



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11883/2017

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 8<sup>th</sup> August 2018

Decision and Reasons Promulgated  
On 19<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

AAM  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Tabassum (solicitor)  
For the Respondent: Mr A McVeety (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge McCall, promulgated on 21<sup>st</sup> May 2018, following a hearing at Manchester on 4<sup>th</sup> May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the

Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Somalia, and was born on 1<sup>st</sup> April 1998. He appealed against the decision of the Respondent Secretary of State dated 31<sup>st</sup> October 2017 refusing his claim to asylum and to humanitarian protection under paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is of Bajuni ethnicity. He was forced to leave his home when he was 4 years old. His local area had then been attacked by members of the Darood clan. His mother was raped in the attack. She was taken away by the Darood and he has not seen her since. His father was assaulted. Afterwards his father took the Appellant to a refugee camp in Kenya. The Appellant lived in a refugee camp for some five years. His father then passed away when the Appellant was about 10 years of age. He moved with a friend to a safe place near a camp. In Kenya he attended a mosque. He came to the attention of followers of Sheikh Abu Bakhar. He was asked to join their youth members and fight for them in Jihad and support Al-Shabab. When the Appellant refused he was held captive, beaten, and tortured and his hand was hacked off with a machete. After some three months in captivity he was informed that he would be released provided he agreed to spread the word of support for Al-Shabab and recruit more supporters which he agreed to do. Once he was released the Appellant returned home and explained what had happened to him. It was agreed it was no longer safe for him to remain in Kenya so he and his friend travelled by boat to Gambia. He remained in Gambia for some six years. He worked as a fisherman there. Eventually he and his friend left with the help of an agent to go to a safe country. He travelled from Gambia to Italy, and from there to Germany, and eventually left that country to come to the UK where he claimed asylum.

### **The Judge's Findings**

4. In what is a comprehensive and carefully crafted determination, the judge found that the Appellant was of Bajuni ethnicity. However, he went on to say that his account was inconsistent. He had not been honest with regard to the countries he had passed through. He had fabricated his account. He entered the UK on a false British passport. The judge went on to say, "I do not accept the Appellant's account that he was detained and tortured because he refused to join Al-Shabab and that he was then later released" (paragraph 35). Importantly, in coming to these conclusions, the judge referred to the leading country guidance case of **MOJ (Somalia) [2014] UKUT 00442** (at paragraph 36 of the determination).
5. The appeal was dismissed.

## Grounds of Application

6. The grounds of application state that the judge failed to correctly follow the country guidance when considering internal relocation to Mogadishu. The judge failed to take into account several factors in assessing the viability of return to Mogadishu and made findings that were based purely on assumption. The judge's decision was based solely on the fact that he rejected the Appellant's account. However, he had failed to adequately consider the risk on return or the potential for internal relocation.
7. On 14<sup>th</sup> June 2018, permission to appeal was granted.

## Submissions

8. At the hearing before me on 8<sup>th</sup> August 2017, Ms Tabassum, appearing on behalf of the Appellant, relied upon the detailed and measured grounds of application.
9. First, that the relevant passages of MOJ (to which the judge refers at paragraph 36 of the determination) makes it clear that a person returning to Mogadishu after a period of absence, who has no nuclear family or close relatives to return back to, would have difficulty in re-establishing themselves, such that careful assessment needs to be made of all the circumstances.
10. Second, the issue of whether the Appellant could internally relocate to Mogadishu was central to his claim.
11. His individual circumstances were that he was from the minority clan, of the Bajuni people, had no links to Mogadishu, and had no secular education, and no work experience in Somalia. He had no close relatives in Mogadishu that he could turn to. He was therefore unlikely to succeed in obtaining employment in Mogadishu. The judge made no findings whatsoever in relation to his connections to Mogadishu.
12. Third, the Appellant did not speak the Somali language, which was spoken in Mogadishu, but spoke Kibajuni, which was the language of the Bajuni islands, and the judge failed to take into account such key factors when assessing the availability of internal relocation to Mogadishu for the Appellant
13. Fourth, the country guidance case of MOJ makes it clear that return to Mogadishu with, "no access to funds and no other form of clan, family or social support is unlikely to be realistic" and the judge completely failed to apply this principle when assessing the viability of return to Mogadishu.
14. Fifth, the judge had recorded that the Appellant had worked in Germany and had been supported in Germany by a Somali organisation, and he had not made any effort to obtain a statement from that organisation, "who presumably would corroborate some of the claims made by the Appellant" (paragraph 37) however, this was subjective reasoning, that was not properly made out on the evidence which the judge could refer to.

15. Sixth, the judge gave no other reason for why the Appellant's account should be rejected. Seventh, the Bajuni clan are a minority group who are recognised as vulnerable by the Respondent, and exposing the Appellant to the enhanced risk of ill-treatment with little protection, was unjustified.
16. Finally, the judge had speculated about whether the Appellant could find work in Mogadishu because the Appellant was unskilled and had never worked in Somalia, had no work experience, and limited prospects of securing employment, such that he was extremely vulnerable as an individual, and all of this demonstrated that there had been a failure to apply "anxious scrutiny" to his particular circumstances.
17. For his part, Mr McVeety submitted that what was critical to the Appellant's decision was the complete rejection of the Appellant's credibility. The reality was that only the Appellant's Bajuni ethnicity was accepted by the judge. He had entered the UK illegally "in pursuit of economic betterment", and he had been "unable to disclose the true facts relating to his background, family ties and his life because he realises that if he did so his claim would be rejected as it is safe for him to return to Somalia and is able to support himself there" (see paragraph 40).
18. Given that this was the finding of the judge, submitted Mr McVeety, it was implicit in this conclusion that the Appellant was not a person who had indeed lost his family in the manner that he had explained and the judge was not satisfied that the Appellant was a person without "family ties". He had travelled extensively throughout Europe. He had been on Ryanair twice. He had been working in Europe.
19. A reliance upon clan membership, by his representatives now, was to no avail, because the very purpose of the country guidance case of MOJ, was to make it clear that,

"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 ..." (see paragraph 36 of the determination where the judge refers to this in terms).
20. Mr McVeety submitted that there was no error of law.
21. In reply, Ms Tabassum submitted that much of the credibility attack upon the Appellant was in relation to Section 8 matters relating to the delay in applying for asylum and the travel through other countries.
22. However, the fact of the Appellant's Bajuni ethnicity in itself (which was accepted on the basis of the evidence that the Appellant had given) cannot be insignificant. The reality was he had no ties in Mogadishu.
23. He would therefore not be able to "establish" himself. He spoke Kibajuni. He did not speak Somali. He had no access to financial help.

### **No Error of Law**

24. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. First, it is not the case that the impugning of the Appellant's credibility by the judge is based solely upon Section 8 matters. The judge found in terms that the Appellant was not detained or tortured or that he had refused to join Al-Shabab or that he was subsequently released upon giving them an undertaking (see paragraph 35). At its core, the Appellant's protection claim was rejected.
25. Second, the Appellant has been a resourceful individual. The judge found that "the Appellant has been able to support himself for some time and that he has travelled extensively". He had the opportunity to seek protection in Italy, Belgium and Germany. However, he failed to make a claim. The judge found that "he had worked in Germany" (paragraph 37).
26. Given that **MOJ** makes it clear at (1)(x) that a number of factors need to be taken into account for a person who is returning back after a long absence, with no nuclear family or close relatives to turn to, (and the judge refers to this at paragraph 36 of the determination), the conclusion reached by the judge that "the Appellant is unable to disclose the true facts relating to his background, family ties and his life" (at paragraph 40) mean that it cannot for this reason be concluded that the Appellant's return to Mogadishu is untenable. This is exactly what the judge decided (at paragraph 40). Accordingly, there is no error of law.

### **Notice of Decision**

27. There is no material error of law in the original judge's decision. The determination shall stand.
28. An anonymity order is made.

### **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 their 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

Dated

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> September 2018