



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

Appeal Number: PA/08498/2017

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated  
Belfast**

**On 2 October 2019**

**On 23 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**MUSTAFA AHMED MOHAMUD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S McTaggart, instructed by RP Crawford & Co Solicitors

For the Respondent: Ms Petterson, Senior Presenting Officer

**DECISION AND REASONS**

1. In my earlier decision dated 20 August 2019 I gave my reasons for concluding that the First-tier Tribunal had erred in law and I also made an anonymity direction. Mr McTaggart has now acknowledged there is no need for such a direction, and accordingly it ceases.
2. A copy of my earlier decision is annexed hereto, however, for ease of reference the following matters can be noted:

- (i) The appellant is a national of Somalia, from where he left at the age of 4, and thereafter lived in Kenya until February 2017 when he entered the United Kingdom unlawfully with the assistance of an agent.
  - (ii) His mother obtained a visa in 2003 to join her second husband in the United Kingdom who is a British citizen.
  - (iii) The appellant and his brother remained behind with their grandmother who died in 2010, after which another female relative took care of them. The appellant's younger brother remains in Kenya.
  - (iv) The Secretary of State refused the appellant's protection claim on the basis that there was a sufficiency of protection for him in his place of origin, Kismayo.
  - (v) The First-tier Tribunal concluded based on the country information that the situation in Kismayo was better than Mogadishu. The appellant should be able to safely travel there from the airport in Mogadishu.
  - (vi) The First-tier Tribunal rejected the appellant's claimed fear from the Somali Government in the absence of any profile or reason why he would be targeted. The claim based on the appellant's Ashraf clan was similarly not found to lead to a need for protection.
  - (vii) The tribunal also found the appellant is now an adult, is educated and enjoys good health. His mother could continue to support him financially and there was also the possibility of support from his relative in Canada who had funded the journey to the United Kingdom.
3. I was satisfied that it was open to the First-tier Tribunal to make a finding of potential financial support from the above sources as well as an Assisted Voluntary Return package. The aspect which persuaded me to set aside the decision related to the First-tier Tribunal's conclusion that the appellant should be able to travel safely between Mogadishu and Kismayo. The judge had not explained in further detail why the appellant would be able to do so in the light of the evidence at the hearing which indicated he would need to pass through Al-Shabaab controlled territory. I observed that if there are flights between Mogadishu and Kismayo the appellant would not be at risk if the evidence was still the case that an overland journey would trigger a risk of the kind identified in *AMM & Others*. In my concluding paragraph I explained:

"16. Accordingly, I conclude that Judge Farrelly erred on this aspect in failing to identify the evidence that supported his finding or to give adequate reasons for that finding. I set aside his decision in relation to the issue whether the appellant can travel safely between Mogadishu, being the city of return, and Kismayo, the city of resettlement. If the evidence does not show a safe journey is feasible then considerations of internal relocation in Mogadishu will come into play. The case will remain in the Upper Tribunal for

a further hearing for this limited purpose. Otherwise the findings of the First tier Tribunal are preserved.”

4. By way of evidence on the point, Mr McTaggart relied on:
  - (i) A more recent map than that before the First-tier Tribunal sourced [www.polgonow.com](http://www.polgonow.com) showing approximate territorial control.
  - (ii) A report by Reuters dated 20 August 2019 with the headline “Official: Southern Somali State Shuttters Main City, Airport Ahead of Election”. The body of the article explains that the southern Somali state of Jubbaland has blocked access to the capital city Kismayo and its main airport ahead of Thursday’s vote to elect a president of the semi-autonomous region, a senior regional official said Tuesday. The article also comments on tensions between Jubbaland authorities and the Federal Government in Mogadishu.
  - (iii) UNHCR Operational Update, August 2019. This refers to repatriation flights to Somalia bringing the total of refugees “facilitated to voluntarily repatriate” for the year to 1,592. Specific reference is made to all return movements both flights and road convoy to Kismayo being the biggest return destination remain temporary suspended from 13 July 2019 following explosions and gun attacks in Kismayo and tension in Jubbaland region linked to the contested results of the election. The focus appears to be on repatriation from Dadaab which is to the south of Kismayo.
  - (iv) An extract from the website of Jubba Airways timetabling direct flights from Mogadishu to Kismayo at 9 o’clock on Tuesdays and 10 o’ clock on Mondays.
  - (v) Ms Patterson relied on a download from [flightsfrom.com](http://flightsfrom.com) which she accessed on 26 September 2019. In response to a request for an economy round trip for one traveller between 9 and 13 October Jubba Airways had a flight to Kismayo (KMU).
5. By way of submissions Mr McTaggart accepted from the evidence his instructing solicitors had provided and the material from the Home Office that there are flights from Mogadishu to Kismayo on Mondays and Tuesdays but nevertheless he contended that it was not entirely clear that Kismayo was taking flights owing to the reports by Reuters and UNHCR although he accepted the latter relate to movements from Dadaab. He did not have anything more recent following the blocking of access to Kismayo’s airport in advance of the elections. Given the date of the Reuters report it appears that the elections were to be on 22 August and thus the flights affected would be on 19 and 20 August.
6. Mr McTaggart had been unable to obtain evidence of the possibility of travel by sea between Mogadishu and Kismayo and he reiterated the risks by reference to the more recent map for overland journeys. If I were not persuaded that the appellant would be unable to travel by air, it would be necessary to consider the position of the appellant remaining in

Mogadishu. In this regard Mr McTaggart considered the following factors relevant:

- (i) The appellant speaks Somali.
  - (ii) He left Somalia at the age of 4 for Kenya.
  - (iii) The appellant has no personal connections in Mogadishu.
  - (iv) His wife is assumed to be still in Kenya.
  - (v) The appellant is a member of a minority Ashraf clan.
  - (vi) The appellant has no job skills or trade.
  - (vii) The possibility of financial support from the appellant's mother and the relative in Canada was accepted.
7. By way of response Ms Petterson argued that the burden of proof was on the appellant and the fact of closure of Kismayo Airport in August did not show that this was permanent. It was her contention that based on the evidence she had obtained the appellant had not demonstrated that the airport had reopened. If it were not possible to fly to Kismayo this would have been indicated in the flights detail she had obtained. Even if the appellant were unable to travel to Kismayo it was open to him to remain in Mogadishu where he would have financial support including payment for assisted voluntary return with which he could establish himself, taking account of the lack of employment experience. There were no health concerns.
8. Mr McTaggart had no submissions by way of reply.
9. I am satisfied on the evidence that the closure of Kismayo Airport in advance of the August elections was temporary. Had there been further disruption, this would have been reported particularly in the light of the scale of the returns indicated by UNHCR to Kismayo. The judge made an unchallenged finding that the appellant would be safe in Kismayo and accordingly in the light of my finding as to the availability of air travel between Mogadishu and Kismayo, the appellant has not established that he is in need of international protection.
10. Even if the appellant were held up for a time in Mogadishu awaiting a flight, in the light of the preserved findings as to financial assistance for him, his state of health and age, indicate to me that it would not be unreasonable or that it would be unduly harsh for him to remain in the capital until such time that he can make his way by air to Kismayo.
11. By way of conclusion therefore the decision of the First-tier Tribunal is set aside on the limited basis above described. The decision in the appeal against the refusal by the respondent to recognise the appellant as a refugee is dismissed.

Signed

Dated: 18 October 2019

UTJ Dawson

Upper Tribunal Judge Dawson

**ANNEX**



IAC-FH-WYL-V1

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

Appeal Number: PA/08498/2017

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated  
Belfast  
On 9 August 2019**

.....  
**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**MAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S McTaggart, instructed by RP Crawford & Co Solicitors

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting disclosure of any matter that may lead to the identification of the appellant and other parties to these proceedings. Any breach may lead to contempt proceedings.

2. This is an appeal by the appellant, a citizen of Somalia, born 1995 against the decision of First-tier Tribunal Judge Farrelly. For reasons given in his decision dated 16 January 2019 the judge dismissed the appellant's appeal against the Secretary of State's decision refusing his protection claim for reasons given in a decision dated 20 February 2017. That claim had been on the basis of risk if returned because of imputed political opinions and membership of the minority Ashraf clan from the Al Shabab, clan related violence and the Somali government.
3. The Secretary of State accepted the appellant's citizenship and membership of the Ashraf clan but contended that his fear was not objectively well-founded. As to his immigration history, the appellant had left Somalia when he was 4 years old and lived in Kenya with his younger brother until he left on 12 February 2017. In 2003 his mother had been granted a visa to join her second husband in the United Kingdom who had British citizenship. The appellant and his brother had remained behind with their grandmother who died in 2010 when the appellant was 15 years old. His mother had arranged for another female relative to care for them. The appellant's younger brother remains in Kenya.
4. Judge Farrelly concluded the appellant had not established a real risk of persecution if returned to Mogadishu in the light of the situation having stabilised. He did not consider that family life within the meaning of Article 8 was engaged. Having regard to the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002 he considered the appellant's return to Somalia would not result in a breach.
5. The grounds of challenge argue:
  - (i) A failure by the judge to consider and apply the guidance in *MOJ & Others (Return to Mogadishu) Somalia CG* [2014] UKUT 442 (IAC).
  - (ii) The judge had erred by finding the appellant could relocate to Kismayo with reference to *AMM & Others (Conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 445 (IAC).
  - (iii) The judge had irrationally ignored the evidence as to the inability of his mother to support him and the decision that the relative in Canada could assist. In addition the resettlement package was never raised at any stage which indicates that AVR package assists monetarily for voluntary returnees, which the appellant is not.
6. In granting permission to appeal, First-tier Tribunal Judge Keane considered the judge had arguably erred by failing to apply the country guidance decision in *MOJ*. He had also erred by finding the appellant's mother could provide him with support in the light of her evidence that she would not.
7. In refusing the protection claim, the Secretary of State had considered that there was a sufficiency of protection for the appellant in Somalia particularly in Kismayo, his place of origin. The judge's conclusions on the

circumstances the appellant might face are set out at [20] to [24] of the decision as follows:

- “20. The country guidance decision of M[OJ] and others returned to Mogadishu Somalia CG [2014] UKUT 00442 was focusing upon Mogadishu as the title suggests. It pointed out that generally an ordinary citizen, that is, someone not associated with the security forces or the government, would not face a risk of persecution in Mogadishu nor will they be exposed to an article 15C risk. It refers to Al Shabab’s withdrawal from Mogadishu. It also suggests that the chance of being injured by being in the wrong place could be avoided by exercising caution. There was no real risk of forced recruitment by Al Shabab. The country information indicates that the situation Kismayo is better than that in Mogadishu and it is to the latter the respondent contemplates the appellant’s return to. Country information indicates that Kismayo is controlled by the Somali army. The appellant should be able to safely travel from the airport in Mogadishu to Kismayo.
21. The respondent also has regard to the appellant’s claimed fear from the Somali government. The appellant has no profile and no reason to be seen why he would be targeted. His account about difficulties from majority clans was also considered to be vague did not present as a real risk.
22. Aspects of the appellants claim are incredibly vague. He now claims that his benefactor in Canada can no longer assist [sic]. His mother is claiming that she can no longer send him money because she has a back condition and can only work part-time. However, she has remarried and has indicated her husband is in employment albeit fully paid. He continues to assist the appellant’s brother. His account of transiting through a 3<sup>rd</sup> country which does not know is unbelievable. I believe you would have had some awareness to looking at the signs and the uniforms on the planes. In the past he has held the Somali passport is account about 9 where his wife is also incredible. I also find it unbelievable that his mother was unaware of his marriage.
23. Ultimately, I do not find the appellant has established a real risk of persecution. The situation in Somalia has stabilised. The inter-clan violence has now subsided and shifters been upon coexistence. The appellant’s mother could continue to support him as he establishes himself in his home country. There is also the possibility has [sic] benefactor in Canada can support him. He will also have the benefit of a resettlement package.
24. In terms of article 8 the appellant has no wife here nor has he any children. He is now an adult. He has been living apart from his mother and sister for many years. He is educated and enjoys good health. I do not see any features which would suggest that family life within the meaning of article 8 is engaged. In any event, the respondent’s decision is proportionate in the interests of immigration control. On a freestanding assessment of article 8 I would be required to have regard to the factors set out in section 117B. The appellant’s mother has been reliant upon public funds



and there is nothing to suggest that if the appellant were here he would not present a drain. Furthermore, is [sic] not demonstrated a command of English. The public interest is in immigration control. The intention is for the appellant to be returned to Somalia rather than Kenya. Based upon the country information and his personal circumstances I see no breach of his protected rights occurring as a result.”

8. Prior to commencement of the hearing I indicated to the parties my wish to hear argument on the Court of Appeal authorities in *SSHD v MS (Somalia)* [2019] EWCA Civ 1345 and the earlier decision of the Court in *SSHD v MA (Somalia)* [2018] EWCA Civ 994. Time was given to Mr McTaggart to consider these cases. The respondent’s position was that the appellant could resettle in Kismayo where it was considered he would not be at risk for the reasons advanced in his claim and so considerations of internal relocation would not arise. To the extent that this raised humanitarian concerns, the two decisions were of relevance.
9. Mr McTaggart began his submissions with the challenge in [4(iii)] above focusing on the judge’s findings in [23] of his decision. The appellant’s mother’s evidence was that she was on reduced income due to her injury and was required to provide support to her other son in Kenya. The judge’s finding that she could continue to support the appellant was conjecture and if the judge had rejected evidence there was a requirement to give reasons for doing so. In relation to the support from the Canadian relative, the appellant had given evidence that he did not have contact with them, as evidenced in his witness statement. In respect of the resettlement package (by the Home Office) this issue had not been raised and had only been briefly mentioned in terms of the refusal letter. The appellant would refuse to go and would not return voluntarily.
10. In respect of grounds (i) and (ii) Mr McTaggart explained that these were linked. The judge had not given reasons for his conclusion that the appellant should be able to travel safely from the airport in Mogadishu to Kismayo. He referred to the country guidance by the Upper Tribunal in *AMM & Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 0045 (IAC) in particular the risk identified in the headnote to those who are reasonably likely to have to pass through Al-Shabab areas. My enquiry whether there were not flights from Mogadishu to Kismayo led Mr McTaggart to produce a map dated 2107 from a website giving an indication of “approximate territorial control” by the different factions in Somalia. This indicated the presence of Al-Shabab in a large part of the land area between Mogadishu and Kismayo in the south. The judge had not referenced his finding as to the ability of the appellant to travel safely.
11. This led to a discussion involving Mr Diwnycz regarding travel of the kind envisaged by the judge in the CIPN report that was before him dated July 2017. I observed to Mr McTaggart that if I were persuaded the judge had not given adequate reasons for his statement regarding travel between the two cities, the issue would then arise as to internal relocation to Mogadishu. In this regard Mr McTaggart acknowledged his difficulties in

relation to this aspect and the best that could be made of the point was that it had not been considered by the judge. Mr Diwnycz's response in essence was that there had been a paucity of reasons but did not consider the judge had materially erred in the light of the decision of the Court of Appeal in *MS (Somalia)*.

12. I make these conclusions on the grounds in the order that they were argued. The first is a challenge to the fact finding by the judge regarding financial support from three potential sources. At [11] the judge surveys the appellant's mother's evidence regarding her ability to continue to provide financial support. As will be seen from [22] the judge notes that she had been married and that her husband was in employment and that he supported the appellant's brother. I am satisfied the judge was rationally entitled to conclude that the appellant's mother could continue to support him as he establishes himself, as explained in [23]. Furthermore, I consider the judge was rationally entitled to observe the possibility of the benefactor in Canada supporting the appellant too. Although this is not well-reasoned the judge noted at [7] of the extent of that relative's support and the appellant's evidence in [8] that he was no longer in contact. In the absence of an explanation why that contact had not been maintained, I consider the judge was rationally entitled to at least observe the possibility of that support being provided. Finally, in connection with the financial assistance from the Assisted Voluntary Returns Service, as Mr McTaggart accepted, the point had been raised by the Secretary of State in the refusal letter in paragraph [120] as follows:
 

"120. In addition, it is considered that help with your reintegration into Somalia would potentially be available to you from the Assisted Voluntary Returns Service (contact details are given on page 23 of this letter) if you were minded to return to Somalia voluntarily, and thus avoid the penalties of a relatively longer period of exclusion from the UK that your enforced removal from the country would automatically entail."
13. In my judgment good faith requires cooperation by the appellant. If he is unsuccessful in succeeding in this protection claim, he cannot rely on obduracy that might dis-entitle him to financial assistance as a means to underpin a need for protection.
14. It is also questionable whether these evidential aspects of the grounds of challenge were of any material relevance even if I were wrong in my conclusions. As I have explained earlier, the Secretary of State's position was that the appellant would be able to return to Kismayo where he would not be at risk and there is no challenge to the judge's findings in that regard. Instead, the challenge is focused on the difficulties it is apprehended the appellant would face in Mogadishu with reference to *MOJ & Others* and the anticipated difficulties the appellant would face in passing through Al-Shabab controlled territory. As to the latter I accept the judge has not explained in further detail why the appellant would be able to travel safely in the light of the evidence contained in the map sourced from [www.polgonow.com](http://www.polgonow.com) which had been submitted at the

hearing. The judge does not explain whether he considered the appellant should be able to travel safely overland or by air or sea as an alternative.

15. This is a narrow but important issue which may however be readily resolved. If there are flights between Mogadishu and Kismayo the appellant would not be at risk if the evidence is still the case that an overland journey would trigger a risk of the kind identified in *AMM and Others*.
16. Accordingly, I conclude that Judge Farrelly erred on this aspect in failing to identify the evidence that supported his finding or to give adequate reasons for that finding. I set aside his decision in relation to the issue whether the appellant can travel safely between Mogadishu, being the city of return, and Kismayo, the city of resettlement. If the evidence does not show a safe journey is feasible then considerations of internal relocation in Mogadishu will come into play. The case will remain in the Upper Tribunal for a further hearing for this limited purpose. Otherwise the findings of the First tier Tribunal are preserved.

Signed

Date 20 August 2019

UTJ Dawson  
Upper Tribunal Judge Dawson