



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00015/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
on 23 August 2019

Decision & Reasons Promulgated  
on 03 September 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AAM

(anonymity direction made)

Respondent

**Representation:**

For the Appellant: Ms S Jones Senior Home Office Presenting Officer.

For the Respondent: Dr Chelvan instructed by Duncan Lewis & Co Solicitors.

**ERROR OF LAW FINDING AND REASONS**

1. The Secretary of State appeals with permission a decision of First-Tier Tribunal Judge Gibbs promulgated on 10 June 2019 in which the Judge allowed the appellant's appeal, finding his deportation from the United Kingdom will breach article 3 ECHR.

## **Background**

2. AAM is a citizen of Somali born on 24 February 1996 who is the subject of an order for his deportation from the United Kingdom. The Judge notes a number of criminal convictions at [7] of the decision under challenge which include on 28 February 2012 a conviction for wounding with intent to cause grievous bodily harm for which AAM was sentenced to 4 ½ years in a Young Offenders Institute, 7 July 2015 when AAM was convicted of possession of a firearm and possession of a controlled drug (Class B) cannabis/cannabis resin for which he was sentenced to 5 years imprisonment, and on 14 July 2017 for which AAM was convicted of assaulting a prison officer for which he was sentenced to 6 weeks imprisonment.
3. The Judge notes AAM did not seek to rebut the section 72 Nationality, Immigration and Asylum Act 2002 certificate which was issued as the Secretary of State.
4. The Judge had before her a report from Karen O'Reilly and was persuaded by Mr Chelvan's submissions that although the country guidance case of Somalia does not specifically address the risk to those who are apostates on return to Somalia there was a finding which indicated that there was a real risk at [226]. At [21] the Judge writes:

“21. I am satisfied that this appellant is an apostate and that he will be readily identified as such; he will not attend the mosque, dress appropriately and will not observe Muslim festivals. Further, if asked about his religion the appellant should not be required to hide this (HJ (Iran) v Secretary of State the Home Department (Rev 1) [2010] UKSC 31 (07 July 2010)) and I am satisfied that he would therefore be identified as a non-practising Muslim which will place him at risk of significant harm.”

5. The Secretary of State sought permission to appeal which was granted by a Designated Judge of the First-Tier Tribunal in the following terms:
  - “1. The respondent SSHD applies in time for permission to appeal to the Upper Tribunal against the decision and reasons statement of FtT Judge L K Gibbs that was issued on 10 June 2019. Judge Gibbs decided the appellant was a refugee from Somalia.
  2. The grounds challenge the judicial findings that: (i) the appellant would be identified as an apostate if returned to Somalia, and (ii) as a perceived apostate he had a well-founded fear of persecution.
  3. The first ground is not made out because it amounts to mere disagreement with the judicial findings made. At [17] and [18] Judge Gibbs gives sufficient reasons for finding the appellant to be a non-practising Muslim. It is common practice in the FtT for judges to treat the lower standard of proof as being discharged where the respondent's refusal letter identifies that a person may be at risk for a particular reason. If this was not intended by the respondent in this case, then it was for the Presenting Officer to clarify what was and what was not conceded. It is evident from the refusal letter and the way the appeal was defended by the Presenting Officer that the focus of the appeal was

whether the appellant's fear was objectively well-founded even though it was subjectively well-founded.

4. The second ground is made out. The second headnote under "Country Guidance" in MOJ states the following [my emphasis]:
  - (ii) generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official Administration or any NGO or international organisation) on return to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabab or by Al Shabab as an apostate or someone whose Islamic integrity has been compromised by living in a western country.
5. It is arguable that Judge Gibbs does not give adequate reasons for departing from this guidance. It is arguable that Judge Gibbs has failed to give reasons for relying on the expert report of Ms K O'Reilly from the country guideline case."

### Error of law

6. As indicated by Dr Chelvan, the difficulty with the grounds relied upon by the Secretary of State is that they refer to and rely upon the country guidance case of *MOJ and others (return to Mogadishu) Somalia CG [2014] UKUT 442* which sets out an assessment of risk on return to Mogadishu. The problem arises as the Secretary of State in the decision letter specifically states that it is not her intention to return the appellant to Mogadishu.
7. The country guidance case regarding parts of Somalia outside Mogadishu still remains *AMM (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)*. The point of return is to the north-east of the country to Puntland. The expert report considered by the Judge in support of the appellant's claim to face a real risk was evidence not specifically challenged by the respondent before the Judge.
8. In light of the fundamental error regarding location and in the light of the fact it has not been made out the Judge's findings fall outside the range of those reasonably available to the Judge on the evidence, as accepted by Ms Jones, the appeal must fail.

### Decision

9. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

10. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 23 August 2019