Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00084/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 27 November 2017	**On 22 March 2018**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[M S]

Respondent

Representation:
For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr S Vokes, Counsel instructed by Turpin & Miller Solicitors

DECISION AND DIRECTIONS

1. Although the appellant in these proceedings is the Secretary of State, I continue to refer to the parties as they were before the First-tier Tribunal ("FtT").

2. The appellant is a citizen of Somalia, born in 1989. He arrived in the UK on 21 November 2002 with his mother and six siblings. His mother claimed asylum, with him and his siblings as dependants. Her application for asylum was refused but she was granted exceptional leave to remain on 19 January 2003 and leave to remain was then granted until 19 May 2007 to her, the appellant and his siblings.

3. On 18 November 2011, the appellant's mother and siblings, but not the appellant, were granted asylum and indefinite leave to remain ("ILR"). Notwithstanding the appellant's criminal offending from 2006, it was decided not to pursue deportation proceedings against him and he was granted discretionary leave on 14 February 2012 until 14 February 2015. On 8 October 2012 his discretionary leave was curtailed and on the same day he was granted asylum and leave to remain until 8 October 2017.

4. On 24 September 2012, in the Crown Court at Warwick, the appellant was convicted of an offence of conspiracy to defraud and on 31 March 2014 he received a sentence of 21 months' imprisonment. There was also a one month's consecutive sentence of imprisonment for breaches of previous orders and failing to surrender to custody.

5. On 28 August 2014 and 13 November 2014 he was served with notice of liability to deportation and invited to submit reasons as to why he should not be deported. On 1 May 2015 he was notified of the Secretary of State's intention to cease his refugee status.

6. On 7 January 2016 in the Crown Court at Warwick the appellant was further convicted of assault by beating, and on 24 February 2016 convicted of assault occasioning actual bodily harm. On 15 April 2016 he was sentenced to a total of 28 months' imprisonment. Although he completed his custodial sentence on 19 November 2016, after a period in immigration detention he was recalled to prison on 25 February 2017 to serve the remainder of his sentence because of a failure to keep appointments and a failure to comply with requirements as to his residence.

7. Earlier, on 15 April 2015, the respondent refused a protection and human rights claim, these being the Secretary of State's decisions to make a deportation order and to revoke the appellant's refugee status. His appeal came before First-tier Tribunal Judge Andrew ("the FtJ") on 16 August 2017. She allowed the appeal in terms of the respondent's decision to cease refugee status and consequently concluded that the appellant was entitled to protection under the Refugee Convention and/or Article 3 of the ECHR, thus concluding that he could not be deported. She allowed the appeal with evident reluctance, in the light of what she described as the appellant's "appalling" criminal history.

8. Before setting out the respective parties' arguments, it is necessary to summarise the FtJ's decision.

The decision of the FtJ

9. The FtJ referred to the appellant's extensive history of criminal offending, starting in 2006. I can summarise the appellant's offences as including offences of dishonesty, public order offences, assault, damaging property, and possession of drugs. I have already referred to his most recent offending and incidentally, the most serious.

10. The FtJ summarised the appellant's claim as being that he fears persecution in Somalia as a member of a minority clan, and would thus be at real risk from the general civil unrest in the country.

11. In relation to the burden and standard of proof she said this at [23]:

> "In relation to the cessation of the Appellant's refugee status it is for the Respondent to prove, on the balance of probabilities, that there has been a fundamental and enduring change in the country situation in Somalia to allow for the Appellant's refugee status to be revoked in the whole of the country and not just part of the country. It follows from this that issues of internal relocation are not relevant considerations".

12. The FtJ stated that otherwise, the burden of proof is on the appellant and she gave an appropriate self-direction on the standard of proof.

13. The FtJ heard oral evidence from the appellant. She noted that he had a number of convictions and concluded that he had no respect for the criminal law of the UK or any respect for authority. However, she said that her first task was to consider whether or not his refugee status should be revoked. She noted at [30] that his refugee status was granted on 8 October 2012, following the conviction on which the respondent sought to rely in her subsequent decision to make a deportation order.

14. Referring to the application of s.72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") she noted that the appellant's refugee status was granted on 8 October 2012 following his conviction on 24 September 2012 and said that it was difficult to understand how the respondent could rely on that conviction for the purposes of the s.72 certification. She pointed out that the appellant was convicted shortly before he was granted refugee status and that it must follow therefore, that as at the date of grant of refugee status the respondent did not consider that the appellant's conviction was for a particularly serious crime or that he was a danger to the community (as set out in s.72). She concluded that the s.72 certificate could not be maintained.

15. The FtJ referred to the sentencing judge's remarks in relation to the most recent convictions whereby it was said that the assault was of a most serious nature. She reiterated that the appellant had an appalling criminal history and she said that she had no doubt that he would continue to offend in the future. She commented that he does not learn by his previous convictions and she said that she was not satisfied that there was anything in what he says in his witness statement that would be a protective factor to prevent him offending in the future.

16. At [37] she referred to the contention that the appellant had been diagnosed with schizophrenia. However, she pointed out that there was no medical evidence to that effect before her. No adjournment had been applied for, she said, in order for such evidence to be obtained. She noted that he had been seen by a mental health unit but there was no evidence of what the outcome of any mental health assessment was. Although he had been prescribed Risperidone at HMP Birmingham, all the notes referred to were that the appellant had self-reported having paranoid schizophrenia and a personality disorder.

17. With reference to a report from a Dr Chisholm, she said that that was dated 1 August 2016, over a year before the hearing before her, and prior to the appellant's latest

incarceration. She referred to various aspects of Dr Chisholm's report and noted the conclusion that "he does not suffer from a psychotic diagnosis". She noted the tentative diagnosis of personality disorder.

18. At [47] she referred to inconsistency in the appellant's claim about his mother having returned to Somalia. Medical notes indicated that he had said that his mother had gone on holiday to Somalia but had not returned, although the appellant claimed that he had never said that his mother had returned to Somalia.

19. The FtJ concluded at [48] that she could not find as a fact that the appellant no longer understands his native language. Her assessment was that they would have used Somali in their household, before and after he came to the UK with his mother and siblings.

20. However, she also noted that in the appellant's mother's appeal it was accepted that she is Ashraf, a minority clan, and that she came from Kismayo, not Mogadishu.

21. In the following paragraph she concluded that it was unlikely that the appellant would receive any support in Somalia from his family in the United Kingdom, finding it unlikely that the appellant's mother and sister are employed. The appellant's evidence, which by implication the FtJ accepted, was that the whole family were on benefits.

22. Next, the FtJ made reference to the decisions in *AMM & others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 00445 (IAC) and *MOJ & Ors (Return to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC). She found that the appellant was not from Mogadishu but from Kismayo, and from a minority clan, the Ashraf. She found that he has no former links with Mogadishu, having left Somalia at a young age. She further concluded that she could not be satisfied that the appellant has access to funds or that any other form of clan, family or social support is likely to be realistic. She said that she made that assessment knowing that the appellant claimed that his mother had returned to Somalia whilst he was incarcerated. However, she said that there was nothing other than this before her to suggest that the appellant does still have family in that country. She found that the appellant has no skills, never having formally been employed in the UK. Although he has some GCSEs and has undertaken some basic courses whilst incarcerated, none of those had led to employment in the UK. She found that they were unlikely to be of much assistance in obtaining employment in Mogadishu, other than in some unskilled job.

23. At [53] she said that she had to take into account that the appellant probably suffers from a mental disorder, although concluded that he was not at risk of suicide. She noted that he does however receive medication for his mental health. She said that the results of his not having that medication are not known, as there was no medical evidence before her on the point. Equally, there was no evidence to show that the medication the appellant receives cannot be obtained in Somalia, she said.

24. She concluded at [54] that the appellant would have no alternative but to live in makeshift accommodation within an IDP camp, and that there is thus a real

possibility that he would have to live in conditions that would fall below acceptable humanitarian standards. In that regard she referred to the respondent's Country Information Guidance ("CIG"). She also noted that the UNHCR had also expressed concerns as to the appellant living in Mogadishu and as an IDP. Again referring to the CIG, she said that that confirmed that in general, majority clans or minority group members who are at risk, are unlikely to be able to access effective protection from the state.

25. At [59] she said that it was necessary for the respondent to show that the change is in the whole of the country, and that the respondent had given no consideration to the fact that the appellant does not come from Mogadishu but from Kismayo. She said that what the respondent was effectively saying was that in terms of cessation, the appellant could attempt internal flight to Mogadishu. However, she concluded that changes in a refugee's country of origin affecting only part of the territory should not, in principle, lead to a cessation of refugee status. That, she said, could only come to an end if the basis for persecution is removed, without a pre-condition that the refugee has to return to specific safe parts of the country in order to be free from persecution. Furthermore, not being able to move or establish oneself freely in the country of origin would indicate that changes have not been fundamental. In this she referred to the UNHCR Guidelines on cessation at paragraph 17.

26. She thus concluded that the respondent had not shown that cessation of the appellant's refugee status was appropriate and that he therefore should continue to have protection under the Refugee Convention and/or Article 3.

The Grounds and Submissions

27. In the grounds it is argued that the FtJ was wrong at [59] to have said that the respondent had given no consideration to the fact that the appellant comes from Kismayo rather than Mogadishu. The grounds refer to a cessation letter dated 25 August 2015, specifically at para 13, which acknowledges that the appellant is from Kismayo. In fact, I read that information from a cessation letter dated 1 May 2015, at para 14. Nevertheless, the point remains the same.

28. The grounds continue that if the appellant was deported he would be removed to Mogadishu and it would be for the appellant to consider if he wished to relocate. It is argued that *MOJ & Ors* indicates that the appellant would not be at risk on return to Mogadishu.

29. It is further argued that although the FtJ had relied on UNHCR Guidelines on the issue of cessation, those are not determinative. In appeals, a Tribunal relies on a different threshold from considerations assessed by the UNHCR, it was submitted. Furthermore, *MOJ & Ors* indicated that there was a durable and fundamental change in conditions. So far as his minority clan membership is concerned, the significance of that was considered in *MOJ & Ors*.

30. Although the FtJ had suggested that the appellant would have to live in an IDP camp in breach of Article 3, she had made no findings about the possibility of remittances

from the UK, or any of the returns packages available. Furthermore, although the FtJ had concluded that the appellant would not be able to find employment, other than unskilled work, that did not suggest that he would not be able to find employment at all and avail himself of the economic opportunities in Mogadishu.

31. The FtJ, it was argued, had failed to give clear reasons as to why the appellant would be forced to live within an IDP camp if deported to Mogadishu.

32. In submissions before me, Mr Wilding contended that there is nothing in the Refugee Convention which indicates that cessation only bites where the well-founded fear of persecution no longer exists. It was submitted that the UNHCR has a broader 'agenda' than that of status determination of refugees. It was submitted that the absurdity of that contention in relation to cessation and internal relocation is illustrated with reference to the Kurdish Regional Government in Iraq.

33. As to the facts, although the appellant has had no formal employment in the UK he does have some GCSEs and would be able to obtain an unskilled job. The economic boom is not only available to those who could obtain skilled jobs. There are opportunities as waiters, taxi drivers, kitchen porters and so forth. There is no engagement with those issues by the FtJ. All of that informs the assessment of whether the appellant would end up in an IDP camp. I was referred to [425] of *MOJ & Ors* and the guidance at (xii) in that decision.

34. Mr Vokes relied on his written submissions and referred to *MOJ & Ors*, also in particular to (xii) of the guidance. It was pointed out that the FtJ had noted that the appellant's mother was found to be an Ashraf, a minority clan, from Kismayo and not from Mogadishu. Furthermore, the FtJ had concluded that the appellant suffers from a mental disorder in the light of the psychiatric evidence before her. That was a relevant factor that she took into account in terms of how he would be able to survive in Mogadishu. That is a matter that needs to be added to the other difficulties that the appellant would have in terms of lack of clan support, lack of family support and the basic level of his skills. Those difficulties are exacerbated by his mental disorder. At [54] the FtJ had looked at the CIG, and at [56] in terms of state protection.

35. On the issue of principle in terms of cessation of refugee status, that status should not be a temporary matter. The FtJ had said at [23] that the onus was on the respondent to prove that the change was in relation to the whole of the country. It was submitted that it was not a question of preferring the UNHCR over the decision in *MOJ & Ors* but asserting the principle of cessation as indicated by the UNHCR.

36. In reply, Mr Wilding pointed out what could be said to be a lack of clarity in the diagnosis of the appellant's mental health, with the FtJ concluding that there was no evidence of schizophrenia. What the FtJ had said at [53] was not therefore a fact-specific compelling situation in terms of his mental health that needed to be considered. Mr Wilding also referred me to the decision in *Hoxha & Anor v Secretary of State for the Home Department* [2005] UKHL 19, in particular at [56], in terms of the question of cessation.

Assessment

37. Article 1C(5) provides that the 1951 Convention shall cease to apply to any person falling under the terms of Article 1(A) if:

> "He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
>
> Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality".

38. The issue of principle at play in this appeal is in the application of Article 1C(5) of the Refugee Convention. The FtJ concluded that issues of internal relocation are not relevant considerations in terms of the application of Article 1C(5).

39. The FtJ relied on the UNHCR Guidelines which are referred to in the letter dated 17 June 2015 in response to the respondent's proposal to cease the appellant's refugee status. In this context the UNHCR letter states on page 3 as follows:

> "As the application of the cessation clauses in effect operates as a formal loss of refugee status, UNHCR recommends a restrictive and well-balanced approach to their interpretation. This is because of the need to avoid unjust deprivation of the right to international protection. In practical terms, a restrictive approach means a strong presumption in favour of retaining refugee status, and a high threshold of proof for the application of any cessation clause".

40. The letter goes on to state that:

> "… it is UNHCR's view that the availability of an internal relocation alternative is not, in principle, a relevant consideration when making a decision on the application of Article 1C(5), which relate to fundamental and durable changes in the country of origin. UNHCR's Cessation Guidelines state, at paragraph 17, that
>
> > 'changes in the refugee's country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status. Refugee status can only come to an end if the basis for persecution is removed without the precondition that the refugee has to return to specific safe parts of the country in order to be free from persecution. Also, not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental'.
>
> UNHCR wishes to emphasise that internal relocation alternatives should not be taken into account when making a decision on whether to cease refugee status under Article 1C(5)".

41. The respondent's decision of 15 September 2015 states at [53] that the circumstances under which the appellant was granted refugee status have now changed. That is

because although it was accepted that he was from Kismayo, he was granted refugee status due to the situation in Mogadishu. The letter goes on to state that *MOJ & Ors* demonstrates that there has been a significant and enduring change in Mogadishu. At [54] the respondent's decision notes the UNHCR's views but states that their submissions about internal relocation are not relevant in the appellant's case. It points out again that he was granted refugee status because of the situation in Mogadishu which has now changed, as previously explained.

42. I do consider that the FtJ was wrong at [59] to state that the respondent had given no consideration to the fact that the appellant does not come from Mogadishu but from Kismayo. That is plainly not the case. Not only does the letter of 15 September 2015 refer to his origins in Kismayo, so also does the letter dated 1 May 2015 notifying the appellant of the intention to cease refugee status, at [14]. That however, does not seem to me to be material to the principle of cessation in terms of its relationship to the possibility of internal relocation.

43. I note the Asylum Policy Instruction on revocation of refugee status, Version 4.0 dated 19 January 2016. On page 25, under the heading "Internal relocation" it states as follows:

> "Where it is considered that it would be reasonable to return an individual to a specific part of a country, the fact that they have previously been recognised as a refugee must form part of the overall assessment. This overall assessment includes, but is not limited to, full consideration of:
>
> - the situation in the country of origin
> - means of travel
> - proposed area of relocation in relation to the individual's personal circumstances
>
> Even where country information and guidance suggest that relocation is possible, it is the ability of the individual and any dependants to relocate in practice which must be assessed, bearing in mind that the changes must be significant and non-temporary".

44. Whilst that document was not referred to by either party, it does reflect the Secretary of State's view that there is in principle no reason why Article 1C(5) should not apply where there is a viable internal relocation alternative available.

45. During the course of argument, the only two authorities to which I was referred by the parties on this issue of principle were *Hoxha*, and *AH (Algeria) v Secretary of State for the Home Department* [2015] EWCA Civ 1003. The former was a case in which the cessation clauses were considered in the context of asylum applicants who no longer had a well-founded fear of persecution prior to the determination of their asylum claims, which were in principle well-founded at the time that they fled their country of origin. As such, it is not a decision which is directly on point, although certain paragraphs are worth noting. Thus, their Lordships said the following at [63]–[65]:

> "63. This provision, it shall be borne in mind, is one calculated, if invoked, to redound to the refugee's disadvantage, not his benefit. Small wonder, therefore, that all the emphasis in paras 112 and 135 of the Handbook is upon the importance of ensuring that his recognised refugee status will not be taken from him save upon a fundamental change of circumstances in his home country. As the Lisbon Conference put it in para 27 of their conclusions: '… the asylum authorities should bear the burden of proof that such changes are indeed fundamental and durable'.
>
> 64. Many other UNHCR publications are to similar effect. A single further instance will suffice, taken from the April 1999 Guidelines on the application of the cessation clauses:
>
> > '2. The cessation clauses set out the only situations in which refugee status properly and legitimately granted comes to an end. This means that once an individual is determined to be a refugee, his/her status is maintained until he/she falls within the terms of one of the cessation clauses. This strict approach is important since refugees should not be subjected to constant review of their refugee status. In addition, since the application of the cessation clauses in effect operates as a formal loss of refugee status, a restrictive and well-balanced approach should be adopted in their interpretation.'
>
> 65. The reason for applying a 'strict' and 'restrictive' approach to the cessation clauses in general and 1C (5) in particular is surely plain. Once an asylum application has been formally determined and refugee status officially granted, with all the benefits both under the Convention and under national law which that carries with it, the refugee has the assurance of a secure future in the host country and a legitimate expectation that he will not henceforth be stripped of this save for demonstrably good and sufficient reason. That assurance and expectation simply does not arise in the earlier period whilst the refugee's claim for asylum is under consideration and before it is granted. Logically, therefore, the approach to the grant of refugee status under 1A (2) does not precisely mirror the approach to its prospective subsequent withdrawal under 1C (5)".

46. Those paragraphs illustrate the "strict" and "restrictive" approach to cessation clauses, which at [65] of *Hoxha* was described as "surely plain".

47. The decision in *AH (Algeria)* is significant for another reason, that is in terms of the weight to be afforded to the views of the UNHCR. It is only necessary to quote from [13] as follows:

> "13. It is clear from these materials that the UNHCR is a significant voice in the interpretation of the Convention. But it is not a lawgiver, or a source of law. It is a contributor of the first importance to the protection of refugees; and that fact itself must qualify the force of what it has to say when a balance falls to be struck between the interests of a putative refugee and those of the potential receiving State: 'exclusion clauses should not be enlarged in a manner inconsistent with the *Refugee Convention*'s broad humanitarian aims, but neither should overly narrow interpretations be adopted which ignore the contracting states' need to control who enters

> their territory' (*Febles*, headnote: see further on *Febles* below)" [a reference to *Febles* [2014] 3 SCR 431, a decision of the Supreme Court of Canada].

48. Paragraph 339A(v) of the Rules reflects the terms of Article 1C (5) and provides that a person's grant of asylum will be revoked or not renewed if the Secretary of State is satisfied that:

> "(v) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality".

49. Paragraph 339A goes on to state that:

> "In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded".

50. Article 1C(5) and paragraph 339A(v) both refer to "the circumstances in connection with which he has been recognised as a refugee have ceased to exist". As quoted above, paragraph 339A states that the Secretary of State shall have regard to whether "the change of circumstances" is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded. Thus, the "circumstances" in connection with which a person has been recognised as a refugee and the "change of circumstances" must be considered.

51. The Secretary of State's position as set out in the decision letter dated 15 September 2015 states at [53] and [54] that the circumstances under which the appellant was granted refugee status have now changed, because although it was accepted he was from Kismayo, "you were granted refugee status due to the situation in Mogadishu". However, relying on *MOJ & Ors*, the Secretary of State says that "there has now been a significant and enduring change in Mogadishu". Quite clearly therefore, the Secretary of State puts the situation in Mogadishu at the heart of the decision to cease the appellant's refugee status.

52. However, in my judgement the Secretary of State's approach in this respect is fundamentally flawed. The basis of the appellant's refugee claim (or more accurately the basis of his mother's claim upon which he was a dependant) is that he had a well-founded fear of persecution in the country of his nationality, Somalia. That well-founded fear of persecution arose in his home area of Kismayo. Naturally, the issue of internal relocation would have been a factor that was considered at the time of the decision to grant refugee status to the family. Presumably, although the information has not been provided, internal relocation to Mogadishu was not considered a viable option at the time. In my view it is contrary to the humanitarian principle of surrogate protection under the Refugee Convention for the Secretary of State to be able to seek to identify an area of a country where it could be said that an individual no longer has a well-founded fear of persecution, and to which he could now relocate if the claim were now made.

53. The UNHCR's Cessation Guidelines make the point that not being able to move or to establish oneself freely in the country of origin would indicate that the changes have not been fundamental. The Secretary of State does not suggest that the appellant's claim to refugee status in terms of the risk to him in his home area has been extinguished by reason of fundamental and durable changes in the country as a whole.

54. Although it was suggested on behalf of the respondent in submissions that there was no difference in principle between the grant or the cessation of refugee status, because a person is only a refugee so long as there is no safe area of return, I do not agree. There is, in my judgement, a very significant philosophical and indeed practical difference between the grant and the cessation of refugee status, illustrated by the UNHCR Cessation Guidelines, but also reflected in the two authorities to which I have referred.

55. If the Secretary of State's position was to hold good, it would mean that a person claiming asylum would be in a more advantageous position than a person who already has refugee status and whose status the Secretary of State seeks to rescind. Thus, if the person whose claim for asylum depends on an assessment of an internal flight option, that individual would have that issue assessed on the basis of undue harshness and the reasonableness of internal relocation. However, in the case of a person whose refugee status is to be taken away, once it is decided that there is a part of the country in which the change of circumstances is of such a significant and non-temporary nature that the person's fear is no longer regarded as well-founded (in that area), that individual may be returned without the sort of examination of the issues of undue harshness and reasonableness of return to that particular area which would occur in considering a grant of refugee status. That is so notwithstanding the respondent's Asylum Policy Instruction on revocation of refugee status which I have set out at [42], which does not provide full coverage of the issue of internal relocation.

56. Thus, what was recognised in *Hoxha* as being the need for a "strict" and "restrictive" approach to cessation clauses would be significantly undermined. Put another way, it would make it easier to cease a person's refugee status than to make a grant of refugee status; a position which is contrary both to logic and principle.

57. In those circumstances, I am satisfied that the FtJ was correct to conclude that the respondent was not entitled to cease the appellant's refugee status on the basis only of the change in circumstances in Mogadishu since his claim was made. That is not to afford the UNHCR Cessation Guidelines a status of being determinative of the issue in question, but in my view it does mean that those Guidelines are correct in what they say in this respect.

58. As I have already indicated, the FtJ was wrong to say that the respondent gave no consideration to the fact that the appellant does not come from Mogadishu, but that error of fact is not (in this case) an error of law. Even if it could be said to amount to an error of law, it is not one that is material to the outcome.

59. Accordingly, it is not necessary for me to go on to consider whether the FtJ erred in law in her assessment of the appellant's particular circumstances in terms of the viability of his return to Mogadishu and the risk that he would have to live in an IDP camp. However, if I had to decide the issue, I would say that there is no error of law in the FtJ's decision in this respect. The grounds are incorrect to suggest that the FtJ made no findings about the possibility of remittances from the UK. She did, at [50].

60. On the question of whether the FtJ wrongly failed to take into account the possibility of financial assistance in terms of return packages available (presumably provided by the Home Office), I was not referred to any evidence that was put before the FtJ on this issue. The matter was referred to in *MOJ & Ors* at [239] and [423]. However, in both those paragraphs the reference is to a grant of up to £1,500 for voluntary returnees. The appellant would not be a voluntary returnee, although I recognise that in *AN & SS (Tamils – Colombo – risk?)* Sri Lanka CG [2008] UKAIT 00063 it was said that a person could not argue destitution in circumstances where they refuse to avail themselves of such a grant simply by refusing to return voluntarily. In any event, I cannot see that even if the FtJ should have taken into account that matter, it would have made any difference to her conclusions in the light of her other findings about the appellant's circumstances on return.

61. Although it is true that in *MOJ & Ors* there was reference to a variety of types of employment that individuals may be able to obtain on return to Mogadishu, such as building labourers, waiters and so forth, the FtJ expressly considered the extent to which the appellant would be able to support himself on return to Mogadishu. She implicitly accepted that he might be able to find employment in some unskilled job, but she also took into account that he "probably" suffers from a mental disorder, following her careful analysis of the limitations of the medical evidence in that respect. I cannot see that the respondent's contentions in relation to this aspect of the FtJ's decision amount to anything other than a disagreement with her assessment of his likely circumstances on return.

62. Mr Wilding confirmed that there was no challenge to the FtJ's conclusions in terms of the s.72 certificate.

63. In the circumstances, I am not satisfied that there is any error of law in the FtJ's decision.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to allow the appeal therefore stands.

Upper Tribunal Judge Kopieczek 21/03/18