**Upper Tribunal (Immigration and Asylum Chamber)** **Appeal Number: RP/00063/2018**

**THE IMMIGRATION ACTS**

| **Heard at The Royal Courts of Justice** | **Decision & Reasons Promulgated** |
|---|---|
| **On 1 November 2021 and** | **On the 13 September 2022** |
| **At Field House on 18 July 2022** | |

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**AMW (SOMALIA)**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Emma Fitzsimons, instructed by Wilsons LLP
For the Respondent: Tony Melvin, Senior Presenting Officer

**DECISION AND REASONS**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. This order was made, and is continued, on account of the appellant seeking international protection.**

1. By a decision dated 28 July 2020, Upper Tribunal Judge McWilliam set aside the decision of the First-tier Tribunal, which had allowed the appellant's appeal on Article 3 ECHR grounds. Judge McWilliam ordered that the decision on the appeal should be remade in the Upper Tribunal. For the reasons which follow, I remake the decision on the appeal by dismissing it.

**Background**

2. The appellant is a Somali national who was born in Kenya on 4 March 1994. He arrived in the United Kingdom at the age of 14, on 2 September 2008. He arrived with his mother and his three siblings. They had all been granted entry clearance in order to join the appellant's father, who was granted refugee status and indefinite leave to enter the United Kingdom on 6 February 2003. The appellant and his family were granted indefinite leave to enter upon arrival. The appellant then lived in the UK with his family.

3. The appellant's family composition is as follows. His father, MWAB, was born in Somalia on 4 May 1938. His mother, MHN, was born in Somalia on 1 February 1968. The appellant has one sister and two brothers. His oldest sibling is his brother SMW, who was born in Somalia on 6 June 1990. His older sister AMW was born in Kenya on 5 August 1992. His younger brother LMW was born in Ethiopia on 3 October 1995.

4. On 5 April 2013, the appellant went to a party. The appellant's actions at that party resulted, ultimately, in a sentence of seven years' imprisonment and, in due course, to the decision which gave rise to this appeal. I take the following summary of those events substantially from the sentencing remarks of Mr Recorder Gallagher.

5. The appellant went to the party in Elephant and Castle with a friend and a seventeen year old girl, VS. VS was profoundly deaf and had cochlear implants. She also had learning and comprehension difficulties and mental health problems. The appellant had been in some form of relationship with her for three of four months before the party. He persuaded her to buy alcohol for the party. He had himself bought alcohol and khat (a stimulant drug) for the party. The appellant was videoed at the party, glorying in excess alcohol consumption.

6. The appellant had previously persuaded VS to have sex with his friends. A considerable amount of grooming had taken place in that regard. At the party, the appellant intimated to VS that he had an interest in another girl and that he intended to persuade her to perform oral sex upon him. VS objected to this.

7. The appellant tried to push VS away and then, without consent from VS, he inserted three fingers into her anus. She had told him in the past that she disliked any form of contact with her anus. The appellant penetrated her in this way repeatedly and over a long period of time, in order to humiliate her, and to punish her for objecting to his interest in the other girl. This caused VS such pain that she screamed out. Her cochlear implants fell out or were taken during the incident.

8. The appellant left the party. VS did not know where she was or how to return home. The appellant withdrew £200 from her account. She had no money and no means of returning to her home until she was able to make contact with her father, who came and collected her.

9. The appellant was arrested and tried at the Crown Court in Croydon between 29 March and 13 April 2016, after which he was convicted of sexual assault on a female by penetration. On 11 July 2016, he was sentenced by Mr Recorder Gallagher to a term of seven years' imprisonment. He was made the subject of an indefinite restraining order, prohibiting him from any contact with VS, and automatic notification to the Sex Offenders Register for life.

10. The appellant was visited by officers from the Home Office whilst he was detained at HMP Swinfen Hall in Lichfield. That visit prompted him to write to the respondent on 16 May 2017, asking that consideration should not be given to his deportation. On 15 July 2017, however, the respondent issued a notice in which she intimated that she did intend to deport the appellant. She invited him to make representations against that course. The appellant (who was still, at that stage, unrepresented) replied to that notice on 14 August 2017.

11. On 10 November 2017, the respondent wrote to the appellant again, this time intimating that she intended to revoke his refugee status. She noted that the appellant's father had been granted refugee status as a former member of Siad Barre's government and a member of the Marehan clan and that there was no longer a risk of ill-treatment on either basis in Mogadishu. There was not thought to be any risk to the appellant from Al-Shabaab. The respondent wrote to the UNHCR on 11 December 2017, inviting any observations it which to make on the intention to cease the appellant's refugee status.

12. The appellant and the UNHCR both provided responses. As he had previously, the appellant highlighted his connections to the UK and his concern about going to Somalia. The UNHCR considered that there had not been a fundamental and durebale change there, and that the respondent had failed to consider the appellant's personal circumstances adequately or at all.

13. On 27 March 2018, the respondent wrote to the appellant again, stating that a deportation order had been made; that his refugee status had been ceased and that his human rights claim had been refused. She also concluded that the United Kingdom was not prevented from refouling the appellant to Somalia even if he was a refugee, since he was a serious criminal to whom section 72 of the Nationality, Immigration Act 2002 ("the 2002 Act") and Article 33(2) of the Refugee Convention applied.

## Appellate History

14. The appellant gave notice of his appeal on 17 April 2018. His appeal came before First-tier Tribunal Judge Davey, sitting at Hendon Magistrates Court, on 10 October 2019. The appellant was represented by Ms Fitzsimons of counsel, as he has been throughout. The respondent was represented by a Presenting Officer (not Mr

Melvin). The judge heard oral evidence (although his decision does not state from whom) and received submissions from the advocates before reserving his decision.

15. In his reserved decision, which was issued on 31 December 2019, the judge dismissed the appeal on Refugee Convention grounds, seemingly because the appellant was not at risk of persecution on return to Somalia and because s72 of the 2002 Act applied: [16]-[17]. Having considered a report from an expert witness (Mary Harper, the BBC's Africa Editor), the judge allowed the appeal on Article 3 ECHR grounds. He summarised his conclusions in that respect at [18]:

> However the matter goes further because I conclude that however unmeritiours the appellant's position may be it seems to me on the facts of his background, the absence of family and language, the absence of skills to find employment or be of interest in the jub market which is disadvantaged in any event means that there is the real risk that the appellant will have to relocate into an IDP camp and there face the real prospects identified of appalling life conditions, destitution and inevitably some measure of exploitation, disadvantage and danger associated with the uncertainties of such a lifestyly. Accordingly, it seemed to me that the claim in respect of Article 3 ECHR risk of ill-treatment, on the current evidence was sustained.

16. The Secretray of State sought and was granted permission to appeal against the decision to allow the appeal on Article 3 ECHR grounds. Her appeal was allowed by Upper Tribunal Judge McWilliam in a decision dated 28 July 2020. Judge McWilliam concluded that it was not clear from the FtT's decision whether the judge had applied the test in MSS v Belgium & Greece (2011) 53 EHRR 2 or that in N v United Kingdom (2008) 47 EHRR 39. She ordered that the decision on the appeal would be remade in the Upper Tribunal, with the issue being whether the return of the appellant to Somalia would be in breach of Article 3 ECHR. She noted that the judge below had made no findings in respect of the possibility of the appellant receiving remittances from the UK, the Facilitated Returns Scheme, or the possible advantage of speaking English. The judge also noted that the FtT had accepted that: the appellant would have linguistic problems and no social network or family in Mogadishu; that he has no work skills; and that he has a limited vocabulary and 'no particular fluency in speaking Somali.' There was no reason before her to interfere with those findings.

17. The pandemic caused various listing difficulties. The appeal was the subject of a transfer order. Further difficulties were caused as a result of the appellant being recalled to prison and by Ms Fitzimons being unwell when the appeal was first listed for a remote hearing before me in August 2021. So it was that the appeal eventually came before me, sitting at the Royal Courts of Justice, on 1 November 2021.

## The First Resumed Hearing

18. Ms Fitzsimons indicated that she did not intend to pursue submissions on any grounds other than Article 3 ECHR. She confirmed that she

would be referring to an 82 page bundle and a 1017 page bundle. Both advocates had produced skeleton arguments for the hearing. I heard oral evidence from the appellant, his sister and his younger brother. I do not propose to rehearse that evidence in my decision and will refer to it insofar as it is necessary to do so to explain my findings of fact.

19. Mr Melvin relied on the Secretary of State's decision and his skeleton argument and submitted that it would not be a breach of Article 3 ECHR to remove the appellant to Somalia. It had been confirmed that that was the sole issue for the Tribunal to determine. The extant country guidance decision was MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), although a new country guidance decision was awaited. It was accepted on all sides that the appellant was not born in Somalia and that he had never lived there. The extent of his unfamiliarity with the culture and customs of the country of his nationality had been overstated, however. His father was a Somali speaker and he had confirmed during his oral evidence that Somali television was watched in the home. That was where his parents had originally lived and where his older brother was born.

20. Mr Melvin submitted that the appellant had not shown that assistance would not be available to him from the United Kingdom. Although the appellant and his family had tried to suggest that they would be unable to provide support, the reality was that they could. The appellant's family, and LW in particular, were able to provide some financial assistance. The appellant had studied until the age of 18 or 19. It was common ground that he had not had paid employment and that he had been supported by his parents and other family members. There was nothing to suggest that the appellant could not obtain manual labour in order to support himself, particularly in a 'boom town' such as Mogadishu. He would receive support by way of a resettlement payment from the UK and would receive financial assistance from his family whilst he sought such employment.

21. Mr Melvin submitted that there would likely be support on the ground from the family's connections in Somalia, albeit that they had been downplayed in the oral evidence. It was important to recall that the appellant was from the Marehan, which was one of the largest, noble clans. Mr Melvin accepted, in answer to my question, however, that he was unable to point to anything in the background material to support the first of those adjectives, which he withdrew. There would be support from the clan. There would be support from the appellant's family. He was able to work. There would be no breach of Article 3 ECHR.

22. Ms Fitzsimons relied on her skeleton argument and made clear that her overarching submission was that the appellant would be at risk 'on MOJ grounds'. She submitted that the factual matrix was very different from that in Ainte (material deprivation - Art 3 – AM (Zimbabwe)) [2021] UKUT 203 (IAC). The appellant in that case still spoke Somali and was integrated into the Somali community. This appellant was born outside Somalia and had spent most of his childhood in Ethiopia. He had said that Amharic was his best language and this was plausible, given the length of time he had spent there.

23. Mary Harper's report was supportive of the appellant's claim; it spoke to the multi-faceted problems he would be likely to encounter upon return. He had no contacts in Somalia; his life was in the UK. It was clear from the authorities and from Ms Harper's report that people now look to their families, rather than their clans, for support. The appellant's nuclear family was in the UK and he plausibly claimed to have no wider connections in Somalia.

24. The appellant had received some education in the UK. There had been discrepant evidence given about the extent to which the appellant had continued his education beyond the age of 16 but it was largely immaterial in circumstances in which it had been accepted by Mr Melvin that he had never had a job. He had undertaken some volunteering and some work in prison but there was nothing which stood him in good stead for the kind of employment suggested by the respondent.

25. Ms Fitzsimons took me to seven specific sections of the large background bundle. These concerned the challenging circumstances for IDPs inside and outside camps and the worsening of their situation by plagues of locusts, the Covid-19 pandemic and the exploitative actions of so-called 'gatekeepers'. It was reasonably likely, she submitted, that the appellant would be unable to get a job and that he would be positively at risk of exploitation or other ill-treatment which would be contrary to Article 3 ECHR. There was little realism in the Secretary of State's submission that the appellant could receive financial support from the UK; support had previously come from the appellant's parents but there were now elderly and in receipt of benefits. The appellant's siblings were in no position to assist. His sister was in full time studies. His younger brother had just married and planned to study for a Master's degree. His older brother was distanced from him as a result of the appellant's criminality. The only way for the appellant to survive in Mogadishu would be for him to seek work.

26. At the end of the submissions, I reserved my decision.

27. Shortly after reserving my decision, I was informed that the Upper Tribunal (Judges Kebede, Frances and Stephen Smith) had received final written submissions in the Somali country guidance case on 14 October 2021 and that a decision was expected in early 2022. I resolved to delay my decision in this appeal, with a view to inviting further submissions on that decision as and when it became available.

28. In the event, the decision in OA (Somalia) CG [2022] UKUT 33 (IAC) was reported on 2 February 2022. Given the obvious significance of that decision for this appeal, I considered that the hearing should be reconvened, so as to provide an opportunity for there to be further written and oral evidence and further submissions from the advocates. There was unfortunately some difficulty in listing the appeal successfully, and it was only on 18 July 2022 (shortly before I was to go on leave) that the appeal could be listed again at the Royal Courts of Justice.

**The Second Resumed Hearing**

29. An interpreter had been booked for the hearing and HMP Brixton had been ordered to produce the appellant. Shortly before the hearing was due to commence, however, I was informed that the interpreter had cancelled at the last moment and that the prison had 'forgotten' to arrange transport for the appellant. The earliest he could be collected from the prison would be midday. It was said to be difficult and possibly impossible to arrange a video link to the prison at such short notice. Since this was set to be the hottest day on record, I canvassed the position with the advocates. Having taken instructions, Ms Fitzsimons confirmed that she was content not to call further evidence and for me to proceed in the absence of the appellant. The hearing therefore proceeded by way of (further) submissions only.

30. The hearing then resumed in court 14 at Field House. Mr Melvin provided two documents: the respondent's guidance on the Facilitated Returns Scheme ("FRS") and the latest Country Information and Policy Note ("CPIN") on Somalia. Ms Fitzimons confirmed that there was from the appellant's side a further bundle of evidence, the important parts of which had been distilled into a helpful schedule.

31. Mr Melvin had provided an addendum to his main skeleton, which he adopted. It had been agreed at the first hearing that the issue was Article 3. The appellant would be returned to Mogadishu. It remained the respondent's submission that he could rely on support from others in the event that he required it. There would be assistance from his family and from his clan. It was notable that the appellant's family had been able to stand surety for large sums in the appellant's bail application. His parents received a pension entitlement of £278 per week and there was nothing to show their outgoings or their savings. His brothers worked and there was no proper reason that they could not assist. Some remittances would be made, in reality. He would receive at least £750 from the FRS, and was able to apply for more.

32. The appellant would not be forced to live in an IDP camp. OA (Somalia) did not support that submission insofar as it was to be made. Doubts as to Mary Harper's evidence had been raised in Ainte and in AAW (expert evidence – weight) [2015] UKUT 673 (IAC) and in MOJ itself. There was no indication that the appellant had mental or physical health problems and he would be able to survive with family and clan support. The appellant would be part of the influx of refugees returning to Somalia from around the world. He spoke fluent Amharic and had been brought up with a father who spoke only Somali. His fluency was likely rather better than suggested. He also spoke good English.

33. It was agreed that the appellant would not be at risk as a result of his father's previous role in government. He had never worked. His offence was committed when he was nineteen but he was only tried and convicted when he was 22. He had been supported by his family throughout. He could take a causal labouring position and it was clear from OA (Somalia) that no guarantor was required for such a role. It was not clear why the appellant was said to be at risk when he was a member of a noble clan. The impact of the pandemic had been considered in Ainte. There was no demonstrable risk of trafficking or

exploitation given the support on which the appellant could depend. Nor would he be at risk on account of his apparent westernisation. It was unlikely that he would be forced to live in an IDP camp.

34. Ms Fitzsimons relied on her original and supplementary skeleton arguments, in which she had detailed the general security situation in Mogadishu. The key submissions made for the appellant centred on the ongoing Al Shabaab presence in the city and the fact that the appellant would be unfamiliar with the environment. It was accepted that there was a need for the appellant to show some sort of additional vulnerability, which was provided by the fact that he had never been to Somalia and would be very soically isolated were he compelled to go there. He had limited Somali, a wholesale lack of connection to the country and no work experience.

35. The passages set out in the schedule of background material highlighted the challenges which the appellant would face. Mr Melvin had drawn attention to the various historical criticisms of Ms Harper's evidence but she had been assessed as generally helpful at [194] of OA. The facts of that case were starkly different from the appellant's; OA had been brought up in Somalia and spoke the language. This was particularly relevant to the appellant's prospects of finding employment. A guarantor would not be required for casual labour but the appellant was not sufficiently 'plugged in' to be able to start his own business. In any event, the pandemic had reduced the number of available opportunities.

36. The respondent persisted in an unrealistic submission that the appellant could receive support from his family. His parents were pensioners who struggled to survive on their modest pension credits. His sister was in receipt of student finance. His younger brother could not offer support and did not wish to do so. His older brother had all but disowned him. The FRS was a negligible sum which would offer about four weeks' worth of food and accommodation only. The clan would not offer assistance and the appellant had no family in Mogadishu. The amount of work available in the country had decreased as a result of the pandemic, as was clear from Ms Harper's second report. There had also been inflation and a rise in the risk of famine as a result.

37. Whilst Ms Fitzsimons accepted that people were returning to Somali, she submitted that these would naturally be people who had lived there for at least part of their lives. In answer to my question, however, she accepted that there would be some who had been born outside of Somalia and then returned with their parents, for example.

38. Ms Fitzsimons concluded her submissions by underlining the appellant's case that he would personally encounter conditions contrary to Article 3 ECHR in the event that he was required to live in an IDP camp. Mr Melvin helpfully confirmed, in answer to my question, that it was not accepted by the respondent that the appellant's return to an IDP camp would necessarily breach Article 3 ECHR, in line with [13] of the headnote to OA.

39. I reserved my decision again, noting that it would likely be delayed due to the summer vacation.

**Country Guidance**

40. OA (Somalia) CG [2022] UKUT 33 (IAC) is the most recent country guidance decision on Somalia. It was reported on 2 February 2022. At [1] of the judicial headnote, the Upper Tribunal underlined the need for a causal link between the Secretary of State's removal decision and any 'intense suffering' feared by the returnee. At [2]-[17], the Upper Tribunal gave the following country guidance (I have omitted [4] and [16] in the interests of brevity, since they relate to the Reer Hamar clan and to the procurement of hard drugs in Somalia):

> *[2] The country guidance given in paragraph 407 of MOJ (replicated at paragraphs (ii) to (x) of the headnote to MOJ) remains applicable.*
>
> *[3] We give the following additional country guidance which goes to the assessment of all the circumstances of a returnee's case, as required by MOJ at paragraph 407(h).*
>
> *[4] …*
>
> *[5] Somali culture is such that family and social links are, in general, retained between the diaspora and those living in Somalia. Somali family networks are very extensive and the social ties between different branches of the family are very tight. A returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact.*
>
> *[6] In-country assistance from a returnee's clan or network is not necessarily contingent upon the returnee having personally made remittances as a member of the diaspora. Relevant factors include whether a member of the returnee's household made remittances, and the returnee's ability to have sent remittances before their return.*
>
> *[7] A guarantor is not required for hotel rooms. Basic but adequate hotel accommodation is available for a nightly fee of around 25USD. The Secretary of State's Facilitated Returns Scheme will be sufficient to fund a returnee's initial reception in Mogadishu for up to several weeks, while the returnee establishes or reconnects with their network or finds a guarantor. Taxis are available to take returnees from the airport to their hotel.*
>
> *[8] The economic boom continues with the consequence that casual and day labour positions are available. A guarantor may be required to vouch for some employed positions, although a guarantor is not likely to be*

*required for self-employed positions, given the number of recent arrivals who have secured or crafted roles in the informal economy.*

*[9] A guarantor may be required to vouch for prospective tenants in the city. In the accommodation context, the term 'guarantor' is broad, and encompasses vouching for the individual concerned, rather than assuming legal obligations as part of a formal land transaction. Adequate rooms are available to rent in the region of 40USD to 150USD per month in conditions that would not, without more, amount to a breach of Article 3 ECHR.*

*[10] There is a spectrum of conditions across the IDP camps; some remain as they were at the time of MOJ, whereas there has been durable positive change in a significant number of others. Many camps now feature material conditions that are adequate by Somali standards. The living conditions in the worst IDP camps will be dire on account of their overcrowding, the prevalence of disease, the destitution of their residents, the unsanitary conditions, the lack of accessible services and the exposure to the risk of crime.*

*[11] The extent to which the Secretary of State may properly be held to be responsible for exposing a returnee to intense suffering which may in time arise as a result of such conditions turns on factors that include whether, upon arrival in Mogadishu, the returnee would be without any prospect of initial accommodation, support or another base from which to begin to establish themselves in the city.*

*[12] There will need to be a careful assessment of all the circumstances of the particular individual in order to ascertain the Article 3, humanitarian protection or internal relocation implications of an individual's return.*

*[13] If there are particular features of an individual returnee's circumstances or characteristics that mean that there are substantial grounds to conclude that there will be a real risk that, notwithstanding the availability of the Facilitated Returns Scheme and the other means available to a returnee of establishing themselves in Mogadishu, residence in an IDP camp or informal settlement will be reasonably likely, a careful consideration of all the circumstances will be required in order to determine whether their return will entail a real risk of Article 3 being breached. Such cases are likely to be rare, in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps.*

*[14] It will 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 would be reasonable for internal relocation purposes.*

*[15] There is some mental health provision in Mogadishu. Means-tested anti-psychotic medication is available.*

*[16] …*

*Other country guidance given by MOJ*

*[17] The country guidance given at paragraph 408 of MOJ ((xi) of the headnote) is replaced with the country guidance at paragraph (14), above. Paragraph 425 of MOJ ((xii) of the headnote) should be read as though the reference to "having to live in conditions that will fall below acceptable humanitarian standards" were a reference to "living in circumstances falling below that which would be reasonable for internal relocation purposes".*

**Analysis**

41. Before embarking on my analysis of the appellant's human rights claim, I should make clear that the delay between the first and second resumed hearings resulted largely from the promulgation of OA (Somalia) in February this year. I do not consider that delay to have had any impact on my ability to determine the case fairly. My notes of the evidence and the submissions were clear and thorough and my view on the oral evidence was reached immediately after the first resumed hearing.

42. There is no attempt in the analysis which follows to consider and resolve the principal point which concerned Judge McWilliam at an earlier stage of the appeal to the Upper Tribunal, as summarised at [16] above. Presumably in recognition of the conclusions in Ainte and OA (Somalia), Ms Fitzsimons did not seek to submit before me that the MSS threshold was applicable to the appellant's living conditions claim. As held in both of those decisions, therefore, the threshold which applies to that (secondary) claim is the modified N v UK test set out in AM (Zimbabwe) v SSHD [2020] UKSC 17: whether there is a real risk that the individual concerned will be exposed to intense suffering or a significant reduction in life expectancy

43. Ms Fitzsimons principal submission is that the appellant is at risk 'on MOJ grounds' and it will assist to consider the bases upon which that submission is and is not made. In order to do so, I begin by considering the risk which was found to exist in the past.

44. The appellant's father was recognised as a refugee in 2003 and the appellant was subsequently granted Indefinite Leave to Enter as his family member. In the respondent's bundle, I have various documents in connection with the claim for asylum which was made by the appellant's father. There is a Statement of Evidence Form accompanied by a statement; a further statement which was made in answer to a refusal letter; and the decision of the late Brian Watkins

CMG (Adjudicator) in the appellant's father's appeal (reference HX/24756/2003).

45. The appellant's father's claim was advanced in reliance, firstly, on his actual or imputed political opinion. He was the former mayor, under President Siad Barre, of a number of municipalities in Somalia. The second basis on which the claim was argued was in reliance on the appellant's father's ethnicity, as a member of the Darod Marehan clan.

46. The facts of the claim were not in dispute; what was in issue before the Adjudicator was whether the appellant's father's political activity and his ethnicity would place him at risk on return. The Adjudicator found that the appellant's father would be at risk from the United Somali Congress of the Hawiye clan on account of his clan membership. He did not accept that the appellant's father would be at risk on account of his historical association with the Siad Barre regime.

47. Ms Fitzsimons argued before the First-tier Tribunal and in her first skeleton argument (dated 22 August 2021) before the Upper Tribunal that the respondent had failed to establish that there had been a fundamental and durable change in Somalia such that the appellant was no longer entitled to international protection. That argument was based in significant part on the UNHCR's response to the respondent's indication that she intended to cease the appellant's refugee status. The appeal was dismissed by the FtT on asylum grounds, however, and Ms Fitzsimons accepted before me that the only extant issue was Article 3 ECHR. She did not seek to submit that the appellant was positively at risk on account of his father's political activity or their clan membership.

48. Ms Fitzsimons' submission was, instead, that the appellant would be particularly vulnerable on return to Somalia, such that he would be at particular risk from indiscriminate violence or at risk of being exposed to living conditions which breached Article 3 ECHR upon return. In order to consider both of those submissions, it is necessary to make findings about the appellant's likely circumstances upon return. In that respect, the burden of proof is on the appellant, although the standard of proof is the lower one applicable in protection appeals, as considered by Sir John Dyson SCJ (with whom the other Justices agreed) at [12]-[20] of MA (Somalia) v SSHD [2010] UKSC 49; [2011] All ER 65.

49. The extent of the appellant's association with Somalia has never been in dispute. It is accepted by the respondent that he was born in Kenya and that he lived for much of his life in Ethiopia before coming to the United Kingdom. As Ms Fitzsimons understandably highlighted in her written and oral submissions, he has no experience of living in the country of his nationality. That is undoubtedly a significant matter and one which I have borne fully in mind in reaching my decision.

50. The First-tier Tribunal found that the appellant has no particular fluency in the Somali language. I received further evidence about the appellant's ability to speak Somali. I approach the appellant's own evidence with considerable circumspection because he has a record of deception. He required VS to give evidence and subjected her to a contested trial in the Crown Court. It is clear from the Recorder's

sentencing remarks that he manipulated and groomed her for sexual and financial reasons. He also stated in his evidence to the First-tier Tribunal that he had decided to turn his back on his old lifestyle, including the use of drugs, although he subsequently accepted before me that he had been recalled to prison in connection with an event at which he was found by the police to have drugs (cannabis) in his pocket.

51. The appellant maintains that he has very limited familiarity with the language, having grown up in Ethiopia. The appellant's sister and his brother were both asked questions about this claim. His sister said that she is the better Somali speaker and that she also speaks fluent Amharic. Asked why she thought that the appellant would not be able to support himself, she said that he "doesn't speak the language and has no one there". She added that he 'only speaks Amharic'. The appellant's brother, on the other hand, said that the appellant speaks 'poor Somali'.

52. I consider the appellant and his siblings to have overstated his difficulties with the Somali language. The appellant's brother confirmed in his oral evidence that their father only speaks and understands Somali and that he watches Somali television in the house which they all share. I consider it more likely than not that the appellant is able to converse with his father, with whom he has lived for the last two decades or so. I accept that his principal language is Amharic but I do not accept that he would have been able to live in his father's house in the UK without a shared language in which they could communicate effectively. His account of speaking to his father in a mix of Somali and English or Amharic (at [5] of his witness statement of 18 September 2019) is not reasonably likely to be true when set against his brother's evidence that his father's only language is Somali.

53. Ms Fitzsimons was constrained to accept that there had been inconsistent evidence given before me when it came to the appellant's educational career in the UK. He was concerned, in my judgment, to paint himself as a man who had emerged from school in the UK with no skills which might be transferable to Somalia. He was asked by Mr Melvin whether he had attended college or undertaken an apprenticeship after leaving school in the UK. His answer was that he had done 'nothing like that' and that he had just been 'sitting at home' after he left school. The evidence given by his mother, however, was that the appellant had been studying science and information technology at Lewisham College until his arrest. She added that there had also been another college but that she had forgotten the name. She stated that the appellant had been living at home at this time and that he had been in receipt of an allowance from the college of £30 per week.

54. The appellant's sister stated that he had studied Business Management at BTEC level at Southwark College after he had left school. His brother also stated that the appellant had been 'studying at college prior to his arrest' although he was not sure what he was studying at that time. Whilst I have nothing before me to show what educational qualifications the appellant does or does not have, it is quite clear to

me that he set out to deceive me about his education in the UK. He did so, in my judgment, in an attempt to further the case which he knew was to be put on his behalf, of a vulnerable young man returning to a country with which he has no familiarity.

55. There was a real focus in the evidence before me on the ability of the appellant's family in the UK to remit money to him in Somalia. The appellant's solicitors had plainly attempted to secure evidence to show that the family were either unable or unwilling to remit money. The reasons for that were, in summary, as follows. The appellant's parents are elderly and dependent on benefits and have no spare money. His elder brother is no longer on speaking terms with him, having shunned the appellant when he was recalled to prison, and would not be willing to assist him at all. His younger brother has recently married, is in debt and is looking to have a family and to take a Master's degree. His sister is an undergraduate student, living on student finance.

56. I do not accept that the appellant has demonstrated to the lower standard that his family would be unable or unwilling to support him on return to Somalia. Although I accept on the evidence before me that his parents are on benefits, the amount that they receive is not inconsiderable (£278 per week), particularly when it is borne in mind that the appellant's sister lives at home and is able to contribute to the family finances. She said in evidence that they struggle, as a household, to pay the bills but there were no bank statements from the appellant's parents in evidence, nor was there any evidence to show that payments are being missed. There is no schedule of income and outgoings, despite the fact that the appellant is expertly represented. It is the experience of the Tribunal that many families live extremely frugally and are able to remit quite sizeable sums from the public funds which they receive. The fact that the appellant's parents are in receipt of benefits does not, without more, serve to establish that they are unable to remit money to the appellant in Somalia so as to continue to support him financially as they have done in the UK since 2003.

57. I do not accept that the appellant's father is unaware of the appellant's offending. The precise details might not have been disclosed to him but I do not accept that he was unaware that the appellant was in prison from 2018 onwards, or that he was recalled to prison whilst on licence. When questioned about this, the family simply stated that the appellant's father had beed told that he had gone away and was 'coming back'. I do not consider that to be the truth. I find that he knows that the appellant went to prison and that he is also likely to be aware that the appellant is facing deportation proceedings. I do not accept that the appellant would be cut off by his parents in the event of his deportation.

58. I do accept that the appellant's older brother has effectively disowned the appellant as a result of his recall to prison, however. He has made one witness statement in these proceedings, in which he explains how he felt about the appellant's offending. I accept the evidence given by the appellant and his family about the effect of the appellant's recall on this brother, who had already left home and started a family life of his own.

59. I accept that the appellant's sister is a full time student and that she would not be in a position to send very much money to the appellant in the event of his deportation. Her bank balance is low and whilst she might be able to make some contribution to the household finances, she is not likely to be able to support the appellant regularly or to a very great extent in the event of his deportation.

60. I do not accept that the appellant's younger brother would be unable or unwilling to support the appellant in the event of his deportation. He is clearly loyal to the appellant. He is an engineer and earns a respectable salary of £35,000 per annum. There is no evidence beyond his say-so that he is currently in debt; that he is going to take a Master's degree; or that his outgoings are such that he is unable to spare money to support his brother in Somalia. The bank statements which I have for him are all dated at the time of the hearing before the FtT and shed no light on his financial circumstances at today's date. He and his wife may prefer not to remit money to the appellant when he returns to Somalia but it is not established that they are unable to do so. I find that they would be willing to do so, in combination with the appellant's parents, in order to ensure that the appellant's basic living needs are met.

61. I find for the reasons above that the appellant speaks more Somali than he suggested and that he is likely to have achieved more academically than he stated. I also find that he has failed to discharge the burden upon him of establishing that he would not receive money from his family members in the UK.

62. I am not able to accept on the lower standard that the appellant's family have no remaining ties to Somalia. As Mr Melvin noted before me, the appellant is from a noble clan; the Marehan is a sub-clan of the Darod clan (Mr Melvin referred in this connection to a report of the Canadian Immigration and Refugee Board dated March 2018, as detailed in his second skeleton argument). More importantly, however, the appellant's father was clearly a man of means and influence in Somalia. Although the family left Somalia many years ago, I was told in oral evidence that the appellant's father had retained links to the Somali cultural centre until his health deteriorated recently. Although the family were in Kenya and then in Ethiopia, the appellant's mother accepted in her evidence before me that the camps in which they stayed held a range of nationalities, including Somalis. The Upper Tribunal's holdings about the nature of Somali society and the interconnectedness of the diaspora have been clear for many years, and are repeated in paragraph 5 of the headnote to OA (Somalia). Against that backdrop, and considering that the appellant's father was a member of Siad Barre's elite for a dozen years or more, I do not accept that this family is effectively an island, out of contact altogether with family members and other Darod Marehan clan members in Somalia. In my judgment, the appellant would not be bereft of any support on return to Somalia. It is more likely than not that there would be extended family members in Mogadsihu who could be forewarned of the appellant's arrival and who would be prepared to provide him with some assistance, whether by way of food, accommodation or employment. That is particularly so if those

connections could be provided with remittances before the appellant's return, as considered at paragraph 6 of the headnote to OA (Somalia). It is more likely than not, in my judgment, that the appellant could call upon a pool of such family and clan connections upon return to Mogadishu. Through those connections, he would be able to access a guarantor for rented accommodation and for manual employment, as considered at [8]-[9] of the headnote to OA (Somalia).

63. In reaching the finding that the appellant could call upon family *and* clan connections on return to Mogadishu, I have taken into account what was said in the country guidance decisions and in Mary Harper's report about the modern role of the clan in Somalia. I do not find that the appellant would be required to look to the Marehan clan for protection, properly so called. My finding is, instead, that the appellant could look to that noble, 'majority' clan for social support mechanisms and access to a livelihood and accommodation. That is a finding which is in line with the country guidance expressed in MOJ and OA (Somalia) (at [234]-[241] in particular), from which I do not understand Ms Harper to demur.

64. Having heard the appellant give evidence for some time, and having considered his evidence against the remaining evidence in this appeal, I am also able to express the following conclusion about the appellant's vulnerability. There is no supporting evidence before me to suggest that he has any physical or mental health difficulty. (The reference in his statement to his having anxiety and taking a high dose of Mirtazapine is unsupported by any recent medical evidence.) He is not a young man who could readily be characterised as having any particular vulnerability. He was able, as I have observed above, to manipulate a vulnerable young woman for his sexual gratification and financial benefit. He chose to subject her to a lengthy trial. Despite his protestations in his witness statements before the FtT that he had learned from his time in prison, and to have changed his ways, he was found to be carrying drugs whilst he was on licence. Considered in the atmosphere of a London courtroom, the appellant is not a vulnerable young man, he is a young man who is capable of manipulation (whether successful or not) in order to achieve his own ends.

65. Ms Fitzsimons submits with proper justification, however, that the appellant's vulnerability is not to be considered through that prism, but through the prism of the appellant's return to Somalia. In that respect, she relies on background material including the UNHCR's letter to the respondent and the expert reports (original and supplementary) of Mary Harper.

66. The opinion of the UNHCR in such matters is obviously deserving of particular respect. In her first skeleton argument, Ms Fitzsimons recalls what was said in that connection in R v SSHD ex parte Adan [2001] 2 AC 477. Mention might also be made of the Supreme Court's reference to the UNHCR's 'unique and unrivalled' expertise at [71]-[74] of R (EM Eritrea & Ors) v SSHD [2014] UKSC 12; [2014] 1 AC 1321.

67. The UNHCR's response to the respondent's letter is reproduced in the respondent's bundle. It expressed concern about an uptick in inter-clan violence becoming a 'major destablishing factor' and to civilans being

severely affected by the conflict, with reports of deaths as a result of conflict related violence, amongst other humanitarian problems. Al-Shabaab's control of rural areas and presence in urban areas, including Mogadishu, was noted, as was its ability to strike targets with improvised explosive devices and other weapons. Civilians, it concluded, faced 'daily threats to life'. There were ongoing problems for minority clans, it stated, and minority clans often lacked vital protection and suffered pervasive discrimination. It concluded that the appellant would be likely to struggle to re-establish himself in Somalia and that he 'may be at risk of serious harm if returned to Somalia'. It cautioned against forcible return and encouraged the Secreytary of State to undertake a fact-specific analysis before taking any such decision.

68. Ms Harper is the BBC's Africa Editor and is well known as an expert witness on Somalia. Despite the doubts expressed about Ms Harper's methodology in MOJ and AAW, I note that the Upper Tribunal concluded in OA (Somalia) that many parts of her report were helpful and that she spoke with a degree of authority as a visitor to Somalia and an experienced commentator on the region. I am satisfied that she is qualified to give expert evidence in this case.

69. Ms Harper has produced two reports for this appeal, dated 22 September 2019 and 5 February 2021. Together, they run to 29 pages of single-spaced type and I do not intend to attempt a comprehsensive summary of either report for the purpose of this decision. I have considered both reports carefully and note that many of Ms Harper's concerns echo those expressed by the UNHCR. She believes that he would be at 'severely heightened risk' because of his lack of understanding of Mogadishu and she also expresses the view that he might be at risk of recruitment by Al-Shabaab. There might also be a risk from the security forces as a result of his lack of Somali. She does not think that he would receive assistance from the Marehan clan, as it is only the family who would assist. He would be extremely unlikely to find a job which would enable him to support himself and he would be at risk of finding himself in an IDP camp, the conditions in which are 'desperate'. Her own conclusion, as summarised at [10.1] of the first report was as follows:

> Based on my analysis of ongoing events in Somalia, I am of the opinion that a person in [AMW's] circumstances would face severe risks on return to Mogadshi or elsewhere in Somlai, including the risk of being harmed by the security forces or other armed groups, becoming destitute and/or being forced to live in an IDP or squatter camp – or becoming completely homeless. In addition, Mogadishu and many other parts of the country remain dangerous and unpredictable, and the security forces are often unable to protect civilians. I believe the facts that [AMW] has never been to Somalia, does not speak the language well, has no family or other contacts in the country and has committed a sexual offence would add to these risks, and make it almost impossible for him to survive in Mogadishu or elsewhere in South Central Somalia.

70. In Ms Harper's second report, she considered the risk of Al-Shabaab recruitment to have diminished but the other matters to have worsened as a result of the pandemic and its impact on the economy in particular.

71. I have also taken account of the additional background material provided by the appellant's solicitors. I am particularly grateful for Ms Fitzsimons' oral references to key paragraphs in the large bundle and for the helpful written schedule she provided at the second hearing. I note, in particular, the advice given by the Foreign, Commonwealth and Development Office against all travel to Somalia and the references to an upsurge in violence in Mogadishu and the increasing food insecurity in the country.

72. Considering all of the evidence in this appeal, and the guidance given in MOJ and OA, the reality of the appellant's situation is, in my judgment, as follows. I have based this assessment on the factors set out at [407] of MOJ, as endorsed in the more recent country guidance.

73. The appellant has never been to Somalia and that is a serious matter when considering his 'return' to the country of his nationality. He has no nuclear or close relatives in Mogadishu and he had no personal 'circumstances in Mogadishu prior to departure'. He is likely to have clan and family connections there, however, and he has not established that he cannot receive remittances from his family in the UK. He has received a more significant education in the UK than he was prepared to divulge and his ability with the Somali language is very much better than he was prepared to accept. Given the connections which the family is likely to be able to call upon as a result of his father's lengthy political career and their noble clan membership, I find that the appellant is likely to be able to find employment, in the medium term, which will be sufficient to support him to a standard in excess of that required by Article 3 ECHR. In the event that a guarantor is required to secure such work, the appellant will in my judgment be able to call upon those contacts in order to provide one. Equally, I am satisfied that he is more likely than not to be able to secure a guarantor who will be able to vouch for his so that he can access cheap accommodation of the kind considered in OA (Somalia) (at a rate of between $40 and $120 per month).

74. In the shorter term, he has not established that his family in the UK will be unable to support him adequately, just as they have whilst he has lived in this country. In addition to that support, it is common ground that he will receive in the region of £750, which will enable him to live, in hotel accommodation if necessary, for between two and three weeks. Given the support which will, in my judgment, be available to him, there is not a reasonable degree of likelihood that he will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms. I do not find it reasonably likely that the appellant would be required to live in an IDP camp, whether in the short, medium or long term.

75. My analysis of the appellant's circumstances upon return to Mogadsihu differs markedly from Ms Harper's. Although I, like the Tribunal in OA< found her reports to be generally helpful, they are premised on the

appellant's assertions about his connections to the country, his fluency in Somali and his family's ability to support him there. In those respects, I have found against the appellant and I consider that I am entitled to reach a different view from Ms Harper's as regards the appellant's economic vulnerability on return.

76. For the same reason, my view about the assertedly enhanced risk to the appellant from Al-Shabaab and the security forces differs from that expressed by Ms Harper. Given the findings I have reached about his ability to integrate into Somalia and the support which will be available to him, I do not accept that he will be at enhanced risk of targeting by these groups. I do not accept that he will be unable to give an account of himself to the security forces and I do not accept that he would stick out in Mogadishu to the extent that he would become a target for Al-Shabaab. Any suggestion (as in Ms Harper's report) that he would be at risk as a result of his sexual offence is speculative; there is no reason to think that this aspect of his history would be revealed, whether to Al-Shabaab or anyone else. He would naturally have no familiarity with the city but he would be able to depend on his extended family and his clan contacts in order to avoid any problems arising from that lack of familiarity. The risk to ordinary civilians in Mogadishu is not such as to breach Article 3 ECHR and the appellant's personal circumstances are not such as to enhance that risk to the point that it becomes a real risk.

77. It follows that I do not accept that the appellant is at risk of conditions contrary to Article 3 ECHR on return to Somalia, whether as a result of the security situation or the living conditions, or both. The appeal will therefore be dismissed on the basis that the respondent's decision is not unlawful under section 6 of the Human Rights Act. No further grounds of appeal were extant before me.

**Notice of Decision**

The decision of the FtT having been set aside in part by Judge McWilliam, I remake the decision on the appeal by dismissing it on human rights grounds.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**24 August 2022**