



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004552

First-tier Tribunal No: PA/51399/2023
LP/01007/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th March 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

SAH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Sanders, Counsel instructed on behalf of the appellant
For the Respondent :Ms Z. Young, Senior Presenting Officer

Heard at (IAC) on 21 February 2024

DECISION AND DIRECTIONS

1. Pursuant to section 12 (2) (b) (ii) of the Tribunals, Courts and Enforcement Act 2007, this is the remaking of the decision of Judge of the First-tier Tribunal Fisher promulgated on the 7 September 2023, following the decision dated 8 January 2024 of the Upper Tribunal panel setting aside the decision of the FtT in the light of both parties having agreed a material error of law in that decision relating to the issue of internal relocation.
2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.
3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the

public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

The background:

4. The factual background can be summarised as follows. The appellant is a national of Somalia who arrived in the United Kingdom on 21 May 2021 and claimed asylum. In summary, he asserted that he had twice been approached by Al Shabab in his home area of Jilib but had refused their efforts to recruit him. He said that their interest in him did not subside, and he feared that he would be killed by them on return because he had refused to join.
5. The respondent considered his application and, whilst the appellant's identity, membership of the minority Sheekhaal tribe and nationality were accepted, the respondent did not accept that he would be at risk on return to his home area or in the alternative he could relocate to Mogadishu. Consequently, his application was refused on 15 February 2023.
6. The appeal came before the FtTJ Fisher. The FtTJ set out the issues as follows. "It was not in issue that the Refugee Convention could be engaged on the basis of an imputed political opinion if the appellant had refused the demands of Al Shabaab to join their ranks. In addition, the respondent conceded that, if his account were found to be true, there would be no sufficiency of protection in his home area of Jilib, where Al Shabaab remains in power (paragraph 6).
7. The FtTJ set out that the respondent did not accept that the appellant's account of Al Shabaab's attempts to recruit him was reasonably likely to be true, asserting that it contained both internal and external inconsistencies, and that it lacked specificity and sufficient detail. Furthermore, the author of the refusal letter did not consider it plausible that Al Shabaab would have attempted to recruit the appellant on two occasions, and that they would then have left to allow him time to reconsider. Similarly, it was considered incredible that Al Shabaab would not have imposed any timescale or made other arrangements in connection with the "tax" demanded from the appellant's mother.
8. Having considered the evidence the FtTJ accepted to the lower standard applicable that the appellant's account of Al Shabaab's attempts to recruit him and the imposition of tax on his mother was consistent with the background evidence. Accordingly, he accepted his claim that Al Shabaab made attempts to recruit the appellant (see paragraph 8). At paragraph 10 , the FtTJ stated that as he was satisfied with the appellant's account that Al Shabaab had attempted to recruit him in Jilib, he accept the submission that the appeal turned on the issue of internal relocation. The FtTJ recorded that on the evidence before him it demonstrated that Al Shabaab does not forcibly recruit in the government controlled areas of Somalia. The appellant would be returned to Mogadishu which is under government control. He further concluded "In my judgement, the issue of internal relocation can be further refined as, if the appellant were forced to reside in one of the settlements often loosely described as IDP camps within the city, there is a real risk that the conditions there would breach Article 3, thereby rendering internal relocation unreasonable".
9. When considering the issue of internal relocation, the FtTJ took into account the country guidance decision of OA (Somalia)CG [2022] UKUT 33 which held that the

guidance previously given in 407 of MOJ and others(Return to Mogadishu) Somalia CG [2014] UKUT 00 442 (IAC) and the assistance given by family or clan members in order to re-establish life and secure a livelihood. The factual account was that the appellant was born in Saudi Arabia and returned to Somalia in 2007. He had only spent a few days in Mogadishu before moving to his home area. The FtTJ accepted this evidence and found that “it cannot be said that he had any significant exposure to the city before he left the country” (at paragraph 13) The FtTJ accepted that the appellant’s mother and younger sisters were living in a settlement or camp in Mogadishu and did not believe that his mother would be in a position to assist him (at paragraph 12). However he considered that the appellant would be able to relocate to Mogadishu and that whilst he was a member of a minority clan, he would be able to take advantage of any association with a majority clan (Hawiye). The FtTJ found that the appellant’s uncle would be prepared to assist him financially to enable him to establish himself in Mogadishu. He concluded that the appellant could reasonably relocate to Mogadishu and dismissed the appeal.

10. The appellant sought permission to appeal and FtTJ Seelhoff granted permission on 11 October 2023.
11. At the error of law hearing on 3 January 2024 there was agreement between the parties that the decision of the FtTJ involved the making of a material error on a point of law. Ms Young confirmed that there was no Rule 24 response on behalf of the respondent but having had the opportunity to consider the grounds in the light of the decision of the FtTJ and having discussed the matter with Counsel for the appellant, she set out that position of both advocates was that the FtTJ’s assessment of the issue of internal relocation to Mogadishu involved the making of a material error of law principally based on ground 3, which she conceded was of sufficient materiality to undermine the overall assessment of the issue of internal relocation when applying the relevant guidance given in the country guidance decisions of OA and MOJ(as previously cited).
12. Both advocates agreed that the appeal needed to be reconsidered on the issue of risk on return (internal relocation) applying the country guidance to the appellant’s circumstances. Furthermore both advocates were of the view that this was an appeal that should be heard by way of the resumed hearing before the Upper Tribunal in view of the findings of fact made the FtTJ concerning the appellant’s protection claim which were agreed as preserved findings.
13. In the light of that concession and also on the basis of the grounds and oral submissions, it was agreed between the parties that the FtTJ’s decision disclosed the making of a material error on a point of law and as both advocates agreed, should be set aside to be remade on the issue of internal relocation.
14. There is no challenge raised to the FtTJ’s findings of fact between paragraphs 6 and 8 (that the appellant would be at risk of harm in home area and there was no sufficiency of protection) which stand as preserved findings.

The evidence:

15. At the outset of the hearing steps were taken to ensure that the evidence was available to both advocates and the Tribunal.

16. There had been a large bundle of documents provided by the appellant which contained a copy of his witness statement dated 4 April 2023, the Amnesty International report for 2022 dated 27th of March 2023, the US State Department report on Human Rights 2022, Somalia 2022 Human Rights Report, World Report, Somalia 2022 Report, Human Rights Watch, Human Rights and Somalia Amnesty International. It also included a copy of the Respondent's CPIN : Somalia: Al Shabaab November 2020 and CPIN Security and Human Rights situation in Mogadishu dated May 2022.
17. There was also a copy of the respondent's bundle before the Upper Tribunal which included a copy of the decision letter dated 15 February 2023, copy of the decision of FtTJ Fisher, his screening interview and the two substantive interviews which took place. Ms Young also provided a copy of the EAUU report (from the appellant's grounds of appeal).
18. Directions were given for the filing of evidence following the error of law hearing on 3 January 2024. No further bundle was filed on the E-filing system and when enquiries were made with the appellant's representatives, an email was received on 16 February stating that they relied on the previous bundle submitted for the error of law hearing but also indicated that they had commissioned an expert report which would be available on Monday. When further enquiries were made, it was stated that the document was filed by email. The report is by Professor Mario Aguilar dated 16 February 2024. At the hearing Ms Sanders provided a skeleton argument.
19. When the issues were canvassed at the hearing, it was agreed that the issues for assessment were set out in the error of law decision and that it related to internal relocation in the light of the relevant county guidance decisions. Whilst there had been reference made in the expert report to the risk from Al-Shabaab in Mogadishu and that the appellant would be targeted, it was accepted that this issue had not formed part of the original grounds of challenge and that it was not an issue ventilated at the error of law hearing. It did not form part of the submissions she was going to make.
20. As to the late service of the expert report, Ms Young confirmed that she had sufficient time to consider the report and did not raise any issues as to its admissibility. The report therefore formed part of the evidence.
21. The appellant gave his evidence with the assistance of an interpreter in the Somali language. There were no problems identified with the interpretation and both the interpreter and the appellant confirmed that they were able to understand each other. He relied upon his earlier statement dated 4/4/23 and was not asked any additional questions.
22. In cross examination he was asked when he last had contact with his mother which he stated was May 2023 and that she lived in a camp and where are problems for her. He said he had not phoned her since it is difficult to get through to call each other when living in an IDP camp.
23. He agreed that his uncle had provided him with money to leave Somalia and that he had paid money "until Greece". He stated that he had not had contact with his uncle. He said that when he came to Turkey he did not have the facilities to call his uncle. When he came to Greece he was put in a camp which did not have a telephone and he was not allowed to use the phone in Greece. He said that his uncle was in Saudi Arabia, and he tried to contact him via social media but was

not able to. He said that he knew that he was in Saudi Arabia because previously he had lived there and that if he had left his mother would have told him. He thought his mother had contact with him. When asked if his uncle supported his mother financially, the appellant stated that she had told him that she had had no support from anyone whilst in the refugee camp.

24. The appellant was asked if returned to Mogadishu why could not his uncle support him? He said he had no status in Saudi Arabia and that the work was not permanent. He also had his own family and children and therefore would not be able to support him. Whilst he had helped him leave Somalia by paying for his journey, the appellant stated he had done so because he had to take him out of the position of danger from Al-Shabab and it was hard for him to find the money to bring him out of the country. He confirmed that before he left Somalia he had not been financially supported by his uncle. He stated that they lived on a little farm that he was not supported by him.
25. He further confirmed that his mother was from the Ashraf clan and that the last time he heard from his mother she was in the refugee camp.

The submissions:

26. At the conclusion of the evidence each party had the opportunity to provide their closing summary. I am grateful for the helpful submissions proved by both advocates.
27. The submissions made on behalf of the respondent are summarised as follows. Ms Young referred to the headnote in OA (Somalia) and the criteria adopted from MOJ with regard to all the circumstances of a potential returnee to Mogadishu.
28. She further submitted by reference to the CPIN version 1.0 at paragraph 2.4.4 set out the considerations that should be taken into account. She accepted that at the last hearing before the FtTJ the appellant's position was that he had never been in Mogadishu. She further submitted that it was acknowledged on behalf of the respondent that the issue related to internal relocation and that this was not even an appellant who had ever resided there and thus there were a different set of facts that applied. She conceded that when looking at the circumstances subparagraphs (i) and (ii) fell in favour of the appellant.
29. She submitted that the key part of the assessment related to whether the appellant's family or clan would be able to assist him in relocating to Mogadishu. The appellant's evidence was that his mother and his siblings resided in IDP camp. That was the position before the FtTJ who had found that they would not be able to provide any support for the appellant. The appellant had been in contact with his mother, and this could be considered "in the round".
30. However in relation to the appellant's uncle who funded the journey, whilst the appellant has no contact with his uncle, the appellant's mother has contact with the uncle and as far as the appellant is aware the uncle is in Saudi Arabia and as he helped him leave Somalia it would be open to make a finding that he could support him in Mogadishu.
31. As to his clan membership, Ms Young referred to the extract set out in the appellant's grounds of appeal. She did not seek to argue against that material.

However in relation to the expert report there were references to being asked questions about Ethiopia and sufficiency of protection and references to issues that were not in dispute. It was not clear whether the expert had a copy of the FtTJ's decision or that of the error of law which narrowed the issues to internal relocation. Thus she submitted parts of the report are irrelevant when considering the preserved findings.

32. She submitted that whilst reference was made in the report to being at risk in Mogadishu as a result of Al-Shabab, the country guidance decision in OA and referred to in the CPIN dated May 2022 (at 2.5.4 - 7) that the appellant would not be at risk of having lived in the UK as a returnee, and that there was no cogent evidence to go behind either of the CG decisions.
33. As to the prospects of securing a livelihood, reference is made to the economic boom but that there was no reason why the appellant as a healthy male could not access the job market on return.
34. Thus she submitted internal relocation would not be unreasonable or unduly harsh.
35. Ms Sanders relied upon the earlier skeleton argument provided to the First-tier Tribunal and referred to parts of the skeleton she had prepared.
36. As set out in the previous ASA, it is submitted that it would be unreasonable to expect the A as a member of a minority clan, with no family support or employment opportunities to be able to integrate as suggested in Mogadishu.
37. The US State Department report of 2022 noted that minority clan members such as A continue to be discriminated against and persecuted in Somalia,

“In most areas the dominant clan excluded members of other groups from effective participation in governing institutions and subjected them to discrimination in employment, judicial proceedings, and access to public services. Minority groups, often lacking armed militias, continued to be disproportionately subjected to killings, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and majority clan members, often with the acquiescence of federal and local authorities. Many minority communities continued to live in deep poverty and to suffer from numerous forms of discrimination and exclusion”.

38. There is an additional risk to A that he will because of his lack of ties and background be forced to relocate. The Home Office has previously noted (2017) that persons leaving Al Shabab areas and attempting to relocate to cities or towns with AMISOM/SNAF presence will be forced to settle in IDP settlements unless they have nuclear or extended family with the necessary resources to support them.
39. It is submitted that A would be unable to obtain guarantors from other communities given he is outside the country but even if he could arrange an informal arrangement the appellant would not have a high chance of securing employment, accommodation, basic services, and healthcare as per the 2022 US State Department Report: “Employment opportunities were limited for refugees, Somali returnees, and other vulnerable populations. Refugee returnees from Kenya reported limited employment opportunities in the southern and central

sections of the country... Refugees and Somali returnees had limited access to basic services.” (United States State Department, 2017.)

40. In her oral submissions she referred to the written submissions are paragraphs 7 – 8 that the respondent’s conclusion that he could live in Mogadishu because members of his clan lived amongst other majority clans was not supported by the country materials. She placed reliance upon the extract from the report cited in the grounds which stated that some Sheikhal groups are strong, and others are marginalised. The appellant had stated to the respondent that he belonged to the subgroup of the Jasira whose members have been identified as one of the marginalised minority groups whose members predominately reside in Mogadishu and that they have been oppressed by majority group militias since 1991 (and see the appellant’s interview question 25 page 84 respondent’s bundle).
41. When assessing the circumstances facing the appellant, he was born in Saudi Arabia and spent a few days in Mogadishu before moving to his home area. He has no knowledge or familiarity with Mogadishu or family or clan associations in Mogadishu and has no access to financial resources. His mother and other siblings are in an IDP camp and there are no resources that he could draw upon that they do not have available to them. As to the assertion of support from the appellant’s uncle, if he had the ability to support the family, they would be used to protect the vulnerable female members of the appellant’s family.
42. Ms Sanders highlighted that the appellant has had no education and was unemployed before arriving in the UK and as he has no clan or family support and will not be in receipt of remittances from abroad and has no real prospect of securing access to live on return, and those factors taken together demonstrate that it would be unduly harsh or unreasonable for the appellant to relocate internally to Mogadishu.

Discussion:

43. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom's obligations under the 1951 Refugee Convention.
44. The appellant bears the burden of proving that he falls within the definition of "refugee". In essence, the appellant has to establish that there are substantial grounds for believing, more simply expressed as a 'real risk', that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country.
45. In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to.
46. The issue identified for this hearing is that of internal relocation, the FtTJ having previously found that there was a reasonable likelihood that the appellant would be at risk of persecution or serious harm in his home area and there was no sufficiency of protection or him in his home area. Neither advocate has addressed

the tribunal on the relevant law, but it is well established and can be summarised as follows.

47. As to internal relocation, Rule 3390, which is included in part 11 of the Immigration Rules, deals with the possibility of "Internal relocation". It states:

"(i) The Secretary of State will not make:

(a) a grant of refugee status if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

48. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [\[2006\] UKHL 5](#), [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

49. The Upper Tribunal in MB(internal relocation-burden of proof) Albania [2019] UKUT 00392 held that: *The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in SSHD v SC (Jamaica) [2017] EWCA Civ 2112, at paragraphs [40] and [41]. MM v Minister for Justice, Equality and Law Reform, Ireland (Common European Asylum System - Directive 2004/83/EC) Case C-277/11 does not impose a burden on the respondent or result in a formal sharing of the burden of proof, but merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports.*

50. The starting point of the assessment are the findings of fact made by FtJ Fisher which are as follows:

(1) The appellant is a national of Somalia and is a member of the minority Sheekhaal ethnic group.

- (2) It was not in issue that the Refugee Convention could be engaged on the basis of an imputed political opinion if the appellant had refused the demands of Al Shabaab to join their ranks. In addition, the respondent conceded that, if his account were found to be true, there would be no sufficiency of protection in his home area of Jilib, where Al Shabaab remains in power (paragraph 6).
- (3) The appellant's account of Al Shabaab's attempts to recruit him and the imposition of tax on his mother was consistent with the background evidence. Accordingly, the FtTJ accepted that Al Shabaab made attempts to recruit the appellant (see paragraph 8).
- (4) The respondent conceded that, if his account were found to be true, there would be no sufficiency of protection in his home area of Jilib, where Al Shabaab remains in power (paragraph 6).
- (5) The issue to be determined was internal relocation.
- (6) Al Shabaab does not forcibly recruit in the government controlled areas of Somalia. The appellant would be returned to Mogadishu which is under government control. The FtTJ further concluded " the issue of internal relocation can be further refined as, if the appellant were forced to reside in one of the settlements often loosely described as IDP camps within the city, there is a real risk that the conditions there would breach Article 3, thereby rendering internal relocation unreasonable".
- (7) The factual account was that the appellant was born in Saudi Arabia and returned to Somalia in 2007. He had only spent a few days in Mogadishu before moving to his home area. The FtTJ accepted this evidence and found that "it cannot be said that he had any significant exposure to the city before he left the country" (at paragraph 13) The FtTJ accepted that the appellant's mother and younger sisters were living in a settlement or camp in Mogadishu and did not believe that his mother would be in a position to assist him (at paragraph 12).

51. The relevant country guidance is the decision of OA (Somalia)CG [2022] UKUT 33 which held that the guidance previously given in 407 of MOJ and others(Return to Mogadishu) Somalia CG [2014] UKUT 00 442 (IAC) and the assistance given by family or clan members in order to re-establish life and secure a livelihood.

52. The parts of the guidance in OA which are relevant to this appeal are as follows:

"2. The country guidance given in paragraph 407 of MOJ (replicated at paragraphs (ii) to (x) of the headnote to MOJ) remains applicable.

3. We give the following additional country guidance which goes to the assessment of all the circumstances of a returnee's case, as required by MOJ at paragraph 407(h).

...

5. Somali culture is such that family and social links are, in general, retained between the diaspora and those living in Somalia. Somali family networks are very extensive and the social ties between different branches of the family are

very tight. A returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact.

6. In-country assistance from a returnee's clan or network is not necessarily contingent upon the returnee having personally made remittances as a member of the diaspora. Relevant factors include whether a member of the returnee's household made remittances, and the returnee's ability to have sent remittances before their return.

7. A guarantor is not required for hotel rooms. Basic but adequate hotel accommodation is available for a nightly fee of around 25USD. The Secretary of State's Facilitated Returns Scheme will be sufficient to fund a returnee's initial reception in Mogadishu for up to several weeks, while the returnee establishes or reconnects with their network or finds a guarantor. Taxis are available to take returnees from the airport to their hotel.

8. The economic boom continues with the consequence that casual and day labour positions are available. A guarantor may be required to vouch for some employed positions, although a guarantor is not likely to be required for self-employed positions, given the number of recent arrivals who have secured or crafted roles in the informal economy.

9. A guarantor may be required to vouch for prospective tenants in the city. In the accommodation context, the term 'guarantor' is broad, and encompasses vouching for the individual concerned, rather than assuming legal obligations as part of a formal land transaction. Adequate rooms are available to rent in the region of 40USD to 150USD per month in conditions that would not, without more, amount to a breach of Article 3 ECHR.

10. There is a spectrum of conditions across the IDP camps; some remain as they were at the time of MOJ, whereas there has been durable positive change in a significant number of others. Many camps now feature material conditions that are adequate by Somali standards. The living conditions in the worst IDP camps will be dire on account of their overcrowding, the prevalence of disease, the destitution of their residents, the unsanitary conditions, the lack of accessible services and the exposure to the risk of crime.

11. The extent to which the Secretary of State may properly be held to be responsible for exposing a returnee to intense suffering which may in time arise as a result of such conditions turns on factors that include whether, upon arrival in Mogadishu, the returnee would be without any prospect of initial accommodation, support or another base from which to begin to establish themselves in the city.

12. There will need to be a careful assessment of all the circumstances of the particular individual in order to ascertain the Article 3, humanitarian protection or internal relocation implications of an individual's return .

13. If there are particular features of an individual returnee's circumstances or characteristics that mean that there are substantial grounds to conclude that there will be a real risk that, notwithstanding the availability of the Facilitated Returns Scheme and the other means available to a returnee of establishing themselves in Mogadishu, residence in an IDP camp or informal settlement will be

reasonably likely, a careful consideration of all the circumstances will be required in order to determine whether their return will entail a real risk of Article 3 being breached. Such cases are likely to be rare, in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps.

14. It will 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 would be reasonable for internal relocation purposes .

15. There is some mental health provision in Mogadishu. Means-tested anti-psychotic medication is available.

53. The relevant paragraphs of MOJ are as follows:

(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.

54. The appellant has filed an expert report from Professor Mario Aguilar dated 16th of February 2024. He sets out his expertise between paragraphs 2 - 9. There has been no dispute as to whether he is able to give expert opinion in the light of his qualifications and experience in research as set out in the report. Some of the conclusions reached are not relevant for this hearing in light of the preserved findings of fact as set out above. They are as follows. The report refers to clan structure in Somalia providing a general history of clans from 1961 onwards from the exit of Siyaad Barre and the fights are controlled by different clans which arose thereafter. In the report reference is made to other clans for example the Ashraf (paragraph 37) and the Reer Hamar (paragraph 38). Between paragraphs 42 - 51 the report summarises the Hawiye clan with a family tree at paragraph 51. Reference is made to other different clans including the Bravaneese (paragraph 52) and the Reer Hamar (paragraphs 53 - 56). None of that historical evidence is controversial or in dispute.
55. As to the appellant's clan membership, paragraph 58 sets out the appellant's clan membership. The report states that "The appellant states that he belongs to the Sheekhaal. The Sheekhaal allied themselves to the Hawiye during the civil war and previously were associated with the clans that moved between southern Somalia and the NFD in Eastern Kenya. I note here that I conducted fieldwork in the former NDF, the seventh province of Kenya." He concludes at " conclusion 2" that the appellant's narrative is consistent with his alleged belonging to the Sheekhaal, a clan present in the area where he was born where his family lived (conclusion 2 paragraphs 59-60). Again that is not in dispute as the respondent has always accepted his clan membership as stated.
56. Contrary to the report, it is not in dispute that the appellant was at risk from Al-Shabaab in his home area. That was a finding of fact made by the FtTJ which was not challenged by the respondent and forms part of the preserved findings. Whilst at conclusion 3 there is reference to Al-Shabab being active in Mogadishu and that as he was already known there would be an attempt to find the appellant and recruiting him by force, as recorded above that is not relied upon by the appellant for the purposes of this hearing.

57. The issues highlighted by both advocates for assessment is the support the appellant is likely to receive in Mogadishu. The report cites some of the material from MOJ (see paragraphs 67) and sets out his conclusions on the list of factors from OA (Somalia) (as cited) at paragraphs 80-85. I have taken account of the evidence in the report when addressing the relevant factors identified by the parties and when reaching a conclusion on the issue of internal relocation.
58. The country guidance decision of OA (Somalia) (as cited) sought to address the conditions in Mogadishu in the light of the further country information provided post- MOJ (see paragraph 218 of OA). As set out, the issues are interconnected, for example an individual's exposure to the potentially harsh humanitarian conditions in Mogadishu are affected by a range of factors such as clan connections, access to remittances, employment prospects and access to accommodation. An individual's employment prospects may be influenced by the network and clan connections.
59. When assessing the issue of return to Somalia, both MOJ and OA refer to the importance of "some form of in country support, network or provision in order to become established in Mogadishu." In MOJ, the tribunal emphasised the importance of an individual's nuclear family as recorded at paragraphs 234 - 236. That is also a point made in the expert report.
60. The appellant's social and family history as accepted by the FtTJ was that the appellant was born in Saudi Arabia and returned to Somalia in 2007 and that he only spent a few days in Mogadishu before moving to his home area. As Ms Young fairly outlined in her oral submissions it was acknowledged on behalf of the respondent that the appellant's social history was that he had not resided in Mogadishu and therefore gave rise to a different set of facts. That was also a finding of fact made by FtTJ Fisher that "it cannot be said that he had any significant exposure to the city before he left the country" (paragraph 13). Thus she acknowledged that subparagraphs (i) and (ii) were in favour of the appellant.
61. Whilst the report refers to the position of the appellant's mother in a refugee camp, there no dispute that she resides in an IDP camp nor is there any dispute between the parties that as a result the appellant's mother will not be able to assist him. That was a finding made by Judge Fisher set out at paragraph 12 of his decision and stands as a preserved finding.
62. The appellant therefore does not have the ability to call upon family in Somalia for essential assistance such as accommodation, food or assistance in securing work. That being the case, when applying the country guidance decision, a careful assessment of all the circumstances 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.*

63. As set out above, Ms Young does not seek to challenge the first two factors as they are resolved in favour of the appellant given the social and family history described earlier and the lack of any real association with Mogadishu.
64. The issue is whether the appellant is likely to receive assistance from members of his own clan and /or other members of his family.
65. In the relevant country guidance decisions of MOJ, the significance of clan membership was that they could provide potentially social support mechanisms and assist with access to livelihood as they performed less of a protection function. In OA, the tribunal considered that the material established broadly the same picture (see paragraph 237) but also accepted that as a general rule minority clans may struggle to offer significant levels of practical assistance although clan specific additional considerations did apply, for example an analysis was made of the Reer Hamar (see). The practical assistance provided may be for example vouching for the individual (see paragraph 259). The tribunal also found at paragraph 256 that the circumstances of a returnee with family and diaspora links in the country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family living in Mogadishu through friends of friends, if not direct contact.
66. Applying to this appellant's case, it is not argued on behalf of the respondent that the appellant has any diaspora links in the UK nor is there any evidence that he has links with the clan he belongs to either in the UK or in Mogadishu.
67. The expert report sets out a history of Somali clans from paragraph 26 onwards. That evidence again is not controversial or in dispute. As to the appellant's clan membership, paragraph 58 of the report sets out the appellant's clan membership. The report states that "The appellant states that he belongs to the Sheekhaal. The Sheekhaal allied themselves to the Hawiye during the civil war and previously were associated with the clans that moved between southern Somalia and the NFD in Eastern Kenya. I note here that I conducted fieldwork in the former NDF, the seventh province of Kenya." He concludes at " conclusion 2" that the appellant's narrative is consistent with his alleged belonging to the Sheekhaal, a clan present in the area where he was born where his family lived (conclusion 2 paragraphs 59-60). Again that is not in dispute as the respondent has always accepted his clan membership as stated.
68. It is therefore common ground that the appellant is a member of a minority clan. The respondent however considered that external sources confirmed the clan was a type of trans-clan lineage that had lived among the major clans from the north and south of Somalia. This is based on material from the EASO 2021 report.
69. In her oral submissions Ms Young did not seek to rely upon the earlier material set out in the decision letter and which had been challenged in the grounds to the Upper Tribunal. Nor did she challenge the extract from the EU AA Somalia country guidance document dated June 2022(p 103) which had been set out in the grounds.

70. The relevant extract reads as follows:

Sheikhal/Sheekhaal

Sheikhal are not one but several groups, with different cultures and dialects. The word 'Sheikhal' is simply the local plural of 'sheikh' and signifies a lineage who has an inherited religious status. The Sheikhal are scattered in different districts and regions of the country, e.g. Mogadishu, Belet Weyne, Jowhar, Middle and Lower Juba and Gedo. The main Sheikhal branches are the Jasira, the Gendershe, the Loboge, and the Aw Qutub. In the Somali parliament, three seats are reserved for Sheikhal clan, through the Hawiye clan family.

While some Sheikhal groups are politically strong, others are marginalised. The Gendershe and Jasira groups have the position of marginalised minority groups, whose members predominantly reside in Mogadishu and south of the city, and who have been marginalised and oppressed by majority group militias after the outbreak of the civil war 1991. In contrast, the sub-clans Loboge and Aw Qutub have a more ambiguous position. Older reports indicated that the Loboge had been allies of some Hawiye, had their own militia in the early 1990s and they had engaged in fighting. The Aw Qutub had suffered some discrimination or harassment in Somaliland from the dominant Isaaq clan, being suspected of disloyalty to the Somaliland state after 1991.

71. Whilst the appellant is a member of a minority clan, his evidence has been consistent that he further identifies his clan membership as falling within the subclan of the Jasira (Jazeera; see Q 25 of AIR; 317CEF).
72. The material set out above demonstrates that the Sheikhal are not one clan but there are different sub clans with different cultures and dialects and that whilst some groups are politically strong, others are marginalised. The material identifies that the Jasira subgroup whilst they reside predominantly in Mogadishu they have been marginalised and oppressed by majority group militias after the outbreak of the Civil War.
73. The expert report does set out the history of Somali clan membership in paragraph 26 which is not in dispute and also summarises the position of different clans including the Ashraf and the Reer Hamar. Those clans are not strictly relevant to the circumstances of this appellant.
74. The expert report at paragraph 59 refers to the appellant's clan as follows: "Sheekhaal: A few clans in the borders of [Somalia](#) do not belong to the Hawiye clan, but came to be associated with them politically and socially: [Gaalje'el](#) in Lower Shabelle, Middle Shabelle, Hiiran, and elsewhere in central Somalia traces its paternal descent to Gardheere Samaale; [Degoodi](#) in the [Somali Region of Ethiopia](#) and [North Eastern Province](#) is related to Gaaje'el as Saransoor and traces its patrilineage to Gardheere Samaale; Ajuraan in the North Eastern Province claim descent from Maqaarre Samaale; and, [Sheekhaal](#) acknowledges descent from Sheikh [Abadir Umar Ar-Rida](#), also known as *Fiqi Umar*. Thus, the [Gaalje'el](#), [Degoodi](#) and Ajuraan are said to have patrilineal ties with the [Dir](#) and Hawiye through Samaale to [Aqeel Abu Talib](#), whereas the Sheekhaal traces descent to a different forefather than the Samaale progeny, but also traces to [Aqeel Abu Talib](#)".
75. However the expert report does not take account of the subclan of the appellant as set out above. Reference is made to the conclusion at paragraph 68 that his

clan does not come from Mogadishu and is therefore not likely to get help from them. However the material relied upon by the appellant and highlighted by both parties sets out that the clan is predominantly in Mogadishu.

76. However as Ms Sanders on behalf of the appellant pointed out the expert report does not take account of the subclan of the appellant, and it is in this context that they are characterised as a “marginalised clan” which is the relevant part of the evidence.
77. Therefore the expert’s view that “for purposes of Somali kinship he has no extended family (families are considered those led by a man and his descendants and blood relations) to protect him as protection comes from males not females. Because there is no male connection to clan activities in Mogadishu, and his clan does not come from Mogadishu it is most likely that he would not get help from Sheekhaal” is supported by that material, even though there are clan members in Mogadishu.
78. When considering that evidence, the appellant has demonstrated that he will not be able to draw upon a clan assistance upon return. He has no links with any clan members in Mogadishu nor in the UK, whether male or female although I would accept that the society is patrilineal as set out in the report. The sub clan is one that has been marginalised and any support in this appellant’s own circumstances would be minimal if at all.
79. The next issue relates to that of remittances. This is featured as an important part of an individual’s finances in the country guidance decisions (see paragraph 263 of OA), and the strength of links in an individual’s case are highly relevant to the issue of whether a returnee will receive remittances (see paragraph 265).
80. Ms Young on behalf of the respondent submits that the appellant’s journey was funded by the appellant’s uncle and that as he helped the appellant leave Somalia, he would be able to assist the appellant financially by providing remittances. Ms Sanders by way of reply submits that this is based on speculation and that it is advanced on a basis which had previously led the FtTJ to fall into error which had been accepted at the error of law hearing. She further submitted that the appellant’s account as to the risk of persecution or ill-treatment in his home area was found to be credible by the FtTJ and therefore he should be considered as credible on this evidence also by applying the “benefit of the doubt” principal.
81. There is no dispute that the appellant’s uncle did fund his journey. This was a number of years ago. The appellant’s uncle, according to the evidence of the appellant which the FtTJ accepted, is not resident in Somalia but lives in Saudi Arabia. He does not have any status in that country and appears to have limited employment. The appellant’s evidence which has been consistent is that he has had no contact with his uncle since he left. He had not been able to call him in Turkey although trying to do so. He tried to contact him whilst in Greece and later in the UK he referred to having tried to find him via social media.
82. When considering the issue of remittances, it is relevant to take into account that the appellant’s uncle is in contact with the appellant’s mother who is living in an IDP camp with the appellant’s younger siblings. Having considered the evidence it is a reasonable inference to draw that if the appellant’s uncle were in a position to provide remittances and/or financial assistance he would have already done so by providing assistance to the appellant’s mother and siblings who are living in

difficult conditions in an IDP camp. I accept the submission made by Ms Sanders and this is supported by the objective material, that as a woman and the head of a household they are likely to be vulnerable individuals in an IDP camp (see paragraph 302 of OA which refers to sexual violence and robberies against women and 331 of OA which refers to the particular vulnerability of female-headed households). Therefore if the appellant's uncle had money available it is likely that it would have already been utilised to help the appellant's mother and siblings to alleviate their conditions. The descriptions of the IDP camps at paragraph 299 and 269 of OA referred to overcrowded, and sanitary and disease ridden camps. Further, it is also relevant that there is no evidence that the appellant's uncle provided support for the appellant when he lived in Somalia nor when was in a camp in Greece.

83. Whilst the appellant would have very short-term assistance via the facilitated return scheme, this could only provide short-term assistance, i.e. that of several weeks. He does not have a guarantor via extended family or from his clan for the reasons given.
84. As to being able to access the economic boom, the appellant can speak Somali and is healthy. However his social background demonstrates that he is not educated, having never gone to school and that he has no qualifications or skills. He has held no previous form of employment either in Somalia or in the UK and therefore in terms of experience or skills he has little to offer the economic boom. Even if casual labour could be accessed, the absence of a guarantor would mean that there could only be the possibility of self-employment (see 356) which could not guarantee a livelihood.
85. In summary there is no challenge to the FtTJ Fisher's factual assessment the appellant was at risk of serious harm or persecution in his home area for the reasons he gave. The issue to be addressed is that of whether internal relocation would be unduly harsh or unreasonable taking into account the appellant's individual circumstances holistically.. In conclusion the appellant's individual circumstances when assessed as set out above fall into headnote 14 of OA : "It will 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 would be reasonable for internal relocation purposes " and therefore the appellant has demonstrated that to internally relocate to Mogadishu would be unduly harsh or unreasonable based on the assessment undertaken.

Notice of Decision

86. The decision of the FtTJ which relates to the issue of internal location involved the making of a material error of law it is set aside to be remade as follows: the appeal is allowed on asylum grounds.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

26 February 2024