



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00089/2018

**THE IMMIGRATION ACTS**

Heard at Cardiff Civil Justice Centre  
On 23 May 2019

Decision & Reasons Promulgated  
On 13 June 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H K H

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer

For the Respondent: Mr G Hodgetts, instructed by South West Law

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (H K H). A failure to comply with this direction could lead to Contempt of Court proceedings.
2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

## **Background**

3. The appellant is a citizen of Somalia who was born on 17 October 1999. He entered the United Kingdom on 10 February 2008 with indefinite leave to enter on the basis of family reunion with his mother who had been granted refugee status in the UK as a member of a minority clan from Somalia. His mother has since become a British citizen by naturalisation on 21 July 2016.
4. Between 12 September 2014 and 20 July 2017, the appellant was convicted of a number of offences. Most recently, on 20 July 2017 he was convicted of possessing an offensive weapon in a public place and possessing an imitation firearm in a public place and was sentenced to concurrent detention and training orders for a total of twelve months.
5. As a result of that conviction, the Secretary of State decided that the appellant should be subject to deportation. In order to do that, the Secretary of State informed the appellant on 9 January 2018 that he intended to revoke his refugee status on the basis that there had been a fundamental and non-temporary change in Somalia such that the circumstance in connection with which had been recognised as a refugee had ceased to exist. On 1 May 2018, the Secretary of State made a decision to revoke the appellant's refugee status and to refuse his human rights claim under Arts 3 and 8 of the ECHR.

## **The Appeal to the First-tier Tribunal**

6. The appellant's appeal to the First-tier Tribunal, both against the decision to revoke his refugee status and to refuse his human rights claim, under s.82(1)(b) and (c) of the Nationality, Immigration and Asylum Act 2002 (the "NIA Act 2002").
7. In a determination sent on 19 September 2018, Judge Trevaskis allowed the appellant's appeal on the basis that he was not satisfied that the respondent had shown that the conditions for cessation had been established. The judge made no decision in respect of the appellant's human rights claims.

## **The Appeal to the Upper Tribunal**

8. The Secretary of State sought permission to appeal to the Upper Tribunal.
9. Permission was initially refused by the First-tier Tribunal but on 24 January 2019, the Upper Tribunal (UTJ Hanson) granted the appellant permission to appeal.
10. On 8 May 2019, the appellant filed a rule 24 response seeking to uphold the judge's decision.

## **The Law**

11. The relevant cessation provision is derived from the Refugee Convention in Art 1C(5). The relevant provisions are also now found in Art 11 of the Qualification Directive (Council Directive 2004/83/EC) and para 339A(v) of the Immigration Rules (HC 395 as amended). It suffices for the purposes of these proceedings to set out Art 11 of the Qualification Directive which in the following terms:

"Article 11

### Cessation

1. A third country national or a stateless person shall cease to be a refugee, if he or she:
    - ...
    - (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality.
  2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded."
12. That provision was considered by the CJEU in the case of Abdulla and Others (joined Cases C-175/08, C-176/08, C-178/08, C-179/08) [2010] ECR I-1493. Abdulla was itself considered by the Court of Appeal in SSHD v MA (Somalia) [2018] EWCA Civ 994.
  13. In MA (Somalia) the Court of Appeal identified that the issue that has to be established by the Secretary of State in order for the cessation provisions to apply is that the circumstances which form the basis for granting protection no longer existed and that there was no other reason for the individual to have a well-founded fear of persecution. Secondly, the change of circumstances must be significant and non-temporary. Thirdly, humanitarian standards were not the test for a cessation decision. The fact that an individual's return might breach his or her human rights (for example under Arts 3 or 8 of the ECHR) did not prevent a cessation decision since that was focused exclusively upon whether the appellant's return would breach the Refugee Convention. Whether an individual's return would breach his or her human rights was an independent matter to be considered apart from, and outside of, the issue of cessation and revocation of refugee status.

### The Judge's Reasoning

14. In his determination, Judge Trevaskis dealt with the issue of revocation of the appellant's refugee status at paras 95–101. At para 95, the judge recognised that the basis upon which the appellant had been granted refugee status was because of his and his mother's membership of a minority clan. The judge said this:
  - "95. The decision to seek to revoke the refugee status of the appellant has been taken by the respondent in reliance upon paragraph 339A(v), namely that the appellant can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality. He was granted refugee status as a member of the family of his mother, who was granted refugee status because of her membership of a minority clan, of which her son is therefore also a member."

15. Then, at para 97 he considered the circumstances which the appellant would face if returned to Mogadishu by reference to the factors set out by the Upper Tribunal in the country guidance decision of MOJ and Others (Return to Mogadishu) CG [2014] UKUT 442 at [407(viii)]. The judge said this:

“97. Consideration of revocation of refugee status can only have regard to conditions prevailing in the country of return, and whether the respondent has discharged her burden of proof of showing that there has been a fundamental and durable change in the circumstances which will be faced by the appellant on return, which will mean that he will no longer have a well-founded fear of persecution. The starting point for consideration of risk on return is the country guidance decision of MOJ. Having regard to these factors, my findings are as follows:

**circumstances in Mogadishu before departure** – the appellant lived 30 km from Mogadishu with a woman he believed to be his maternal grandmother, but who his mother says was his maternal great aunt, without experiencing any problems until he left in 2008;

**length of absence from Mogadishu** – the appellant has been away for approximately 10 years;

**family or clan associations to call upon in Mogadishu** – the appellant claims to have very little knowledge of family or clan connections in Mogadishu, his mother says that there are no family or clan members who will be able to support him; in any event, it is accepted that the appellant is a member of a minority clan, which, according to country guidance, may have little to offer.

**access to financial resources and prospects of securing a livelihood** – according to the evidence which I have accepted, the appellant himself has no access to money, other than from his mother, he has no skills, no education, no work experience and little apparent self-discipline, which mean that he is likely to be at a significant disadvantage in finding employment, even in the economic boom which is said to be taking place in Mogadishu, his access to employment is not likely to be enhanced by his criminal convictions; given the lack of family support or clan support likely to be available in Mogadishu, I find that he will have no access to financial resources there;

**availability of remittances from abroad** – the appellant’s mother is in receipt of benefits; she has stated that she has a half-sister in London, whose husband works; the appellant’s cousin’s husband in Bristol is a taxi driver and supports his wife and three children, and also has no spare money to support the appellant in Somalia;

**means of support in the United Kingdom** – the appellant arrived as a child, and has been dependent for his lawful income upon his mother; it appears that he has been able to finance his drug habit of £70 a week, and it is likely that he has done this by criminal activity; he is now 18 years old, and has done nothing to acquire skills which will enable him to find employment, when he is permitted to undertake it; his claim to have enrolled in a vocational course of education has not been substantiated by documentation, and I attach no weight to his oral evidence about that;

**funding of his journey from Somalia and financial support on return** - I find is a fact that the appellant came to the United Kingdom under the family reunion policy; his entry clearance was granted without payment of the fee, and his airfare was paid, presumably by a family member; however, that does not alter my view that there is likely to be no funding available from the same source, or any other source, on his return."

16. Then at paras 98-100 the judge set out his reasons for finding at para 101 that he was not satisfied that the respondent had shown that the conditions of cessation had been established. The judge said this:

"98. I have considered the submission by the respondent that there is evidence of a change of circumstances which will justify me in departing from the country guidance. These submissions are largely based upon the suggestion that the appellant will be able to receive support from family or clan members, whose existence he and his mother have sought to conceal. Had these circumstances existed when the appellant's mother claimed asylum, she would presumably have been refused. Subsequent developments in Somalia have meant that the situation of minority clans has become worse, rather than better. However, in accordance with the respondent's country policy, I recognise that the risk faced by the appellant on return will not be by reason of his ethnicity or social group alone; I have additionally found that there is no support networks there for him, and largely due to his own fault, he will have no real prospect of securing access to a livelihood, and will therefore face difficult living conditions, to say the least. I am satisfied to the required standard that he will have no choice but to live in an IDP camp, where he will be at risk of persecution on the basis of his social group or ethnic origin, or any of the other reasons which I have identified above. I have concluded that there are no circumstances which justify me in departing from country guidance; the evidence which post dates the promulgation of that decision, in my view, reinforces that guidance, rather than undermining it.

99. The respondent is required to prove to the required standard; not only that the appellant does not face a well-founded fear of persecution for the convention reason for which refugee status was originally granted, but also that there are no other reasons for the appellant to fear protection. I find no evidence that the respondent has discharged that burden of proof to the required standard.

100. The appellant will be returned to Mogadishu. The circumstances which he will face on arrival have been fully set out by UNHCR in their response to the respondent's proposal for cessation of refugee status. The information, much of which is repeated in the respondent's country information, shows that Somalia in general, and Mogadishu in particular, present an unattractive prospect for a returnee such as this appellant, whose characteristics have been identified in my findings; he is in an 18 year old minor criminal member of a minority clan with no family clan with no family or clan support in Somalia, no skills or education and little prospect of applying himself sufficiently to obtain work in order to render himself economically self-sufficient; there is a high probability that he would soon become destitute, whether or not he was able to find shelter in an IDP

camp; he will additionally face a significant risk of being targeted as someone who has returned after having spent a significant period of time in the West, and will be assumed to have acquired wealth, thereby making himself ironically a target for criminal gangs.”

### **The Submissions**

17. On behalf of the Secretary of State, Mr Howells submitted that the judge had erred in-law in finding that the conditions for cessation were not established because he had taken into account humanitarian factors in concluding that the appellant was still at risk. This, Mr Howells submitted, was contrary to the approach accepted by the Court of Appeal in MA (Somalia) at [56] and [61]. That, Mr Howells submitted, was exemplified by the judge’s reliance on the factors set out in MOJ and Others. Secondly, Mr Howells submitted that to the extent that the judge had found that the appellant would be at risk of persecution for a Convention reason, namely as part of a social group or because of his ethnic origin if he were to live in an IDP camp, the judge had failed properly to identify the evidence and give reasons why such a risk existed. Mr Howells acknowledged that in the relevant Country Policy and Information Note, *Somalia: Majority clans and minority groups in south and central Somalia* (June 2017) the Secretary of State said at para 3.1.4 that:
 

“Minority group members who have become IDPs in any part of south and central Somalia and who have no choice but to live in an IDP camp may be at risk of persecution on the basis of their social group or ethnic origin. Conditions in camps, however, vary and are better and established, settled sites – some of which are dominated by minority groups, each case will need to be considered on its facts.”
18. Mr Howells submitted that the guidance required the judge to look at all the circumstances of any particular camp to which the appellant might be driven to live as an IDP and he had not done so.
19. Thirdly, Mr Howells in his reply submitted that the judge in para 100 of his determination was wrong to identify that there was a “significant risk” of the appellant being targeted as someone who had returned from the west and would be assumed to have acquired a wealth such that he would become a target for criminal gangs. Mr Howells submitted that that was contrary to the country guidance case of MOJ and Others.
20. Fourthly, Mr Howells submitted that the judge had failed, in any event, to explain why the appellant would become destitute and, therefore, have to live in an IDP camp, in particular following MOJ and Others. He had failed to explain why the appellant would not be able to take advantage of a ‘economic boom’ in Mogadishu.
21. Mr Hodgetts, who represented the appellant relied upon his detailed rule 24 response which he developed in his oral submissions.
22. First, Mr Hodgetts submitted that the judge was well-aware of the decision in MA (Somalia) which he summarised at para 74 of his decision. Secondly, he submitted that the judge had correctly reasoned that, taking into account the factors set out in MOJ and Others, the appellant’s circumstances were such that he would end up in an

IDP camp and, on the basis of the respondent's own *CPIN* report which the judge cited at para 76 of his determination, the judge was entitled to find that the appellant was at risk in an IDP camp as a result of his minority clan status.

23. Thirdly, Mr Hodgetts submitted that the Secretary of State had not challenged the judge's finding that the appellant would be forced to live in an IDP camp and therefore, in any event, his claim should succeed under Art 3.
24. Mr Hodgetts reminded me that the burden of proof was upon the Secretary of State to establish the conditions for cessation to apply and, given the Secretary of State's own guidance, the judge had been entitled to find that the conditions had not changed such that the appellant no longer had a well-founded fear of persecution.

### Discussion

25. At para 98 of his decision, the judge recognised that the risk faced by the appellant would "not be by reason of his ethnicity or social group alone". To the extent that the judge meant by this, as had once been the case, a person who established that they were from a minority clan was at real risk of persecution from majority clans in Somalia, that is no longer the case. That was recognised in the country guidance decision of MOJ and Others at [400(g)] where the Upper Tribunal said this:

"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."

26. At para 98, the judge having recognised this went on to find, having considered the factors set out in MOJ and Others at para 97 of his determination, that the appellant had "no real prospect of securing access to a livelihood" and that he would as a result "face difficult living conditions" and would have no choice "but to live in an IDP camp". The judge then went on to find that: "He will be at risk of persecution on the basis of his social group or ethnic origin, or any of the other reasons which I have identified above."
27. With respect to the judge, this reasoning is somewhat confused. Was the risk to the appellant because of his minority clan status within an IDP camp or was it because, taken together with that risk, or alone, one of the "other reasons" he had identified put him at risk. If it were the former, the judge was, no doubt, placing reliance upon the Secretary of State's policy in the *CPIN* at, in particular, para 3.14. That, however, did not state that a minority clan member was inevitably at risk in an IDP camp because of their "social group or ethnic origin". That policy statement, and it is of course not evidence in itself, was that each case would need to be considered on its own facts because conditions in the camps varied. In para 98, the judge did not grapple with any evidence that would establish that this appellant would have no choice but to live in an IDP camp in which the circumstances were such that he would be at risk because of his "social group or ethnic origin". There is simply no consideration of the circumstances in any particular camp to which the appellant would have no choice but to live in.

28. To the extent that the judge relies upon “other reasons” that he has identified, those are entirely humanitarian factors. They are that the appellant would have no means of support, no financial resources and no family or clan connections in Mogadishu such that he would be unable to secure access to a livelihood etc. Those are the very factors which the Court of Appeal in MA (Somalia) concluded were not part of the test for a cessation decision. At [56], Arden LJ said:

“... humanitarian standards are not the test for a cessation decision. It matters not whether the FTT had Article 3 of the Convention in mind or whether it simply took the view that a refugee should not be returned unless the country of origin now protected human rights in general. The FTT went much further than the QD or the Refugee Convention.”

29. Further, at para 100 of his decision, the judge further conflated the “humanitarian considerations” with the risk factors relevant to a claim under the Refugee Convention. Having identified the circumstance facing the appellant on return to Somalia the judge said: “there is a high probability that he would soon become destitute, whether or not he was able to find shelter in an IDP camp; ...”. Then, turning to what, on the face of it, looks like a relevant risk factor for international protection the judge said this:

“He will additionally face a significant risk of being targeted as someone who has returned after having spent a significant period of time in the West, and will be assumed to have acquired wealth, thereby making himself, ironically, a target for criminal gangs.”

30. The first reason is not a relevant one in determining whether the requirements for cessation have been established. The second reason may be but, as Mr Howells submitted in his reply, that risk flies on the face of the Upper Tribunal’s conclusion in MOJ and Others at [407(a)] when referring to an ordinary citizen returning to Mogadishu that:

“He will not be at real risk simply on account of having lived in a European location for a period of time being viewed with suspicion either by the authorities or a possible supporter of Al-Shabaab or by Al-Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.”

31. Both reasons, therefore, cannot found the judge’s conclusion that the circumstances on return to Mogadishu would leave the appellant at real risk of persecution for a Convention reason.

32. I do not accept Mr Hodgetts’ submission that the Secretary of State is in difficulty in showing there has been a change of circumstances when the *CPIN* recognises that there may be a risk in an IDP camp based upon clan origins. First, that is a policy statement and not in itself evidence. Secondly, in any event, the fact that there may be a risk in some camps to minority clan members did not entitle the judge to make the positive finding that this appellant would be at risk in an IDP camp without identifying and grappling with the evidence and tying it to the appellant’s potential IDP camp destination near Mogadishu. The fact of the matter is that the refugee status of the appellant and his mother was not based upon the risk to him as a



minority clan member in an IDP camp but rather, at large, in Mogadishu (or Afgoye) from which he comes, (some 30 kilometres away from Mogadishu). Those circumstances have, as MOJ and Others recognises, changed and were a change of circumstance of a “significant and non-temporary nature”. To the extent that the judge was concerned with identifying a real risk to the appellant as a minority clan member on return to Somalia now, he was addressing a new risk to the appellant, albeit one that was still based upon his clan membership. But, the circumstances of any such risk was new and different from that upon which he and his mother had been granted refugee status. It is simply not possible to discern on the basis of what evidence the judge reached his view concerning any risk to the appellant in an IDP based upon his minority clan membership.

33. For these reasons, therefore, I am satisfied that the judge’s conclusion that the Secretary of State had not established that the conditions for cessation have been established was legally flawed and I set it aside.
34. Mr Hodgetts invited me to conclude that the appellant should, in any event, succeed under Art 3. That, of course, would not be relevant to the decision to revoke the appellant’s refugee status. It is an independent and freestanding issue as the Court of Appeal recognised in MA (Somalia). There are two reasons why I do not accept Mr Hodgetts’ submission. First, the judge has made no finding in relation to Art 3 other than he concluded that the appellant would be forced to live in an IDP camp. Whether that would breach Art 3 of the ECHR, assuming that finding stands, required consideration of what was said by the Court of Appeal in MA (Somalia) in respect of the Court of Appeal’s earlier decision in Said v SSHD [2016] Imm AR 1084, especially at [63]–[64] as to the circumstances in which a breach of Art 3 may arise from an absence of “basic living standards” in an individual’s home country.
35. Finally, Mr Hodgetts invited me, if the appeal was to be remitted or the decision remade in the Upper Tribunal, to preserve the judge’s finding in para 98 based upon his consideration of the factors in MOJ and Others at para 97 of his decision that the appellant would have no choice but to live in an IDP camp. Mr Hodgetts submitted that the Secretary of State had not challenged that finding. I do not accept that submission. It is clear in para 13 of the grounds that the Secretary of State contended that the judge’s finding failed to take into account and explain why the appellant would not have access to the “economic boom” in Mogadishu which the UT in MOJ and Others considered to be a relevant factor in determining the appellant’s circumstances on return (see [407(h)] of MOJ and Others). That issue is directly relevant as to whether or not, as the judge found in para 98, the appellant would have no choice but to live in an IDP camp.
36. Mr Howells, relying upon the grounds, placed weight upon what was said by the Upper Tribunal in AAW [2015] UKUT 0673 (IAC) at [59] that:
 

“All of this indicates that the appellant would be a person who, in seeking low-skilled work in Mogadishu would have advantages over those without anything to show a prospective employer, particularly given his construction qualifications. The reasons offered as to why the appellant would have no prospect of securing work on return do not stand up to scrutiny.”

37. Mr Hodgetts submitted that AAW was not a country guidance case and the judge was not referred to it and required to take it into account. He gave, Mr Hodgetts submitted, adequate reasons and reached a rational conclusion in para 97 that, given the appellant's lack of qualifications and work experience, he was, even in the economic boom, unlikely to obtain employment. Mr Howells accepted that he no longer relied upon the financial support that the appellant might obtain from the Facilitated Returns Scheme.
38. I have set out above the judge's assessment of why, in his view, the appellant would not be able to take advantage of the "economic boom" given his lack of skills, education, work experience and self-discipline. That, at least, differentiates this appellant from the appellant in AAW who had construction qualifications.
39. In my judgment, there is no basis made out in the grounds for setting aside the judge's findings in para 97 and finding in 98, based upon those findings, that the appellant will have no choice but to live in an IDP camp on return to Mogadishu. Subject, therefore, to compelling evidence requiring a judge when remaking the decision to revisit these findings, in remaking the decision in respect of the revocation of the appellant's refugee status and whether his return to Somalia would breach Arts 3 and 8 of the ECHR, the judge's findings in para 97 and the finding in para 98 that the appellant would have no choice but to live in an IDP camp shall stand.

### Decision

40. For the above reasons, the decision of the First-tier Tribunal to allow the appellant's appeal against the revocation of his refugee status involved a material error of law. That decision cannot stand.
41. The decision in relation to the revocation of the appellant's refugee status and whether he returned to Somalia would breach Arts 3 and/or 8 of the ECHR must be remade. There has, in fact, been no decision made in relation to either Art 3 or Art 8. In the light of that, and the extent of the fact-finding still required, I remit the appeal to the First-tier Tribunal to remake the decision to the extent I have indicated at [39] above; the appeal to be heard by a judge other than Judge Trevaskis.

Signed



A Grubb  
Judge of the Upper Tribunal

11 June 2019