Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00031/2017**

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)	**Decision & Reasons Promulgated**
On 10 October 2017	**On 30 October 2017**

Before

UPPER TRIBUNAL JUDGE A GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MH
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer
For the Respondent: Ms Bayoumi, Counsel instructed by Duncan Lewis Solicitors

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Respondent and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appeal to the Upper Tribunal is brought by the Secretary of State who was the respondent in the First-tier Tribunal. However, for ease of reference, we refer to the parties as they were known in the First-tier Tribunal.

2. The Appellant is a male citizen of Somalia born in 1964, and so 53 years old. Having entered the UK illegally he was granted indefinite leave to remain as a refugee in September 2001. On 1 August 2013 he was sentenced at Cardiff Crown Court having been found unfit to plead, on a charge of assault occasioning actual bodily harm, to be detained in hospital under section 37/41 of the Mental Health Act 1983, without time limit. Subsequently he was discharged into the community, initially on conditions but absolutely in November 2016. At that time, it was found not be in the public interest to reinstate proceedings against him.

3. On 17 September 2015, the respondent notified the appellant that she was proposing to deport him under section 5 (1) of the Immigration Act 1971 having concluded that his presence in the UK is not conducive to the public good, and that to remove him would not breach his human rights under article 3 or 8 ECHR. On 29 October 2015, the respondent told the appellant she was intending to cease his refugee status on the basis of his conviction for a particularly serious crime with his continued presence in the United Kingdom being a danger to the community, and a durable change in the country conditions. The appellant appealed to the First-tier Tribunal.

4. At the hearing before the First-tier Tribunal the respondent conceded that it was not open to her to argue that the matter of asylum or humanitarian protection were precluded by a criminal conviction giving rise to a sentence of imprisonment of at least 2 years because the indefinite hospital order imposed was not a period of imprisonment. For the same reasons, the appellant was not a foreign criminal in the context of section 117C of the Nationality Immigration and Asylum Act 2002 Part 5. The judge assessed the merits of the international protection claim. In those circumstances, the judge assessed the merits of the decision to cease the appellant's refugee status and risk on return currently.

5. The judge noted that the respondent had previously concluded that the appellant was at risk in his home area of Afgoye. The country evidence showed that whilst other areas of the country may be safe for returnees there was nothing to show that Afgoye was not still in the clutches of Al-Shabab. In assessing relocation to Mogadishu, the judge noted that the appellant was a minority clan member who would be returning to Mogadishu. The judge noted the country guidance in MOJ and others (return to Mogadishu) (CG) [2014] UKUT 00442 to the point that minority clan members could not ordinarily expect relevant or support from their

clan in Mogadishu, that the appellant would be returning without nuclear family or close relatives in the city to assist him, that he had never previously lived in Mogadishu. His parents had been killed in Somalia. He had managed to be reunited with his wife and children in Wales but they were now separated because of his mental illness of schizophrenia. There was no evidence of any family here who could support him in Somalia. The judge concluded he would have no choice but to live in an IDP camp.

6. The judge noted the respondent's country information to the point that minority clan members, whilst not at risk any longer in the context of a return to Mogadishu, are likely to be so if they have to go to an IDP camp. In an IDP camp the evidence is that they would likely face discrimination and various human rights abuses, including economic exploitation, extortion, forced labour and forced evictions, amounting to persecution and treatment contrary to article 3. In those circumstances, the judge concluded, the appellant would not only be at risk of persecution in his home area, expecting him to relocate to an IDP camp would also expose him to persecution and ill-treatment contrary to article 3, and that would be unduly harsh.

The Appeal to the Upper Tribunal

7. On 27 July 2017, the Secretary of State was granted permission to appeal by the First-tier Tribunal, it being found that the judge had arguably failed to take account of material evidence when deciding that Mogadishu was not a viable internal relocation option.

8. Before us, Mr Richards, who represented the Secretary of State, relied upon without elaboration the Grounds of Appeal. In summary, they are that the judge erred in law in finding that the appellant could not successfully relocate to Mogadishu because:

   (a) he arrived in the United Kingdom at the age of 37, so that he would still be familiar with the language culture etc,

   (b) the judge did not explain why he could not benefit from the economic boom in Mogadishu given that he had had employment as a chef and so had a transferable skill, could expect to receive preference as Western returnees, who employers viewed as being better educated and more resourceful than citizens who had remained in Mogadishu throughout

   (c) the country guidance was that the fact that a returnee had never lived in Mogadishu was not a determinative factor.

   (d) The judge too readily accepted the appellant's evidence that he would have a lack of support in light of the evidence of remittances from abroad there was an absence of reasoning as to why the appellant's family in the United Kingdom could not offer financial assistance until he was able to establish himself in Mogadishu.

9. Ms Bayoumi submitted that the judge had correctly identified the country guidance and applied it appropriately to the appellant circumstances. The judge had reached conclusions based on the unchallenged evidence that the appellant, irrespective of the previous history of work, had been unable to sustain that position and was in receipt of benefits. The Home Office had questioned him as to when he had last worked and did not challenge his evidence that it was 4 years ago and it was not suggested in submissions that he should be able to support himself through employment. In respect of his family members his evidence had been that the family with whom he was in contact were his children and the evidence did not show that they were in a position to send remittances abroad. It was not to put to him that he was still in contact with his brother or that his brother would be able to remit funds to him, and that argument was not relied upon in submissions. The judge had done sufficient to provide reasoning for the cases it was argued before her.

Discussion

10. The structure of the judge's decision was not assisted by the muddle presented by the reasons for refusal letter, which is not only incorrect in terms of the import of the appellant's conviction, the lack of a term of imprisonment, treats the appellant as a resident of Mogadishu and fails to address the issue of persecution in the appellant's home area. So far as Mogadishu is concerned the only relevant question is the substance of the relocation issue, involving both the safety of return and the question of whether or not it would be unduly harsh to expect the appellant to go there. The reality is that the judge has provided adequate reasons in respect of identifying that the appellant would be at risk in his home area, and that it would be unduly harsh in the context of international protection principles to return him to Mogadishu. The conclusion that the appellant would be likely to find himself in an IDP camp is in accordance with the approach of the country guidance case, as are the conclusions that he would be at risk of persecution therein, and be at risk of Article 3 treatment.

11. The matters that the respondent relies on in her grounds, whilst clearly being a disagreement with the judge's conclusions, have been considered by the judge at some length when, at paragraphs 23,24,26,28,29 and 31, she makes her findings as to the appellant never having lived in Mogadishu, his minority clan affiliation, and in the context of the arguments as they were put on the day, that he would be unable to access funds, family or social support. Whilst the appellant may have been cross-examined on having no family support in light of the fact that he had a brother who had helped him 4 years previously, as well as his evidence of his children's economic position, that did not happen. The HOPO on the day had the benefit of seeing and hearing the appellant give his evidence. The judge was entitled to deal with the case on the basis upon which it was argued.

Decision.

12. The decision of the First-tier Tribunal reveals no error of law for the reasons set out above. The decision to allow the appeal stands.

Signed E. Davidge Date 24 October 2017

Deputy Upper Tribunal Judge Davidge