Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00019/2020 (V)

THE IMMIGRATION ACTS

Heard at Field House (by remote means)	**Decision & Reasons Promulgated**
On 10th March 2020	**On 8th April 2021**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AHAA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Ms S Ferguson of Counsel, instructed by Freemans Solicitors

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. There were technical difficulties for Ms Ferguson accessing the video call, on which she could be seen but not heard and the problems could not be resolved at the hearing. With agreement of the parties, the hearing proceeded with

Ms Ferguson joining by telephone rather than video. The file contained the documents partly in paper format and in part available electronically.

2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Roots promulgated on 29 October 2020, in which AHAA's appeal against the decision to revoke his refugee status, refuse his protection and human rights claims was allowed only on human rights grounds under Article 3 of the European Convention on Human Rights, and dismissed on all other grounds. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with AHAA as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a national of Somalia, born on 25 August 1997, who entered the United Kingdom on 26 September 2010 under the family reunification provisions and was granted leave to remain in line with his father up to 20 April 2018.

4. On 4 November 2013, the Appellant was cautioned for assault occasioning actual bodily harm. On 5 May 2015, the Appellant was convicted of possessing a knife in a public place for which he was sentenced to a nine month referral order, ordered to pay costs and a victim surcharge. On 4 December 2018, the Appellant was convicted of robbery and common assault for which he was sentenced to two years' imprisonment, with a two month concurrent sentence and ordered to pay a victim surcharge.

5. On 23 January 2019, the Respondent issued the Appellant with a decision to deport letter and on 12 June 2019 the Respondent notified the Appellant that section 72 of the Nationality, Immigration and Asylum Act 2002 applied and that there was an intention to revoke his refugee status. The latter was also notified to the UNHCR, who responded on 11 November 2019. The Appellant made written submissions in response on 5 September 2019.

6. A Deportation Order was made against the Appellant on 3 March 2020, followed by the Respondent's decision dated 4 March 2020 to revoke his refugee status and refuse his human rights claim. The revocation decision was based on an improvement in conditions in Mogadishu such that following the country guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), the Appellant would no longer be at risk on return because he was from a minority clan, nor was there any risk to him from Al-Shabaab and the circumstances for the grant of refugee status had therefore ceased to exist. The Respondent considered that the Appellant had not rebutted the presumption in section 72 such that that certificate remained and excluded the Appellant from a grant of humanitarian protection pursuant to paragraph 339D of the Immigration Rules. For essentially the same reasons, there would be no breach of Articles 2 or 3 of the European Convention on Human Rights.

7. In relation to the Appellant's right to respect for private and family life, this was an automatic deportation case such that the Respondent followed

paragraphs 398 and following of the Immigration Rules. The Appellant did not have a partner or child in the United Kingdom and could not therefore meet the family life exception to deportation. The Appellant could also not meet the private life exception as he had not spent half of his life in the United Kingdom, the Respondent did not accept that he was integrated in to the United Kingdom in light of his criminal convictions and there would be no very significant obstacles to his reintegration in Mogadishu.

8. Finally, the Respondent considered that the Appellant had arrived in the United Kingdom as a minor, his respective ties to Somalia and the United Kingdom, his criminal offences, that no family life was established with his parents and siblings for the purposes of Article 8 and concluded overall that there were no very compelling circumstances to outweigh the public interest in deportation.

9. Judge Roots allowed the appeal on Article 3 grounds, but dismissed the appeal on all other grounds in a decision promulgated on 29 October 2020. In summary, the First-tier Tribunal upheld the section 72 certificate on the basis that the Appellant had not rebutted the presumption contained therein and as such he was excluded from asylum and humanitarian protection. In relation to Article 3, the First-tier Tribunal considered the factors in paragraph (ix) of the headnote in MOJ and concluded that there was a real risk of the Appellant being destitute on return to Mogadishu and living in an IDP camp, which in accordance with MOJ would be a breach of Article 3. In relation to Article 8, the First-tier Tribunal found that the Appellant did not meet either of the exceptions to deportation (although he was integrated in the United Kingdom and would face very significant obstacles to reintegration on return, he had not spent at least half of his life in the United Kingdom) and there were no very compelling circumstances to outweigh the public interest in deportation.

The appeal

10. The Respondent appeals on the basis that the First-tier Tribunal materially erred in law in failing to consider and apply the case law which followed MOJ which clarified that the factors taken into account in the decision from the country guidance did not establish a real risk of a breach of Article 3 of the European Convention on Human Rights. Further, that the First-tier Tribunal had not made any finding that the Appellant would be precluded from taking advantage of the economic opportunities available in Mogadishu, nor precluded from seeking clan support and given that he had access to financial support, he would not in these circumstances be forced to live in an IDP camp.

11. There was no cross-appeal by the Appellant against any other part of the First-tier Tribunal decision in which his protection and human rights claims were otherwise dismissed.

12. At the oral hearing, Mr Lindsay pursued the appeal on Article 3 grounds only, identifying two specific issues in this regard, both of which

individually contained sufficient errors to establish a material error of law. These were first, was the Appellant at real risk of living in an IDP camp on return; and secondly, if so, was there a real risk of serious harm to him.

13. The First-tier Tribunal made clear findings in paragraphs 67(e) of the decision that the Appellant had at least some prospect of establishing a livelihood on return and in paragraph 67(f) that he was likely to receive some financial remittances from abroad. On those findings, even if the factors in MOJ were applied in isolation, the only available conclusion would be that there is no real risk to the Appellant of being destitute or forced to live in an IDP camp.

14. Further, the approach to the application of MOJ of the First-tier Tribunal failed to follow the subsequent case law in Secretary of State for the Home Department v Said [2016] EWCA Civ 442, SB (refugee revocation; IDP camps) Somalia [2019] UKUT 00358 (IAC), and Secretary of State for the Home Department v MA (Somalia) [2018] EWCA Civ 994. In these cases, paragraph (xi) of the headnote in MOJ (which comes from paragraph 408 in the decision) was disapproved of so far as it purported to refer to Article 3 of the European Convention on Human Rights; paragraphs 407(h) and 408 only being concerned with the ability of a person to support themselves on return but not concerned with either Article 15(b) or (c) of the Qualification Directive. The conditions in an IDP camp could not, save for in exceptional circumstances, establish a breach of Article 3 of the European Convention on Human Rights and there were no findings by the First-tier Tribunal that could support such a conclusion, going no further than a finding of deprived living conditions which is not sufficient.

15. The First-tier Tribunal fell into error by simply having gone through the factors in MOJ and concluding that there would be a substantial risk, without factoring in the chance of the Appellant establishing a livelihood and receiving remittances and jumps to a finding that that would be a breach of Article 3, which the findings were not capable of establishing as a matter of law.

16. Mr Lindsay did acknowledge that the First-tier Tribunal made reference in the decision to the cases of Said and SB (Somalia) but that evidently these were not followed in relation to the correct approach to Article 3. He further acknowledged that the Respondent's CPIN from January 2019 referred only to the headnote in MOJ but that this predated the later authority and had not been updated to reflect that as yet.

17. On behalf of the Appellant, Ms Ferguson resisted the appeal and relied on her skeleton argument. She accepted Mr Lindsay's submissions that being forced to live in an IDP camp would not alone be a breach of Article 3 to the correct standard, with paragraph 408 of MOJ being a conflation of difference standards, the correct one for destitution and living conditions being that in N v UK [2005] 2 AC 296.

18. However, Ms Ferguson submitted that the Appellant is at risk not just of destitution but also because of the risk of specific violence to him. Although he has been excluded from the refugee convention and humanitarian protection, it is important that he would still be a refugee outside of Mogadishu in Somalia and these factors are relevant to the assessment under Article 3. It was however accepted that the First-tier Tribunal had not found that the Appellant would be at risk on return and these matters did not form part of the Appellant's claim before the First-tier Tribunal in relation to Article 3. Ms Ferguson submitted however that although it is not generally unsafe for the general population, the Appellant is a minority clan member and his circumstances must be assessed individually, including that he would be unlikely to receive economic support or protection from his clan as minority clans have little to offer. In these circumstances, the Appellant is not on an equal playing field to other returnees and the factors in MOJ point to this Appellant not being able to support himself on return. Although the Appellant's family said that they would try to assist him, the First-tier Tribunal found that this was unlikely to be meaningful financial assistance and there was no certainty of any money being available under the Financial Assistance Scheme.

Findings and reasons

19. In this appeal, the First-tier Tribunal erred in law in its assessment of whether the Appellant's return to Mogadishu would breach Article 3 of the European Convention on Human Rights by relying solely on factors in paragraph (ix) and the conclusion in paragraph (xi) of the headnote in MOJ without following the later guidance which clarified that these factors were not referring to Article 3 and the appropriate standard which should be applied for such an assessment. The reasons for this are set out below by following through the developments in the case law following MOJ.

20. The relevant parts of MOJ are summarised in the headnote, with additional cross-referencing to the original paragraphs numbers in the main body of the decision given in square brackets for ease of cross referencing to relevant paragraphs in later decisions below; these set out as follows:

> *(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 from majority clan members, as minority clans may have little to offer.* [paragraph 407(f)]
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> *(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. [paragraph 407(g)]

(ix) If it is accepted that a person facing 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 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.* [paragraph 407(h)]

(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. [paragraph 407(h)]

(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. [paragraph 408]

(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 formal 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 prospect of having to live in conditions that will fall below acceptable humanitarian standards. [paragraphs 424 and 425]

21. There is some concern expressed by the Court of Appeal in Said as to conflation between factors relevant to the assessment of internal relocation, humanitarian protection and Article 3 in MOJ, which need to be

set out in full. The discussion is at paragraphs 26 to 31 which states as follows:

> *"26. Paragraph 407(a) to (e) are directed to the issue that arises under article 15(c) of the Qualification Directive. Sub-paragraphs (f) and (g) establish the role of clan membership in today's Mogadishu, and the current absence of risk from belonging to a minority clan. Sub-paragraph (h) and paragraph 408 are concerned, in broad terms, with the ability of a returning Somali national to support himself. The conclusion at the end of paragraph 408 raises the possibility of a person's circumstances failing below what "is acceptable in humanitarian protection terms". It is, with respect, unclear whether that is a reference back to the definition of "humanitarian protection" arising from article 15 of the Qualification Directive. These factors do not go to inform any question under article 15(c). Nor does it chime with article 15(b), which draws on the language of article 3 of the Convention, because the fact that a person might be returned to very deprived living conditions, could not (save in extreme cases) lead to a conclusion that removal would violate article 3.*
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> *...*
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> *28. In view of the reference in the paragraph immediately preceding para 407 to the UNHCR evidence, the factors in paras 407(h) and 408 are likely to have been introduced in connection with internal flight or internal relocation arguments, which was a factor identified in para 1 setting out the scope of the issues before UTIAC. Whilst they may have some relevance in a search for whether a removal to Somalia would give rise to a violation of article 3 of the Convention, they cannot be understood as a surrogate for an examination of the circumstances to determine whether such a breach would occur. I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408, he would have established that his removal to Somalia would breach article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence which at para 34 UTIAC expressly understood itself to be following.*
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> *29. Having set out its guidance, UTIAC then turned to consider IDPs, about which each of the experts had given some evidence. It recognised that the label was problematic because there were individuals who are considered as internally displaced persons who have settled in a new part of Somalia in "a reasonable standard of accommodation" and with access to food, remittances from abroad or an independent livelihood. UTIAC considered that the position would be different for someone obliged to live in an IDP camp, the conditions of some of which "are appalling", para 411. It continued by quoting from evidence of armed attacks on IDP camps, of sexual and other gender based violence and the forcible recruitment of internally displaced children into violence, albeit that it did not accept*

the evidence it quoted. UTIAC also mentioned overcrowding, poor health conditions and (ironically) that the economic improvements in Mogadishu were leading to evictions from IDP camps in urban centres with vulnerable victims being unable to seek refuge elsewhere.

30. It is immediately apparent that the discussion of this evidence, which is culled from expert reports, understandably touches on concerns about violence, which in article 3 terms would be analysed by reference to the approach in MSS and Sufi and Elmi cases, and aspects of destitution, which would be analysed by reference to the approach in the N and D cases. The conflation continues in para 412:

> *"Given what we have seen, and described above, about the extremely harsh living conditions, and the risk of being subjected to a range of human rights abuses, such a person is likely to found to be living at a level that falls below acceptable humanitarian standards."*

Having further discussed the contradictory evidence about how many people lived in IDP camps, UTIAC concluded that "many thousands of people are reduced to living in circumstances of destitution" albeit that there was no reliable figure of how many people lived in such destitution in IDP camps. The determination continued:

> *"420. Whilst 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 not to be 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 ...*
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> *421. Other than 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 in AMM was published. The famine is confined to history ... The "economic boom" has generated more opportunity for employment and ... self-employment. For many returnees remittances will be important ...*
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> *422. The fact that we have rejected the view that there is a real risk of persecution or serious harm or ill treatment to civilian 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 the circumstances of a particular individual."

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 judgement 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."

22. The question of whether the risk of deprivation on return would lead to a violation of Article 3 of the European Convention on Human Rights was revisited in MA (Somalia). Lady Justice Arden, being bound by the decision in Said, confirmed that there is no violation of Article 3 by reason of a person being returned to a country which for economic reasons can not provide him with basic living standards. The Respondent in MA contended that the situation in Somalia was brought about by conflict, which is recognised by the European Court of Human Rights as an exception to the analysis. Lady Justice Arden however concluded at paragraph 63 that:

"… It is true that there has historically been severe conflict in Somalia, but, on the basis of MOJ, that would not necessarily be the cause of deprivation if the respondent were returned to Somalia now. The evidence is that there is no present reason why a person, with support from his family and/or prospects of employment, should face unacceptable living standards."

23. This test has been expressly endorsed by the Court of Appeal in MI (Palestine) v Secretary of State for the Home Department [2018] EWCA Civ 1782 and by the Upper Tribunal in SB (Somalia).

24. It is well established that in Article 3 cases where the risk to the individual is not from treatment emanating from intentionally inflicted acts of the public authorities in the receiving state or from those of non-State bodies in that country when the authorities there are unable to afford him appropriate protection; it is only in very exceptional circumstances that there would be a violation of Article 3. The principles are summarised by the European Court of Human Rights in N as follows:

"42. Aliens who are subject to expulsion cannot in principle claim entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling state. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the contracting state is not sufficient in itself to give rise to breach of art 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the contracting state may raise an issue under art 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In D v UK … the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.

43. The court does not exclude that there may be other very exceptional cases where the humanitarian considerations are equally compelling. However, it considers that it should maintain the high threshold set in D v UK … and applied in its subsequent case law, which it regards as correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-state bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country.

44… Advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the Contracting State and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the Convention system, for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited healthcare to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States."

25. The position has been developed slightly further in the case of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17, but not in a way which is relevant to the facts of the present appeal.

26. It is clear from the First-tier Tribunal decision that none of the above was taken into account or applied by it when assessing whether the Appellant's return would breach Article 3 of the European Convention on Human Rights. Although there is specific reference in paragraph 66 to the cases of SB (Somalia) and Said, this appears to be in relation to the need to focus on the individual circumstances of the Appellant as opposed to the

correct approach to the findings in MOJ and the test for Article 3. Having referred to these cases, the First-tier Tribunal then immediately turns to the factors identified in paragraph (ix) of the headnote in MOJ, finding that assessing these factors in the round there would be a real risk that the Appellant would find himself destitute and living in an IDP camp which would, in accordance with the country guidance and factors identified in MOJ, be a breach of Article 3. As a matter of law, those findings could not amount to a breach of Article 3 for the reasons set out in the case law above such that the First-tier Tribunal could not lawfully allow the appeal on that basis. It is only in very exceptional cases that there may be a breach of Article 3 in circumstances such as this, but there were no findings of any such factors in this appeal beyond a risk of poor living conditions and even then, coupled with a finding of at least some financial support from the United Kingdom.

27. The Respondent also challenges the First-tier Tribunal's conclusion in paragraph 69 that the Appellant would face a real risk of destitution and living in an IDP camp on return to Mogadishu on the basis of findings that the Appellant would be in receipt of limited remittances from family in the United Kingdom and had not shown that he would be unable to secure a livelihood on return – albeit the First-tier Tribunal found based on limited evidence that he would likely face significant difficulties in doing so and a real risk of him not being able to do so within a reasonable period. The conclusion on consideration of all of the factors set out in paragraph 67 of the decision is arguably at odds with the country guidance in paragraph (xi) of the headnote that: *"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.",* at least in respect of financial remittances given that on the findings, the Appellant would not be without all three forms of support (clan/family, remittances from abroad and no prospect of securing a livelihood). However, whether the findings and conclusion were properly open to the First-tier Tribunal following MOJ is not material to the outcome of this appeal, as even taking those findings at their highest, the threshold for a breach of Article 3 can not, as a matter of law, be met for the reasons already set out above.

28. At the hearing, there was some discussion as to the next steps in this appeal if an error of law was found. Mr Lindsay appropriately noted that there was a forthcoming country guidance appeal likely to be listed before the Upper Tribunal in June to include consideration of destitution and Article 3 of the European Convention on Human Rights in relation to Somalia. Ms Ferguson stated that the Appellant would wish to rely on other risk factors for the purposes of Article 3, including his membership of a minority clan and as such further submissions and/or a further hearing may assist the Tribunal in re-making the decision.

29. In all of the circumstances and on the facts of this appeal I do not consider that any further submissions or hearing are required. In relation

to risk factors and clan membership which Ms Ferguson indicated the Appellant would wish to rely for the purposes of Article 3, it is noted and was accepted by her that these formed no part of the submissions to the First-tier Tribunal and that there were no findings of risk in the Appellant's favour made by the First-tier Tribunal upon which the Appellant could rely; and upon which there was no application for permission to cross-appeal. The First-tier Tribunal made clear findings that the Appellant was not at risk on return to Mogadishu by reason of being a minority clan member or otherwise, there was a lack of evidence before the First-tier Tribunal that could support such a claim and no suggestion that the Tribunal should depart from the clear findings in MOJ that a person such as the Appellant would not be at risk on return. There is therefore nothing further that could be taken into account for the purposes of Article 3 in this regard. There was no indication of any new evidence or change of circumstances since the very recent decision of the First-tier Tribunal since the hearing in October 2020.

30. For the reasons set out above, the findings of the First-tier Tribunal at their highest were not capable of establishing a real risk to the Appellant on return to Mogadishu to the correct threshold and standard applicable to Article 3 of the European Convention on Human Rights. In those circumstances and in the absence of any further evidence, there is no need for any further submissions as the appeal must be dismissed on human rights grounds, the facts not being capable of amounting to a breach of Article 3.

31. I do not consider, in all of the circumstances, that it is necessary, appropriate or in the interests of justice to delay the remaking of this decision pending a decision in the up-coming country guidance case in the Upper Tribunal. Whilst there may be some overlap in the issues, I take into account that it is unlikely that the country guidance will be heard until at least June 2021 with a decision not reasonably expected until some months after that; that the country guidance can have no impact on the test to be applied upon which there is binding Court of Appeal authority and that in the present case, there was no further background country evidence to consider or any request to depart from the current and still binding country guidance.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law in relation to Article 3 of the European Convention on Human rights. As such it is necessary to set aside the decision in relation to that part only. The making of the decision of the First-tier Tribunal on all other grounds did not involve the making of a material error of law and as such, those parts of the decision are confirmed.

I set aside the decision of the First-tier Tribunal in respect of the Article 3 findings only and remake the appeal as follows:

The appeal is dismissed on human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed G Jackson Date 26th March 2021

Upper Tribunal Judge Jackson