



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/02036/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> March 2015

Determination Promulgated  
On 27<sup>th</sup> March 2015

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AMIR ALI MOXAID  
(No anonymity direction made)

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer  
For the Respondent: Mr A Adewoye of Prime solicitors

**DETERMINATION AND REASONS**

1. For ease of reference I shall call Mr Moxaid the claimant.
2. On 4<sup>th</sup> August 2014 I found an error of law in the determination of the First-tier Tribunal, set aside the determination for the following reasons and made directions as set out below:
  1. First-tier Tribunal Judge Metzger allowed the appeal of Mr Moxaid, a Somali national, against the imposition of a deportation order dated 26<sup>th</sup> September 2013 under s32(5) UK Borders Act 2007.

## Background

2. The claimant is a Somali national date of 13 March 1977. He arrived in the UK on 27<sup>th</sup> December 2001 and applied for asylum on 9<sup>th</sup> January 2002. His asylum application was rejected but he was granted exceptional leave to remain. His appeal on asylum grounds was dismissed. On 8<sup>th</sup> April 2003 he made an application for further exceptional leave to remain, such application being refused and his subsequent appeal dismissed. He remained in the UK unlawfully from 25<sup>th</sup> October 2004. Following a review of his case, he was granted indefinite leave to remain on 9<sup>th</sup> February 2010. An application for naturalisation was refused on 28<sup>th</sup> August 2012.
3. On 4<sup>th</sup> July 2013 the claimant was convicted, following a plea of guilty, of unlawful wounding and sentenced to 12 months imprisonment.
4. His appeal against deportation was on the grounds that the situation for Midgan minority clan members had changed since the previous determinations and he was thus at risk of Article 3 breach. He also pursued a claim under Article 8 private life.

## Undisputed factual findings

5. The claimant is a member of the Midgan minority clan. He has no family members in Somalia and is not and would not be under the protection of a majority clan. Relocation to Puntland or Somaliland was not an option.
6. Although the claimant has established private life in the UK by virtue of his lengthy residence, it would not be disproportionate to remove him (in Article 8 terms) to Somalia taking account of the seriousness of his offence, his age, previous offences.

## Error of law

7. The First-tier Tribunal found that the situation for members of the Midgan clan had deteriorated since the two previous determinations in this claimant's case. The judge referred to HY [2006] UKAIT 0002 [17] and to YS and HA [2005] UKAIT 00088 [73].
8. [17] of HY reads:

“The question that then arises is whether facing this situation on return if he does face it would give rise a real risk of breach of his rights under either Convention. In this context we note the finding of the IAT in **YS** and **HA** at paragraph 73(viii) that a Midgan who has lost the protection of local patron (or local patrons) and who had not found alternative protection in the city would be vulnerable to persecution. And also at (ix) it is said that a Midgan who has lost protection from a noble clan patron or patrons in his home area would not be able to relocate safely within Somalia.”

9. The headnote of HY is as follows:

*“The finding of the IAT in **YS** and **HA** that a Midgan who had lost the protection of a local patron or patrons, and who had not found alternative protection in the city would be vulnerable to persecution is good law and applies to Yibir as well.”*

10. [73] of YS and HA is as follows:

“(i) This decision should be seen as superseding four previous Country Guidance determinations:

-MA (Risk – Jaaji Clan –Benadiri) Somalia CG [2002] UKIAT 04084 (previously known as Amin [2002] UKIAT 04084);  
 -IJ (Risk - Midgan) Somalia CG [2002] UKIAT 06314 (previously known as Ibrahim Abdi Jama [2002] UKIAT 06314); and  
 -FB (Risk – Class – Midgan) Somalia CG [2002] UKIAT 06753 (previously known as Beldeq [2002] UKIAT 06753)  
 -AH (Midgan – Disabled Woman – Relocation – Mogadishu) Somalia CG [2002] UKIAT 07343 (previously known as Hirsi [2002] UKIAT 07343).

- (ii) Each appeal must be decided on its own facts but the following should be treated as authoritative guidance on cases concerning the Midgan (also called the Migden, Midgaan and Madhiban and Madiban) in Somalia. One version of their name translates as “harmless”.
- (iii) This decision is also authoritative guidance for the consideration of cases of members of other small caste groups identified in paragraph 42 above.
- (iv) Midgan are expected to perform low status jobs in Somali society and are usually poor. However, they are not slaves.
- (v) Midgan living in rural communities can generally expect to receive patronage and therefore protection from noble clans.
- (vi) Midgan who have left rural communities to settle in cities will sometimes have gained the patronage and protection of noble clans.
- (vii) Midgan who enjoyed the patronage and protection of a noble clan when they left Somalia can normally be expected to regain such patronage and protection in the event of their return. The protection afforded would extend to provision being made upon return for their internal safe travel back to rural areas.
- (viii) A Midgan who has lost the protection of a local patron (or local patrons) and who had not found alternative protection in a city would be vulnerable to persecution.
- (ix) A Midgan who has lost protection from a noble clan patron or patrons in his or her home area would not be able to relocate safely within Somalia.
- (x) Being a female Midgan increases the level of risk on return but does not on its own increase it to the level of real risk under the Refugee Convention and the ECHR.”

11. The SSHD in the decision that s32(5) applies dated 26<sup>th</sup> September 2013 sets out the legislation in force and relevant at that date and considers the position in accordance with paragraphs 398, 399(a), 399(b), 399A of the Immigration Rules HC395 as amended. She then considers the position as regards Mogadishu. She makes specific reference to AMM and others [2011] UKUT 00445 and asserts that

the situation in Mogadishu has changed since that determination in November 2011. She makes specific reference to the COI Report Somalia, August 2012 paragraph 3.01, 4.15, Country Bulletin Brief February 2013, Somalia Bulletin 14 August 2012 paragraph 3.16 and 3.17, Country of Origin Report 5 August 2013 and concludes that the situation “has improved to such an extent in Mogadishu that the judgment in AMM and others that there remains a general risk of Article 15(c) harm for the majority of those returning to the city is no longer true”.

12. On 25<sup>th</sup> June 2014 I granted permission to appeal to the SSHD on the grounds that it was arguable that the First-tier Tribunal judge had failed to have adequate regard to evidence as to Article 3 risks as set out in the decision by the SSHD.
13. The First-tier Tribunal judge in reaching his decision considered paragraphs 3.2.21 and 3.2.22 of the COI. Although concluding [21] that there had been

“a material change in the lack of protection available to the Midgan clan since the previous determinations in 2002 and 2004. We find the [claimant] has established to the relevant standard on the basis of his evidence, that of his witnesses and the objective evidence as summarised in the Country Information and Guidance that he would be at risk of ill treatment contrary to Article 3 of the ECHR were he to be returned to Somalia given his minority ethnicity and the lack of protection that he would be afforded by not having a connection with the majority clan nor would he receive the protection of the police and other authorities.”

the First-tier Tribunal has not addressed the matters referred to in the reasons for decision which point towards a significant change economically, improved access to markets, greater humanitarian access, the withdrawal of Al Shabaab in August 2011, indications of political stability, the large numbers of people returning to Mogadishu, security gains and that people move freely about the city. There was no reference in the decision to the most recent country guidance case of AMM and others [2011] UKUT 00445. Looking specifically at return to Mogadishu the Upper Tribunal, in the headnote in that case, said:

*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.*

14. As referred to in [74] of AMM and others, the Tribunal heard evidence in relation to the economic situation and its potential effects on the Midgan and power arrangements. One of the AMM appellants was Midgan and his case was specifically considered. There was a specific finding by the tribunal that he would not, on the basis of the current evidence be at Article 3 risk of serious harm although he was entitled to 15(c) protection:

“[664] ..... Finally, there is on the evidence no real risk of appellant AF suffering Article 3 harm in Mogadishu at the present time.”

15. Although the claimant’s evidence was that he

“...could be killed as an unarmed civilian roaming the streets of Mogadishu....[on return] from the United Kingdom he would be considered a spy or presumed to have money and relatives abroad and could be subject to being kidnapped or forcibly recruited”

the First-tier Tribunal judge made no findings on these claims and there is no reference to any background evidential material that supports these blanket assertions or that they played any part in the conclusions reached by the First-tier Tribunal which are based purely upon the factual matrix that the claimant is from the Midgan minority clan, has no majority clan links and has no family in Somalia. There is no background material referred to which supports these claims in any event. The First-tier Tribunal has not provided any reasoning for in essence coming to a different conclusion to that reached by the Tribunal in AMM and others as regards Article 3 risk. There is no finding that the claimant has any particular vulnerability or was not fit for work.

16. The COI that had been placed before the First-tier Tribunal was, according to Mr Avery, an unpublished version. He did not seek to assert that it should not have been relied upon by the First-tier Tribunal but drew specific attention to the content of the decision letter which refers to the changing situation in Mogadishu since 2011. Mr Adewoye referred to the fast changing nature of Somalia and reiterated that HY and YS and HA remained pertinent despite their age. He did not seek to argue that the claimant was entitled to 15(c) protection but rather because of his personal circumstances namely Midgan, no family and length of time away from Somalia, he was at Article 3 risk and this was eminently shown not only by virtue of the paragraphs of the COI referred to by the First-tier Tribunal but that there were other paragraphs in the COI which supported those conclusions.
17. The First-tier Tribunal judge does make a generalised statement that he has considered the “objective” evidence in the Country information and Guidance ([21]). That is not sufficient to indicate that the judge has had regard to the various matters raised. There is conflicting information in the background material before the First-tier Tribunal, some of which is sourced from eg the UNHCR and some of which is sourced from unidentified single NGOs. The matters relied upon by the SSHD have not been considered and weighed in comparison with the other evidence before the judge and there has been no consideration of the Upper Tribunal’s conclusion that a Midgan clan member was not at Article 3 risk on return to Mogadishu in 2011. The First-tier Tribunal judge gave no indication why he preferred some evidence over other evidence or what information he considered changed that situation other than the quotes from the COI which are, as I have said, contradicted in other respects.
18. It was incumbent upon the First-tier Tribunal to consider the matters that were before it, not only those put forward by the claimant but also those put forward by the SSHD. It was incumbent upon the Tribunal to consider caselaw relevant to the appeal before it. The failure to do so, particularly given the previous dismissal of asylum/Article 3 claims of the claimant by the Tribunal, amounts to an error of law such that the decision is set aside to be remade.

### **Remaking of the decision**

19. The Upper Tribunal is due to produce a Country Guidance reported case within the next few weeks. On that basis it is not appropriate for this decision to be remade at this time.

**Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

**Directions**

20. I make the following directions:

- a. This appeal to be relisted for hearing for 2 hours on a date two or more weeks after the reporting of the forthcoming country guidance case on Somalia.
- b. No oral evidence; submissions only on Article 3 risk on return to Mogadishu.
- c. Factual findings as set out in [5,6] to stand. Finding on Article 8 (not disproportionate to remove the claimant) to stand. Although no finding made, it was acknowledged by the claimant through his solicitors that he did not face an Article 15(c) Qualification Directive risk on return to Mogadishu.
- d. Claimant and SSHD to file and serve a skeleton argument 3 days before the resumed hearing, such skeleton arguments to specifically address Article 3 risk on return to Mogadishu for a minority clan member with no remaining family members.

**Resumed hearing on 9<sup>th</sup> March 2015**

3. Ms Isherwood apologised for failing to file a skeleton argument; Mr Adewoye had complied with directions and filed a skeleton. No application was made for me to hear oral evidence or to amend the directions I had made pursuant to the “error of law” finding.
4. At the commencement of the resumed hearing the following facts were agreed:
  - (a) The appellant is a minority Midgan clan member
  - (b) The appellant has no immediate family in Somalia
  - (c) There was no option of relocation to Puntland or Somaliland
  - (d) There was nothing to suggest that the appellant had a link with a dominant clan as a member of the minority Midgan clan
  - (e) The appellant has been out of Somalia since 2001 and in the UK for the last 14 years
  - (f) The appellant’s father is in America and his mother is in Sweden; he is no longer in touch with his wife; evidence of his mother’s passport was produced
  - (g) The appellant’s immediate family members include his brother, cousin and sister are all in the UK and all previously had refugee status
  - (h) The findings on Article 8 made by the First-tier Tribunal stand namely it will not be disproportionate to remove him to Somalia.
5. Mr Adewoye submitted that, in essence the appellant has no friends or family in Somalia; he belongs to a minority clan and fears return because he will be ill

treated. He distinguishes the current most recent CG case of MOJ & others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) and seeks to rely on AMM & others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC) where guidance was given in AAM and those issues were not addressed in MOJ. The country guidance given in MOJ is as follows:

- (i) *The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC). Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.*
- (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.*
- (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. That was not the case at the time of the country guidance given by the Tribunal in AMM.*
- (iv) *The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab’s resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.*
- (v) *It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of “collateral damage” in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.*
- (vi) *There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.*
- (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.*

6. Mr Adewoye relies in particular upon paragraphs (vii), (xi) and (xii). My attention was drawn to particular paragraphs in MOJ. Mr Adewoye said that the appellant was



“...not relying on his minority clan membership to say he is at risk or that he will be targeted or forcefully recruited by Al Shabaab but he is saying that the minority clan membership would make his livelihood fall below acceptable humanitarian standards. That was accepted in MOJ. It has been said by the UNHCR and that is where the obligations of the UK are engaged. He will end up in an IDP camp.”

Mr Adewoye submitted that the likely destination of the claimant was an IDP camp – he had never worked in the UK but had been reliant upon benefits; his family in the UK had not supported him in the past and would not support him in the future and this was evidenced by their refusal to meet even his travel costs for the hearing and that he was living in a bail hostel rather than with his family; as a minority clan member without access to a dominant clan member or familial support he would not be able to find employment because it would be given to someone else in preference to him; the presence of a nuclear family is a requirement for livelihood support; as a Midgan clan member he would be treated as a slave; he has spent at least 14 years away from Mogadishu; he falls within the category or person described in paragraph 408 of MOJ namely

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.

7. Mr Adewoye submitted that the claimant would be unable to take advantage of the economic boom as described in MOJ:

The “Economic Boom”

344. The economic revival of Mogadishu can be described only as remarkable, considering what is known about conditions in the city since the civil war began in 1991. Each of the expert witnesses has addressed this in their evidence that we have considered above. It is perhaps well described by a report of the New York Times of April 2012:

“But people here are sensing the moment and seizing it. More than 300,000 residents have come back to the city in the last six months..... The economic boom, fuelled by an infusion of tens of millions of dollars, much of it from Somalis flocking home from overseas, is spawning thousands of jobs that are beginning to absorb young militiamen eager to get out of the killing business...”

An international agency referred to in Dr Mullen’s report is recorded as saying:

“Mogadishu is now a ‘buzz’, people are going around minding their own business and there is an increasing freedom of movement for everyone.”

345. It is beyond doubt that there has been huge inward investment, large-scale construction projects and vibrant business activity. Land values are said to be “rocketing” and entrepreneurial members of the Diaspora with access to funding are returning in significant numbers in the confident expectation of

launching successful business projects. The question to be addressed is what, if any, benefit does this deliver for so called “ordinary returnees” who are not themselves wealthy businessmen or highly skilled professionals employed by such people.

346. According to the respondent, a striking feature of developments in Mogadishu since AMM is the evidence that “huge numbers” of people have returned to Mogadishu, that is said to be indicative of a considerable reduction in levels of violence and improvements in security. Some local NGO sources have said that there were 300,000 returning residents to Mogadishu in the six months between November 2011 and April 2012 alone. By August 2012 it had been estimated that more than 500,000 people had moved back to the capital including the vast majority who had fled since 2007.

347. Dr Hoehne’s view was that very few people indeed benefit from this. He said when asked who benefited:

“A tiny proportion. 89% are poor. The remaining 20% will be a bit better than being poor. A little better than “barely surviving”. Possibly 1% or 2% of the population benefit from the last two years economic development.”

As we have observed, the arithmetic disclosed by that answer is problematic but we have more difficulty with the view expressed.

348. Pressed further to explain who does benefit from the economic development in Mogadishu, Dr Hoehne said:

“A very tiny fraction of the elite. The vast majority of people are struggling to survive...”

349. This is a view that is not altogether easy to understand and we are unable to agree with it. The evidence is of substantial inward investment in construction projects and of entrepreneurs returning to Mogadishu to invest in business activity. In particular we heard evidence about hotels and restaurants and a resurgence of the hospitality industry as well as taxi businesses, bus services, drycleaners, electronics stores and so on. The evidence speaks of construction projects and improvements in the city’s infrastructure such as the installation of some solar powered street lighting. It does not, perhaps, need much in the way of direct evidence to conclude that jobs such as working as building labourers, waiters or drivers or assistants in retail outlets are unlikely to be filled by the tiny minority that represents “the elite”. Indeed, Dr Hoehne suggested that SSM, on whose behalf he was being asked questions:

“... could probably get a job as a waiter...”

although he said that there would probably be much competition.

350. The respondent submits that, given the inward investment that has been received into Mogadishu, said to be tens of millions of dollars, it is impossible to see how the benefits could be restricted to such a tiny minority. The respondent refers to evidence from the Department for International Development in Somalia report – Autumn Update 2013 in

which it is asserted that 56,900 jobs have been created since May 2011 and a further 45,000 new private sector jobs will be created.

351. Further, there is evidence before the Tribunal, identified by Dr Mullen, to the effect that returnees from the West may have an advantage in seeking employment in Mogadishu over citizens who have remained in the city throughout. This is said to be because such returnees are likely to be better educated and considered more resourceful and therefore more attractive as potential employees, especially where the employer himself or herself has returned from the diaspora to invest in a new business.
352. For those reasons we do not accept Dr Hoehne's evidence that it is only a tiny elite that derives any benefit from the "economic boom". Inevitably, jobs have been created and the evidence discloses no reason why a returnee would face discriminatory obstacles to competing for such employment. It may be that, like other residents of Mogadishu, he would be more likely to succeed in accessing a livelihood with the support of a clan or nuclear family.

He referred in submissions to the Midgan being scattered and not concentrated in one area and thus unable to provide any support. He referred to them doing menial jobs and that the claimant has no financial resources available to him and that there is a low ethical obligation to assist individuals from weak groups which stands in stark contrast to the obligation of Somalis to assist their own lineage.

8. The Secretary of State referred to the applicant's failure to attend his appeal hearing in 2002 and his numerous convictions pointing to an overall lack of credibility. There had, she submitted, been no evidence called as to the siblings' inability or unwillingness to assist financially and there was no evidence that his mother and father would not assist. She referred to the first bail application made by the claimant in which a brother and cousin stood as sureties for £500 and £800. The claimant had passed English language qualifications and has volunteered at a local Somali community organisation; it was found that he was close to the Somali community in previous adjudications. He has gained skills since he came to the UK and would be returning to a country where jobs were available. There was no explanation how or why the applicant had not obtained employment or sought employment whilst in the UK and although he may well not have the business acumen to take on a high paying job or open a business there was no evidence why he, as a healthy young man with language skills and contacts in the Somali community would not be able to find employment. The reference by Mr Adewoye to the need for familial or clan support was a reference in MOJ to such contacts assisting not being a pre-requisite. It had not been established that individuals were barred from working because of their clan membership, rather MOJ had found that there were extensive job opportunities.
9. This claimant has not shown to the lower standard that he would not be able to obtain some economic activity that would enable him to live in Mogadishu. He has not shown to the lower standard that his family would not provide at least some support, given especially that in the past they were prepared to stand as sureties but even without that support, the claimant is a fit and healthy young

man for whom there is no impediment to finding work – as referred to in paragraphs 349, 351, 352 and 408 of MOJ. There is no evidence from his mother and father that they would not assist him. There was no evidence that he could not work. I am satisfied that there is no Article 3 risk to this claimant.

10. The appeal of the Secretary of State is allowed.

**Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing the SSHD's appeal; the claimant's appeal against his deportation is dismissed.

Date 27<sup>th</sup> March 2015

Upper Tribunal Judge Coker