Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00154/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 31 August 2017	**On 6 September 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

[A M]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Kotak, instructed by Lupins Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Somalia, born on [ ] 1990. Following a grant of permission to appeal against the decision of the First-tier Tribunal allowing his appeal, on Article 3

human rights grounds, against the respondent's decision to refuse his protection and human rights claims, it was found, at an error of law hearing on 19 June 2017, that the Tribunal had made errors of law in its decision and the decision was set aside, to the extent set out below. Directions were made for the decision to be re-made by the Upper Tribunal.

Background

2. The appellant is from the island of Chula in Somalia. He arrived in the UK on 11 March 2007, at the age of 16 years, with entry clearance to settle with his father, who had been granted refugee status in February 2004, following a successful appeal, as a member of the minority Bajuni clan, sub-clan Alossi. The appellant was granted indefinite leave to enter as a refugee. On 11 July 2014 the appellant was convicted of false imprisonment and sentenced, on 22 August 2014, to 66 months' imprisonment. On 28 October 2014 he was notified of his liability to automatic deportation in accordance with section 32(5) of the 2007 Act and on 10 February 2015 he was served with a decision to make a deportation order under section 32(5). The respondent also, in a letter of the same date, invited the appellant to seek to rebut the presumption under section 72 of the Nationality, Immigration Act 2002 that he had been convicted of a particularly serious crime and constituted a danger to the community.

3. On 21 December 2015 the appellant was notified of the respondent's intention to cease his refugee status under Article 1C(5) of the Refugee Convention and paragraph 339A of the immigration rules on the basis that the circumstances in connection with which he had been recognised as a refugee, namely on the basis of risk on return as a member of the minority Bajuni clan, had ceased to exist. On 15 January 2016 the respondent notified the UNHCR of the same and invited a response, which was received in a letter dated 8 February 2016. In a decision dated 27 July 2016 the respondent decided to revoke the appellant's protection refugee status and refused his human rights claim and maintained the decision to deport him. A deportation order was issued the same day pursuant to section 32(5) of the 2007 Act.

4. The respondent, in making that decision, considered that the appellant had failed to rebut the presumption under section 72(2) of the 2002 Act and accordingly certified that the presumption applied to him, with the effect that he was excluded from protection under the Refugee Convention. He was also excluded from humanitarian protection for the same reasons. The respondent then went on to consider the issue of cessation and concluded that the situation regarding minority clans, which was the basis upon which his father had been granted refugee status, had since changed. The respondent considered that the appellant could choose to return to the Bajuni islands or remain in Mogadishu, to where he would be removed. The respondent relied on the country guidance in MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442 in regard to the current improved situation in Mogadishu and considered that the appellant no longer required international protection on the basis of his Bajuni clan membership. The respondent considered that the appellant would be able to relocate to Mogadishu and that he was no longer at risk of persecution or ill-treatment amounting to a breach of Article 3 of the

ECHR. The respondent therefore decided to revoke the appellant's refugee status. The respondent went on to consider Article 8 of the ECHR and concluded that the appellant could not meet the requirements in paragraph 399(a) and (b) or 399A and that there were no very compelling circumstances outweighing the public interest in his deportation. The respondent found that the appellant could not meet any of the exceptions to automatic deportation in section 33 of the 2007 Act.

5. The appellant appealed against that decision. His appeal was heard by Judge Khan in the First-tier Tribunal on 7 February 2017 and was allowed in a decision promulgated on 6 March 2017. It was noted that the appellant had been released from custody on 30 December 2016. The judge heard from the appellant and his father. The judge considered the circumstances of the appellant's offending, was not impressed with his evidence, noted the seriousness of the index offence and concluded that he posed a danger to the community and that the respondent had properly found that he had failed to rebut the presumption in section 72(2). With regard to risk on return the judge considered the country guidance in MOJ. He found that the additional background information and country reports demonstrated a deterioration in the security situation in Mogadishu. He considered that the appellant would not have access to financial resources, would not be able to secure a livelihood in Mogadishu, would have no family or clan support and that he would end up in the IDP camps where he would be at real risk of serious harm and/ or inhuman and degrading treatment in breach of Article 3. He allowed the appeal on human rights grounds.

6. The respondent sought permission to appeal that decision on the grounds that the judge had wrongly applied the findings of the country guidance in MOJ, that he had too readily accepted the appellant's evidence as to lack of support when he had otherwise made adverse credibility findings against him and that he had failed to give reasons why he could not take advantage of the economic conditions in Mogadishu and secure a livelihood there. Permission to appeal was granted on 20 April 2017.

7. There was no cross-appeal by the appellant seeking to challenge the judge's decision under the Refugee Convention or on humanitarian protection grounds.

8. Following an error of law hearing on 19 June 2017, I upheld the First-tier Tribunal's decision dismissing the appellant's claim under the Refugee Convention and on humanitarian protection grounds but set aside the decision allowing the appeal on Article 3 grounds, as follows:

> "10. It was Mr Wilding's submission that the judge had conflated the considerations of Article 15(c) of the Qualification Directive and Article 3 of the ECHR and had failed to give full and proper reasons as to why the appellant would be at Article 3 risk in Mogadishu. The judge's finding as to a lack of clan association in Mogadishu was unreasoned and contrary to references made by UNHCR; the judge had failed to consider the full extent of available financial resources; no reasons had been given as to why the appellant could not secure a livelihood, particularly since he had undertaken a motor mechanics course in the UK; and the judge had failed to explain why the appellant could not access the economic opportunities available in Mogadishu.

11. Ms Kotak submitted in response that the judge's conclusion on the lack of minority clan support was consistent with the country guidance and that the judge had fully and properly applied the country guidance and had considered and made findings on all relevant factors.

12. I find myself in agreement with Mr Wilding's submissions as to the adequacy of the judge's reasons for reaching the conclusions that he did on the factors set out in the country guidance. I put aside the submissions that he made in relation to Said, given that that was not a matter raised in the grounds, but focus on the judge's assessment of the appellant's circumstances in the context of MOJ. It was Ms Kotak's submission that the judge had done everything that he was required to do in undertaking such an assessment, but I agree with Mr Wilding that there is a lack of adequate reasoning in his conclusions. I also agree with the respondent's assertion in the grounds that, having found the appellant to be an unimpressive witness, the judge failed to explain why he simply accepted his evidence as to a lack of resources available to him in Mogadishu without a proper consideration of the same.

13. The evidence before the judge was that the appellant had various relatives in Canada and the evidence recorded in the decision in his father's appeal at [9] was that one of those relatives had paid for his father's travel out of Somalia. Yet no consideration was given by the judge to whether any financial assistance was available to the appellant from such sources if he found himself in Mogadishu, and he focussed only on the lack of family in Somalia. The judge found, in regard to (ix) of the headnote to MOJ, that the appellant was unable to fund his journey to the west because he was a child, yet failed to consider how the journey was, nevertheless, funded. As to the appellant's ability to secure a livelihood, the judge found that he could not find work, but failed to explain why that was the case, stating simply at [42] that many of his educational qualifications were gained in prison. As Mr Wilding said, the evidence was that the appellant had undertaken a motor mechanics course (at [8]), yet the judge failed to give any consideration to opportunities available as a result, in line with (x) of the headnote to MOJ, and appeared to reverse the burden of proof suggested at (x).

14. Accordingly it seems to me that there was an inadequacy of reasoning on the judge's part in concluding that the appellant would find himself destitute and subjected to harsh conditions in an IDP camp amounting to a breach of Article 3.

15. There is a further matter which was not raised in the respondent's grounds, but which chimes with the respondent's assertion in the grounds that the judge's acceptance of the appellant's evidence was inconsistent with his previous finding that the appellant had not impressed him. I note that there appears to be an inconsistency in the chronology relied upon by the judge at [42], which was taken from the appellant's witness statement and that of his father, but which does not accord with the evidence recorded at [9], [12] and [17] of the decision in the appellant's father's appeal. That was not considered by the judge when he accepted that the appellant had only lived in Somalia for two years and had not lived there since 1995, yet is relevant to that claim. I would emphasise that that was not a matter raised before me and therefore it does not form part of my overall findings on the error of law, but is an observation that I make with a view to the re-making of the decision.

16. Accordingly, for the reasons given, the judge's conclusion on Article 3 risk on return is not sustainable and must be set aside. The appeal will accordingly be listed for a resumed hearing for the decision to be re-made and any submissions on the effect of the decision in Said can be raised and considered at that hearing. The judge's findings on exclusion are

preserved. The decision will therefore be re-made on the question of risk of Article 3 ill-treatment on return to Mogadishu."

9. The following directions were made for the resumed hearing:

"Not later than 14 days before the resumed hearing:

a. The appellant or his representatives are to file with the Tribunal and serve upon the respondent an indexed and paginated bundle containing all documentary evidence relied upon.

b. In respect of any witness who is to be called to give oral evidence there must be a witness statement drawn in sufficient detail to stand as evidence in chief filed with the Tribunal and served upon the respondent. The appellant and his father may wish to consider addressing the matter raised at [15] above.

c. The appellant's representatives are to file with the Tribunal and serve upon the other party a skeleton argument setting out all lines of argument to be pursued at the hearing."

Appeal hearing and submissions

10. The appeal then came before me for a resumed hearing on 31 August 2017, to re-make the decision on Article 3.

11. Although she acknowledged that it was not likely to be a course open to her, Ms Kotak sought nevertheless to re-open the decision on the appellant's exclusion from the Refugee Convention. That was on the basis that the expert evidence previously available, assessing the appellant as posing a low risk of re-offending, had been accorded little weight by the judge given that the appellant had been out of prison for only a short period of time, whereas more time had since elapsed and there was further expert evidence of the low risk of re-offending and evidence showing that the appellant had changed. Ms Kotak submitted that if that issue were to be decided now, the exclusion decision would be different and the appellant would still have refugee status. Ms Kotak accepted, however, that there had been no cross-appeal made with respect to the judge's findings on exclusion and on that basis I ruled that it was not open to the appellant to re-open the matter. I accepted that she could argue Article 8 in regard to any developments since the judge's decision.

12. The appellant then gave oral evidence before me. His father did not appear as a witness but it was said that he had had to take his daughter to a hospital appointment and that he relied upon his statements as his evidence. The appellant adopted his earlier statement of 24 January 2017 and a more recent undated statement prepared for this appeal. He provided details of his qualifications obtained in prison but said that they would not assist him finding employment in Somalia and that he would not be able to find work there. He was currently supported by his father but that support consisted only of sharing his clothes and eating the food provided for the family. His father did not give him any money and in fact he could not afford a new mobile telephone since his previous

one stopped working. His father would not be able to send any funds to him in Somalia. He had no other family in the UK or in Somalia. He did not know anything about a cousin in Canada until recently when his appeal was being prepared.

13. In response to my questions the appellant said that his father had four children including him. The other three were aged six, five and three years. The appellant said that he had also had another brother, who had disappeared when they were living in the refugee camp. He said that he left Somalia when he was young, in 1994 or 1995. He did not know why it was recorded in the decision in his father's appeal, in December 2003, that his father's two children were living in Somalia with an aunt. He was not in Somalia at that time but was living with his grandmother, his father's aunt, in Kenya. He lived in Kenya for six to seven years and then in Tanzania for six years, before coming to the UK. His father paid for him to come to the UK.

14. Both parties made submissions. Ms Aboni submitted that there were inconsistencies in the evidence about the length of time the appellant had been away from Somalia and it was not accepted that he left in 1995. The appellant could use the skills obtained in his various courses in Somalia and it was not accepted that his father would not provide him with any funds as he had previously said that he would. The appellant had failed to show that he would not be able to take advantage of the economic opportunities in Mogadishu, as referred to in MOJ. He would not be forced to live in an IDP camp and would not be at risk on return to Mogadishu. Ms Aboni relied on the case of Secretary of State for the Home Department v Said [2016] EWCA Civ 442 in submitting that the appellant would not be forced into living in conditions in breach of Article 3 or 8 of the ECHR even if he ended up in an IDP camp.

15. Ms Kotak submitted that the appellant's evidence should be accepted. Said could not be relied upon in relation to its findings on Article 3 in regard to IDP camps. Ms Kotak relied upon the expert report from Dr Markus Hoehne, whose expertise had been accepted in MOJ, and who concluded that the appellant would not be able to find employment in Mogadishu and that he would be subjected to violence. The appellant would end up in an IDP camp in conditions contrary to Article 3. Even if the threshold for Article 3 was not reached, there were very significant obstacles to the appellant's integration in Mogadishu, due to the humanitarian crisis. His removal to Somalia would be disproportionate and in breach of Article 8. He had changed and posed a low risk of re-offending. Ms Kotak relied upon the further expert report from Lisa Davies. She submitted that the appellant was accessing rehabilitation services. He worked with street homeless people and enjoyed that work. The appeal should be allowed on human rights grounds.

Consideration and findings.

16. The decision in the appellant's appeal is being re-made on the question of risk on return to Mogadishu. It is relevant to set out the relevant factors set out in the headnote to MOJ, as follows.

> *"(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."

17. MOJ remains the relevant and authoritative country guidance. The Home Office Country Information and Guidance of July 2016 considered various human rights reports, referring at section 8.3 to returns of diaspora to Somalia, and concluded at section 2.3.21 that the situation had continued to improve since 2014 and that there was no reason to depart from the existing country guidance. Whilst the Human Rights Watch report dated 12 January 2017 refers to various security concerns, the report is, for the most part, not particularly focussed on Mogadishu, and overall does not provide any justification for departing from the much more detailed and focussed guidance in MOJ. As for Dr Hoehne's report, it is relevant to note that the Tribunal in MOJ had some difficulties with his evidence as to the security situation in Mogadishu, for example at [129] and [130], and preferred the evidence of other experts in that respect. Accordingly I have considered the risk on return to the appellant in line with the assessments made in MOJ.

18. It is the appellant's case that, as a person who has never lived in Mogadishu, he falls within (xi) and (xii) as being a person with no clan or family support, with no remittances from abroad and no real prospect of securing access to a livelihood, such that he would be forced to live in an IDP camp in breach of Article 3. The decision of the First-tier Tribunal accepting such a conclusion has been set aside as lacking in adequate reasoning, particularly in the light of adverse credibility concerns expressed by the judge arising from inconsistencies identified in parts of the evidence.

19. As (x) makes clear, the burden of proof lies upon the appellant show that he would not be able to access economic opportunities, or indeed other means of support, in Mogadishu. In my view he has failed to do that given the unreliable nature of the evidence he has provided. Like Judge Khan I did not find the appellant to be an impressive witness. Aside from the inconsistent evidence he provided before Judge Khan, as referred to at [26] of the judge's decision, there were further inconsistencies in his evidence before me,

leading me to conclude that he has sought to adapt his evidence to fit within (xi) and (xii) of MOJ.

20. Whilst the evidence previously adduced was that the appellant received financial assistance, albeit limited, from his father (according to his father in his statement at [21], £30 a week, but otherwise according to the appellant £20 a week), his evidence before me, which I do not accept, was that his father did not give him any pocket money or any financial assistance at all and that he shared his clothes with his father, and therefore that he would not receive any financial assistance in Mogadishu. He stated that his father could not even assist him in having his mobile telephone repaired, yet he was clearly able to obtain and fund a telephone in the first place. I consider it to be the case that his father does provide him with some financial assistance in the UK, although I accept that that may be limited to £20 or £30 a week, and I note the evidence that his father managed to pay for his journey to the UK when he first came here. In his expert country report, Dr Hoehne made it clear at [47] of the report that there would be no problem with remittances being sent from abroad and I find that the appellant would, therefore, be able to receive some limited support from his father, particularly initially whilst getting himself settled.

21. It is the appellant's claim that he was not aware of any relatives in Canada and this was only brought to his attention when referred to at the appeal hearing. I do not accept that that is the case. As I have said, the appellant is not a reliable witness and it seems to me that this is a further example of him seeking to adapt his circumstances to fit in with the country guidance. I am not prepared to accept that there are no other relatives, either within or outside Somalia, who are able to provide some limited support, at least initially until he is settled and has found some employment.

22. As for the matter I specifically pointed out in my error of law decision at [15] there is a significant inconsistency in the evidence about the age at which the appellant left Somalia. His claim, before the First-tier Tribunal and in his statement before me, to have lived in Somalia for only one to two years and to have departed for Kenya in 1995, at the age of five years, whilst consistent with his father's evidence before the First-tier Tribunal, is completely at odds with the evidence given by his father in his own appeal on 11 December 2003. His father's evidence, as recorded at [12] of the decision of Adjudicator Lloyd, was that his two children (the appellant and his brother) were living in Somalia at that time with his aunt, after they had all left Jomvu refugee camp when it closed in 1998, following the death of the appellant's mother in 1996, and his (the appellant's father's) subsequent departure from Somalia in 2003. Indeed it was on the basis of that evidence that the respondent considered, in the decision of 27 July 2016, that the appellant had spent his formative years in Somalia.

23. In response to the observations I made in my error of law decision, the appellant's father, in his statement, claimed that he had left the camp in 1995 with his sons and said that he did not know why the judge in his appeal had considered that he had left in 1998. However there can be no doubt, from the various references throughout the decision, at [9], [12], [16] and [17], that his evidence before the judge in his appeal was that he had left in 1998. The appellant's father did not appear before me to submit to further questioning

and clarification. It was said that he had had to take his daughter to a hospital appointment, but no reason was given why her mother could not have taken her so that he was able to attend the hearing. The appellant's father's evidence at his own appeal hearing was accepted as credible and it was on that basis that he was granted refugee status. There is no reason, therefore, why that evidence should now be disregarded in place of the current claim, particularly when there are other concerns about the reliability of the evidence in the appellant's appeal. Indeed the evidence given by the appellant's father at his own appeal hearing is consistent with the account given by the appellant to his probation officer and recorded in the OASys report of 30 January 2017, at B17 and B19 of the appeal bundle before the First-tier Tribunal, that he was born and raised in Somalia by different uncles, aunts and his grandmother. I note that that account has since been supplemented by further evidence recorded in the more recent OASys report of 16 August 2017 at B41 of the updated appeal bundle, with reference to him moving to Kenya and Tanzania with his grandmother and brother and living in Tanzania with his grandmother and brother, but that in turn is inconsistent with his account at [4] of his statement of 24 January 2017 and the account given to the psychologist Lisa Davies in her report of 2 February 2017 at paragraph 3.2.1, which refers to him having left his aunt/ grandmother in Kenya.

24. In my view the appellant has sought to diminish his links to Somalia in order to enhance his claim and, contrary to the account given before the Tribunal, he spent the majority of his youth and formative years in Somalia prior to coming to the UK at the age of 16 years, spending only a limited period time in Kenya and Tanzania prior to arriving in the UK. That, of course, is a significant factor in assessing his ability to integrate into life in Mogadishu and to access support and it is relevant to note that the expert opinion of Dr Hoehne was based upon an acceptance of the appellant having only lived in Somalia as a child up to the age of five years (see [41]). Plainly he would be more familiar with the country than he claims, albeit that he originated from a different region and had not, or so he claims, previously lived in Mogadishu.

25. With regard to problems the appellant may encounter as a result of being a member of a minority clan, it is the case that that is a relevant factor to take into account. However, MOJ at [337] to [343] makes it clear that that is not in itself a risk factor, although it would nevertheless be relevant in assessing support, as made clear at [343]. There is no indication, however, that an absence of support as a member of a minority clan would prevent access to employment or other opportunities. Indeed, the Tribunal found at [342], with regard to clan support, that "*this source of assistance must not be overstated*". It is relevant to note in any event that the Bajuni do have a presence in Mogadishu, as referred to by the respondent at [26] of the refusal decision and not disputed by the country expert Dr Hoehne, albeit, as he observed at [37], not commanding any authority there. Nevertheless it is clear that the appellant would not be isolated on the basis of his minority clan membership but would be able to find some form of support from within his clan.

26. Turning to the question of access to employment, I see no reason not to rely on the findings made in MOJ. Paragraphs [344] to [352] of MOJ provide details of the opportunities available to returnees as a result of the economic boom, referring to

opportunities in unskilled work such as building labour, and emphasising at [351] the advantages for returnees from the West in seeking employment. There is nothing in the evidence provided in MOJ in these paragraphs or the preceding paragraphs dealing with the significance of clan membership to support the appellant's claim that he would have difficulty finding employment. On the contrary the evidence is that he has attended college in the UK and has undertaken various courses both within and outside prison, including a car mechanics course and English language courses, all of which would clearly provide him with an advantage in seeking employment, whether or not he has had practical experience of car mechanics. The appellant relies on the expert report of Dr Hoehne in asserting that the job opportunities described in MOJ do not in fact exist and I note Dr Hoehne's assessment at [43] to [47] in that regard, criticising the findings in MOJ as out of touch with reality. However it is relevant to note that Dr Hoehne's view in this regard was rejected by the Tribunal in MOJ and I refer in particular to [347] - [349] and [352].

27. Accordingly, it seems to me that the appellant has failed to demonstrate that he would not be able to establish himself in Mogadishu and secure a livelihood for himself, with some initial assistance from relatives to accommodate and maintain himself until in receipt of an income. The evidence does not suggest that the appellant, as a young healthy male with an ability to speak fluently in English and with various qualifications, would find himself in an IDP camp and there is therefore no basis for concluding that his deportation would breach Article 3 of the ECHR. There is no need, therefore, to consider the implications of Said.

28. As for Article 8, I refer to the findings of Judge Khan at [48] and [49], noting that he allowed the appeal under Article 8 only as a result of his positive findings on Article 3. There is no significant change in the appellant's circumstances to justify a departure from the findings made at [48] and [49]. For the reasons given above in relation to Article 3 I find no 'very significant obstacles to integration' in Somalia, but in any event the appellant would need to demonstrate very compelling circumstances over and above those in paragraph 399A and section 117C(4), as required under section 117C(6), which I find he is unable to do.

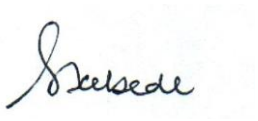
29. The appellant has no dependants and is a single male. He lives with his step-mother and father and half-siblings and, whilst he claims to be close to them, has spent a lengthy period apart from them when in prison. He committed a very serious offence for which he received a lengthy term of imprisonment of 66 months. That was in addition to a previous conviction in September 2011 for possession of a weapon for which he received a six month prison sentence. Although Lisa Davies, in her more recent report, assessed his risk of re-offending as being low and a return to his previous lifestyle as being of low likelihood, she opined at [1.8] and [6.1] to [6.3] of her recent report that he presented a moderate risk of serious harm to the public. In the more recent OASys report of 16 August 2017 the appellant was assessed at page B65 as being a medium risk to the public and I attach weight to that report, written as it was by the probation services who had observed him over a significant period of time. Whilst there is evidence of the appellant having engaged in some rehabilitative work such as that referred to in the letter dated 9 May 2017

from Coventry Recovery Community (page C1) and the letter of 16 August 2017 from his probation officer (page B26 and B27), the evidence in that regard is limited. It is also relevant to note that the appellant remains on licence and under threat of deportation and thus has every incentive to comply with the rehabilitative process and the conditions of his licence at this stage.

30. In addition to these considerations, my findings are that the appellant spent his formative years in Somalia and, whilst returning after a lengthy absence would no doubt present its difficulties, he would be at no risk on return to that country and would be able to re-establish himself there. Accordingly I do not accept that he has demonstrated very compelling circumstances outweighing the public interest in his deportation and I do not find that he is able to meet any of the exceptions to automatic deportation.

DECISION

31. The making of the decision of the First-tier Tribunal involved an error on a point of law in relation to its findings on Article 3, and the decision has accordingly been set aside in that respect. I re-make the decision by dismissing the appellant's appeal on Article 3 grounds, as well as on Article 8 grounds and on all other grounds.

Signed 

Upper Tribunal Judge Kebede Dated: 5 September 2017