Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00111/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th October 2020	**On 29th October 2020**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

J A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr E. Tufan, Home Office Presenting Officer
For the Respondent: Ms M. Butler, instructed by David Wyld & Co

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Somalia born in 1982. His appeal against the decision to revoke refugee status was allowed by of First-tier Tribunal Judge Welsh on asylum and human rights grounds.

2. The Secretary of State appealed on the following grounds: The judge failed to apply the approach in **MS (Somalia)** [2019] EWCA Civ 1345, promulgated after the hearing. Following country guidance in **MOJ (Somalia) CG** [2014] UKUT, the Appellant was not at risk from Al-Shabaab

or from his membership of a minority clan. The Appellant had failed to show he could not access the economic boom in Mogadishu and the judge failed to give reasons for finding the Appellant's family would not be able to assist him on return. Upper Tribunal Judge Macleman granted permission on 5 March 2020.

3. It is not necessary to repeat the Appellant's immigration history or document what occurred in previous proceedings. The issue before the First-tier Tribunal was whether the circumstances in connection with which the Appellant had been granted refugee status ceased to exist. The relevant question was whether there had been a significant and non-temporary (fundamental and durable) change in circumstances, such that the Appellant's fear of persecution can no longer be regarded as well founded, and there was no other basis upon which the Appellant could be held to be a refugee.

4. In summary, the judge found that there was not a fundamental and durable change in circumstances in the Appellant's home area of Brava. The Respondent's evidence was that the situation was improving. The Appellant was still at risk from Al-Shabaab because of his western appearance. In considering relocation to Mogadishu the Respondent had failed to demonstrate, in relation to this Appellant, that there had been a significant and non-temporary change in circumstances given the proximity to Brava and the risk to the Appellant travelling to and from Mogadishu. In the alternative, the judge found that the possibility of internal relocation was not a viable option following paragraphs 407 and 408 of **MOJ**.

Submissions

5. Mr Tufan relied on the skeleton argument dated 18 May 2020 and submitted the judge had erred in law in applying the reasoning in **AMA (Article 1C(5) – proviso – internal relocation) Somalia** [2019] UKUT 0011(IAC). The judge should have followed the approach in **MS (Somalia),** which disapproved of the findings in **MOJ** in relation to Article 3.

6. In **SB (refugee revocation; IDP camps) Somalia** [2019] UKUT 358 (IAC) the Tribunal held that the Court of Appeal has authoritatively decided that refugee status can be revoked on the basis that the refugee now has the ability to relocate internally within their country of nationality. Mr Tufan relied on paragraph 75 of **SB**, which states:

> "In re-making the decision in relation to Article 3 and (if advanced by the claimant) Article 2 of the ECHR, the fact-finding tribunal will be required to have regard to the relevant country guidance, as described above and as authoritatively interpreted by the Court of Appeal in Said and MS (Somalia), in order to decide whether, if returned to Mogadishu, the claimant would face a real risk of Article

> 2/3 harm, having regard to the claimant's personal circumstances, but bearing in mind that (absent any significant change in the general situation in Mogadishu between now and then) an Article 3 claim advanced in respect of general living conditions (as opposed to risk as a "direct result of violent activities": paragraph 31 of Said) will need to meet the high test in D v United Kingdom and N v United Kingdom."

7. Mr Tufan submitted that following **Said**, the Appellant's Article 3 rights would not be breached even if he went to an IDP camp in Mogadishu. The humanitarian conditions were insufficient to breach Article 3. Mr Tufan referred to paragraphs 74 to 76 of **MS** and submitted the judge had applied the wrong legal test at [31].

8. Ms Butler relied on her written submissions dated 20 May 2020 and 8 October 2020. She submitted that Mr Tufan's argument on Article 3 was not raised in the grounds of appeal. In applying **MOJ**, the judge considered internal relocation and whether it was reasonably available. The judge did not rely on **MOJ** to support a breach of Article 3. The judge looked at the factors relevant to assessing internal relocation. Ms Butler submitted the primary findings at [29] and [30] were not challenged. There was no sufficient durable change and the Appellant would be at risk travelling from Mogadishu to Brava.

9. When considering internal relocation, it was necessary to consider return to the Appellant's home area, Brava, which was close to Mogadishu. It was not possible to say the change in circumstances was sufficiently durable. It was reasonable for the judge to apply **AMA** and **MOJ**. **MS** endorsed **MA**. The judge's primary finding was that there had been no sufficient durable change for Mogadishu to be safe for this Appellant. Any lack of reasoning in [31] and [32] was not material because it was not reasonable for the Appellant to internally relocate. Mr Tufan did not address internal relocation.

10. Mr Tufan submitted it was unreasonable to suggest there had been no durable change. There was a material misdirection in law in the decision. Following country guidance and Court of Appeal authority it was reasonable for the Appellant to internally relocate to Mogadishu. The judge's assessment of cessation of refugee status was inconsistent with **MA** and **MS**. The judge had erred in law in misapplying case law. The decision was perverse and lacked reasons. The judge had failed to make findings on Article 8 and therefore a re-hearing would be necessary.

Conclusions and reasons

11. The judge adopted the approach in **MA** endorsed in **MS** (at paragraph 47): "A cessation decision is a mirror image of a decision determining refugee status." The judge first considered whether the Appellant could return to his home area, Brava. Her conclusion that the Respondent had failed to

show there had been a significant and non-temporary change in circumstances in Brava was open to her on the evidence before her and she gave adequate reasons for coming to that conclusion. There was no challenge to this finding in the grounds of appeal.

12. Having found that the Appellant had a well founded fear of persecution in Brava, which is 209km from Mogadishu, the judge then went on to consider relocation to Mogadishu. The Respondent accepted there was a risk to those who are encountered by Al-Shabaab travelling between Mogadishu and Brava who "*are considered to be looking a bit westernised*." The judge concluded the Appellant was such a person. He left Somalia when he was eight years old and he was now 36 years old. The judge considered the particular circumstances of this Appellant. This approach was not inconsistent with **MS**. The judge considered whether it was appropriate to cease refugee status on the basis of the situation in Mogadishu.

13. The judge agreed with the analysis in **AMA** and concluded the Respondent had been "*unable to explain how, in the context of a country such as Somalia, with a lengthy and fluid history of complex and egregious persecution by various actors in the face of an either non-existent or weak state apparatus, there can be the 'significant and non-temporary' change in circumstances."* This finding was open to the judge on the evidence before her.

14. In **AMA**, the Upper Tribunal found that changes in the refugee's country of origin affecting only part of the country, may in principle, lead to cessation of refugee status provided that the protection available is sufficiently fundamental and durable notwithstanding the absence of this in other parts of the country. The Court of Appeal in **MS** had reservations about the generalised statements made by the Upper Tribunal in **AMA** that it would be difficult, in practice, for a change in circumstances in a place of relocation to be sufficiently fundamental and durable for there to be cessation.

15. In the present case, the decision of **MS** post-dated the hearing before the First-tier Tribunal and the judge was not referred to it prior to promulgating her decision. The decision of **AMA** was not overruled and the judge was entitled to refer to it. She relied on it to support her finding that there had not been a significant and non-temporary change of circumstances for this Appellant in Mogadishu.

16. The judge considered the particular circumstances of this Appellant and whether the possibility of relocation should lead to the cessation of refugee status. This approach was consistent with **MS**. Her conclusion that the Respondent had failed to show there had been a fundamental and durable change in Mogadishu, such that this Appellant would no longer be at risk, was open to the judge on the evidence before her. The judge adopted a restrictive and well balanced approach. There was no error of law in the judge's decision that the Respondent had failed to show that the

circumstances, which caused the Appellant to be a refugee, ceased to exist.

17. The judge went on to consider whether it would be reasonable for the Appellant to relocate to Mogadishu, in the alternative. There was no misapplication of country guidance and no lack of reasoning in the judge's conclusions. Mr Tufan's argument in relation to Article 3 was not raised in the grounds, but it was not material in any event.

18. There was no error of law in the judge's conclusion that the Respondent had failed to show that Mogadishu was a viable internal relocation alternative for the Appellant. On the facts found by the judge, it would be unduly harsh for the Appellant to return to Mogadishu because there was a real possibility that he would have to live in conditions that would fall below acceptable humanitarian standards.

19. There was no error of law in the decision promulgated on 12 August 2019. The appeal is dismissed.

Notice of Decision

Appeal dismissed

J Frances

Signed Date: 23 October 2020
Upper Tribunal Judge Frances