IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-001150
UI-2024-001151
First-tier Tribunal No:
PA/52425/2023
PA/52431/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between
AA
YA
(SOMALIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnik, counsel instructed by Jackson Lees Group Limited solicitors
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

Heard at Field House on 13 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Sarwar promulgated on 8 February 2024 in which he dismissed the appellants' appeals against decisions of the Secretary of State made on 6 April 2023.

Background

2. The appellants are nationals of Somalia from the minority Reerhamar clan. They claim they were orphaned when their parents were killed in 1998 by the Hawiye tribe for being members of the Reerhamar Tribe. The appellants and their siblings were taken to the United Arab Emirates (UAE) in 1998 when they were young children, remaining there until June 2019 (on a resident card) when they travelled to Ireland, after which they flew to the UK using an agent. They claimed asylum on the day of arrival, 7 August 2019. They fear they will be killed by the Hawiye tribe if returned to Somalia, being identifiable by their names and ethnicity; they would also have no support (including from the UK) and speak little of the language. The appellants were both referred to the National Referral Mechanism (NRM) due to their experiences in the UAE, in respect of which they received positive grounds conclusions and were granted 12 months' discretionary leave valid until 03/05/2024.

3. In letters dated 6 April 2023 ("the Refusal Letters"), which are very similar in content, the respondent rejected the appellants' claims. The letters accepted the appellants' nationalities, that they were victims of modern slavery in the UAE, that they were members of the minority tribe, Reerhamar, and that clans/minority groups formed a particular social group in Somalia for the purposes of the Refugee Convention. The letters considered the appellants' credibility was undermined pursuant to s.8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 because they had not claimed asylum whilst in Ireland. Citing OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC) and MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), the respondent did not consider the appellants would be at risk by reason of membership of their minority tribe; they would not face any difficulties in securing employment and could make use of their clan support network to establish themselves on return; they could return to Mogadishu. Return would not result in a breach of Article 8 on the basis of family or private life.

4. The appellants appealed the refusal decisions. Their linked appeals were heard by First-Tier Tribunal Judge Sarwar ("the Judge") at Manchester on 19 January 2024, after which the Judge's decision was promulgated on 8 February 2024. The Judge dismissed the appeals on all grounds.

Grounds of appeal

5. The appellants applied to the First-tier Tribunal for permission to appeal on the following grounds:

   Ground 1

   The Judge applies the wrong standard of proof to the appeal.

At [11] the Judge identifies the correct burden and standard of proof in asylum appeals, adding the caveat that "The lower standard is applied to all findings of fact except where expressly stated". At [61], the Judge states in respect of his conclusions on the appellants' asylum claim that "I am not satisfied that the Appellants have met the evidential burden, on the balance of probabilities on the lower standard". The Judge has applied a higher standard of proof on the appellants and materially erred in law in doing so.

Ground 2

The Judge does not reach a decision on the appellants' Article 8 appeal. At [62-63] the Judge concludes that he dismisses the appellants' asylum claim and that their appeals do not succeed on Humanitarian Protection and Article 3 ECHR grounds. No reference is made to Article 8. The error is material, a ground of appeal having not been resolved by the Judge.

Ground 3

Neither appellant is from Mogadishu. It was accepted by the respondent that they were at risk outside of Mogadishu [33] but had argued that they could relocate to Mogadishu. In considering the appeal, the Judge solely considered whether the appellants would face persecution in Mogadishu, a separate question from whether it would be unduly harsh for them to relocate to Mogadishu. As noted in OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC) the question for the Tribunal to resolve was whether the appellant would be, "living in circumstances falling below that which would be reasonable for internal relocation purposes". The Judge materially erred in law in failing to consider the question of relocation.

Ground 4

The Judge materially erred in law at [56] in concluding that being a member of the Reerhamar tribe was sufficient for the appellants to be able to return and establish themselves in Mogadishu. The appellants stated they have no contact with any clan members back in Somalia. For the purpose of his consideration the Judge was prepared to accept that the appellants have no family in Somalia. Connection or ability to connect with their clan is a relevant factor for the Tribunal to have taken into consideration, (MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)). The Judge failed to resolve whether or not the appellants have any clan connection or could utilise that connection within a reasonable period of time on return.

6. Permission was granted in part by First-tier Tribunal Judge Athwal on 13 March 2024, saying:

> "1. The application is in time.
>
> 2. The first ground asserts that at paragraph 61 the Judge erred by applying a higher standard of proof on the appellants. Whilst the Judge has at paragraph 11 set out the correct standard of proof, it is arguable that when considering the evidence he has referred to balance of probabilities. This is not an appeal to which the NABA 2022 provisions apply and is therefore arguably a material error of law.

> 3. The second ground asserts that the Judge failed to reach a decision on the Appellant's Article 8 appeal. At paragraph 16 the Judge identified that an Article 8 appeal was before him but having read his decision, he has had not reached a decision on the appellants' family life in the UK or paragraph 276ADE. This raises an arguable and material error of law.
>
> 4. The third ground asserts that the Judge failed to resolve whether the appellants had any clan connection or could utilise that connection within a reasonable period of time on return. The ground is not arguable, the Judge at paragraph 55 made reference to the fact that Appellant 1 and his siblings were rescued by members of their tribe after their parents were killed. He has therefore adequately addressed clan connection".

7. Permission to appeal was therefore granted on Grounds 1 and 2 only.

8. The respondent did not file a response to the appeal.

The Hearing

9. The appeal came before me on 13 June 2024.

Preliminary issue

10. At the outset of the hearing I noted the appellants had applied for an extension of time for serving notices pursuant to s.104(4b) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). I said the timeline concerning the appeal appeared to be as follows:

    (a) Asylum claims made on 7 August 2019

    (b) Refusal decisions made on 6 April 2023

    (c) Appeals lodged with the First-tier Tribunal (FTT) on 19 April 2023

    (d) Discretionary leave granted to both appellants on 9 May 2023, at which point both appeals fell to be treated as abandoned pursuant to s.104(4) of the 2002 Act.

    (e) The time limit for the appellants' giving notice to the FTT of their intention to continue their claims despite the leave expired on 7 June 2023 pursuant to rule 16 of the FTT procedure rules (The time limit for giving notice to the Upper Tribunal (UT), to the extent it was required, expired on 9 June 2023 pursuant to rule 17A of the UT procedure rules).

    (f) A case management conference was held on 27 October 2023 at which the appellants say they verbally confirmed to the FTT judge that they wanted to continue their appeals. However, I note the directions made by FTT judge Hollings-Tenant on 6 November 2023 following this hearing refer at paragraph 3 only to leave having been granted and do not record a request for an extension of time for filing a s.104(4B) notice; an extension of time is only referred to as regards filing the bundle.

    (g) The substantive hearing takes place before the Judge on 19 January 2024.

(h) The Judge's decision is issued on 8 February 2022, with [21g] referring to the NRM conclusion and grant of leave, with no mention being made of s.104(4B) of the 2002 Act or the notices required.

(i) Applications lodged for permission to appeal on 16 February 2024, with no mention of the issue.

(j) Partial grant of permission to appeal is issued on 13 March 2024, with no mention of the issue.

(k) Appellants notices served along with applications for extensions of time at the UT by letter dated 6 June 2024.

11. I noted that I did not have jurisdiction to hear the appeals unless and until notices were filed pursuant to s.104(4B) and any necessary extensions of time had been granted by the appropriate tribunal. The appellants had now provided the requisite notices and applied for extensions of time.

12. Pursuant to the case of MSU (S.104(4b) notices) Bangladesh [2019] UKUT 412 (IAC), I said I needed to sit as a FTT judge (as the abandonment had occurred before the FTT) to decide whether time should be extended.

13. I therefore sat as a judge of the FTT to consider whether time should be extended. I said I would adopt the three stage for relief from sanctions, as set out in the decisions of the Court of Appeal in Mitchell v News Group Newspapers Ltd [2013] EWCA Civ 1537, Denton v T H White Ltd [2014] EWCA Civ 906 and Hysaj v SSHD [2014] EWCA Civ 1633.

14. I invited submissions from the representatives in this regard, first asking Mr Walker whether he opposed an extension of time been granted; he did not, considering it would be unfair in all the circumstances to try and limit the appeals.

15. Mr Karnik said it would be proper to infer from the directions of FTT judge Hollings-Tenant that the FTT was aware of the grant of leave and the applicable time limits for serving notice such that it had already reached a decision that the appeals should proceed. In any case, he apologised on behalf of the instructing solicitors for only having recognised the provisions belatedly, due to Mr Karnik having raised the issue with them.

16. I considered the matter briefly before addressing the three-stage test as follows:

(a) The breach: The grants of leave were made on 9 May 2023 and had since expired on 3 May 2024. The period of 28 days limited by FTT rule 16(3) expired on 7 June 2023. The default was therefore both serious and significant, with the notices only having been served on 6 June 2024, 366 days out of time.

(b) The reason for the breach: The appellants' legal advisors had candidly admitted not being aware of the statutory provisions and this appeared to be the only reason for not having filed notices earlier. They only became aware of the provisions upon counsel being instructed for the hearing before me. They submitted that the relevant provisions are comparatively obscure

but, given legal advisers are paid for being experts in their field, this was not a good excuse for not being aware of the applicable law. In my view there was also no evidence of any notice having been given, nor requests for extensions of time being made, to the FTT prior to the written notices given on 6 June 2024. The directions of FTT judge Hollings-Tenant did not reflect what the appellants alleged in this respect and no further evidence of what occurred at the case management hearing had been provided. The explanation of having given notice at the case management hearing did not fit with the admittance by the appellants' advisers that they were not aware of the statutory provisions prior to counsel alerting them. Overall, I therefore considered that no good reason for the breach had been provided.

(c) All the circumstances of the case: despite there being a serious and significant breach without good reason having been provided, I nevertheless considered it would be in the interests of justice to allow the extensions of time for several reasons. Those reasons were that:

(i) the claims under discussion are protection claims

(ii) now that the appellants' discretionary leave had expired, this appeal was their only route to the possibility of further leave being granted to remain in the UK

(iii) they should not be blamed for the failings of their representatives

(iv) applications for extensions of time had now been made, albeit belatedly

(v) whilst the appellants' legal advisers were at fault for not having served notices earlier, the impact of leave having been granted and the resultant need for such notices was not picked up by any of: FTT judge Hollings-Tenant at the case management hearing; the Judge in the hearing before him or his subsequent decision; FT judge Athwal in granting permission to appeal; or the respondent at any point

(vi) both parties had prepared for the hearing before me and the appeals were otherwise ready to proceed such that it would be a waste of time and resources for all concerned, as well as unfair for the appellants who are blameless, for the hearing not to go ahead.

(d) Decision: I considered that the justice of this case required time to be extended; and I therefore extended time for the notices for such period as would enable the notices received on 6 June 2024 to be regarded as having been made in time.

Submissions

17. I noted that, in granting permission to appeal, FTT judge Athwal had only referred to 3 grounds of appeal rather than 4, and it was not clear in referring to "the third ground" whether this was actually ground 3 or ground 4. I invited comment on this point. Mr Karnik agreed the grant of permission was not clear.

18. Mr Walker took the opportunity to confirm that the respondent had not filed a response pursuant to rule 24. He helpfully and candidly admitted that there was no indication within the Judge's decision that article 8 had been considered in any way. He said this was a complex case with the two appellants having arrived separately from their sisters who had previously claimed, and been granted, asylum such that there were aspects to article 8 that needed doing. He therefore conceded that the Judge had materially erred by failing to make findings on article.

19. Mr Karnik thanked Mr Walker for the concession concerning article 8 but said also:

    (a) that ground 1 also revealed a clear and obvious error concerning the appellants' protection claim, in that the Judge applied wrong standard of proof. This was not an appeal to which the Nationality and Borders Act 2022 (NABA) applied and so the standard was not the civil standard. A plain reading of [61] indicates the wrong standard was applied and one cannot then unpick what it means for the rest of the decision.

    I questioned whether this could simply be a typographical error in [61] and the Judge intended to say "I am not satisfied that the Appellants have met the evidential burden, on the balance of probabilities *or* [not 'on'] the lower standard"? Mr Karnik agreed that is a possibility but said it was unclear, especially considering there has been a change in standard under NABA.

    (b) ground 3: the point is that Mogadishu is not a place of return per se but a place of relocation, something the Judge fails to deal with.

    (c) the Judge's decision is unsustainable and so the right course is for it to be remitted to the FTT for hearing de novo.

20. Mr Walker responded to say he had no further submissions to make. I questioned whether that meant he was not challenging the grounds of appeal on any basis, including concerning the protection claim such that he was conceding that the errors alleged by the grounds of appeal were disclosed and were material? He said yes, that was his position. He agreed that the Judge's decision should be set aside and remitted back to the FTT.

21. At the end of the hearing, having considered the matter and having heard the submissions, including Mr Walker's concessions, I said I would set aside the Judge's decision and remit the matter back to the FTT for hearing afresh, with confirmation of this decision to follow in writing. This is that confirmation.

Discussion and Findings

22. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law, if it is found that the tribunal below has made a genuine error of law that is material to the outcome of the appeal. I therefore need to reach my own decision on the appeal even with the concessions made by Mr Walker.

23. Dealing with ground 2 first, the appellant says that the Judge did not reach a decision on the appellant's article 8 claim. Mr Walker for the respondent agreed.

24. I also agree.

25. The appellant's skeleton argument at [16] and set out the issues, one of which was:

> "Will the appellants face very significant obstacles under 276ADE or will their removal be disproportionate under Article 8?"

26. The Judge accordingly sets out the issues in [16], which included at [f]:

> "Would the Appellant's removal from the UK breach of their Article 8 Right to Family Life in the UK?"

27. At [45] of the decision, the Judge says that, having considered the evidence of the appellants' sister (who I note attended the appeal):

> "I have not been provided with sufficient evidence as to how the Appellants have established private family life in the UK, under Article 8 of the ECHR".

28. In other words, the Judge finds that article 8 is not even engaged. No reasoning is provided for this finding and it does not address the evidence going towards private and family life that was provided by the witnesses.

29. That evidence included a letter from one of the appellants' sisters, MAH, dated 3.11.23 (page 88 UT bundle) which referred to her not being able to live without her brothers and needing them for emotional support. MAH attended the hearing and gave oral evidence in support of her statement as is noted by the Judge in [19]. There was also a letter from the appellants' aunt (page 88 UT bundle) who said she had taken care of them but could not attend court due to medical conditions. Paragraphs 4-5 of AA's witness statement (page 63 UT bundle) refer to the mutual support provided between the appellants and their aunt in the UK.

30. Whilst I note the Judge finds in [60] that "there is no basis to conclude that there are any serious obstacles to their re-integration in Somalia", this went towards the appellant's ability to meet the immigration rules (paragraph 276ADE) which would only have been one factor considered in the overall proportionality balancing exercise required for article 8, had it been found to be engaged on a proper consideration of the evidence.

31. Overall, this was not a case where there was no evidence at all going to private and family life under article 8. Rather, there was evidence that the Judge needed to analyse and make findings on as to whether and how much weight could be attributed to it. He did not do this, which is an error. The error is material because, having dismissed the appellant's protection claims, their article 8 claims remained to be adjudicated upon. Had they succeeded in those claims, their appeals could have been allowed on a human rights basis.

32. It follows that ground 2 is made out.

33. That leaves grounds 1, 3 and 4 which all relate to the appellants' protection appeals. Given that the grant of permission did not refer to of these grounds, and

it was unclear what the it meant by 'the third ground', I considered (which I confirmed at the hearing) that the fairest thing to do was to allow argument in respect of all of them.

34. Despite Mr Walker accepting all of the grounds to be made out, I do not accept that this is properly the case.

35. As indicated at the hearing, I am not persuaded that there is not simply a typographical error in [61] concerning the standard of proof applied by the Judge, in that the word 'on' should actually be the word 'or'. This is the only thing I can see in the decision which could be taken as an indication of anything other than the lower standard being applied. The Judge expressly sets out the relevant burdens and standards of proof correctly in [11-14], albeit omitting to discuss the standard applicable to article 8 (which could be said to further support ground 1 he made out). In [11] he specifically says that:

> "The lower standard is applied to all findings of fact except where expressly stated".

36. He does not expressly state anywhere that he has applied the higher standard of the balance of probabilities to any of the evidence. Indeed I note that no examples of the Judge applying the wrong standard have been given in the grounds of appeal. The grounds simply rely on a single sentence in [61] which refers to both standards.

37. It follows that I do not find ground 1 to be made out.

38. As regards ground 3, the appellants say that the Judge only considered whether the appellants would face persecution in Mogadishu, and did not also or separately address whether it would be unduly harsh for them to relocate there, which was a different question.

39. I agree that the decision is unclear in this regard. The issues listed in [16] contain separate bullet points for [b] 'The risk of return to Mogadishu, Somalia', [c] 'Fear of persecution' [d] 'Sufficiency of protection' and [e] 'Cases of MOJ and OA Somalia'. I consider the appellant's skeleton argument is not much clearer in terms of differentiating between risk of return for the purposes of the Refugee Convention, the situation on return in terms of destitution and humanitarian protection, and the reasonableness of relocation to Mogadishu.

40. There are two limbs to the assessment of internal relocation; the first is whether an applicant would have a well-founded fear of persecution or a real risk of suffering serious harm in the place of proposed relocation, the second is whether it would be reasonable for the person to relocate to that place – see AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC), at [23]).

41. As stated in SSHD v SC [2018] WLR 4004, [2017] EWCA Civ 2112 at [39]:

> "The tribunal only reaches the [reasonableness] stage of the test if it is satisfied that the person would not be exposed to a real risk of serious harm."

42. In AS this Tribunal referred to Article 8 of the Qualification Directive (substantially reproduced in the Immigration Rules at Rule 339O(i)), in saying that when dealing with internal relocation:

> "Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

43. It also referred to the then-applicable 2003 UNHCR Guidelines which stated:

> "II. The Reasonableness Analysis
>
> a) Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there."

44. Paragraph 44 of AS sets out in full the relevant test and summarises it at paragraph 45 as requiring "a holistic assessment, encompassing all relevant considerations pertaining to the appellant" in the country of return.

45. This approach was endorsed by the Supreme Court in SC (Jamaica) v SSHD [2022] UKSC 15, paragraph 95:

> "The correct approach to the question of internal relocation under the Refugee Convention is that set out in Januzi at para 21 and in AH (Sudan) at para 13 (see paras 58 and 59 above). It involves a holistic approach involving specific reference to the individual's personal circumstances including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual "can reasonably be expected to stay" in that place. It does not take into account the standard of rights protection which a person would enjoy in the country where refuge is sought."

46. The Judge records in [21a] that the appellants' home area is Buhodle, Somalia, from whence they were taken to the UAE [21c]. The Judge presumably considers position on return to Mogadishu (and not elsewhere, including the home area) because this is the only place of return proposed by the Refusal Letter, as the Judge sets out in [22d].

47. The Judge does not address the question of internal relocation using the staged two-limb approach from AS referred to above. Rather he appears to address both limbs together, making the following findings:

    (a) there is doubt about the appellants' credibility due to inconsistencies in the witness evidence [46]

    (b) the fact that the appellants have been recognised as victims of modern day slavery and vulnerability was noted but was in relation to how they were treated in the UAE

    (c) the appellants had not put forward any information to suggest they would be regarded as anything other than 'ordinary citizens' and so, despite their length of absence, they would not be at risk of persecution on return [51]

    (d) the present level of casualties in Somalia does not amount to a sufficient risk to ordinary civilians [52]

(e) the appellants could reasonably avoid areas and establishments which are clearly identifiable as likely Al-Shabaab targets and there is no real risk of forced recruitment to Al-Shabaab for civilian citizens in Mogadishu[53]

(f) the appellants are members of the Reerhamar clan, which has a relatively advantageous position and can provide social support mechanism and assistance with access to livelihoods [54]

(g) tribe members were able to rescue the appellants previously [55]

(h) if the appellants' account of having no family in Mogadishu, and their length of absence is accepted, nevertheless their clan has a privileged position in Mogadishu, both appellants had significant education in the UAE and are fluent in Arabic such that they would have significant prospects of securing employment in Mogadishu [56]; which the lack of financial remittances does not affect [57]

(i) [58] the appellants have not produced enough medical evidence to confirm that their current course of treatment would not be able to them in Mogadishu [58].

48. Having made these findings the Judge concludes that:

> "[59] Applying the country guidance cases to the facts of these protection appeals I am not satisfied that the Appellants fear of persecution based on their membership of the Reerhamar clan has been established. Further the country guidance cases indicate that there is sufficiency of protection should the Appellants be returned to Mogadishu, Somalia.
>
> [60] For the reasons I have set out above, and my findings on the Appellants credibility there is no basis to conclude that there are any serious obstacles to their re-integration in Somalia"

49. The Judge does not reach any conclusions on the reasonableness of internal relocation separate from the question of risk other than in terms of addressing whether there are any serious obstacles to reintegration, which is the test under immigration rule 276 ADE(1)(vi) (as was) rather than the correct test of whether it would be reasonable for the appellants to relocate to Mogadishu. The Judge does not refer to the latter test in his findings as far as I can see.

50. Finding that there would not be very significant obstacles to integration (which uses the 'enough of an insider' test pursuant to Kamara [2016] EWCA Civ 813) is insufficient for the separate and different test of the reasonableness of relocation which, as above, concerns undue hardship. Whilst the same factors of employment, a support network, language ability and so on can be discussed concerning both, and it is perhaps hard to see how the appellants could have met the test of undue hardship given the Judge's findings concerning these factors, the tests are nevertheless different. Whilst the Judge finds the appellants could secure and access treatment for mental health conditions on return, there is no analysis as to whether/how mental health impacted on their ability to obtain work, seek support, improve their knowledge of language etc (although there is a question as to whether the evidence went to this in any case).

51. Overall I consider it cannot be said with certainty that, had the Judge followed the two-limb approach in AS and considered the questions of risk and reasonableness of relocation separately, he would have reached the same overall conclusion. The error in not adopting the correct approach is therefore material.

52. It follows that I find ground 3 is made out.

53. I do not need to address ground 4 given that material error has already been found but do so for the sake of completeness.

54. The appellant says that the Judge has failed to resolve whether or not the appellants have any clan connection, or could utilise that connection within a reasonable period of time on return.

55. I agree that the Judge does not expressly say whether or not the appellants have any connections, but he does point out in [55] that their clan managed to rescue them previously after their parents were killed. In [54] the Judge appears to find, based on the country evidence, that the appellants could rely on the support of their clan despite not having any close family remaining in Somalia. I therefore consider he has addressed the question of whether the appellants could utilise their clan membership within a reasonable period of time on return.

56. Even if he does not address this point and this amounts to an error, I do not consider such an error would be material, given that the Judge finds the appellants would have significant prospects of securing employment in Mogadishu and would be able to take advantage of the economic opportunities in Mogadishu even without having financial remittances or family in Somalia [56]-[57]. Essentially the Judge therefore finds they do not fulfil the test in headnote 14 of OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC) which states (my emphasis involved):

> "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."

57. I therefore find that ground 4 is not made out.

Conclusion

58. To summarise, I find that grounds 2 and 3 are made out, but grounds 1 and 4 are not.

59. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law and the errors found infect the decision as a whole such that it cannot stand.

60. Both parties agreed that the appropriate course of action was for the matter to be remitted to the First-tier Tribunal for hearing afresh. In the light of the need for extensive judicial fact-finding, I am also satisfied that the appropriate course of action is to remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Sarwar.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.

3. Given the claims concerns issues of protection, an anonymity order is made.

Signed: L. Shepherd
Date: 28 June 2024

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber