

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/07754/2018**

**THE IMMIGRATION ACTS**

|  |  |  |
| --- | --- | --- |
| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 17 December 2018** | **On 01 February 2019** | |
|  | |  |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**SMM**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Masood of Aden & Co Solicitors

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Somalia born in 1993. He is from the area of South Somalia, the town of Bu’ale, which is controlled by al-Shabaab. He arrived in the United Kingdom and claimed asylum on 18 January 2018, having left Ethiopia on 17 January 2018.
2. His application for asylum was refused in a decision dated 8 June 2018, when it was accepted that the Appellant is a national of Somalia from Bu’ale but it was found that it would not be unreasonable or unduly harsh to expect him to relocate to Mogadishu. He appealed against that decision and his appeal came before Judge of the First-tier Tribunal Davidge for hearing on 19 July 2018. In a Decision and Reasons promulgated on 27 July 2018 the appeal was dismissed.
3. Permission to appeal was sought, in time, on the basis that the judge had erred in her assessment of whether or not it would be unduly harsh to expect the Appellant to internally relocate. In particular, the judge had failed to give any or proper reasons for her findings and had failed to apply the country guidance decision in MOJ [2014] UKUT 00442 (IAC), albeit the judge had made reference to that judgment at [7].
4. Permission to appeal was granted by Upper Tribunal Judge King on the basis:

“As a member of the Ashraf clan it was found that he may relocate to Mogadishu. The issue is whether such would be unduly harsh. It was considered that there were family members who could provide support, albeit not living in that city. It is just arguable that a full assessment should be carried out as set out in paragraph 407 of MOJ.”

*Hearing*

5. At the hearing before me, Mr Masood sought to rely on his grounds of appeal, in particular, that the judge had failed to apply what was said by the Upper Tribunal by way of country guidance in MOJ [2014] UKUT 00442 (IAC) and in particular at [406]- [408]:

“406. We consider, in the light of the evidence as a whole, that the position as set out by UNHCR in its report published on 25 September 2013 continues to reflect an appropriate starting point today, upon which to build in the light of our review of the up to date evidence:

‘With regard to Mogadishu, the personal circumstances of an individual need to be carefully assessed. UNHCR considers an IFA/IRA as reasonable only where the individual can expect to benefit from meaningful nuclear and/or extended family support and clan protection mechanisms in the area of prospective relocation. When assessing the reasonableness of an IFA/IRA in Mogadishu in an individual case, it should be kept in mind that the traditional extended family and community structures of Somali society no longer constitute as strong a protection and coping mechanism in Mogadishu as they did in the past. Additionally, whether the members of the traditional networks are able to genuinely offer support to the applicant in practice also needs to be evaluated, especially given the fragile and complex situation in Mogadishu at present.’”

407.…(h) 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:

(i) circumstances in Mogadishu before departure;

(ii) length of absence from Mogadishu;

(iii) family or clan associations to call upon in Mogadishu;

(iv) access to financial resources;

(v) prospects of securing a livelihood, whether that be employment or self-employment;

(vi) availability of remittances from abroad;

(vii) means of support during the time spent in the UK;

(viii) why his ability to fund the journey to the West no longer enables an Appellant to secure financial support on return.

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.”

6. In her submissions, Ms Pal submitted that the point of return would be to Mogadishu. The judge found that the Appellant would be able to receive assistance from his uncle, who lives in Somalia. Clarification was sought at that point, where it was discovered from the Record of Proceeding, the witness statement and the interview that there was no detail as to where the Appellant’s uncle was living and therefore no evidential basis to support the judge’s finding that he had a maternal uncle in Somalia who could assist him on return.

7. A further issue arose in relation to an inconsistency between the judge’s finding at [14] that the Appellant has a sister and two brothers whom he left in Somalia along with his mother and that he had chosen rather than was forced to separate from them in Italy and the judge’s finding at 17(a) that *“the Appellant has provided no explanation as to why his family should be anywhere else other than at home given that that was where they were when he left Ethiopia”*.

*Findings and reasons*

8. For these reasons, I find material errors of law in the judge’s decision. There are apparent factual errors and inconsistencies in the judge’s findings. It is entirely unclear where it is the Appellant’s uncle is living and indeed where his family members in terms of his mother, sister and two brothers are living and whether they remain in Somalia or in Italy, which is clearly material to any assessment of internal relocation. The assessment of the reasonableness or undue harshness of internal relocation can, I find, only be assessed in light of clear findings as to the whereabouts of family members, including extended family, in Somalia at the current time.

**Notice of Decision**

9. I remit the appeal for a hearing *de novo* before the First-tier Tribunal, to be heard by any judge other than First-tier Tribunal Judge Davidge.

**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 his 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 Rebecca Chapman Date 15 January 2019

Deputy Upper Tribunal Judge Chapman