



Upper Tribunal

(Immigration and Asylum Chamber)

AM (Evidence – route of return) Somalia [2011] UKUT 54 (IAC)
THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 18 November 2010

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Before

Lord Bannatyne

Senior Immigration Judge Latter

Between

AM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr. T Buley , instructed by Fadiga & Co, Solicitors

For the Respondent: Mr. J Parkinson, Home Office Presenting Officer

(i) In HH (Somalia) v Secretary of State [2010] EWCA Civ 426 at para 84 the Court of Appeal when referring to the Claimant raising a cogent argument that there might not be a safe route of return was not setting down a threshold requirement for cogent evidence before it was open to the Tribunal to consider the issue but making the point that the issue need only be considered if there was a proper evidential basis for doing so.

(ii) In the light of the comprehensive rejection of the appellant's credibility, the issue of the safety of returning from Mogadishu to Afgoye had to be assessed in the light of the general background evidence on this issue: MA (Somalia) v Secretary of State [2010] UKSC 49 applied.

(iii) The general evidence before the Upper Tribunal failed to establish that generalised or indiscriminate violence was at such a high level along this route that the appellant would face a real risk to his life or person entitling him to a grant of humanitarian protection.

DETERMINATION AND REASONS

1. The appellant, a citizen of Somalia, appeals against the determination of the First-tier Tribunal (Immigration Judge Kopieczek and Mrs G Greenwood) dismissing his appeal against the respondent's decision of 13 January 2010 to make a deportation order against him following his conviction of possessing a false identity document with intent for which he was sentenced to twelve months' imprisonment.

Background

2. The background to this appeal can briefly be summarised as follows. The appellant was born on 1 January 1983. He arrived in the UK on 26 June 2009 and attempted to gain entry using a false document. He was prosecuted and following his conviction and imprisonment the respondent made a deportation order against him under the provisions of s. 32(5) of the UK Borders Act 2007. He appealed on the basis that he would be at real risk of persecution or serious harm on return to Somalia. He claimed that he was a member of the minority Benadiri clan and had left Somalia for Yemen at the age of 10 with his mother and sisters where they lived in a refugee camp. He was a victim of violence not only from Yemenis but also the police.

3. In 2007 he left Yemen for Saudi Arabia where he worked as a security guard but in early 2009 he was arrested by the authorities there and returned to Somalia. According to the information he gave to the respondent, he married in 2003 and has two children, one is living with his mother in Yemen and the other with his wife in Saudi Arabia. He claimed that at the end of March 2009 after he had been praying in a mosque, he was approached by two armed men who were members of Al Shabaab (AS). He was told that he had to join them in the jihad and that if he did not do so, he would be killed. The appellant asked for time to make a decision. He told his uncle what had happened. He then heard that members of AS were searching for him and arrangements were made for him to leave Somalia with the help of an agent who organised his departure to the UK via Dubai.

4. At the hearing before the First-tier Tribunal the appellant said that he had not had contact with anyone in Somalia or Saudi Arabia. He had been able to contact his mother in Yemen but she did not know where his wife and children were. He accepted that when he was deported from Saudi Arabia, he was returned to the airport at Mogadishu and then travelled to Afgoye in a vehicle with other people. He had been able to arrange that without any problems. A vehicle was for hire and although he did not have any money, people in the vehicle from his home area paid for him when he explained his situation; they could not leave him at the airport as he had no one there and none of his family knew that he had returned.

5. In Afgoye he said that he stayed with the son of his aunt. He did not have many other relatives in Somalia but he did have his maternal uncle and he referred to another elderly person he stayed with in Afgoye. He also accepted that his father and his sister were in Somalia and that his wife had relatives in Afgoye. His uncle had raised \$2,500 for his departure from his business.

6. The Tribunal took into account the country background material in the COI Report for Somalia November 2009 and the Human Rights Watch Report, 19 April 2010. There was expert evidence in a report from Dr Luling dated 16 April 2010 in support of the appellant's claim that he was from a minority clan.

The Findings of the First-tier Tribunal

7. The Tribunal accepted that the appellant was a Southern Somali but it was not satisfied that he was a member of a minority clan. It gave reasons for differing from the opinion given by Dr Luling in her

report. The Tribunal commented that despite claiming to be from a minority clan and with his family in Somalia not knowing about his return, he nevertheless had managed to travel safely from Mogadishu to Afgoye. It noted that although the appellant claimed that he had travelled in a vehicle with other people who had paid his fare, it was significant that he was able to make his way from the airport to Afgoye without apparently encountering any difficulties. It also regarded as significant his evidence that his uncle was able to run a business and spent \$2,500 recruiting an agent to help him to escape. The appellant had also claimed that his wife's family was from the same minority clan and lived in Afgoye but had not suggested that they had suffered because of their minority clan status. So far as the appellant's claimed fear of AS was concerned, the Tribunal found that his account of the problems he had with that organisation was inconsistent (see paras 69-72 of the determination) and did not accept his evidence.

8. In summary, the Tribunal were not satisfied that the appellant had established as reasonably likely that he was from the minority Benediri clan or that he had ever encountered AS, been questioned by them or subjected to an attempt to recruit him. The Tribunal went on to say that even if they were wrong in their conclusions and if the appellant was from a minority clan, the evidence indicated that he was one of those individuals who would be able to access protection on his return from a majority clan. He and his wife both had close relatives living in Afgoye who were apparently able to live there without having encountered security problems and he would be able to secure the protection of members of a majority clan.

9. The Tribunal went on to consider the issue of humanitarian protection. It took into account the determination in AM and AM (Armed conflict: Risk Categories) Somalia CG [2008] UKAIT 00091 where it was found that the armed conflict in Mogadishu amounted to indiscriminate violence at such a level of severity as to place the majority of the population at risk of a consistent pattern of indiscriminate violence but those whose home area was not Mogadishu would not in general be able to show a real risk of persecution or serious harm simply on the basis that they were civilians or internally displaced persons albeit that much would depend on the background evidence relating to their home area.

10. The Tribunal summarised its findings on humanitarian protection as follows:

"80 . The 2007 Act does not expressly include an exception under s.33 in terms of humanitarian protection. Even assuming that humanitarian protection does need to be considered, we would not have been satisfied for the reasons already given that the appellant has established that he is entitled to a grant of humanitarian protection. We are not satisfied that substantial grounds have been shown for believing that if returned he would face a real risk of suffering serious harm as defined in para 339C. We are satisfied that the appellant is one of those individuals, no doubt few in number, who would be able to return to Somalia, in his case to Afgoye, without real risk of suffering serious harm. That conclusion applies, for the avoidance of doubt, in relation to any claim to humanitarian protection on the basis of Article 15(c) of the Qualification Directive.

81. With reference to the decision of the Court of Appeal in HH , we are satisfied that the appellant would be able safely to reach his home area, having done so before and having regard to our general conclusions on his claim."

11. In the light of the conclusions the Tribunal reached on the appellant's asylum claim, it also found the appellant failed to show that his removal would lead to a breach of either Articles 2 or 3 of the ECHR.

12. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal on the limited grounds that it was properly arguable that the First-tier Tribunal had failed to deal adequately with the issue of whether any risk of harm arose from the route of return to the appellant's home area of Afgoye.

Submissions

13. In his submissions Mr Buley argued that the Tribunal had given no indication in its reasons in paras 80-81 what factors had been taken into account and that it was axiomatic that a Tribunal must properly explain the basis of its main conclusions. Mr Parkinson submitted that the Tribunal's conclusions although expressed succinctly were sustainable in the light of the particular facts of the case. By implication the appellant was found to be a majority clan member. It was accepted that he had been returned from Saudi Arabia in early 2009 and had then been able to travel from Mogadishu to his home area of Afgoye. He had returned safely from Afgoye back to Mogadishu in the company of an agent who, on the appellant's own account, had been paid \$2,500 by his uncle. The Tribunal's finding that the appellant could return to Somalia without any real risk of serious harm was properly open to it and was adequately supported by its findings of fact.

The Error of Law

14. The issue for us at this stage of the appeal is whether the First-tier Tribunal erred in law. Mr Buley's submission is that the Tribunal failed to give adequate reasons for its decision. Succinct reasons when read in the context of the determination as a whole may often make it clear that all relevant matters have been properly taken into account. However, in the present case although the Tribunal summarised the country background material before it in paras 37-43 of its determination, it is not clear from the brief reasons given in para 81 what view it took of that evidence or of its relevance to the appellant's claim. The Tribunal simply said that it was satisfied that the appellant would be able safely to reach his home area having done so before and having regard to its general conclusions on his claim. Further, it is unclear from the reasons whether in considering the critical issue of whether the appellant would be able to reach his home area in safety it had regard to the context of the background evidence as a whole. In these circumstances we are not satisfied the reasons are such that it is clear that all relevant matters were properly taken into account and accordingly the First-tier Tribunal erred in law.

Further Evidence and Submissions

15. The Tribunal's findings of primary fact are not in issue before us. Permission was not granted to challenge those findings and was limited to the issue of safety on return. Directions were subsequently given confirming that the appeal was to be prepared on that basis and requiring the filing of any documentary evidence to be relied on if the Upper Tribunal concluded that the decision of the First-tier Tribunal on route of return and safety whilst travelling that route should be set aside and re-made. The appellant has accordingly produced and relies on an expert report prepared by Markus Hoehne dated 12 November 2010. The respondent also relies on further evidence: the documents in A-C of Bundle R, a UNHCR briefing note of 16 May 2008, the UKBA Operational Guidance Note Somalia July 2010 and the report of the Fact-Finding Mission on Somalia Nairobi 8-15 September 2010 of October 2010.

16. In his submissions Mr Buley relied on the report of Mr Hoehne. He submitted that the background evidence showed that there were conflicting reports about who was in control of which areas in Southern Somalia. According to the Fact-Finding Mission at 1.14 the Afgoye corridor was not under

the control of the TFG (Transitional Federal Government); AS controlled access to it and the area surrounding it whereas Hisbul Islam (HI) nominally controlled the corridor although there had been skirmishes between AS and HI over control of HI areas. He submitted that the appellant would be at risk of travelling across the frontline between opposing groups.

17. Even within Mogadishu, the appellant risked, so he argued, having to cross an HI or TFG checkpoint where there was a risk from undisciplined soldiers who would try and extort money. He would then have to go through AS checkpoints where he would be at risk if he was seen to be behaving in an un-Islamic way. There was a real risk to the appellant in travelling the route to Mogadishu and Afgoye: it could not simply be argued that he would not be at risk because he had managed to make the journey on two previous occasions. It was clear, he submitted, from the expert evidence that very minor matters could be regarded as un-Islamic by AS such as having the wrong photographs or music on a mobile phone. When the various risk factors were looked at cumulatively, including the risk of getting caught up in fighting, having to go through different checkpoints, having come from the UK with the perceptions that would give rise to and his own relative lack of familiarity with what the position was on the ground in Somalia, Mr Buley argued that the appellant would be at real risk of serious harm.

18. Mr Parkinson submitted that the appellant could not bring himself within the ambit of *HH (Somalia) v Secretary of State* [2010] EWCA Civ 426 as he had not raised a cogent argument that there might not be a safe route of return and therefore in the light of the comments of the Court of Appeal in para 84 of its judgment, the Tribunal was not obliged to deal with this issue. However, if the Tribunal took the view that it should consider the issue of the safety of the route of return, he submitted that the appellant would be returned via Nairobi and this would not lead to any perception that he was a wealthy person because he was travelling from the UK. It was clear from the background evidence that a reasonable number of flights, around fifteen to eighteen a day, arrived at Mogadishu Airport carrying members of the Somali diaspora and that in the eight months to the end of August 2010 African Express carried some 12,000 passengers. Majority clans could make arrangements for family members to be met on return. The road to Mogadishu from the airport was controlled by the TFG. He accepted that ordinary Somalis could not afford armed escorts but the evidence showed that in general they were not needed and that they were likely to use minibuses even though drivers may have to buy their way through the checkpoints.

19. He submitted that the evidence showed that buses and taxis operated between the airport and the city and Somali citizens used them. There was no clear distinction in Mogadishu between the areas controlled by the TFG and by AS and people travelled between these areas freely. So far as onward travel from Mogadishu to Afgoye was concerned, in areas under the control of AS generalised violence was at a low level and if travellers obeyed AS's rules, they would be allowed to continue their journey. There was a lot of travel between Afgoye and Mogadishu and there were informal bus timetables between the various major towns in Somalia. In the light of the background evidence, he submitted that the appellant had failed to show that he did not have a safe route of return from Mogadishu to his home area.

20. In reply Mr Buley argued that there was no threshold requirement in para 84 of *HH* which had to be met. Once the issue of the safety of the route was raised, the Tribunal was obliged to deal with the issue. He referred to the background evidence and in particular to the risk of forced recruitment. He argued that even if the appellant was returned via Nairobi he would still be dressed in a western way and this would bring him to the attention of those at the AS checkpoints but in any event there would be a risk when crossing any checkpoint.

The Expert Report of Mr Hoehne

21. Mr Hoehne's background and expertise is set out at pages 13-19 of his report. In paras 1 and 2 he sets out the background to the current situation in Somalia and in paras 3-7 confirms that the country is in a state of ongoing civil war. The TFG is fighting with militant Islamic groups such as AS and HI. There have been clashes in Mogadishu and other areas of Southern and Central Somalia; tens of thousands of people have been displaced and have had to find refuge in poorly equipped and overcrowded refugee camps (para 3). In AS controlled areas in the south, very particular interpretations of Islamic Sharia are enforced (para 4). Living conditions are harsh and this is thought to help recruit destitute youth and men into militant Islamic forces (para 7).

22. In paras 8-11 Mr Hoehne comments on the safety of the route from Mogadishu to Afgoye. He says that there are many checkpoints which are places of heightened risk as armed guards are often not responsible to any over-arching authorities and they prey on passengers by looting and raping. Even the checkpoints operated by TFG soldiers do not function in any benign way (para 8). On the way from Mogadishu to Afgoye a traveller would have to pass a number of checkpoints both in Mogadishu and along the road between the two places. He refers to an account from a person identified simply as a man who travelled from Afgoye to Mogadishu Airport and back in his own car to pick up a friend (para 9). Mr Hoehne comments that one can be lucky and make the journey without major problems only paying a bit of money but that is not always the case and there can be skirmishes.

23. When passing through AS checkpoints, as militant Islamists, they will check cars for people who do not comply with their rules and norms. He comments that if AS rules are fully complied with, it is reasonably safe to travel through their territories (para 10). He says that the issue of full compliance with AS rules and policies when passing their checkpoints constitutes in his eyes a real risk for the appellant. He refers to the appellant's statement and asylum interview: that AS wanted to recruit him but he evaded them. In circumstances such as this, Mr Hoehne's opinion is that if the appellant were to be returned to Mogadishu and ran into AS at a checkpoint or elsewhere, he would be at serious risk of execution as a traitor (para 11). However, in a footnote to his report Mr Hoehne says:

"The fact that people frequently travel between Mogadishu and Afgoye and, if they fully comply to AS rules, can make the travel without major problems was confirmed by the UK Border Agency: Somalia: Report of Fact-Finding Mission to Nairobi."

The Fact-Finding Mission to Nairobi October 2010

24. This Report is at Annex C of the respondent's documents. At 1.14, the report says that the Afgoye corridor is not under the control of TFG; AS is in control of the access, and the whole of the area surrounding it. HI normally controls the Afgoye corridor, although in recent months there have been localised skirmishes between AS and HI over control of HI areas. The situation at Mogadishu Airport is set out in paras 2.01 - 09 and this confirms that there is a total of around 15-18 flights arriving in Mogadishu per day and it is reported that returning Somalis can make arrangements with family to ensure they have someone to meet them at the airport and somewhere to stay on arrival. Somalis returning to Mogadishu would need a lot of preparation and would need to ensure they have contacts in Mogadishu but the Somali diaspora travel back to Somalia frequently.

25. The report then goes on to deal with travel from Mogadishu Airport to the city where the road is controlled by the TFG with an AMISOM presence. One report is to the effect that Somali citizens do not need or use armed escorts. Ordinary Somalis would not be able to afford this and, even if they could, such guards would draw attention to their importance and wealth and make them more

attractive targets for robbing and kidnapping. There are other reports that it is possible to travel between the city and the airport by taxi and also that buses and taxis operate between the airport and Somali civilians do use them.

26. So far as travelling outside Mogadishu is concerned it is reported that many people travel within the areas under the influence or control of AS. There are checkpoints where travellers will be asked where they are travelling to and why but so long as they obey AS's rules, they are generally allowed to continue with their journey. Road travel between Mogadishu and Belet Weyne and Kismayo is frequently used. There are buses and lorries that will carry passengers between towns. It is said that AS have reduced the number of checkpoints in the area they control and have made travelling by road more secure against criminals but they commit their own abuses including the recruitment of young men from buses stopped at checkpoints.

27. Another source reports that it is possible to travel anywhere in Somalia as long as you have money and contacts. There are numerous checkpoints operating that seek to establish who is travelling where and why but the Somali population can generally pass through these checkpoints safely. Another report says that the old clan system still functions as a protection mechanism for Somalis wishing to travel and that it is generally safe to travel through areas controlled by AS.

28. In dealing with the Afgoye corridor the report says:

"5.11 There are estimated to be between 200,000 and 500,000 people in the Afgoye corridor, but it is difficult to establish the number due to the scale of the settlement. The area is under the control of different factions - TFG, Hizbul Islam and Al Shabaab which makes access for NGOs difficult. There are reports that water and sanitation have been made priorities for aid delivery.

5.12 The Afgoye corridor is increasingly settled, with some businessmen choosing to take their businesses there. Some choose to live in the Afgoye corridor and commute to Mogadishu, although this practice is not as common as it once was due to current instability in the city."

29. Further comments are recorded as follows:-

5.14 "The Afgoye corridor is an increasingly urbanised area. Satellite pictures show evidence of settling, urbanisation and of normal life with growing infrastructure such as water pipes. There is also some evidence from the satellite imaging the population is decreasing.

Not all the corridor is under the control of the TFG. AS seems to create a sense of security even in the corridor."

5.15

"Many people are mobile between Afgoye and Mogadishu and there is a fluidity of movement between the areas depending on the security situation. Hizbul Islam control the area and Amisom are approaching the area. The Afgoye corridor has gatekeepers who control who and what moves into and out of the area. They are not necessarily aligned to any group but seen as opportunists who have found a way to make money. They can make assistance from NGOs very difficult."

The Operational Guidance Note Somalia July 2010

30. In the OGN Somalia July 2010 it is reported that throughout 2009 AS has continued to consolidate its control in large parts of central and southern Somalia and that there are many areas where there is no ongoing fighting because territorial control has been established. In areas fully under AS control the human rights situation is poor but there are low levels of generalised violence whereas in areas

controlled by the TFG, the human rights position is less problematic but there are likely to be high levels of generalised violence due to continued challenges by insurgents. It is reported that given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic and that it will be feasible for many to return to their home areas from Mogadishu Airport as most areas are more accessible than previously and the airport continues to function normally. There are also scheduled air services to a number of other destinations in Somalia (paras 3.7.11, 16).

Assessment of the Issues

31. This is a case where the route of return, Mogadishu Airport to Afgoye, has been identified and we therefore need to consider whether the use of that route gives rise to a real risk of serious harm entitling the appellant to humanitarian or Article 3 protection in accordance with para 84 of HH (Somalia) v Secretary of State [2010] EWCA Civ 426:

“84. In conclusion, our provisional view is that the Directives read together require that the issues of safety during return (as opposed to technical obstacles to return) should be considered as part of the decision on entitlement. Only technical obstacles of the kind we have sought to identify may legitimately be deferred to the point at which removal directions are being made or considered. We are aware that the entitlements which appear to follow may be considered an unintended consequence of the Directives; but this, as we have said, is an issue for another day. Our provisional view, in the light of the Directive, is that if there is a real issue on safety on return the Secretary of State must engage with it in his decision on entitlement to protection, and his conclusion can be the subject of appeal. In any case in which the Home Secretary did not deal with safety during return (because he did not consider that any issue arose) but where the appellant raises a cogent argument that there might not be a safe route of return, the appeal tribunal would have to deal with that issue, possibly after calling for information from the Home Secretary as to his intentions. In any event, as it seems to us at present, the decision on entitlement must be taken within a reasonable time and cannot be left until the Home Secretary is in a position to set safe removal directions.”

32. We do not accept Mr Parkinson’s submission that the appellant has to raise “a cogent argument” in the sense, as we understood his argument, that there was a threshold evidential requirement for “cogent evidence” before it was open to the Tribunal to deal with the issue of safety of the route of return. We cannot envisage that the Court of Appeal had any intention of setting down any threshold requirement as a preliminary issue to be considered before the assessment of safety on return. The point the Court was making was that the issue need only be considered if there was a proper evidential basis for doing so. This view is consistent with the approach of the Tribunal in HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC) at paragraphs 94-7 of its determination. We are satisfied that a real issue has been raised on the safety of the route of return in the light of the general background evidence about the situation in Somalia and the appellant’s own evidence that his home area is Afgoye.

33. In the light of the comprehensive rejection of the appellant’s evidence by the Tribunal, we have also reminded ourselves of the guidance given by the Supreme Court in MA (Somalia) v Secretary of State [2010] UKSC 49 in the judgment of Sir John Dyson SCJ:

“32. Where the appellant has given a totally incredible account of the relevant facts, the tribunal must decide what weight to give to the lie, as well as to all the other evidence in the case, including the general evidence. Suppose, for example, that at the interview stage the appellant made an admission which, if true, would destroy his claim; and at the hearing before the AIT he withdraws the admission,

saying that his answer at interview was wrongly recorded or that he misunderstood what he was being asked. If the AIT concludes that his evidence at the hearing on this point is dishonest, it is likely that his lies will assume great importance. They will almost certainly lead the tribunal to find that his original answers were true and dismiss his appeal. In other cases, the significance of an appellant's dishonest testimony may be less clear-cut. The AIT in the present case was rightly alive to the danger of falling into the trap of dismissing an appeal merely because the appellant had told lies. The dangers of that trap are well understood by judges who preside over criminal trials before juries. People lie for many reasons. In *R v Lucas* [1981] QB 720, the Court of Appeal had to consider whether a statement containing a lie was capable of amounting to corroboration. At p 724F, Lord Lane CJ said:

‘To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family....’

33. Although the analogy is not exact, it is close enough for these words to be of relevance in the present context. So the significance of lies will vary from case to case. In some cases, the AIT may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, the AIT may conclude that they are of great significance. MA's appeal was such a case. The central issue was whether MA had close connections with powerful actors in Mogadishu. The AIT found that he had not told the truth about his links with Mogadishu. It is in such a case that the general evidence about the country may become particularly important. It will be a matter for the AIT to decide whether the general evidence is sufficiently strong to counteract what we have called the negative pull of the appellant's lies.”

34. The appellant is someone who has been found not to have told the truth about his clan membership and contacts with AS. When assessing the risks arising from the route of return, we are proceeding on the basis that the appellant is a Southern Somali and that his home area is Afgoye. On his account he was returned to Somalia by the Saudi Arabian authorities in 2009 and was able to travel to his home area in Afgoye. He was then able to leave Somalia with the help of an agent arranged through his uncle, travelling from Afgoye to Mogadishu. He says that he has relatives living in Afgoye including an uncle with an ability to finance his departure from Somalia.

35. We accept, in the light of the evidence in the report of the Fact-Finding Mission to Somalia, that travel is not only possible but does take place with some degree of frequency from Mogadishu Airport into the city of Mogadishu and into other areas in Somalia. We accept that there are regular, even if limited, flights into Mogadishu, some fifteen to eighteen a day, the report referring to their being just over 12,000 passengers in eight months. Buses and taxis operate between the airport and the city and travel is possible to other cities and through the Afgoye corridor.

36. It is argued that there would be a real risk to the appellant as he has to pass through TFG and AS checkpoints. The AS checkpoints are generally well disciplined and their concern is whether travellers comply with the rules and norms of behaviour required. We are not satisfied that there is any substance in the argument that the appellant would be at real risk. The fact that he has on his own account lived in Yemen and Saudi Arabia strongly suggests to us and we find that he is well able to anticipate and comply with the requirements of AS and he has been able to do so in the past. So far as the TFG checkpoints are concerned, there is nothing about the appellant which puts him at any particular risk and we are not satisfied that the evidence supports a finding that all those who travel

through the checkpoints can be regarded as being at real risk or that he would be so simply because he is being returned from the UK. For similar reasons we are not satisfied that there is a real risk to him of enforced recruitment by AS: the general evidence does not support a finding that all men or young men are at such risk and in the light of the credibility findings made by the First-tier Tribunal the appellant is unable to show that there is anything in his particular circumstances or profile which would put him at risk.

37. The appellant was found not to be a minority tribe member. He has an uncle who was able to fund his departure from Somalia and therefore will be able to take steps to help him avoid foreseeable risks at TFG checkpoints as he will be able to pay what is described as the relatively modest sums often demanded. The concerns expressed in para 9 of Mr Hoehne's report are based on what one traveller described who, in the event, was able to travel in safety. His report accepts that in general people can travel reasonably safely through AS areas provided their conditions are met, the footnote on page 7 of Mr Hoehne's report confirming that people frequently travel between Mogadishu and Afgoye and can make the travel without major problems if they comply with AS requirements. The concerns that Mr Hoehne had for the appellant's safety are primarily based on his account of his previous contacts with AS but his evidence on these issues was rejected by the First-tier Tribunal.

38. We accept that the situation in Somalia is volatile but the issue for us is whether the appellant in his particular circumstances would be at real risk of serious harm when returning from Mogadishu to Afgoye so as to entitle him to humanitarian or Article 3 protection. This must be assessed against the current background evidence. In the light of the Tribunal's findings of fact and the appellant's own evidence that he has been able to make this journey on two occasions without harm, when considered against the background of the travel actually taking place in the Afgoye corridor, we are not satisfied that it has been shown that the generalised or indiscriminate violence has reached such a high level that he, solely on account of his presence in Somalia, travelling from Mogadishu to Afgoye, would face a real risk threatening his life or person. The background evidence does not satisfy us that the appellant would be at real risk of serious harm and there is no particular feature in his profile or background which puts him at a risk above that faced by other residents or returnees.

39. We are therefore not satisfied that the appellant is entitled to asylum, humanitarian protection or that returning him would give rise to a breach of Article 3.

Decision

40. The original Tribunal erred in law. We remake the decision dismissing the appeal on asylum, humanitarian protection and human rights grounds.

Signed Date

Senior Immigration Judge Latter

Judge of the Upper Tribunal