



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00040/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21<sup>st</sup> January 2016  
And 18<sup>th</sup> February 2016

Decision and Reasons Promulgated  
On 15<sup>th</sup> March 2016

Before

UPPER TRIBUNAL JUDGE COKER  
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

BILAL AHMAD ABDULKADIR

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Ahmad, instructed by Thompson & Co Solicitors  
For the Respondent: Ms J Isherwood on 21<sup>st</sup> January 2016 and Mr I Jarvis on 18<sup>th</sup>  
February 2016, Senior Home Office Presenting Officers

**DETERMINATION AND REASONS**

1. By a decision promulgated on 11<sup>th</sup> November 2015 First-tier Tribunal judge E B Grant dismissed the appeal of Mr Abdulkadir, date of birth 14<sup>th</sup> April 1993, against his removal to Somalia on asylum and human rights grounds consequent upon the making of the deportation order on 3<sup>rd</sup> July 2015. Permission to appeal was sought and granted on the grounds that the First-tier Tribunal judge had failed to consider adequately the OASys report in her conclusions as to serious harm- s72

Nationality, Immigration and Asylum Act 2002 (“s72 point”); failed to apply correctly the Country Guidance judgment of *MOJ (return to Mogadishu) Somalia CG [2014] UKUT 0042 (IAC)* (“*MOJ* point”); failed to consider the UNHCR report of June 2014 and failed to grant an adjournment to enable an expert report to be obtained to update the Tribunal on the situation since *MOJ* was reported (“report and adjournment point”).

2. At the commencement of the hearing we indicated to the parties that having considered carefully the grounds of appeal, our provisional view subject to submissions was that the s72 point and the report and adjournment points were unlikely to be successful. We referred to the detail in the OASys report of the nature of the offence and the percentage likelihood of re-offending and violence and indicated that although the First-tier Tribunal judge had not used the words “serious harm” it appeared difficult to see that there could have been any other outcome. We also drew attention to the June 2014 report referring to circumstances outside Mogadishu ie Central and Southern Somalia and not to Mogadishu; that the reference to Mogadishu in the footnote describing the report continued to refer to risk and danger faced in particular parts of the city (government and administrative centres) and that these were issues that had been considered in *MOJ*. We intimated that the decision by the First-tier Tribunal judge to refuse the adjournment appeared to be reasonable and unlikely to be faulted as there was no indication that any additional material would be forthcoming that would justify departure from *MOJ*.
3. Ms Ahmad withdrew reliance on her grounds of appeal on the s72 point and the report and adjournment points and relied solely on her ground that the judge had failed to consider properly and take account of *MOJ* in reaching her conclusion that the appellant would not be subject to Article 3 illtreatment if returned to Mogadishu.
4. Ms Ahmad referred particularly to headnotes (ix) to (xii) of *MOJ*. She submitted that given the specific factual matrix of Mr Abdulkadir, the judge had not given adequate consideration to his likely circumstances on deportation to Mogadishu and thus the judge had erred in law such that the decision should be set aside to be remade. Ms Isherwood went through the elements of the First-tier Tribunal decision and identified what she submitted were the relevant elements of consideration and thus although not specifically phrased by reference to the particular paragraphs of *MOJ*, there was no material error of law.
5. Ms Isherwood and Ms Ahmad were content for us to remake the decision, in the event that we found there had been a material error of law. Both made submissions on what the outcome should be if we set aside the First-tier Tribunal decision on the *MOJ* point.

#### Error of law

6. The findings of fact with regard to Mr Abdulkadir with which there is no dispute are as follows:

- i. He left Mogadishu as a very small child and was largely brought up by his paternal grandmother in Nairobi until he arrived in the UK aged 13.
  - ii. He has been absent from Mogadishu for most of his life (he was aged 22½ years old on the date of the hearing before the First-tier Tribunal).
  - iii. He is Bajuni.
  - iv. His father has returned to 'Africa'.
  - v. He is married and his wife is in Mombasa, Kenya.
  - vi. He has worked whilst in the UK – he obtained employment as an engineer for Railtrack doing track maintenance after release from custody; he worked shifts, all over the UK.
  - vii. He has 8 GCSEs including Maths, English and Science. He has worked as a sales advisor for EDF energy, in a warehouse and as a fundraiser for a charity. He was one of 12 out of 5000 who applied taken on as an apprentice at Caterpillar UK which employment he lost when remanded in custody for the index offence.
7. The grounds relied upon take issue with the finding of the judge that the appellant's father has "more likely than not ...gone back to Somalia or to Kenya". The grounds take issue with the judge's conclusion that the appellant could, if he so wished, travel to Kenya to be with his wife – the grounds assert there was no evidence before the Tribunal which disclosed whether the appellant would be admitted to Kenya as a spouse or at all.
8. The appellant's evidence to the Tribunal was that he spoke only Kibajuni (a dialect related to Swahili) and English. The reasons for the deportation letter dated 3<sup>rd</sup> July 2015 states
61. It was noted in the letter of 16 February 2015, that you speak and write English. When your father was initially interviewed in regard to his asylum claim, he was interviewed in Kibajuni but he also demonstrated that he knew the Somali language. When your mother was interviewed in August 2004 she was interviewed in Swahili and confirmed that Kibajuni was spoken where she lived in Koyama. It is noted that you lived with your grandparents and siblings in a refugee camp in Kenya along with other Somali refugees. When you and your siblings arrived in the United Kingdom, you lived with your parents. It was then considered that in all probability, you speak or at least understand some Swahili, Kibajuni and Somali.
9. *AAW (expert evidence – weight) Somalia* [2015] UKUT 673(IAC) considers the circumstances of a young man being deported to Mogadishu. AAW is from the minority clan Benadiri. AAW records (in [47]) that AAW faced the prospect of being returned after 17 years' absence, that he has no nuclear family or other close relatives in the city and that he is a member of a minority clan. [47] goes on to state that an enquiry is required of all the circumstances including:
- a. His circumstances in Mogadishu before departure;
  - b. The length of absence from Mogadishu;
  - c. The clan associations he may be able to call upon in Mogadishu;

- d. Access to financial resources;
- e. The prospects of him securing a livelihood, whether that be employment or self employment;
- f. The availability of remittances from abroad;
- g. His means of support during the time spent in the UK;
- h. Why his ability to fund the journey to the west no longer enables the appellant to secure financial support on return.

[47] of AAW also reminds the Tribunal that

“...it is for the appellant 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. The country guidance concludes that 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.”

10. We deal first with the evidence that was not agreed and upon which the appellant takes issue with the judge’s findings:
- (a) The OASys report states that the appellant says he is in contact with his wife and has a good relationship with her. There is reference in the report to the appellant’s intentions to be re-united with her. This was contrary to the evidence he gave to the First-tier Tribunal and no explanation for that difference was provided. We are satisfied that the decision by the judge that the appellant was in contact with his wife and that they had a good relationship was a finding that was open to her. We do accept however the submission that it was not open to the judge to find that the appellant could, if he so wished, travel to Mombasa to be with his wife. There was no evidence before the First-tier Tribunal that the appellant would be able to obtain any necessary visa to enable him to lawfully relocate.
  - (b) The appellant’s father is Somali. He has returned to “Africa”. The applicant challenges the finding of the judge that the father is in Somalia on the grounds that there was no evidence to that effect. We are satisfied that it was open to the judge, on the evidence before her, to find that the father, a Somali national, had more than likely returned to Somalia. As a Somali national that is a reasonable finding to reach. The judge found that the appellant is in contact with his father; that was not challenged and in any event was a finding that was open to the judge on the evidence before her.
  - (c) According to the OASys report the appellant said his mother had left the family home when he was aged about 14 and that she was ‘somewhere in London’. The appellant is initially recorded as saying that he has no contact with his mother but subsequently is recorded as saying he had seen her in February 2013 and that he is in contact with her and she is a support to him. The appellant does not seek to resile from that.
  - (d) The appellant states that he speaks Kibajuni and English. He states that he does not speak Somali. The judge does not make a finding on his language abilities. The reasons for deportation letter refers to a British, Danish and Dutch fact-finding mission which visited Nairobi in September 2000 and refers to the elders stating that most Bajuni speak Somali but that younger Bajuni

who have lived in exile may have only a very limited knowledge of Somali although they would know key words in Somali. Although that report is now 15 years old, nothing has been offered to suggest that it is still not the position. The reasons for deportation letter also stated that the appellant

“...would [in all probability] be able to understand some Swahili, Kibajuni and Somali...”

The appellant denies he can speak Somali. The First-tier Tribunal judge did not make a finding on the appellant’s language ability or the possible effect this might have on his ability to support himself.

11. There was no finding by the First-tier Tribunal judge on access to remittances from the UK or financial support from those in Somalia. We are also satisfied that it was not open to the judge to find that he could relocate to Kenya. On this basis alone we are satisfied that the findings of the judge that he could adequately maintain himself in Mogadishu was an assessment predicated upon errors, such errors amounting to errors of law requiring the decision to be set aside to be remade. It is also clear that the judge should have made findings of fact in respect of the appellant’s Somali language abilities. But in view of our findings, if that was an error of law it was not material to the outcome.

Remaking of the decision.

12. Taking the undisputed findings referred to above ([6]) and our conclusions as regards findings made by the judge which were disputed by the appellant ([10]) we are additionally satisfied as to the following:
  - (a) Whatever the appellant’s circumstances were when he left Mogadishu, he was a young child and he will have no personal memory of Mogadishu other than what he has been told by his grandmother and the Somali community in Kenya and his family and the Somali community whilst in the UK
  - (b) He has been absent from Mogadishu for virtually the whole of his life – he was aged 22 at the date of the hearing before the First-tier Tribunal and is now nearly aged 23;
  - (c) Whilst in the UK he has worked in a variety of jobs and obtained academic qualifications.
13. Having reached a conclusion that the decision of the First-tier Tribunal should be set aside to be remade we also concluded that we required further information on issues regarding the appellant’s ability to access employment, finance and a livelihood on deportation to Mogadishu. The evidence that had been produced to the First-tier Tribunal had not included evidence in relation to language and ability to find employment. In particular given that it appeared that the languages spoken by the appellant were limited to English and Kibajuni and possibly a smattering of Somali, this may be of relevance in determining the extent and ability of the appellant to find employment in Mogadishu. On 27<sup>th</sup> January 2016 we made the following directions:

1. This appeal was heard on 21<sup>st</sup> January 2016 and we reserved our decision. We did not indicate whether we found there to be an error of law but both parties were content to and made submissions on the appeal in the event that we set aside the decision of the FtT to be remade.
  2. We would now be assisted in our deliberations on this appeal to hear from the parties on the issue of language. The appellant is Bajuni and stated that he speaks Kibajuni and English only. The reasons for deportation letter refers (paragraphs 63 and 71) to the likelihood of the appellant being able to speak and understand at least limited Somali.
  3. This matter will now be listed for one hour on 18<sup>th</sup> February 2016 to enable the parties to make oral submissions on the issue of language and in particular the extent to which English is used, if at all, in Mogadishu and any hindrance there would be in having limited or no Somali.
  4. Leave to adduce documentary evidence is given, such evidence to be filed and served at least five working days prior to the hearing. If one or both parties would prefer to give written submissions with attached documentary evidence that is acceptable to the Tribunal, such a course of action to be notified to the Tribunal and the other party within 48 hours of the sending of these directions and the written submissions to be received by the Tribunal and the other party no later than three days before the hearing.
14. We are grateful to the parties for responding to the directions and providing us with as much evidence as they could find on this point.
  15. Mr Jarvis, on behalf of the Secretary of State submitted written submissions with an accompanying bundle of documents. The appellant, through his solicitor, did not make any written submissions but submitted a bundle of documents. On 18<sup>th</sup> February 2016 we heard oral submissions from both representatives.
  16. The first issue for us to determine is whether and to what extent the appellant speaks Somali. Ms Ahmad relied upon reports quoted in the 2012 COI report on Somalia which themselves were some 15 years old. These reports indicated that Bajuni would tend not to speak Somali although elders may well speak Somali. It seems to us that it is unlikely that the appellant speaks Somali or if he does, then he speaks only a few words. Although his grandmother, mother and father may, because of their age, speak Somali we are satisfied that the appellant's language at home (whether with his grandmother or mother/father) would not be Somali but would more likely be Kibajuni. After his arrival in the UK and his attendance at school and other education facilities, his first language would, to all intents and purposes, be English although we are satisfied that he retains a good working knowledge of Kibajuni because of his family background. On the basis of the evidence before us we are satisfied that if the appellant speaks any Somali at all it is no more than basic and rudimentary and insufficient to conduct any kind of meaningful conversation.
  17. Ms Ahmad relied upon a LandInfo report dated July 2011 in support of her contention that the appellant would need at least a good working knowledge of Somali in order to be able to access employment in Mogadishu. This report commences by stating that LandInfo has no linguistic expertise in Somali and no linguistic academic experts in Norway; that their report had been produced

through referencing existing academic literature and from consultation with foreign expertise. The report considered Somali dialects and refers to the categorisation of Somali into a number of dialect groups – four in 1919 and an additional four in research carried out in 1986. Migration, nomadism and clan relationships are described (in 1986) as contributing to influencing and changing the dialects of Somalia. The LandInfo report considers the current language situation and concludes

“Several hundred thousands of internally displaced persons and new patterns of settlement among certain clans, the collapse of the education system and lack of basic education amongst a generation may have influenced the language in different ways. Thousands of young men (and some young women) have been affiliated with militias, both in the capital Mogadishu and in other towns and areas. Several members of such groups are said to have their own jargon, which developed into a dialect that is practically incomprehensible to outsiders (CRD [Centre for Research and Dialogue] 2004 p29). “

This is not the correct page reference to the CRD report and nor is it a strictly accurate summary. The relevant page is p40 and the reference is to *some* members of armed criminal gangs/militias developing a slang that is virtually incomprehensible to outsiders. Also in the CRD report is reference to the language of education at that time – English and Arabic both in primary, secondary and tertiary education. The report sets out the different types of school available in the ‘modern education system’.

18. A 2015 report published by the Heritage Institute for Policy Studies, Mogadishu relied upon by Mr Jarvis, states

“Language policy

Medium of instruction

Our findings indicate that schools use a mixture of languages with English and Arabic the languages of choice for the majority. In the schools that took part in our study, English was the most popular language followed by Arabic. A limited number of schools that are under the full control of the government reportedly use the Somali language, but their number is negligible compared to the private schools that are growing in numbers every year.....worth pointing out, however, is that even schools that use foreign languages still teach Somali literature to pupils in the Somali language.

.....

Studying in English at a basic education level would help pupils’ future employability according to some participants. “You’re more likely to find employment if you can speak English” said one headteacher, adding that the Somali language was “limited” to the number who speak it.”

19. Other anecdotal documents produced by Mr Jarvis referred to a returning diaspora and general increased economic activity – confirming the detailed consideration given in *MOJ*. He referred to the NIS Project Profile 2013: Hamerweyne Fish Market Rehabilitation Project and drew attention to the

information in the LandInfo report 2013 which confirmed Hamar-Weyne districts mixed status and its attraction to 'foreigners' (the returning diaspora).

20. Ms Ahmad relies upon an email from Dr Markus Hoehne dated 3<sup>rd</sup> February 2016 in which he says

"English is definitely NOT a language used in everyday life in Mogadishu. Somali is the predominant language. One could try in some circley(sic), to get through with Arabic, and a few old people would still know Italian (from colonial times until 1960 and some post colonial education projects). But English is not strongly anchored in dayly (sic) life. Of course some members of the local elite plus some returnees form the UK or US diaspora would speak. But this is a small and particular group".

Mr Jarvis urged us to place little if any weight upon this email. He pointed out the lack of expert declaration and also drew attention to Dr Hoehne's evidence to the Tribunal in *MOJ* that he had never been to Mogadishu ([106] of *MOJ*), that Dr Hoehne's evidence "generally...consistently presents the least positive interpretation of the source material he draws upon ([158] of *MOJ*) and that he was not a linguist and did not produce linguistic reports. Mr Jarvis also drew support from the 2012 Somalia: Language & Culture report relied upon by the appellant and in particular:

"...A small percentage of Somalis also speak Italian, and a growing number speak English. Educated young adults from well-to-do urban families may speak five or more languages. In addition to the languages mentioned above, there are many other languages spoken in Somalia, as follows: Aweer, Boon, Dabarre, Garre, Jiddue, Maay, Mushungulu, Oromo Borana-Arsi-Guji, Swahili, Tunni....."

21. The appellant had not given evidence before the First-tier Tribunal that he would be unable to find employment in Mogadishu. Although it was asserted in submissions that he would have difficulty in finding employment, in our judgment that was not established by the evidence before us. His academic achievements and that he has previously worked (including the apprenticeship) are all testament to his abilities. We have considered the documentary evidence before us with particular regard to the possible adverse consequences that being unable to speak Somali may have on his employment prospects. We do not accept Dr Hoehne's analysis of the language issue. We are satisfied that English is used in everyday life. The combination of the development of education in English, the increasing number of British Somalis returning to Somalia, the evidence that returnees are preferred as employees to 'locals' and the evidence of economic activity all reinforce that conclusion. English is a language that is used by increasing numbers of people in everyday life; the lack of Somali, whether fluent or basic, is not, on the basis of the evidence before us, likely to be a hindrance to finding employment or a handicap in accessing economic opportunities. The increasing economic activity as considered in detail in *MOJ*, the more recent evidence of the development of Hamar-Weyne are both issues that indicate that



the absence of an ability to speak Somali is not likely to be an obstacle to finding employment in Mogadishu today - a finding we would have reached even if he had said in evidence that he would not be able to find employment – which he did not.

22. We have also considered three other matters. Firstly the whereabouts of the appellant's father and the consequent assistance he may be able to give – if any – secondly the support provided by his mother and thirdly the possibility of support from other members of the family.
23. In so far as his father is concerned it appears that his father travelled to Kenya sometime during 2015 because of his (the father's) mother's illness. The First-tier Tribunal judge found that the appellant was in contact with his father and that finding has not been challenged before us. We note (from the letter produced by the respondent from the father's file in which he requests a travel document) that the father has both a mobile and two email addresses. The appellant has chosen not to share the whereabouts of his father with us. Whilst as a Somali national his father could be expected to be in Somalia if not in the UK, we do note that he was on a 'refugee travel document' and thus he may not have travelled to Somalia but actually gone to Kenya as intimated in his letter to the respondent. The appellant did not give any evidence as to whether his grandmother was still in Kenya. Although the exact whereabouts of his father are unknown we are satisfied that the appellant remains in contact with him.
24. The appellant gave no evidence as to his father's financial situation wherever he is. He gave no evidence that his father had not been supporting him financially or that he was unable to do so in the future. The burden is upon the appellant to establish the facts upon which he seeks to rely and in the absence of evidence to the contrary we are satisfied that the father remains a potential source of at least some financial and other assistance to the appellant.
25. The appellant is in contact with his mother. According to the OASys report she provides support to him. He has given no evidence as to her financial situation. Again, the burden is upon him and there is no evidence that she would not be able to provide some financial assistance.
26. We note from the extract from the appellant's father's file that it was the appellant's maternal uncle who paid for and arranged the family's travel to the UK. The appellant has given no evidence whatsoever about this uncle: where he is, why he would not be able to support him on his return to Mogadishu or why he could not look to him for support. The appellant was aware, from the filing of the respondent's bundle and skeleton argument that this was before the Tribunal but did not seek to file any evidence in connection therewith.
27. The appellant has not established that he would have no financial support available to him from remaining family members whether in the UK, Somalia or Kenya. He is in contact with his mother and father and although he may not be in personal contact with his maternal uncle, there is no reason to suppose that having assisted the family previously, he would not provide assistance again.

28. Although clan membership is not particularly relevant in terms of security, it can be relevant in terms of assistance on relocation. There has historically been an established Bajuni community in Hamar-Weyne. Although the applicant may not have familial ties that he can call upon there was no evidence that he would not be able to obtain some assistance through his clan membership. The evidence relied upon by the respondent that post-dated *MOJ* confirms and elaborates the extensive regeneration of Hamar-Weyne.
29. Taking all of these matters into account in accordance with the guidance in *MOJ* together with the evidence that postdates *MOJ* we are satisfied that this appellant will not be materially disadvantaged because of his inability to speak Somali. His personal attributes are such that he would be able to take advantage of the diaspora driven economic climate in Mogadishu.
30. We dismiss his appeal on human rights grounds.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision and re-make the decision by dismissing it.

Date 4<sup>th</sup> March 2016



Upper Tribunal Judge Coker