Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00121/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 2 December 2019	**On 4 February 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR SELYM SEYD SALUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nicalaou, instructed by Turpin & Miller Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the re-making of an appeal against a decision of the respondent against a decision to deport him as a foreign national offender and upon refusal of his protection and human rights claim on 8 October 2018. His appeal against the decision was allowed by the First-tier Tribunal in a decision promulgated on 8 February 2019. For the reasons set out in my decision promulgated on 11 September 2019, that decision was set aside. A copy of that decision is set out in the annex.

2. The appellant arrived in the United Kingdom on 3 June 2001 and claimed asylum. That claim was refused and on an appeal he was found not to be credible. Following a further appeal in 2003, he was found to be a Somali national and from the Bajuni tribe. That is not in dispute. As the First-tier Tribunal noted at [3], the other parts of his claim, that his father and sister had been killed, and he had been in Kenya for only a few months after leaving Kismayo, were "quite unreliable".

3. At the hearing on 2 December 2019 I heard evidence from the appellant. He adopted his witness statement adding that his family and friends had no money and were not able to support/assist him on return to Somalia. He said he did not know anybody in Somalia.

4. The appellant said that he spoke Arabic, Swahili and understood some Somali by which he meant a few words like mother and father. He said that he had gone to college in the United Kingdom, had had a cleaning job and had no savings, having been in prison for five years. Asked if he took full responsibility for his crime he said that he accepted what he did.

5. In cross-examination the appellant said that he came to the United Kingdom on his own. He said that he was from Ras Kamboli, which is an island in Somalia. He said that he had worked for about six years in the United Kingdom.

6. Asked if there was anything stopping him from getting work in Somalia, he said he did not know anybody who could help him to get a job and he would have no support. He said that he was able to get a job here through the Jobcentre. He said that he could understand a little Somali and what he had said at the hearing in 2003 that he spoke a little Somali. He said that the family friends were not coming to the hearing as they had children to look after.

7. There was no re-examination.

8. Mr Tufan submitted that, relying on MA (Somalia) and SB(refugee revocation; IDP camps) Somalia [2019] UKUT 358, in particular at [75] the relevant threshold here is that established in N and D. He submitted there was nothing here which reached that threshold, the decision in MOJ making it clear that there was no longer any clan based persecution (see MS at [76]).

9. Mr Tufan submitted that even if the appellant were in an IDP camp it would not reach the Article 3 threshold, asking me to note the appellant had managed to get employment in the United Kingdom, that there was nothing stopping him from getting a job in Mogadishu to where he would be expected to return and this would not be unduly harsh. He submitted further that there would be no risk from Al Shabaab in Kismayo if he were to return there.

10. Ms Nicalaou submitted that the appellant would likely to end up in an IDP camp and that this would on the facts of this case amount to an Article 3 breach. She submitted he had limited prospects for obtaining work as he had no support network, only a limited language skill in Somali and no support.

11. Ms Nicalaou submitted that there was a cumulative suicide risk in line with J v SSHD [2005] EWCA Civ 629. Ms Nicalaou accepted that there was no medical evidence to support this but it indicated an appellant's subjective fear of return.

12. Ms Nicalaou submitted that Article 8 required also to be considered. She said it had only been considered in relation to Article 3 on the previous occasion. She submitted that there were great strides in his rehabilitation and very compelling circumstances.

The Law

13. The grounds of appeal in this case are set out in section 84 of the 2002 Act and are as follows:-

> (1) An appeal under section 82(1)(a) (refusal of protection claim) must be brought on one or more of the following grounds—
>
> (a) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention;
>
> (b) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
>
> (c) that removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).
>
> (2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.
>
> (3) An appeal under section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds—
>
> (a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention;
>
> (b) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection.

14. Section 72 of the 2002 Act provides (so far as is relevant) as follows:-

> Section 72 Serious criminal
>
> (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
>
> (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom is he is –

(a) convicted in the United Kingdom of an offence, and

(b) sentenced to a period of imprisonment of at least two years.

…

(9) Subsection (1) applies where –

(a) a person appeals under Section 82, 83 [**F1**, 83A] or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and

(b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).

(10) The Tribunal or Commission hearing the appeal –

(a) must being substantive deliberation on the appeal by considering the certificate, and

(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the grounds specified in subsection (9)(a).

15. Judge Gribble in the First-tier Tribunal concluded for adequate and sustainable reasons that the Section 72 certificate was made out. I am satisfied that that decision was correct and it is evident from the skeleton argument and Rule 24 response served on 12 August 2019 that the appellant did not challenge that conclusion, submitting at [37] that the First-tier Tribunal had made no error of law in concluding that the appeal should be allowed by reference to Articles 3 and 8, making no challenge to the decision with respect to Section 72, nor is it averred that the appellant meets the requirements of the Refugee Convention.

16. In reaching my decision, I have had regard to the background evidence put before me, and to the submissions there on.

17. The starting point with respect to Country Guidance on conditions is MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)J. Ms Nicolaou did not submit that I should depart from it.

18. It must be borne in mind that the question put to the Tribunal in MOJ was as follows:-

> "Whether the current situation in Mogadishu is such as to entitle nationals of Somalia whose home area is Mogadishu or whose proposed area of relocation is Mogadishu to succeed in their claims for refugee status, humanitarian protection status under Article 15(c) or protection against refoulement under

> Articles 3 or 2 of the ECHR solely on the basis that they are civilians and do not have powerful actors in a position to afford them adequate protection".

It is also noted that one of the appellants in that case, SSM, was seeking to revoke a deportation order passed on him as a result of a sentence of three years and four months' imprisonment. It is also of note that paragraph 408 provides as follows:-

> "408. 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 (emphasis added)".

19. At paragraphs 409 to 423 the Tribunal in MOJ went on to consider the position of IDPs, finding in particular:

> 420. While it is likely that those who do find themselves living in inadequate makeshift accommodation in an IDP camp will be experiencing adverse living conditions such as to engage the protection of Article 3 of the ECHR, we do not see that it gives rise to an enhanced Article 15(c) risk since there is an insufficient nexus with the indiscriminate violence which, in any event, we have found to be not at such a high level that all civilians face a real risk of suffering serious harm. Nor does the evidence support the claim that there is an enhanced risk of forced recruitment to Al Shabaab for those in the IDP camps or that such a person is more likely to be caught up in an Al Shabaab attack of which he or she was not the intended target.
>
> 421. Other than for those with no alternative to living in makeshift accommodation in an IDP camp, the humanitarian position in Mogadishu has continued to improve since the country guidance of AMM was published. The famine is confined to history, although food aid is still required and is still available to many who need it. The "economic boom" has generated more opportunity for employment and, as always, self-employment in the form of small-scale trading is an established Somali route to a livelihood. For many returnees, remittances will be important. The evidence before the Tribunal is that more than £16 million was sent in 2009 from the United Kingdom alone by way of remittances to Somalia. There is no reason to suppose that there has been any diminution on that level of support being sent from abroad.
>
> 422. The fact that we have rejected the view that there is a real risk of persecution or serious harm or ill treatment to civilians or returnees in Mogadishu does not mean that no Somali national can succeed in a refugee or humanitarian protection or Article 3 claim. Each case will fall to be decided on its own facts. As we have observed, there will need to be a careful assessment of all of the circumstances of a particular individual.
>
> 423. Two observations might be made about financial considerations. Financial assistance from the Home Office may be available to voluntary returnees, in the form of a grant of up to £1,500, and may of significant assistance to a returnee. Second, if an individual was able to raise the level of funds necessary to pay for a journey to Europe arranged by an agent, it may be difficult for him to assert that he now has no access to financial resources unless he is able to explain what has changed and why, especially if he has been found not to be credible in the factual account he advanced in his appeal hearing.

20. The Upper Tribunal also said this in respect of Internal Relocation

> 424. The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. Large numbers of Somali citizens have moved to Mogadishu where, as we have seen there is now freedom of movement and no clan based discrimination. Such a person seeking to settle in Mogadishu but who has not previously lived there would be able to do so provided he had either some form of social support network, which might be in the form of membership of a majority clan or having relatives living in the city, or having access to funds such as would be required to establish accommodation and a means of on-going support. That might be in terms of continuing remittances or securing a livelihood, based on employment or self employment.
>
> 425. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

21. In SSHD v Said [2016] EWCA Civ 442 the Court of Appeal noted at [4] that the challenge was to the judge's conclusion that deportation would violate article 3 of the Convention as he would be at risk of finding himself destitute and thus likely to end up in an IDP camp, where the conditions would be very poor.

22. At [18] and [19] Burnett LJ held:

> 18. These cases demonstrate that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty or deprivation on return which are not the responsibility of the receiving country or others in the sense described in para 282 of *Sufi and Elmi*, whether or not the feared deprivation is contributed to by a medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg Court in the *D* and *N cases.*
>
> **The Circumstances of AS judged by the Article 3 Jurisprudence**
>
> 19. In my judgment, the circumstances of AS fall far short of being able to satisfy that approach. The highest at which his case can be put is that his PTSD and depression will make it difficult for him integrate back into life in Somalia and have some impact on his ability to work. There is no suggestion that he is precluded from working and much to support the finding that he will be able to do so. It is also clear that, to the extent that it may be necessary, there is every reason to suppose that he will be provided with financial aid by his large and supportive family in the United Kingdom, quite apart from the prospect of some assistance from his clan. There is no evidence to suggest that he will be unable to receive the relatively commonplace medical treatment he currently enjoys if returned to Mogadishu. It is clear that this combination of features is so far removed from the nature of exceptional and compelling circumstances envisaged in the Strasbourg cases as to make it clear that AS's deportation would not breach article 3 of the Convention.

23. After discussing MOJ, Burnett LJ stated [31]:

31. I entirely accept that some of the observations made in the course of the discussion of IDP camps may be taken to suggest that if a returning Somali national can show that he is likely to end up having to establish himself in an IDP camp, that would be sufficient to engage the protection of article 3. Yet such a stark proposition of cause and effect would be inconsistent with the article 3 jurisprudence of the Strasbourg Court and binding authority of the domestic courts. In my judgment the position is accurately stated in para 422. That draws a proper distinction between humanitarian protection and article 3 and recognises that the individual circumstances of the person concerned must be considered. An appeal to article 3 which suggests that the person concerned would face impoverished conditions of living on removal to Somalia should, as the Strasbourg Court indicated in Sufi and Elmi at para 292, be viewed by reference to the test in the N case. Impoverished conditions which were the direct result of violent activities may be viewed differently as would cases where the risk suggested is of direct violence itself.

24. It is accepted by Ms Nicalaou in her skeleton argument at [25] that meeting the situation in the headnote at [xii] does not mean an individual will face harm contrary to Article 3, each case falling to be decided on its own facts.

25. Whilst Ms Nicalaou makes submissions with regard to the Section 72 certificate, there is no reference to material which was not considered by Judge Gribble. The appellant's offence was without doubt very serious resulting in a sentence to ten years' imprisonment upon a guilty plea. Whilst I note the OASys Report indicating that he presents a low risk of reoffending and that as a result he was not eligible for the Resolve programme and Thinking Skills programme nor had he completed offending behaviour courses because of this low risk. Neither that, nor the fact that he has taken positive attitudes in prison. All of these were clearly taken into account by the judge. Accordingly, even had this been in issue I see no reason to depart from the conclusions of Judge Gribble which I respectfully adopt and endorse.

26. I accept that the appellant would, on current Home Office policy, be sent to Mogadishu. I accept, as did Judge Gribble, that the appellant would have no relatives there and no support network. Given that it is not in doubt that he has been in the United Kingdom for nearly twenty years, that is perhaps inevitable. I accept also that he speaks little Somali and understands little Somali. He does, however, speak English, Swahili and Arabic.

27. I accept the appellant would have some money given to him as part of a relocation package on return to Somalia, I accept also that he is from the Bajuni tribe and is originally from the Kismayo area.

28. I turn next to the guidance as set out in MOJ at (vii) to (xii):

(vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.

(viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist 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.

(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- *circumstances in Mogadishu before departure;*
- *length of absence from Mogadishu;*
- *family or clan associations to call upon in Mogadishu;*
- *access to financial resources;*
- *prospects of securing a livelihood, whether that be employment or self employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*
- *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

(x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

(xi) 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.

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

29. I also have regard to SB:, the headnote of which provides:

(1) In Secretary of State for the Home Department v MS (Somalia) [2019] EWCA Civ 1345, 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 the country of their nationality or former habitual residence. The authoritative status of the Court of Appeal's judgments in MS (Somalia) is not affected by the fact that counsel for MS conceded that internal relocation could in principle lead to cessation of refugee status. There is also nothing in the House of Lords' opinions in R (Hoxha) v Special

Adjudicator and Another [2005] UKHL 19 that compels a contrary conclusion to that reached by the Court of Appeal.

(2) The conclusion of the Court of Appeal in Secretary of State for the Home Department v Said [2016] EWCA Civ 442 was that the country guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 442 (IAC) did not include any finding that a person who finds themselves in an IDP camp is thereby likely to face Article 3 ECHR harm (having regard to the high threshold established by D v United Kingdom (1997) 24 EHRR 43 and N v United Kingdom (2008) 47 EHRR 39). Although that conclusion may have been obiter, it was confirmed by Hamblen LJ in MS (Somalia). There is nothing in the country guidance in AA and Others (conflict; humanitarian crisis; returnees; FGM) Somalia [2011] UKUT 445 (IAC) that requires a different view to be taken of the position of such a person. It will be an error of law for a judge to refuse to follow the Court of Appeal's conclusion on this issue.

30. At paragraph [55] of its decision in SB, the Upper Tribunal wrote this:

55. We therefore agree with Mr Jarvis's submissions on this issue and respectfully decline to follow those of Mr Toal. The largely naturally-caused events that led the Upper Tribunal in AMM to find that the high threshold for Article 3 harm, as regards conditions in IDP camps, had been met, no longer applied at the time of MOJ . Given that there is nothing in MOJ or anywhere else that we have seen which suggests human agency is responsible for the generalised conditions faced in IDP camps (as opposed to instances of specific harm), that high threshold needs to be met. Insofar as MOJ might have been read to suggest otherwise, or insofar as it might otherwise be read as indicating a generalised risk of Article 3 harm, Burnett LJ's judgment cogently explains why that is wrong. Irrespective of whether his judgment is formally binding on us, it is fully-reasoned and compelling and should be followed. In our view, it will be an error of law for a judge to refuse to do so.

31. Turning first to paragraph (ix) of the guidance, I accept that in this case the appellant had never been in Mogadishu before his departure from Somalia. He has been absent from the country for nineteen, very nearly twenty years, and I accept has no family or clan associations to call upon in Mogadishu. He will, however, have access to some funds on return owing to a relocation grant. I accept that he is a healthy adult male and there appears to be no reason given as to why he could not obtain some form of employment, be it only unskilled or temporary. I accept he will not have a remittance from abroad and I note that he was able to get some employment in the United Kingdom. Given the length of time that has elapsed since he came to the United Kingdom, it is difficult to see that his ability to fund his departure is now relevant.

32. Ms Nicalaou did not draw my attention to any material regarding the situation in any IDP camps. Whilst it may well be difficult for the appellant, I found that he has failed to satisfy me that he is at risk of an Article 3 harm bearing in mind the high threshold established by D and N. In reaching that conclusion I have had regard to the submissions made regarding Paposhvili. I find no merit in the submission that Said and MA (Somalia) must be viewed through the lens of the most recent Paposhvili v Belgium [2016] EHRR 1113. In AM (Zimbabwe)[2018] EWCA Civ 64 Sales LJ at [39] observed that the Grand Chamber in Paposhivili only intended to

make a very modest extension of the protection under Article 3 in medical cases. There is nothing there to support

33. I am not satisfied that there is a risk of the appellant committing suicide. There is simply the unsupported comment in the witness statement that he would kill himself. This is unsupported by any medical evidence or evidence of previous attempts. Accordingly, applying the principles in **J v SSHD**, I am not satisfied that there is any risk of the appellant committing suicide such as taken together with the other issues would cross the **J** threshold. There is insufficient evidence to show that the appellant suffers from any mental ill health.

34. Having reached these conclusions, I am satisfied that the appellant's removal would not be in breach of Article 3 of the Human Rights Convention.

35. I therefore turn to the issue of Article 8.

> **117C Article 8: additional considerations in cases involving foreign criminals**
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

36. in MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 122 (IAC), the Upper Tribunal said this:

> *In determining pursuant to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, a court or tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted; not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years. Nothing in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 demands a contrary conclusion.*

37. It is also evident from the decision of the Upper Tribunal in that case that if Exception 1 or 2 is not met, then it would be necessary to go on to consider whether there are nonetheless very compelling circumstances over and above those described in Exceptions 1 and 2.

38. The appellant is a foreign criminal who has been sentenced to a period of imprisonment for at least four years. Accordingly, the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2. I therefore turn first to those exceptions in order to consider whether and to what extent he meets these requirements.

39. It is evident that the appellant does not meet exception 2. There is no evidence that he is in a genuine and subsisting relationship with a partner or a qualifying child. With regard to Exception 1, the appellant was born on 4 August 1970. He entered the United Kingdom on 3 June 2001 aged nearly 30 years of age. Even assuming his presence had been lawful retrospectively he has not been lawfully resident in the United Kingdom for most of his life. He therefore falls at the first hurdle in Exception 1. Second, and there were no submissions on this point, there are indicators that the appellant is not socially and culturally integrated into the United Kingdom given his serious crime and drug taking prior to his imprisonment. He has also been in prison for five years and accordingly, any integration that he may have had has diminished.

40. Accordingly, I am not satisfied that the appellant comes anywhere near the exceptions in Section 117C or meets the requirements set out in paragraph 399(a) or (b) or of paragraph 399A of the Immigration Rules.

41. Given that this is a case where the appellant was sentenced to more than four years, I have regard to the seriousness of the conviction. As Judge Gribble noted the appellant continues to present a continuing risk to the public [64]. Further, as can be seen from the sentencing remarks from the trial judge, the appellant subjected the complainant to a sustained and brutal attack of extreme violence whereby she suffered life threatening injuries; that is multiple fractures to the skull, associated brain injury. The judge also noted that this was a category 1 offence and there were factors which increased its seriousness, namely the deliberate attempts by the

appellant to prevent the victim from obtaining urgent medical assistance she required and secondly attempts to conceal and dispose of evidence and, the ongoing effect on the victim. Further, the judge noted that had the matter gone to trial the appropriate sentence would be one to thirteen years' imprisonment.

42. Taking this into account and given the lack of other factors in the appellant's favour, I conclude that there is nothing even accepting that the appellant will be reduced to very difficult circumstances in Somalia, such as to outweigh the very strong public interest in his deportation. Accordingly, I dismiss the appeal on Article 8 grounds as well.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

(2) I re-make the decision by dismissing the appeal on all grounds.

(3) No anonymity direction is made.

Signed Date: 31 January 2020

Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00121/2018

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Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SELYM SEYD SALUM
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms Nicolaou, instructed by Turpin & Miller

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Gribble promulgated on 8 February 2019, allowing Mr Salum's appeal against a decision made to deport him. That decision was consequent on his conviction on 29 October 2014 when he pleaded guilty to an offence of wounding with intent contrary to Section 18 of Offences Against the Person Act 1861 for which

he was sentenced to ten years in prison. The notice of intention to deport was served on 15 July 2017; a notice of intention to revoke refugee status was served on 11 July 2018.

2. Mr Salum's (whom I refer to as the appellant as he was before the First-tier) status was revoked and the Secretary of State issued a certificate under Section 72 of Nationality, Immigration and Asylum Act 2002.

3. The appellant is from the Bajuni tribe and is from Kismayo in Southern Somalia. His case is that he would be at risk on return to Somalia both of persecution and/or Article 3 of the Human Rights Convention.

4. The Secretary of State's case was that there was no basis to rebut the presumption under the Section 72 certificate and that due to his offence he was excluded from a grant of humanitarian protection in accordance with the Immigration Rules. It was also the Secretary of State's case that the appellant had ceased in the event to be a refugee further to Article 1C(5) of the Refugee Convention as circumstances in Somalia have changed since he has obtained status and that Kismayo as generally a safe place it should not present a general risk contrary to Article 2 or 3 of the Human Rights Convention, or Article 15(c) of the Qualification Directive. The Secretary of State further considered that even if there were difficulties in travelling between Mogadishu and Kismayo, nonetheless he could relocate to Mogadishu and that there would not be significant obstacles to re-establishing a life there. The Secretary of State concluded also that there were no very compelling circumstances over and above the exceptions in Section 117C of the 2002 Act.

5. On appeal, the judge concluded that: -

   (i) the appellant poses a continuing risk to the public and thus the presumption under Section 72 is not rebutted [64];

   (ii) the appellant is excluded from a grant of humanitarian protection pursuant to paragraph 399D Immigration Rules;

   (iii) the appellant has no family in the United Kingdom who could assist him [72]; and that, considering whether on return first to Mogadishu he would face treatment likely to breach Article 3 [71], following **MOJ & Ors** that he falls squarely within the class of people set out at paragraph (ix) and (x) he would face treatment such as to breach Article 3 and as such, return is unrealistic and unduly harsh, and that basically he qualified for protection under Article 3 [79];

   (iv) even if that were not so, following **KS (Minority Clans)** the appellant would be at risk on return to Kismayo and thus succeeds on Article 3 grounds.

6. The Respondent sought permission to appeal on the grounds that the judge had erred in that she had: -

(i) failed to make adequate findings as to why the appellant would be unable to return to Mogadishu without becoming destitute;

(ii) failing also to note that all of the criteria in head note (xii) with reference to (ix) must be satisfied;

(iii) that even if the appellant were likely to find himself in makeshift accommodation, prospect of return to an IDP camp was not sufficient to invoke Article 3 – see **Said [2016] EWCA Civ 442**, upheld in **MA (Somalia) [2018] EWCA Civ 994**;

(iv) that although the appellant would find the relocation process difficult, his status as a healthy adult male will put him in no worse position than any other deportee; it was a matter of choice for the appellant whether he remains in Mogadishu or travels on to his home area of Kismayo;

(v) that although **KS** was country guidance, to be read in light of the later case and which makes binding findings on clan and risk.

7. On 26 June 2019 Upper Tribunal Judge Reeds granted permission on all grounds.

8. The starting point must be an appreciation that the judge had already held that the appellant was excluded from the protection of the Refugee Convention by operation of the Section 72 certificate and that he was not entitled to humanitarian protection.

9. Turning to the grounds, I consider that there is significant merit in the respondent's observations that the judge's reasoning as to why the appellant would be unable to return to Mogadishu without being destitute are not sufficiently grounded in evidence. While I note the submission in the Rule 24 response that the understanding of the relevancy of employment is to be seen through the lens of what is said at paragraph 351 of **MOJ**, it was nonetheless speculative to conclude that the appellant would not be able to get employment owing to his age and the evidence with regard to his language abilities is, with respect, based on supposition [72] rather than evidence. Further, contrary to what is averred in the Rule 24 response, it is not necessarily so that those with convictions will struggle to find work in Somalia where that may or may not be known. To say that it is "trite" is not sufficient, there were other menial jobs other than construction or labouring, the two examples cited by the judge at [77].

10. I consider that there is also merit in the fact that the judge did not consider the availability of financial support which may be available under the facilitated return scheme. It is a factor to be taken into account in assessing the likely circumstances on return. Accordingly, I am satisfied that the judge has not made proper and sufficient findings to show that the appellant would have no alternative but to live in makeshift accommodation although I do accept that there is little merit in the observation made by the respondent that all the criteria must be satisfied which makes little sense.

11. Accordingly, the finding that the appellant would be in makeshift accommodation is unsafe and it follows, therefore, that the finding that return would be "harsh and unrealistic" [79] is not sustainable.

12. With regard to the alternative finding at [80] to [81] that the appellant would have been at risk in his home, the judge does not appear properly to have considered whether relocation to Mogadishu would have been unduly harsh or unreasonable; and, given that the findings that it would not be safe are, for the reasons set above, not sustainable, this finding is also unsafe. The guidance set out in KS as to the possibility of internal relocation must now been seen in light of MOJ.

13. For these reasons, the decision involved the making of an error law and I set it aside.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal will be listed for 2 hours.
3. If any of the parties wish to adduce further evidence, oral or otherwise, they must make an application pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 at least 21 days before the hearing, such application to be accompanied by the evidence upon which it is sought to rely.

Signed Date 2 September 2019

Upper Tribunal Judge Rintoul