2.6.14. I permitted Mr Lams to adduce a further statement from the Appellant's father, dated 08 July 2015, and DWP correspondence relating to benefits received by the Appellant's mother. In preparation for the adjourned hearing on 25 November 2015 the Respondent provided two witness statements from Wendy Gilbert, an officer of HMRC, both dated 16 November 2015, two DWP documents summarising searches of the DWP computer system, both dated 22 October 2015, a GOV.UK download relating to child benefit, and a copy of an unreported Upper Tribunal decision (DA/01528/2014). At the hearing on 25 November 2015 Mr Lams provided an amended skeleton argument, an income and expenditure table relating the Appellant's family, a water bill, council tax bills, HMRC documents relating to the Appellant's mother and father, a Jobcentre Plus letter dated 22 September 2015 relating to the Appellant's mother, and a Barclays Bank statement relating to his mother. A handwritten note from the Appellant's younger sister was produced, as was a letter from the Saluja Clinic, dated 16 November 2015, relating to the medical problems suffered by the Appellant's mother. During the hearing the Appellant's father produced a Metro bank statement issued in November 2015.
11. The following is a summary of the material evidence given at the hearings. At the transferred hearing on 13 October 2015 the Appellant adopted his statement and gave his evidence in English. He lived with a cousin because of his licence conditions. His parents lived in the part of Southwark he was not entitled to enter. Prior to his imprisonment he lived with his parents. He identified his parent's address and indicated that his parents, his sister ([S], born in the United Kingdom in August 2002) and 3 of his brothers resided there. His brother, [An], who was 18 years old, did not at the time work. His oldest half-brother, [Aa], who was 23 years old, lived in Bristol and did not work. [Af], another half-brother who was 22 years old, also lived in Bristol with his wife and he worked. The couple had a child 'on the way'. Ai, the last of the Appellant's half-brothers, was believed to live in London but the Appellant was not sure where or whether this brother worked. His parents did not work and his case was legally aided. The Appellant believed his parents were

both in receipt of mobility related benefits. His family received child tax credits and his cousin did not work and was in receipt of benefits.

12. Ms Isherwood confirmed that the Applicant's mother's asylum claim and those of his younger siblings from 2013 remained outstanding. The Appellant's brothers who lived with his parents ([An], [Al] and [Ar]) did not have any lawful immigration status. The Appellant believed [Aa] had ILR, that [Af] was British, and that his father and sister were British. The Appellant maintained he had no friends or family in Mogadishu. He did not believe his parents would be able to support him as they did not get enough money. His parents struggled to send him money when he was detained.
13. When asked whether he could work in Mogadishu the Appellant said he could barely speak Somali. He knew only the basics of the language and used a mixture of Somali and English when he spoke to his mother. He would start with a word in Somali and would end in English. The Appellant did not have a university degree. He 'just about' passed some GCSEs. He had an NVQ level 1 qualification in bricklaying, carpentry and plumbing which he obtained while in school. He completed some courses while in prison and produced the original certificates. He enjoyed football and was involved in a 3 month rugby course. He had certificates in first aid and cleaning skills.
14. In cross-examination, having noted that his parents were to use an interpreter to give their evidence, the Appellant said he spoke English and Somali to his parents, and they understood English. He sometimes had difficulty communicating with them. At home he spoke to his mother in Somali. He spoke to his parents every 3 to 4 days but hardly saw his brothers. He spoke to his brothers whenever he got the chance. When asked why his brothers failed to provide any evidence, the Appellant said two of them lived in Bristol, one had a job interview, and his sister and younger brothers were in school. When asked why there was no evidence from his cousin the Appellant said she had a child and did not speak a lot of English. It was hard to communicate with her but she understood English.
15. Prior to his being detained the Appellant claimed he provided his mother with daily care, but he did not do that anymore. [Aa] recently moved to Bristol. The Appellant's younger siblings were his full siblings. The Appellant's father gave the Appellant about £21 a week to enable him to get around London. He had no financial help from anyone else. When asked what he did with himself during the day the Appellant said he sometimes went to the gym, and would go out with friends, or would not go out. The Appellant explained that his parents financially supported him. The Appellant confirmed that he had been to Somali day at a youth centre. There was no evidence from friends as they were busy and were working. He then explained that he did not ask his friends to provide any evidence because he was embarrassed telling them he had no status and was in the process of being deported.
16. When it was put to the Appellant that, as his mother and some of his siblings had no immigration status, they could return with him to Somalia, the Appellant said

Somalia was one of the most dangerous places. It was put to the Appellant that he initially claimed he was not born in Somalia and asked why he lied. It was pointed out to the Appellant that, at C10 of the Respondent's bundle, he claimed he was born in a refugee camp outside Somalia. The Appellant denied having said that. He was not aware one of his brothers had a robbery conviction. The Appellant was not aware of references made to social services in respect of his family.

17. The Appellant stated that he was in fear of his life if removed to Somalia because he saw a documentary in 2010 about pirates. The Appellant confirmed he had uncles and aunts in the United Kingdom, but did not see them often. He was not aware when his parents saw his aunts and uncles. Most of his relatives on his mother's side were dead. Some lived in other countries, such as an aunt in Saudi Arabia and the Appellant spoke to them in Somali, but it was hard to understand. He only spoke once in a blue moon and did not know if they were working. The Appellant said his mother spoke to his aunt, but he did not know how often. The Appellant's father had 3 sisters in the United Kingdom, all of whom were British. The Appellant did not really speak to them. He last saw his aunties 3 or 4 years ago. When asked what he knew about his father's part-time job, the Appellant said nothing really. He did not know how often his father worked, and then said he did not think his father had a job. His father had not informed the Appellant that he had a job.
18. In re-examination the Appellant said he had never received money from his aunt in Saudi Arabia. He did receive £3 to £5 from his father's family in the United Kingdom when he was 13 years old. Since then he has not received any money from his father's family. The Appellant stated that his mother went through phases of being ill and was currently taking a lot of medication. His mother did not want to return to Somalia.
19. In response to questions from me, the Appellant said that, if his father got a part-time job, he would have informed the Appellant of the fact. The Appellant confirmed that he did not believe his father had a job at the moment.
20. Following his evidence the Appellant was excused from the hearing in order to attend Beckett House to ensure he did not breach his reporting conditions. With the consent of the representatives I heard evidence from the Appellant's father in the Appellant's absence.
21. The Appellant's father, [Mr CMF], adopted his short statement of 08 July 2015. In this statement he claimed he had a part-time job and received some public funds. He confirmed that he financially supported the Appellant and would return to living with his parents as soon as his probation conditions came to an end. In oral evidence the Appellant's father said he used to work for National Car Parks (NCP), but that he was no longer employed. He used to work weekends and was employed for one year. He stopped working in 2014. It was pointed out that the letter was dated from July 2015. [Mr F] claimed he received Job Seekers Allowance and that his wife was sick. [Mr F] was referred to a DWP letter of 24 March 2014 addressed to his wife indicating that £170 was paid into her account in respect of money owed to her from

18/02/2015 to 10/03/2015 due to her 'Motability' agreement finishing early. The letter indicated that DLA would continue being paid into her account. [Mr F] indicated that his wife received benefits because of sickness. He could not recall the exact figure but it was around £160 to £180 per week for him and his wife together. [Mr F] was not aware of other benefits he and his wife received. No-one else in his household was working. His son, [Af], worked but he lived in Bristol. No-one gave [Mr F] money and he did not have any savings. He would not be in a position to send money to his son.

22. [Mr F] confirmed that he gave the Appellant £20 a week for transport. He claimed his wife's medical issues included blood pressure, heart problems, epilepsy and muscle pain. She was not able to do anything. When asked about the possibility of the Appellant living in Mogadishu [Mr F] said that the Appellant would be in difficulty as he could not communicate and did not have anyone there. People in Somalia did not have jobs and the Appellant was unlikely to get one. No other extended family members could support the Appellant financially. The Appellant had matured and now understood responsibility.
23. In cross-examination [Mr F] was asked about his letter of 08 July 2015, with particular reference to his part-time work. [Mr F] claimed that he was aiming to return to work. He worked for 3 months in 2013 then stopped in October 2013 as his wife became ill. [Mr F] confirmed he was not currently working. He saw the Appellant about once a week. Sometimes, if she was feeling better, his wife would come as well. His wife saw the Appellant about once a month. [Mr F] spoke to the Appellant every night. He did not know how often his wife spoke to the Appellant. [Mr F] was asked what the Appellant used the money his father gave him for. [Mr F] said he used it for transport. When asked whether he had discussed with the Appellant what he did during his days [Mr F] stated that the Appellant does not do anything and stayed at home.
24. When asked about the language in which he and the Appellant communicate [Mr F] said it was English, although he sometimes used Somali. The cousin with whom the Appellant lived was around 25 or 26 and had some status in the United Kingdom but [Mr F] was not sure of the exact status. He did not ask her to write a statement in support of the appeal. [Mr F] spoke to the cousin in Somali and English. He believed she came to the United Kingdom about 2 or 3 years ago. He did not pay anything towards the Appellant's upkeep. [Mr F] did not know whether she was working. He confirmed that he sent money to his family before they came to the United Kingdom, when they were in Ethiopia. [Mr F] confirmed he had 5 biological children, including the Appellant. The other four children were younger than the Appellant and were living with their parents. The Appellant's other three siblings had a different father, now deceased. They lived in Bristol. [Mr F] did not think the Appellant had contact with his siblings. He thought they might speak by telephone, but was not sure. He maintained that the Appellant had a good relationship with [An]. The hearing was adjourned at this stage to 25 November 2015.

25. At the commencement of the cross-examination of the Appellant's father on 25 November 2015 [Mr F] was asked why he claimed to have a part-time job in his letter of 08 July 2015. He stated that this was to support his son and to keep him with him. [Mr F] accepted that he lied in this letter. He also accepted that he had not told the truth in the October 2015 hearing when claiming to have worked in 2014 and 2013 for a few months. He said that he previously had a NatWest bank account but this was closed in 2013 and he opened a Metro bank account about a month ago.
26. [Mr F] transported the children to and from school, did the cooking, the washing, and most of the household tasks. [An] helped his mother with translating at the hospital and the GP. He also spoke broken Somali but he knew his mother's medical condition well. [Mr F] did not know why his name did not appear in the letters from Ealing Council dated 1st and 8th September 2015. He confirmed that he lived in Haringey in 2008 and claimed housing benefit at that time, but now lived with his family. He had difficulties with his marriage but he and his wife resolved these difficulties. He could not identify any phone bills being paid out of the Barclays bank account. [Mr F's] 3 youngest children received extra tuition in maths, science and English. This tuition was paid for in cash. He kept invoices but had not brought any with him to the hearing. The tuition was £250 a month and cash withdrawals were made to cover this expense. He conformed he could not afford to send the Appellant money in Somalia as the family were struggling financially.
27. [HM], the Appellant's mother, adopted her statement of 30 December 2013. She gave her evidence via a Somali interpreter. In examination-in-chief she confirmed that the Appellant did not speak very good Somali. If she did not understand him she used [Aa] to translate. [Aa] used to live with them but he now lived in Bristol. When asked how she felt if the Appellant was deported to Somalia [Ms M] became distressed. She claimed she had no family there. [Ms M] produced her various medications, although there did not appear to be any specific anti-depressant.
28. In cross-examination [Ms M] said that [Aa] spoke very good Somali. She spoke to the Appellant every day and her children spoke to him everyday. [Ms M] said she understood English and spoke a little English. She had not seen the Appellant since the previous hearing because she was unwell. Once released from licence [Ms M] believed the Appellant would move back into the family home. He was now 21 years old and would be responsible for any crimes he now committed. She confirmed that she had 8 children. She confirmed that her husband left her for several months in 2008. He left again in 2014 because her illness made her very angry but he came back. She could not recall whether her husband also left in 2010, although a reference in the OASys report suggested he may have. Although social services had previously been contacted regarding the care of her children, they were not currently involved. Her son [An] helped look after her and her husband did all the shopping and was responsible for taking the children to school. He also did the washing and the cooking. [An] was previously working for a company but after his status expired he could no longer work.

29. [Ms M] confirmed she had a single bank account. She believed that payment of the water bill came from the DWP before the DWP benefits were deposited into her account. [Ms M] could not identify any phone bill payments coming from her bank account. She explained that if there was insufficient cash in the bank account she would use a friend's bank account to pay the bill, or sometimes a credit card was used. She had credit card statements at home but had not brought any to the hearing. [Ms M] said her husband had a Metro bank account and believed he held this account when she arrived in the United Kingdom. When asked why her husband's name did not appear in the Ealing letters she claimed that as soon as he returned to the family forms were completed and Ealing Borough was informed. Her husband did not claim benefits from any other authority and no longer had any address other than the address they shared as a family. She had informed the local authority when she and her husband separated in 2014.
30. [Ms M] indicated that her children received tuition in maths, English and science and that the monthly cost was £250. She reiterated that she received financial help from the government and could not afford to send money to the Appellant in Somalia. She did not celebrate any connections to Somalia. None of her family members had ever returned to Somalia. The cousin with whom the Appellant lived had been in the United Kingdom around 3 or 4 years. She joined her husband in this country but she no longer lived with him. [Ms M] had met the Appellant's cousin in Ethiopia in 1994. The cousin had no family in Somalia. [Ms M] had a sister, a brother and nieces and nephew in Saudi Arabia. They were living illegally in that country and could not help the Appellant. [Ms M] was able to fund her journey to the United Kingdom by selling her property in Somalia. She had no money left from the sale. Her husband sent the family money after they arrived in Ethiopia. The Appellant's brother, [Af], used to pay for the Appellant to visit the gym but this stopped as the cost of transportation became too expensive.
31. [An], one of the Appellant's brothers, adopted his statement of 30 December 2013. There was no examination-in-chief. In cross-examination [An] said he was working for Greenpeace as a fundraiser and studying via a distance learning centre. He had been working for a month and a week collecting subscribers on the street and received about £350 a week. His tuition cost £140 a month, his travel cost £100 a week and he contributed £20 to £30 the household a week. He saw the Appellant every couple of weeks and would give him £20 or £10. [An] was trying to save his money and would be unable to send the Appellant any money. His job was not guaranteed. He relied on sign-ups. If he did not get enough sign-ups a week he would be fired. [An] was not in contact with anyone in Somalia. He communicated with his mother in broken Somali. His father did most of the cooking. He relied on himself. In re-examination he understood that his asylum claim would be considered before April 2016.
32. Mr Ibrahim Osman adopted his letter dated 10 December 2014 and issued on behalf of the Somali Advice and Development Centre. In examination-in-chief he said he met the Appellant 4 or 5 times in Feltham Young Offenders Institution. He had not met the Appellant afterwards but had numerous telephone conversations with the

Appellant following his release from immigration detention. Mr Osman explained why he believed the Appellant had now reformed. Mr Osman indicated that the Appellant spoke broken Somali and constructed sentences using an English structure rather than a Somali structure. He indicated he had not given evidence before a tribunal before. In response to questions from me Mr Osman indicated that the Appellant experienced difficulty expressing abstract ideas in Somali. When he and the Appellant tried to speak Somali Mr Osman explained that the purpose of their conversation could not continue in Somali and they had to revert to English. Ms Isherwood ascertained that this conversation occurred over the telephone.

33. I heard submissions both from Ms Isherwood and Mr Lams in respect of both Article 8 and Article 3 which have been fully recorded in my Record of Proceedings and which I have considered in full. In light of the Respondent's certification of the appeal under section 72 of the Nationality, Immigration and Asylum Act 2002 Mr Lams confirmed that the appeal was being pursued on Article 3 and 8 grounds only and not on asylum grounds.

Standard and burden of proof

34. It is for the appellant to prove, to the lower standard of proof, that there is a real risk that his return to Somalia would breach Article 3. It is for the Appellant to prove that his return to Somalia would breach Article 8 and the standard of proof is the balance of probabilities.

Findings and decision

35. The Appellant maintains that his deportation to Somalia would expose him to a real risk of a breach of Article 3. He claims there is a real risk he would have to reside in an Internally Displaced Person (IDP) camp and would find himself living in circumstances falling below that which is acceptable in humanitarian protection terms.
36. The Appellant relies on the country guidance decision of *MOJ & Ors (Return to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC). The general findings of *MOJ* are set out in its headnote. The following extracts from the headnote are relevant for the present appeal.

(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 organisation) 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.

...

(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 his ability to fund the journey to the West no longer enables 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.

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in 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 realistic as, 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 a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

37. It is the Appellant's claim that he has no family network of support in Mogadishu, that he is unlikely to be offered any support from members of the Benadiri clan, a minority clan, that his family would be unable to remit any funds to support him, and that he has no means or prospect of securing access to a livelihood.
38. The Appellant entered the United Kingdom as a 7 year old as a dependent of his mother alongside his full siblings. He has consistently maintained that he has never been back to Somalia and that he no longer has any family in the country. Similar evidence has consistently been given by his mother and father. First-tier Tribunal Judge Perry found (at paragraph 63) that the Appellant did not have any relations in Somalia and this factual finding was preserved by Upper Tribunal Judge Grubb in his error of law decision (paragraph 52). In these circumstances I am satisfied that the Appellant does not have any family members or relatives in Somalia.
39. The Appellant maintains that he speaks only 'broken' Somali. He claims his principle language of communication is English and that, although he does speak with his mother and his cousin in Somali, this communication is fraught with difficulties and he often has to revert to English. This assertion was supported by the oral evidence from his parents and his brother. His mother claimed that, when speaking to the Appellant, she sometimes had to ask her older son, [Aa], to translate. Given that [Aa] was now living in Bristol Ms Isherwood properly pointed out that this stretched the boundaries of credibility. I also take into account the fact that his father admitted to lying to the Tribunal about his employment. The Appellant arrived in the United Kingdom aged 7 and remained living with his family, who were Somali speakers. The evidence given in the previous First-tier Tribunal hearing was that he sometimes attended a Somali youth centre and socialised with other Somalis. I find, having regard to this evidence, that there has been some exaggeration of the degree to which the Appellant is no longer proficient in Somali.
40. I do however attach weight to the evidence of Mr Osman. He is not related to the family and has no vested interest in the appeal. He gave his evidence in a direct and open manner and there was no perceptible attempt at any embellishment. I am satisfied he is an independent witness. His evidence, relating as it did to his interaction with the Appellant when detained in Feltham and in respect of the numerous telephone conversations following his release, was inherently plausible and internally consistent. Although taking issue with Mr Osman's assessment of the risk the Appellant would face on return to Somalia, and noting that Mr Osman had no linguistic qualifications and had attempted a conversation with the Appellant in Somali by telephone, Ms Isherwood did not take issue with the Mr Osman's honesty as a witness. Mr Osman is a fluent Somali speaker who hails from Somalia. His claim to have studied the Somali language at university in Somalia was not challenged by Ms Isherwood. Mr Osman indicated that the Appellant spoke broken Somali. When he attempted to have a conversation in Somali with the Appellant they were unable to continue and had to revert to English. Mr Osman indicated that the Appellant experienced difficulty in communicating abstract ideas in Somali. Having holistic regard to all the evidence before me relating to the Appellant's ability to speak Somali I am satisfied, despite the attempted exaggeration from his family, that his

proficiency in Somali is significantly diminished and that he would encounter real difficulty in every day communication should be returned to Somalia.

41. In *MOJ* the Upper Tribunal had no difficulty in accepting Dr Harper's evidence that Somalis are "particular about how language is spoken" so that differences in accent and vocabulary will be immediately apparent in a conversation with a returnee who has been away for a significant time. The Upper Tribunal noted, on the other hand, that the evidence before it indicated that a very broad range of accents was to be encountered in Mogadishu today. My findings of fact relating to the Appellant's proficiency in Somali do however go beyond simply differences in accent and vocabulary. I am satisfied that the Appellant would struggle to hold a conversation in Somali. His weak grasp of the language is clearly a factor detracting from the likelihood of the Appellant being able to access employment.
42. Ms Isherwood submitted that I could place no reliance on the evidence given by the Appellant or his family relating to their claimed inability to remit funds to him in Somalia. She submitted that the Appellant's father was likely to be engaged in undisclosed employment for which he received cash in hand payments and could therefore remit funds to the Appellant. In support she relied on the brief letter from the Appellant's father written in July 2015 in which he claimed to have a part-time job, and his accepted deception of this Tribunal when claiming he had been employed in 2013 or 2014. She also relied on the absence of any evidence of bank account statements relating to the Appellant's father other than the single statement issued by the Metro bank in November 2015. She highlighted the absence of any evidence of payments in respect of the use of mobile phones or a landline, which the Appellant's mother claimed came out of the bank account, and the absence of withdrawals to pay the water bill. She noted the absence of invoices in respect of the claimed payment for extra tuition for the Appellant's younger siblings and the inconsistent evidence as to how often these extra lessons occurred, and the different accounts given by the Appellant's mother and father in respect of the funding of the mother's journey to the United Kingdom. She additionally noted inconsistent evidence given by the Appellant's mother and father relating to how long the father held a Metro bank account and how many times they had separated. Ms Isherwood also submitted that the DWP evidence adduced by her indicated the Appellant's father was receiving local authority benefits from Haringey Council while his wife received benefits from Ealing council, suggesting he lived separately or that he was unlawfully claiming benefits from another address.
43. In relation to the very last point, I am not satisfied the evidence adduced by the Respondent supports the submission made on her behalf. Ms Isherwood produced two documents issued by DWP relating to searches of the DWP computer system in respect of the Appellant's father and mother. Both traces identified the parents as residing at the same address. The document generated in respect of [Mr F] stated, "*Subject has no claims in his own name. He is being claimed for by his partner. Records indicate Tax Credit interest via HMRC and Local Authority Benefit interest via Haringey Council.*" The actual records were not produced. It is not clear to me what 'Local Authority Benefit interest' actually means. The document does not indicate whether

any 'interest' is current or historic. [Mr F] gave evidence to the effect that, on one of the occasions that he separated from his wife, he resided in Haringey and obtained Housing Benefit. If the records relate to historic 'interest', which is entirely possible, then the reference to Haringey Council is consistent with his explanation. The records in the name of the Appellant's mother indicate she was claiming Employment Support Allowance (ESA) and Disability Living Allowance. I take judicial notice that ESA is a benefit for people who are unable to work due to illness or disability.

44. Ms Isherwood also produced witness statements from Wendy Gilbert, an officer at HMRC, dated 16 November 2015, relating to the Appellant's parents. These statements indicated that both the Appellant's parents were listed at the same address. The statement relating to the Appellant's father indicated that there were no employment records relating to him from 2008/2009 to 2014/2015, and that there had been claims for benefits from 2008/2009 to 2011/2012. This was consistent with his claim to have no employment. The statement relating to the Appellant's mother indicated that she had no PAYE employment records from 2008/2009 to 16 November 2015. The records also showed that she was in receipt of child benefit during the tax years 2010/2011 to 2014/2015. This is broadly consistent with the evidence from both parents.
45. Ms Isherwood also produced a document relating to child benefit downloaded from the gov.uk website, last updated on 14 July 2015. This indicated that child benefit could not be claimed by individuals subject to immigration control. Ms Isherwood submitted that the Appellant's mother had not been entitled to the child benefit she received. I pointed out to Ms Isherwood that there was no evidence before me that child benefit could not be claimed by those subject to immigration control prior to the 14 July 2015. I am however satisfied that, as the Appellant's mother and her minor dependents (other than her daughter) are asylum-seekers, they may not be entitled to child benefit since at least 14 July 2015, and possibly earlier. It would therefore seem that the Appellant's family may in future have access to a smaller source of funds than that anticipated in their income and expenditure schedule. This means that there has to be considerable uncertainty as to whether the family will be able to send any funds to the Appellant if he were removed to Somalia if their only source of funds is by way of state benefits.
46. I find that [Mr F] has lied to this Tribunal concerning his alleged previous employment. I find this reduces significantly any weight I can attach to his evidence in respect of his employment and his circumstances generally. His claim that he supports his wife and carries out the daily household chores, including transporting the children to and from school, cooking, cleaning and shopping, is however consistent with the evidence of the Appellant and his other witnesses and with the medical and ESA and DLA documents relating to his wife. The two medical reports before me (one dated 25 February 2012 and contained in the original Appellant's bundle, the other dated 16 November 2015) indicates that the Appellant's mother suffers from a number of medical issues affecting her mobility and mood and that she is mostly dependent on her family members. The fact that the Appellant's mother

and his younger brother both stated that another of his siblings also assists in the care of his mother is not inconsistent with the [Mr F's] claimed role.

47. Ms Isherwood invited me to draw an adverse inference based on the absence of any reference to water or phone bills in the mother's bank account statement. The mother however claimed that the water bill came out of the benefits she received from the DWP before it was deposited into her bank account. The water bill indicates that payments were being deducted via the 'Water Direct' scheme run by the DWP. I find this a credible explanation for the absence of any reference to the water bill in the bank statement. The Appellant's mother additionally claimed that, on occasions when there are insufficient funds in her bank account, she pays for the phone bill by using a friend's bank account or a credit card. I find this explanation inherently plausible. Although there were minor inconsistencies in respect of how often the Appellant's younger siblings received supplementary tuition I do not find these were such as to undermine the inherent credibility of the claim. The evidence as to the subjects of the extra tuition was consistently given and there were a number of cash withdraws from the Barclays account cumulatively amounting to over £250 (the monthly cost of the claimed tuition) which was consistent with the claimed cost of tuition.
48. The appellant's brother, [An], had been employed for just over a month at the date of the adjourned hearing but his employment was dependent on him meeting his weekly quota of sign ups, and any money that was not spent was saved by him for his own future. I am not satisfied, in these circumstances, that the Appellant will be able to rely on his brother for any funding if removed to Somalia.
49. I have approached the evidence relating to the possibility of the funds being remitted to the Appellant on the lower standard of proof and in a holistic manner. I have taken account of the absence of bank account statements relating to the father and the inconsistent evidence identified by Ms Isherwood. I am nevertheless persuaded that these inconsistencies do not materially undermine the otherwise cogent evidence considered above that the Appellant's father is not in receipt of any income and that his days involve caring for his wife, for which he receives public funds, and ensuring the household chores are done. Although the Appellant currently receives around £21 a month from his parents, and a small amount from [An] given on an ad hoc basis, in light of the possibility that the Appellant's mother and younger siblings may not be entitled to some of the benefits they receive, I am satisfied there is a real risk that he will be unable to receive any funds from his family if returned to Somalia.
50. I have considered the possibility that the Appellant could be deported on the basis that his mother and younger siblings could accompany him to Somalia as they (with the exception of his sister who is a British citizen) have no status in the United Kingdom. Mr Isherwood accepts that the Appellant's mother, whose became an overstayer following the failure to pay the requisite fee for an application of further leave to remain in 2008, has an outstanding asylum claim and the evidence from his brother, [An], is that he and his siblings also have outstanding asylum claims which are due to be decided before April 2016. I cannot speculate as to the Respondent's

future decisions. I must consider this appeal on the basis of the facts in existence when it is heard. I note however that if his mother's asylum claim is successful is it likely that her minor dependants will remain in the United Kingdom. I additionally note her various medical issues as outlined in the two GP reports, a factor that will be relevant in any Article 3/Article 8 decision. As there has been no decision in respect of his family members outstanding asylum claims, and as these claims are not clearly unfounded on the limited evidence before me, I am not satisfied that it is appropriate or reasonable to proceed on the basis that his family could accompany him to Somalia.

51. I have been referred to the case of DA/01528/2014. Ms Isherwood invited me to take account of this unreported UT decision because it was before the UT reporting committee and the evidence and findings went, she submitted, to the heart of the current appeal. Rule 11 of the Tribunal Practice Directions, issued in 2010, indicates that an unreported decision can only be cited with permission of the Tribunal, that the party wishing to adduce the decision must identify the proposition for which the decision is to be cited, and that the party certified that the proposition is not to be found in any reported decision of the Tribunal and has not been superseded by higher authority. Permission will only be given if the Tribunal feels it will be materially assisted by the citation as distinct from the adoption in argument of the reasoning to be found in the decision. Such instances are likely to be rare.
52. In her email accompanying the service of DA/01528/2014 Ms Isherwood indicated that the decision considered the position of a member of the Benadiri clan in light of *MOJ*. At the hearing she submitted that the decision was of assistance as it indicated how *MOJ* should be applied in respect of a Benadiri claiming to have no financial assistance if returned to Mogadishu. Ms Isherwood did not expressly certify that this proposition was not to be found in any other reported decision or higher authority, but I am satisfied such an assertion was necessarily implicit in her application and Mr Lams did not identify any contrary decision. In these circumstances I am prepared to consider the unreported decision.
53. Ms Isherwood invited me to consider and apply the approach taken by the Upper Tribunal in DA/01528/2014 to the instant appeal. She submitted that the Appellant had skills he could utilise to support himself, as did the appellant in DA/01528/2014, and she invited me to consider the findings in that decision in respect of the position of Benadiris in Mogadishu.
54. The appellant in DA/01528/2014 was a 40 year old Somali man who had lived in Mogadishu from his birth in 1974 until the early 1990s when he and his family fled as a result of the civil war. Unusually, he and his family returned to Mogadishu in 1996 and the appellant and his brother only left Mogadishu in 2008, their parents remaining in the city having sold their substantial property for \$40,000 to a local Hayiwe man in respect of whom they had patronage. It is clear at the outset that the appellant in DA/01528/2014 lived for around 28 to 29 years in Mogadishu. The present Appellant arrived in the United Kingdom as a 7 year old and has never returned to Somalia. The evidence presented at the hearing suggested that his

mother and siblings stayed for an undisclosed period of time in Ethiopia having fled Somalia during which time they received funds from the Appellant's father who was already resident in the United Kingdom.

55. In DA/01528/2014 the Upper Tribunal considered the position of the Benadiri clan in Mogadishu with reference to *MOJ*, the COIR report of March 2015 and a 2012 Danish report. The Upper Tribunal's attention had been directed to country evidence suggesting that there had been a significant return of Benadiri people to Mogadishu but the only reference to any such material is the 2012 Danish report, a report that was before the Upper Tribunal in *MOJ*. This report has not been provided to me. Other than the March 2015 COIS report I have not been referred to any further background evidence by either party. The extract from the 2012 Danish report cited in DA/01528/2014 suggests that many Benadiris had returned to Mogadishu and were successful business people. On this basis the Upper Tribunal found that the successful businesses would generate employment prospects. I have taken this finding into account. The decision in DA/01528/2014 is not however a CG case, and is not as yet a reported decision. the March 2015 COIS report cites reports issued after the Danish report indicating that the Banadiri are not considered marginalized and that their position had materially improved (2.6.14 to 2.6.20), but that they are exploited and that, compared to other clans, there were fewer returning to Mogadishu (2.6.16). The COIS report cited another report post-dating the Danish report indicating that the remaining Benadiri traders in Mogadishu were relatively wealthy, that they usually manage to buy protection, although they could also be subject to extortion and blackmail by majority clan militias (2.6.19).
56. The appellant in DA/01528/2014 had, *inter alia*, City & Guilds qualifications in Wall and Floor Tiling, basic Constructions Skills, Paint finishing skills and surface preparation skills, two awards in IT user skills, a Cleaning Professionals Skills certificate, and OCR functional Skills in maths and English. He had worked in a car factory for 7 months and in a car tyre warehouse for 18 months. He had completed 8 weeks of a 16 week bricklaying course. There was no apparent issue with his proficient in Somali. The Upper Tribunal attached weight to that appellant's relevant skills and work experience. This must be contrasted with the present Appellant's skills and experience. In oral evidence the Appellant stated that he 'just about' passed some GCSEs but no details were produced and no details were given of the grades obtained. He also claimed to have an NVQ level 1 qualification in bricklaying, carpentry and plumbing which he obtained while in school, although no evidence was produced in support. I take judicial knowledge of the fact that an NVQ level 1 is a very basic qualification. The Appellant has no work experience. I am satisfied, based on his experience of employment and his more extensive practical qualifications, that the appellant in DA/01528/2014 was in a significantly more enhanced position to that of the present Appellant in respect of his ability to secure access to a livelihood.
57. The Upper Tribunal in DA/01528/2014 found it 'highly relevant' that the appellant's mother had lived in what was described as an IDP camp, but appeared on the evidence to have been a vacant government building, without any suggestion that

she was ever subjected to ill-treatment. The present Appellant has not had any family members living in such accommodation since the family fled Somalia. The Upper Tribunal found the circumstances of the appellant in DA/01528/2014 before he left Somalia, one of the factors identified in *MOJ*, as being very significant. The Upper Tribunal noted the return of the appellant's family to Mogadishu in 1996 and the patronage of the Hawiye clan member which indicated a level of support available to the appellant. The Upper Tribunal noted that no explanation had been provided as to why this man would decline a request from the appellant for help on return. In contrast it has never been suggested that the present Appellant or his family enjoyed the patronage of a majority clan member.

58. Ms Isherwood did not indicate the basis on which DA/01528/2014 was presented to the Upper Tribunal reporting committee to become a reported case. Given the significant factual differences between the two appellants and the absence of any further background material before me relating to the position of the Benadiri other than the COIS report of March 2015 provided by Ms Isherwood, I do not find DA/01528/2014 to be of material assistance in the assessment that I have to undertake under Article 3. The Upper Tribunal in DA/01528/2014 applied the approach to risk assessment identified in *MOJ* to the appellant before it, and I propose to do the same, taking into account the background evidence before me.
59. Having regard to the non-exhaustive considerations in footnote (ix) of *MOJ*, I find that the Appellant left Somalia at a young age and as a dependent of his mother while fleeing the civil war. He is someone to be properly regarded as having no former links with Mogadishu of any significance. He was 7 years old when he arrived in the United Kingdom and is now 21. He has therefore been outside Somalia for 14 years, two thirds of his life. I am satisfied he has no family or relatives in Somalia. There is no indication that he has any access to financial resources in Somalia itself. I am satisfied that the selling of the family property to fund the Appellant's journey to the United Kingdom 14 years ago means that he will have no financial support from this source on his return to Somalia. For the reasons I have already given I am persuaded, albeit on the lower standard of proof only, that the appellant's family will be unable to remit any funds to him should he be deported to Somalia. Because of his lack of proficiency in the Somali language, and his lack of any work experience, and because the Benadiri are a minority clan, I am not satisfied that the Appellant would be able to call upon support from the Benadiri community in Mogadishu. The March 2015 COI guidance indicates, at 1.3.8 & 2.2.7, that persons from minority ethnic groups continue to be marginalised and face discrimination in Mogadishu, and are more vulnerable than other groups. I find that the Appellant's lack of any work experience, his unfamiliarity with Mogadishu and its people and practices, his possession of anything other than the most basic of qualifications, and his lack of proficiency in Somali, means that he has few prospects of securing a livelihood and that there is a real risk he will be unable to access the economic opportunities produced by the economic boom.
60. I am consequently satisfied that there will be a real risk that the Appellant may have no alternative but to live in makeshift accommodation within an IDP camp where

there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards, and that his removal would therefore constitute a breach of Article 3.

61. Having found that the Appellant's removal would breach Article 3, I need not consider whether his removal would also constitute a breach of Article 8.

Notice of Decision

The First-tier Tribunal Judge made a material error of law.

The Appellant's appeal is allowed on the basis that his removal would breach Article 3 ECHR.

No anonymity direction is made.



Signed

01 December 2015

Date

Upper Tribunal Judge Blum