Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12915/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 June 2017	**On 5 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OOA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Deller, Home Office Presenting Officer
For the Respondent: Mr A Masood, Aden & Co Solicitors

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department against a determination promulgated on 13 February 2017 by First-tier Tribunal Judge M R Oliver. The appellant (as I shall style him since this was his status in the First-tier Tribunal) is from Somalia, born on 2 January 1997, who some four years after arriving in the United Kingdom claimed leave to remain.

2. The judge allowed the appellant's appeal on both asylum and human rights grounds. Permission to appeal was granted on a number of linked grounds but those relied upon this morning by Mr Deller for the Secretary of State have focused on the inadequacy of the judge's consideration of

MOJ & Ors (Return to Mogadishu) Somalia (CG) [2014] UKUT 00442 and additionally a ground relating to the judge's failure to give proper consideration to the proportionality assessment under Article 8.

3. Mr Masood, who acts for the appellant, candidly accepts that there may be shortcomings within the determination but contends that it is sufficient for the Upper Tribunal to be satisfied that **MOJ** was properly applied and that the Article 8 determination was a proper exercise of judicial discretion.

4. Mr Masood has taken me to the head note of **MOJ** and has additionally made reference to **RG (Automatic deport Section 33(2)(a) exception) Nepal [2010] UKUT 273 (IAC)**. In addition he has relied upon passages in the Court of Appeal judgment in **Secretary of State for the Home Department v HK (Turkey) [2010] EWCA Civ 583**.

5. Mr Masood is undoubtedly right in that the determination is unusually brief and could usefully have been expanded. The judge's particular findings are at paragraph 24 which reads as follows:

> "Since I have found that the appellant left Somalia at the age of 2 it follows that the only Somali culture which he has experienced has been that reflected within his family. This is only a part of what a normal child would receive and I find that on return he would be a fish out of water. He would have no clan support and would simply not know his way around. His is a situation not envisaged in **MOJ & Ors (Return to Mogadishu) Somalia (CG) [2014] UKUT 00442**. The security situation has not improved since that case was decided and the circumstances of the appellant were not catered for. In **MOJ** it was held that
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> > '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'.
>
> I find that the appellant falls into this category.
>
> This appeal is at least as concerned with family life as it is with asylum. It is a classic case where the bright-line of the age of majority in respect of family life has no meaning, **Kugathas v SSHD [2003] EWCA Civ 31**. After the experiences of the family's upheavals it must have been galling indeed for the appellant to realise the drastic consequences of his father's delay in applying for him and his brother. It must have been even more galling to consider the prospect that he might return where his brother had succeeded in remedying the situation. Proceeding forthwith to the proportionality of his removal, I find that his removal would breach Article 8

> jurisprudence which had the application been made some months before would have recognised the limits of the public interest in the maintenance of fair but firm immigration in respect of this particular family."

6. Mr Masood has made particular reference to paragraph (ix) of the headnote in **MOJ**, which gives a series of bullet points that the judge should take into account in circumstances where an individual is facing return to Mogadishu after a period of absence with no nuclear family or close relatives. The list is non-exhaustive.

7. However, whilst Mr Masood was seeking to make powerful and detailed representations based on material which might have been before the judge, regrettably none (or at least an insufficient amount) of that material is discussed in the determination. I have quoted the relevant section verbatim. There is no more.

8. In my assessment, the determination is wholly inadequate to deal with (1) the evaluation and assessment required under **MOJ** (2) the proper application of country guidance and, in consequence, (3) the Article 8 assessment, which is cursory in the extreme. The judge's failure to deal properly with **MOJ** has inevitably infected his assessment under Article 8. This is a significant error of law and one which is certainly material. It is not open to the Upper Tribunal to seek to rectify *ex post facto* various deficiencies in the determination as Mr Masood invites me to do.

9. Both Mr Deller and Mr Masood are of the opinion, in which I concur, that this matter needs to be remitted to the First-tier Tribunal. Where they disagree is that Mr Deller submits it needs to be dealt with entirely afresh by a different judge conducting full factual assessment and making relevant findings of fact. Mr Masood submits that certain findings of fact can be preserved and that the matter should be remitted to Judge Oliver, who has heard evidence and made credibility findings.

10. With respect, that submission is unsustainable. The errors of law are such that the entire decision is undermined and it would wrong for Judge Oliver to determine it a second time. It would also be inappropriate for any findings or views on credibility to be preserved. The determination is inadequate: proper consideration was not given to the country guidance or the Article 8 considerations.

11. I set aside the decision of the First-tier Tribunal and remit the matter to be heard afresh by a judge other than Judge Oliver. I make no order with the regard to preserving any facts. If the Secretary of State wishes to make any concession as to the appellant's age when he left Somalia, she is at liberty to do so, but as matters stand this will be one of the issued to be examined when the matter is determined afresh.

Notice of Decision

(1) Having found an error of las the decision of the First-tier Tribunal is set aside;
(2) The matter is remitted to be determined afresh by a judge of the First-tier Tribunal other than Judge Oliver;
(3) No part of the determination is preserved.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill* Date 4 July 2017

Deputy Upper Tribunal Judge Hill QC