**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/09086/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7 April 2015** | **On 30 April 2015** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR A R S**
**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**
For the Appellant: Mr S Walker (Senior Home Office Presenting Officer)
For the Respondent: Mr S Chelvan (Counsel)

**DECISION AND REASONS**

1. In a decision promulgated on 16 January 2015, First-tier Tribunal Judge Aujla ("the judge") allowed the respondent's appeal against a decision to remove him from the United Kingdom. The judge concluded that the respondent would not be at real risk of persecution or ill-treatment in breach of Article 3, on return to Somalia. He would, however, be at real risk of suffering serious harm and was entitled to humanitarian protection. In reaching his conclusion that the appeal fell to be allowed on this basis, the judge took into account and applied country guidance given in MOJ [2014] UKUT 442.

2. The Secretary of State, applied for permission to appeal, contending that the judge erred in failing to give reasons or adequate reasons on material matters. The guidance given in MOJ showed that it would be for a person facing return to explain why he would be unable to access economic opportunities in Mogadishu. Only those with no clan or family support, who would not receive remittances from abroad and who would have no real prospect of securing access to a livelihood on return, would face the prospect of living in circumstances falling below those acceptable in humanitarian protection terms. The Secretary of State accepted that the respondent was from a minority clan but he was a resourceful individual who had failed to explain why he would be unable to gain access to economic opportunities on return to Mogadishu. Furthermore, he had failed to explain why he would receive remittances from abroad. The judge failed to fully address the position in the light of the presence here of members of the respondent's family. At paragraph 23 of the decision, the judge referred to the respondent's family as including an aunt and a niece but at paragraph 40, he did not give adequate reasons why the respondent would not have access to financial support and failed to mention these relatives in that paragraph.

3. Permission to appeal was granted on the basis that the judge may have misunderstood or misapplied the country guidance in MOJ. Arguably, that guidance did not support the judge's conclusion and it was also arguable that he failed to adequately address whether the respondent would be able to make a living in Mogadishu on return or receive remittances from family members outside Somalia. The decision appeared to have been written on the basis that the respondent would refuse to take advantage of financial support available to those who returned voluntarily, an error in the light of AN and SS [2008] UKAIT 00063. In that case, the Tribunal held that it was appropriate to take into account the availability of financial support through the voluntary returns programme.

4. In a rule 24 response, the respondent contended that the judge made no material error and that the Secretary of State's grounds disclosed a mere disagreement with his sustainable findings. The judge accepted that the respondent was a credible witness, that he had been a victim of past persecution, that he had never lived in Mogadishu and that he had no family, friends or any clan associations there. The judge heard evidence, which he accepted, on the lack of availability of financial support from relatives in the United Kingdom and made a clear finding on this at paragraph 40. There was no basis for a submission that the respondent should have placed evidence before the Tribunal to show that his family could not assist him, in the light of the judge's acceptance of the evidence in this regard. So far as the voluntary returns programme was concerned, it was contended that this was irrelevant. As at the date of hearing, the respondent was clearly not part of the programme and this aspect did not form part of the pleaded grounds or indeed the Upper Tribunal's reasoning in MOJ. The point had not been put to the respondent at any stage during the hearing.

**Submissions on error of law**

5. Mr Walker said that the proper focus was on paragraph 40 of the decision. The judge had not explained there why the respondent would be unable to receive remittances from the United Kingdom. In the body of the decision, he mentioned and took into account the presence of family members in this country. The judge granting permission to appeal drew attention to AN and SS and the availability of grants under the voluntary returns programme. The appeal was allowed on humanitarian protection grounds and so it appeared that the respondent would be able to avail himself of this resource. No reasons were given in the decision for the judge's conclusion that financial support would not be available to the respondent, including support under the voluntary returns programme. Reliance was placed upon the Secretary of State's written grounds.

6. Mr Chelvan said that the appeal was unusual, in some respects. The voluntary returns programme point was raised in the grant of permission but it was clear that it was not relied upon by the Secretary of State in the grounds of application.

7. Could the respondent rely on the programme? There were several obstacles. It was clear that the Upper Tribunal in MOJ did not give weight to the voluntary returns programme in giving country guidance or view it as a significant factor. The programme formed no part of the ratio in the case. It would have been a clear error if the judge decided not to follow the country guidance. Secondly, the appeal was allowed on humanitarian protection grounds and the availability of a grant could only have become a live issue on promulgation of the decision, with the dismissal of the appeal on asylum grounds and in relation to Article 3 of the Human Rights Convention. The point could only have arisen in hindsight.

8. At paragraph 25 of the decision, the judge recorded the Secretary of State's submission that the respondent was not at risk on return but nowhere was there any challenge to the evidence, accepted by the judge, regarding lack of support in Somalia or from the respondent's family here. There was also no submission regarding corroborative evidence, to support the respondent's case, although there was a related submission regarding medical evidence. The point about the voluntary returns programme was new. At paragraph 23 of the decision, the judge recorded the respondent's evidence, which was not challenged, that he had no family in Mogadishu, had never lived there, had no clan support and would not receive support from his mother. The evidence regarding his aunt was to similar effect. At paragraph 24, the judge recorded evidence from the aunt. There were no submissions from the Secretary of State challenging this evidence, particularly regarding financial support. The thrust of the Secretary of State's case at the hearing was that the respondent ought to be able to generate his own income. There was nothing about a lack of any supporting or corroborative evidence. The judge made cogent

findings regarding credibility at paragraph 27 and those following. The narrative regarding past persecution was accepted.

9. At paragraph 38, the judge cited the relevant paragraphs of MOJ, which were at 424 and 425. There was no mention of the voluntary returns programme there. Again, this aspect was not raised in the grounds of application for permission to appeal. The Secretary of State clearly did not argue before the First-tier Tribunal that the respondent could avail himself of support under the programme. The judge's findings were clearly guided by MOJ and were sustainable. They expressly took into account the ratio of MOJ.

10. At paragraph 40, the judge clearly had paragraphs 424 and 425 of MOJ in mind and he reminded himself of his earlier findings of fact. The only close family the respondent had available was his mother and no financial support was available from her or other relatives, on return. Overall, this was a gold standard determination.

11. So far as the Secretary of State's grounds of application were concerned, again, there was no inclusion of the voluntary returns programme. In seeking to rely on the respondent's own resourcefulness, the Secretary of State overlooked that this was not relevant to the Upper Tribunal's reasoning in paragraphs 424 and 425 of MOJ. Nor was the respondent under an obligation to identify every single member of his family. In the decision, the judge took into account the available sources of support and the family members here. Again, there was no challenge to the respondent's evidence regarding a lack of support, or to his mother's evidence. It was clear that the voluntary returns programme was not raised below. The suggestion that a lack of corroborative evidence undermined the judge's findings took no account of his clear acceptance of the evidence before him and the sustainable findings that were made. The judge accepted the account given regarding family members here and possible sources of support, drawing together his reasoning in paragraph 40.

12. So far as AN and SS was concerned, the support package considered by the Upper Tribunal in that case was clearly not part of the ratio in MOJ. Moreover, there was no evidence before the Upper Tribunal in AN and SS regarding any current terms of support. This aspect was clearly not part of the Secretary of State's case in the present appeal. In AN and SS, the Upper Tribunal was looking at facts in relation to Sri Lanka, in 2008. The judge clearly did not err in applying the ratio in MOJ.

13. Mr Walker had nothing to add to the written grounds or his earlier submissions.

## Conclusion on error of law

14. I conclude that the judge made no material error of law and that the decision of the First-tier Tribunal shall stand. The decision has been prepared by a very experienced judge and contains a clear summary of

the evidence before him, reasoned findings of fact, a succinct direction in the light of MOJ and the application of country guidance given in that case to his findings. All of this led to sustainable conclusions. The judge was entitled to allow the appeal, for the reasons he gave.

15. Although paragraph 40 of the decision is, as Mr Walker said, the proper focus for an assessment of the Secretary of State's case that the decision contains a material error of law, it must not be read in isolation. The judge reminded himself there of his earlier findings of fact. He accepted the account given by the respondent of past persecution in Somalia and the evidence regarding the presence here of family members. The judge was entitled to accept that the respondent had no available means of financial support on return to Mogadishu. There were no family members there, he had never lived in the city and he had no clan support. Insofar as the Secretary of State's grounds amount to a suggestion that the judge ought to have required corroborative evidence, no material error of law has been shown here. The judge did not err in accepting the evidence before him, in the light of the cases put to him by the parties.

16. The judge took into account and applied the country guidance in MOJ, at paragraphs 424 and 425 of that decision, dealing with Mogadishu as a destination for internal relocation. This was relevant guidance as the respondent is from Kismayo and, as noted earlier, the judge found that he had never lived in Mogadishu. The reasoning which appears at paragraph 40 is clear and builds on the earlier findings. It is simply not the case, as contended in the grounds of application, that the judge failed to properly take into account any failure by the respondent to explain why he would not receive remittances from abroad. He took into account the available sources of support and found that they were insufficient.

17. I accept Mr Chelvan's submission that the point identified by the judge granting permission, regarding support available to returnees to Sri Lanka under the voluntary returns programme, was not before the First-tier Tribunal in the present appeal. There is no mention of support from this source in the Secretary of State's letter giving reasons for the removal decision and her representative made no submissions to the judge in this context. The point was also not raised in the application for permission to appeal. As it formed no part of the Secretary of State's case, the judge did not err in law in failing to consider it. In any event, the judgment in MOJ makes no mention of support from such a programme, in the assessment of Mogadishu as a location for internal relocation for Somali returnees.

18. For these reasons, I conclude that the judge made no error of law. The decision of the First-tier Tribunal shall stand.

## DECISION

19. The decision of the First-tier Tribunal shall stand.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

**ANONYMITY**

The First-tier Tribunal Judge made an anonymity direction and I direct that it shall continue, until varied or set aside by this Tribunal or a court.

Signed Date

Deputy Upper Tribunal Judge R C Campbell