



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00073/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24 May 2018

Decision & Reasons Promulgated  
On 09 July 2018

Before

**THE HONOURABLE LORD UIST  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE PERKINS**

Between

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**S – B---  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant:

Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent:

Mr F Habtemariam, Legal Representative with Immigration  
Advice Service

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Respondent. Breach of this order can be punished as a contempt of court. We make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.

2. The respondent, hereinafter “the claimant”, is a national of Somalia who was born on [ ] 1996. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Kinnell dated 11 January 2018 allowing the claimant’s appeal against the decision by the Secretary of State dated 19 May 2017 to make a deportation order in respect of the claimant under section 32(5) of the UK Borders Act 2007 and to refuse his human rights claim. The claimant’s protection status was revoked.
3. The claimant, who was then aged 5, arrived in the United Kingdom on 11 July 2005 with his mother and four siblings. An asylum claim was made but exceptional leave to remain was granted. A later application was refused but a subsequent appeal was allowed on asylum grounds. His mother and her dependants were granted asylum and leave to remain until 17 October 2011. Indefinite leave to remain was granted on 24 November 2010.
4. On 25 January 2013 the claimant submitted an application to be registered as a British citizen. On 28 August 2013 the application was refused due to his criminal record. On 27 March 2013 he had been convicted of unlawful possession of cannabis or cannabis resin for which he received a 6 months referral order and was ordered to pay costs of £35 and a victim surcharge of £15. Subsequently, on 13 December 2013, he was convicted of robbery at Isleworth Crown Court and sentenced to Youth Rehabilitation with ISSP 6 months intensive programme, a supervision requirement for 12 months, a curfew requirement for 3 months with electronic tagging, an extended activity for 90 days and ordered to pay a victim surcharge of £15. Thereafter, on 26 February 2015 at Isleworth Crown Court, he was convicted of possession of heroin and cocaine with intent to supply and on 20 March 2015 sentenced to 27 months detention in a Young Offenders’ Institution and ordered to pay a victim surcharge of £120. The drugs were worth more than £3,000. He had been seen by police officers engaging in a deal and then going into a flat which was being used to package the drugs and collect money.
5. On 21 January 2016 the claimant was served with a deportation notice which invited him to submit a rebuttal that he had committed a particularly serious offence and that he constituted a danger to the UK community (section 72 of the Nationality, Immigration and Asylum Act 2002). A response from his legal representatives dated 1 March 2016 stated that it would be unlawful to cease his refugee status as it would be incompatible with articles 2, 3 and 8 of the European Convention on Human Rights (ECHR). On 20 September 2016 he was served with a notice to cease his refugee status. He did not respond to it. On 5 October 2016 the United Nations High Commission for Refugees (UNHCR) was sent a notice of intention to cease his refugee status in the UK, to which it responded on 30 March 2017. On 11 April 2017 his refugee status was ceased and the UNHCR was notified of the decision. On 24 May 2017 the Secretary of State concluded that the claimant could be returned to Mogadishu without any risk of a breach of his Article 3 rights and refused his human rights claim.
6. The claimant thereafter appealed to the First-tier Tribunal raising Articles 3 and 8 of the ECHR and referring to a risk of persecution or destitution if deported to Somalia. The First-tier Tribunal Judge (F-tTJ) found on the evidence that the requirements of Exception 1 of Section 117C of the Nationality, Immigration and Asylum Act 2002 and paragraph 399A of the Immigration Rules were fulfilled and allowed the claimant’s appeal on Article 8 grounds “notwithstanding what would otherwise be the strong public interest in seeing him deported”. On 21 January 2018 Judge Farrelly of the F-tT found that the grounds of appeal

raised by the Secretary of State demonstrated an arguable error of law in relation to the judge's conclusion about significant obstacles to integration and granted leave to appeal to the Secretary of State.

7. At the hearing of the appeal before us against the decision of the F-tTJ Mr Jarvis for the Secretary of State referred to paragraph 50 of the F-tTJ's determination in which he dealt with Article 3. The F-tTJ there stated that very little evidence had been adduced to show that the claimant would be at risk if returned to Mogadishu, such evidence as there was consisting simply of assertions by the claimant and his family, and no country evidence having been adduced. He commented that in the refusal letter the Secretary of State had referred to the country guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) where it was found that in general an ordinary person returning to Mogadishu after a period of absence would face no real risk of persecution or harm such as to require protection under Article 3 and that he would not be at risk on having lived in a European location for a period of time. The F-tTJ then went on to consider the three limbs of paragraph 399A of the Immigration Rules. He was satisfied that the first two limbs were met because the claimant had lived in the UK since the age of five and was socially and culturally integrated in the UK.
8. The F-tTJ then went on to deal with the third limb of paragraph 399A in paragraph 56 of his determination, where he stated as follows:

“The third point is whether there would be very significant obstacles to the appellant's integration into the country to which he the appellant is proposed to be deported, i.e. Somalia. The appellant may have relatives living on the border of Somaliland and Ethiopia, but there is no evidence to suggest that he has any link or association with Mogadishu, he has never lived there and there is no evidence that he has any family member living there. Though the appellant is capable of earning a living he would be looking for employment in a country that is completely alien to him and he would have to find some accommodation. There is no evidence about what sort of accommodation might be available to him. It seems to me that, in the aggregate, a lack of employment or income, a lack of housing, a lack of fluency in the language prevailing, and no history or actual knowledge and experience of the country in question must amount to a very significant obstacle to integration and I find on the evidence in this case that Exception 1 of Section 117C and paragraph 399A of the Immigration Rules is fulfilled.”
9. The judge went on to add at paragraph 50 that the claimant should take heed that in the event of a future offence and a sentence of in excess of four years the public interest in requiring deportation was highly likely to change.
10. The Secretary of State submitted that the F-tTJ's finding at paragraph 56 was irrational and perverse on account of his failure to have regard to his own findings that the claimant had failed to establish that he had no family in Somalia, that he could not work in Mogadishu and that there would be no financial support from other family members and so could work and otherwise support himself on return. The Secretary of State further submitted that the F-tTJ had further compounded this material error by misdirecting himself on the burden of proof at paragraph 56 by observing that there was no evidence of what accommodation might be available to the claimant on return as this was for the claimant to prove. In any event the finding that the claimant had family and financial support and the ability to work

made such an issue immaterial to the question of risk. The claimant had not suggested that there was no accommodation in Mogadishu.

11. The Secretary of State further asked the Tribunal to note the approach taken to the individual appeals in **MOJ** and **SSM** (SSM was an appellant in the decision known as "MOJ"). In dismissing the appeal in the former case the Upper Tribunal had found (a) that MOJ had been in the UK for ten years, having entered when he was 14 years old (paragraph 426); (b) MOJ had family in Somalia (even if not in Mogadishu) and had failed to show that they could not help him financially at the very least (paragraph 439); and (c) MOJ's argument that working as a hairdresser was reserved for weaker clans was unsustainable in light of the changes in the country and in any event he could work in another area of informal employment (paragraph 440).<sup>11</sup> The claimant in this case had the vocational skills of barbering and building and presumably had the ability to read and write in English as he had four GCSEs. In **SSM** the appellant had left Somalia when he was 12 and been out of the country for 17 years (paragraph 476); in addition, being from the diaspora increased his chances of finding low-level employment in Mogadishu on return. The Secretary of State added for completeness that, as explained by the UT in **MOJ** at paragraph 407(g), the concept of family support was wider than just the nuclear family and that clans now provided, potentially, social support mechanisms and assistance with access to livelihoods, performing less of a protection function than previously. There was no reference at all by the F-tTJ to the claimant's clan and the potential for clan support on return, although not materially needed on the F-tTJ's findings about direct family support and the claimant's ability to find work. <sup>12</sup> Mr Habtemariam for the claimant pointed out that there was no reference in the grounds of appeal to a failure by the F-tTJ to assess the significance of clan membership. The F-tTJ had looked at all the facts in the aggregate. It was of no moment that another decision maker might have come to a different conclusion. The claimant had not been born in Somalia and had no links whatsoever with it.<sup>13</sup> Having considered the submissions made, we are satisfied that there was an error of law on the part of the F-tTJ for the reasons set out in the submission of the Secretary of State at paragraph 8 above. It is correct to say that, in considering Article 8, he to an extent disregarded his own findings when he dealt with Article 3. It is also correct to say that he misdirected himself on the issue of the burden of proof at paragraph 56 of his determination. If it was the claimant's case that his living conditions in Somalia were unacceptable then that was something that he had to prove. He failed to do that.
12. The appeal was allowed because the F-tTJ was satisfied that, in the event of his removal, the claimant would face "very significant obstacles to his integration". We have concluded that the facts relied upon to support this conclusion, which are summarised at paragraph 7 above, cannot in law support that conclusion.
13. We indicated at the hearing that all options were open to us.
14. Although we disagree with the F-tTJ's conclusion that there were "very significant obstacles to his integration" there is no reason to doubt the findings that supported that conclusion. We will rely on those findings and remake the decision on the material that is before us.
15. We have considered the papers before us and have found no reason to fear that the F-tTJ's findings of fact are ill-considered or deficient in any way.

16. The only arguably additional fact that we can identify in the papers that has not been considered by the F-tTJ concerns the claimant's clan.
17. He has identified himself as a member of the Bandabow sub-clan of the Reer Hamar Clan. We have no reason to doubt this and accept what he says. This does not help the claimant. We accept that the place of the clan system in Somali society has changed and, far from being a reason to fear persecution, membership of even a "minority" clan will be a source of support. We rely particularly on paragraph 407(g) of MOJ where the Tribunal said:
- "g. The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assistance 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."
18. Mr Jarvis referred us to the decision of this Tribunal in AAW (expert evidence - weight) Somalia [2015] UKUT 673 (IAC). He did not rely on it for a proposition of law but for a convenient summary of background evidence which we adopt. At paragraphs 54 and 55 the Tribunal said:
54. The appellant now has no family remaining in Mogadishu to look to for assistance in re-establishing himself. He is a member of a minority clan and it is submitted on the appellant's behalf, based upon what was said in *MOJ & Ors* concerning the ability of a minority clan to provide assistance, that he will not be able to look to his clan either for support. On the other hand, Mr Jarvis submits that the appellant's clan is such that the appellant would have resort to: "... a well established and pre-dominant Mogadishu community who have, in general, rebuilt their businesses in the aftermath of the initial period of the civil war." He points out that in April 2014 a member of the Benadari was appointed as District Commissioner for Hamar Weyne district of Mogadishu. He submits this illustrates that the Benadari have established themselves as "significant players" both economically and politically and points to country evidence that there has been a significant return to Mogadishu of Benadiri people after the departure from the city of Al Shabaab. He draws attention to the following extract from the 2012 Danish report: "A local NGO in Mogadishu stated that many members of the Benadari community have returned to Hamar Weyne. Today there are many Benadari people living in Mogadishu and they are successful business people and some also are engaged or employed in the administration.... Today they are living well in Mogadishu and many have reopened shops or undertaken other business activities..."
55. This evidence indicates that, even if some minority clans have little to offer to those of its members looking for assistance, the Benadari, of which the appellant's clan is a sub-clan, is not in such a position. On the contrary, the economic enterprise of this clan is such that it has created businesses that will inevitably generate employment opportunities and it is not easy to see why this would not be to the appellant's advantage.
19. We are satisfied that, notwithstanding the uncertainty about the claimant's family connections with Mogadishu he can be expected to find and retain work and establish himself there.
20. We particularly remind ourselves of paragraph 408 of MOJ which states:
- 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.

21. The F-tTJ found that the claimant has transferable skills, notably as a barber. He does have some facility in Somali. The F-tTJ rejected the evidence that the claimant's family were not able to assist him financially.
22. Even when his clan membership is considered we find that there are no "very significant obstacles" in the way of his integration into life in Mogadishu.
23. Further there are no other facts identified in the papers that outweigh the strong public interest in his removal.
24. We cannot give much weight to the evidence that the claimant has learned from his experiences and has resolved to live industriously and honestly. Except that failure to exhibit such signs of reform exacerbate an already difficult case they are not important points in a balancing exercise involving deportation. The public interest in deportation does not depend on future misconduct but is an expression of society's extreme disapproval of the bad behaviour that the claimant has exhibited.
25. It follows that the appeal against the decision of the Secretary of State must be dismissed.

**Notice of Decision**

26. The First-tier Tribunal erred in law. We set aside its decision and substitute a decision dismissing the claimant's appeal against the decision of the Secretary of State.

Signed

Lord Uist sitting as a Judge of the Upper  
Tribunal

Dated: 5 July 2018