



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

**Appeal Number: AA/11511/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 22 January 2016**

**Decision and Reasons Promulgated  
On 26 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**A J A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Faryl counsel instructed by Irving & Co Solicitors  
For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was previously made and shall continue.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Mulvenna promulgated on 17 March 2015 which dismissed the Appellant's appeal

against the decision of the Respondent to remove the Appellant from the UK following the decision to refuse the Appellant's claim for asylum but allowed the appeal against a refusal of humanitarian protection.

### Background

3. The Appellant was born on 4 October 1993 and is a national of Somalia. The Appellants claimed to be a member of a minority clan, the Banjuni who lived and worked as a fisherman on the Island of Chula. He claimed to be at risk from the majority clans.
4. On 7 February 2014 the Appellant applied for asylum.
5. On 1 December 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
  - (a) It was accepted that the Appellant was a member of the Banjuni minority clan and that he lived and worked as a fisherman on the Island of Chula.
  - (b) It was not accepted that the Appellants brother was kidnapped as claimed as his account was inconsistent and therefore not credible.
  - (c) The Appellants credibility was undermined by his failure to claim asylum promptly on arrival.
  - (d) The Appellant could live in Mogadishu if he chose not to return to his home area.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Mulvenna ("the Judge") dismissed the appeal against the Respondent's decision in respect of the Appellants claim for asylum but allowed the appeal in respect of humanitarian protection. The Judge found :
  - (a) The Appellants claims in relations to why he left Somalia were not credible.
  - (b) He referred to the operative country guidance as AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC).
  - (c) At paragraph 52 he set out the background evidence in relation to the security situation in Somalia generally.
  - (d) At paragraph 54 he concluded on the basis of the background material that the Appellant would not be able to travel to his home area without incurring a significant degree of risk.
  - (e) He considered the question of relocation to Mogadishu and found that his personal circumstances would put him at risk if he sought to relocate there.
7. Grounds of appeal were lodged arguing that the Judge had failed to apply the more recent country guidance case of MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC).
8. On 1 April 2015 First-tier Tribunal Judge Andrew gave permission to appeal.

9. At the hearing I heard submissions from Mr Harrison on behalf of the Respondent. I indicated to him that I was satisfied that the Judge had indeed relied on the case of AMM rather than MOJ but asked him to identify for me what difference that application of the appropriate CG case would have had to the outcome of the case given the factual matrix of the Judge's findings. I reminded him that AMM remains applicable to the extent that it has not been changed by MOJ & Ors. In respect of Mogadishu the changes in MOJ & Ors are substantial, but outside of Mogadishu AMM is still applicable in many respects. Mr Harrison was unable to identify what difference the guidance in MOJ would have made.
10. On behalf of the Appellant Ms Faryl submitted that application of the up to date guidance would have made no material outcome to the case because AMM had to be read in conjunction with MOJ. The Judge was required to look at the situation the Appellant would face on return and he found that the Appellant would end up in a refugee camp.

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made no errors of law that were material to the outcome of the case.
12. It is clear that the Judge erred in failing to have regard to the most up to date country guidance case that applied in respect of Somalia particularly given that it was referred to in the refusal letter.
13. The Respondent does not challenge the finding that on the basis of the available background material that even though the Appellant was not at risk in his home area the prevailing country conditions as set out in the background material he relied on were such that it would be unsafe for him to return to his home area. The issue in the case therefore was whether he could relocate to Mogadishu.
14. I note that neither the grounds nor the permission to appeal clearly identify how the application of MOJ would have produced a different outcome in this case and certainly Mr Harrison was unable to articulate this to me. The guidance given in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) was that 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.
15. I am satisfied that the Judge made brief but sustainable findings that the Appellant could not relocate to Mogadishu at paragraph 54. It was not disputed that he was from a minority clan and the only work that he had done was as a fisherman on the Island of Chula and it would be arguable that this would not translate to a means of support in Mogadishu. It was not challenged that he had no links to the city either familial or otherwise. His family was in Chula and while aspects of his case were rejected the Judge made no adverse finding about his claim that the family had used what assets they had to secure his flight with an agent and therefore the Judge would have been entitled to find he would have no prospect of financial support there or

from any other source. In accordance with MOJ he would have been entitled to find that if the Appellant found himself in a refugee camp this would be unacceptable. Thus the failure to refer to MOJ was not in the circumstances material.

16. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): *“Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”*
17. I was therefore satisfied that the Judge’s determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## CONCLUSION

18. **I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

## DECISION

19. **The appeal is dismissed.**
20. **Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.**

Signed

Date 24.1.2016

Deputy Upper Tribunal Judge Birrell