Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/01344/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th February 2016	**On 26th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

ZAB

(ANONYMITY DIRECTION MAINTAINED)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Brown, Counsel; Duncan Lewis Solicitors
For the Respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Oxlade dismissing the Appellants' appeals against the Respondent's decision refusing to grant asylum and to remove her by way of directions pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002.

2. The Appellant appealed against the decision of Judge Oxlade and was granted permission to appeal by Upper Tribunal Judge Perkins. The grounds upon which permission was granted may be summarised as follows:

   (i) It is arguable that the judge's decision to dismiss the appeal; due to their being family support in Mogadishu is unsustainable on the evidence, and

   (ii) It is arguable that the judge erred in consideration of the Appellant's return to Mogadishu.

3. Permission was granted on that bases however there were five initial grounds of appeal drafted by the Appellant's previous solicitor which was supplemented by further grounds on appeal to the Upper Tribunal. Given that permission was broadly granted, I shall consider the grounds so far as necessary.

Error of Law

4. At the close of submissions, I indicated that I would reserve my decision, which I shall now give. I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.

5. In relation to the judge's consideration of whether there was family support available in Mogadishu, upon which the entire basis of the dismissal of the appeal hinges, the judge's findings are indeed unsustainable on the evidence when forensically analysed.

6. At paragraph 64 of her decision, the judge considers the whereabouts of the Appellant's family however it is important to note that this discussion occurs in the absence of any explicit evidence on that specific issue. It is unclear from the decision that there was any evidence on this point at all which or any which could inform the basis for that decision. That is an unwise approach to take in view of the *dicta* of Keene, LJ in *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223 at [25]; and in the absence of detailed findings on the implausibility of the facts suggested by an Appellant:

> There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT

in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:

> "'An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done."

7. At any rate, it is suggested by the judge that the Appellant must be incorrect in what family remains in Somalia, as opposed to Mogadishu specifically. This is clear from the final sentence of paragraph 64 where the judge states that the Appellant's family have "remained in Somalia" and could "relocate" to Mogadishu (from in Beledeyne presumably in South West Somalia) and receive her there.

8. In that event, Ms Brown submits, and I accept, that the judge should have applied [407(h)] of the relevant country guidance case of *MOJ & Ors (Return to Mogadishu) (CG)* [2014] UKUT 442 (IAC), and not [407(f)] of *MOJ* which was instead applied.

9. Paragraph 407(h) of *MOJ* states as follows:

> 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 United Kingdom;
> (viii) why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.
>
> Put another way, it will be for the person facing return to Mogadishu 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.

10. It is clear on the face of the decision that such assessment has unfortunately not taken place owing to the conflation as to the family's whereabouts in the absence of evidence on the point.

11. As to the presence of family in Mogadishu, there is similarly no consideration of the mixed clan background of the Appellant (as referred to at paragraph 25 of the Respondent's Refusal Letter) and whether there would be any clan support available to her in light of [407(f)] of *MOJ* anyhow, regardless of whether the mother's relatives *may* be there. That paragraph states as follows:

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

12. Furthermore, my attention was drawn to [406] of *MOJ* which makes reference to the relevance of the UNCHR Report on returns to Mogadishu and states as follows:

> We consider, it 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.
> >
> > For the following categories of Somalis, UNHCR would consider that an IFA/IRA will not be reasonably available in the absence of meaningful nuclear and/or extended family support and functioning clan protection: unaccompanied children or adolescents at risk of forced recruitment and other grave violations; young males at risk of being considered Al Shabaab sympathizers and therefore facing harassment from government security forces; elderly people; people with physical or mental disabilities; single women and female single heads of households with no male protection and especially originating from minority clans. In any other exceptional cases, in which the application of an IFA/IRA in Mogadishu is considered even in the absence of meaningful family or clan support to the individual, the person would need to have access to infrastructure and livelihood opportunities and to other meaningful protection and support mechanisms, taking into account the state institutions' limited ability to provide security and meaningful protection."

(Underlining supplied)

13. This emphasis on the careful assessment of the personal circumstances of an individual in the absence of assessment of the factors at [407(h)] of *MOJ* alongside the fact of the Appellant being a single female (not to mention a child and an unaccompanied minor), and the earlier omissions I have highlighted, in my view result in a material error in the assessment of return to Mogadishu and the Appellant's proposed return there. In particular, there would need to be an assessment of whether the Appellant had access to "meaningful nuclear and/or extended family support and functioning clan protection" which has not occurred.

14. In those circumstances, I find that there was an error of law in the decision such that it should be set aside.

15. In light of my findings on the above grounds of complaint, I do not propose to consider the remaining grounds. I set aside the decision and findings of the judge in their entirety.

Decision

16. The appeal to the Upper Tribunal is allowed.

17. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal, to be heard by a differently constituted bench.

Signed Date

Deputy Upper Tribunal Judge Saini