



IAC-AH-CO-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00211/2014

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice  
On 16 November 2015**

**Decision & Reasons Promulgated  
On 4 December 2015**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**JF  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Yeo, Counsel instructed by Wilson Solicitors LLP  
For the Respondent: Mr S Walker, HOPO

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Somalia born on 26 July 1976. He first entered the UK on 1 October 2001 and applied for asylum the next day. His application was refused on 8 November 2001. He appealed. His appeal was dismissed but he was granted exceptional leave to remain until 17 July 2003. On application he was granted further leave to remain on 20 January 2004.
2. He reapplied for asylum on 7 June 2006. The application was refused and his appeal subsequently dismissed on 7 October 2008. Meanwhile, on 7

August 2007 he was convicted of robbery and being knowingly involved in the supply/production of drugs. He was sentenced to two years' imprisonment for the former offence and one month to run concurrently for the latter. His sentence for robbery was reduced on appeal to eighteen months on 21 December 2007.

3. On 14 February 2008 the respondent decided to deport him from the United Kingdom. He appealed on 22 February 2008 and his appeal was dismissed on 7 October 2008. He was served with a signed deportation order on 6 February 2009. A number of representations were made on his behalf. The respondent treated these as an application to revoke his deportation order. She refused the application on 27 January 2014. The applicant gave notice of appeal. His appeal was heard by First-tier Tribunal Judge Keane. The judge said that it was common ground between the parties that paragraph 398(b) applied to the appeal and that paragraphs 399 and 399A did not apply. Accordingly, the paramount issue raised by the appeal concerned the application of paragraph 390A. He was to consider whether the instant appeal disclosed exceptional circumstances whereby the public interest in maintaining the deportation order was outweighed by other factors.
4. First-tier Tribunal Judge Keane dismissed the appellant's appeal. First-tier Tribunal Judge Ford granted permission to appeal. He stated that the appellant relied on Article 3 human rights grounds in his appeal but did not rely on Article 8 human rights grounds. It was arguable that First-tier Tribunal Judge Keane may have erred materially in having regard to Section 117C of the amended Nationality, Immigration and Asylum Act 2002 in his consideration of Article 3 and human rights protection issues.
5. On 8 October 2015 the appeal came before Upper Tribunal Judge Finch. She found that First-tier Tribunal Judge Keane had made a number of material errors of law for the reasons contained in her decision, and that his decision should be set aside and remade.
6. Mr Yeo relied on the skeleton argument he had prepared for today's hearing ie 16 November 2015, the original bundle submitted in support of the hearing in 2014, the bundle prepared for the Case Management Review hearing, the Upper Tribunal's decision in **MOJ and Others (return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)** and the Court of Appeal's decision in **Y and Z Sri Lanka [2009] EWCA Civ 362**.
7. Mr Walker relied on an article entitled "*Unchained Minds: Somali's Mental Health State*"; and another document entitled "*A Manual for Checking Mental Health Best Practices in Somalia*".
8. Mr Yeo relied on what the Upper Tribunal said at paragraph 422 of **MOJ and Others**.

The fact that they had rejected the view that there is a real risk of persecution or serious harm or ill-treatment to civilians or returnees in

Mogadishu does not mean that no Somali national can succeed in refugee or humanitarian protection or Article 3 claim. Each case will fall to be decided on its own facts. As we have observed, there will need to be a careful assessment of all the circumstances of a particular individual.

9. He relied on the submissions set out in his skeleton argument. He submitted that the appellant's case has an unusual set of circumstances. The appeal is pursued on the basis that the appellant is a refugee because he is unable because of his mental health to take basic precautions to ensure safety and is likely to expose himself to danger, the Convention reason being attributed political opinion or membership of a particular social group (the mentally ill); and/or he is at risk of enchainment which would amount to being persecuted because of his membership of the particular social group of the mentally ill in Somalia. Alternatively, the appellant is entitled to humanitarian protection on Article 3 ECHR protection on similar grounds but in the absence of a Convention reason and because of the inhuman conditions he will be forced to subsist, for example in a IDP camp in Mogadishu. Alternatively he is entitled to remain in the UK receiving treatment on Article 3 grounds because of the risk of suicide following a catastrophic decline in his mental state as in **J and Y**. In the alternative he could also succeed on moral integrity grounds under Article 8.
10. Mr Yeo submitted that the appellant is not able to give evidence or give instructions to his solicitor because he lacks capacity according to Professor Katona.
11. The facts of this case are that the appellant was born on 26 July 1976 and is now aged 39. When he was last resident in Somalia, he had been found to be resident in Mogadishu and that he had left Mogadishu in 1992 when he was 16 years old. He lived in Ethiopia for nine years with some members of his family and arrived in the UK in 2001. He has lived in the UK for the last fourteen years. His parents remain in Ethiopia and his siblings are thought to be deceased.
12. It is not disputed that the appellant has acute mental health issues. Professor Katona concludes that the appellant suffers from paranoid schizophrenia, is actively psychotic, suffers mild depression, has a moderate degree of cognitive impairment and lacks capacity to give instructions. The appellant is said to have delusional beliefs and experience hallucinations. In his report dated 29 September 2013 Professor Katona notes that the appellant's condition has improved but goes on to state that he continues to have florid psychotic symptoms and significant cognitive impairment. In the report dated 16 August 2012 Professor Katona noted that the appellant's delusional beliefs and his persistent cognitive impairment would also render him very vulnerable to exploitation. In the 29 September 2013 report Professor Katona states that the appellant's continuing delusional beliefs and associated hallucinations, together with his persistent cognitive impairment, would also render him very vulnerable to exploitation.

13. Mr Yeo submitted that the medical evidence is that the appellant would “act irrationally in response to hallucinatory voices and persecutory beliefs” and that because of his mental health and particular vulnerability, the appellant cannot be considered “*an ordinary civilian*” in the sense deployed in **MOJ and Others (Return to Mogadishu) (CG) [2014] UKUT 442 (IAC)**. Further, he is not able to reduce further still his personal exposure to the risk of collateral damage in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets.
14. Mogadishu is not a familiar city to the appellant and he would struggle to find his way around or survive there. He was only resident in Mogadishu for sixteen years, has been absent for 23 years and has no one to return to. He has particular mental health issues that mean Mogadishu would be a very difficult place to know, understand and survive. The security situation in Mogadishu is still very poor.
15. I find in the light of the appellant’s particular circumstances and vulnerability, that on return to Mogadishu, the appellant is likely to face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.
16. There is also the manner in which the appellant is likely to be treated if returned to Somalia. The WHO Report notes that many Somalis with mental illness are socially isolated when becoming violent. The pain of this isolation is felt intensely because Somali culture is traditionally communal and family orientated. They are generally chained or imprisoned. The country has only five health centres that provide essential mental health care services.
17. The report goes on to say that people with mental health disorders in Somalia are particularly vulnerable to abuse and violation of rights. They often live in poor and humiliating conditions in their own communities, where they are prevented from having access to health and education services, sanitation facilities and often do not have freedom of movement because they are chained. Indeed the document entitled Unchained Minds: Somali’s Mental Health State submitted by Mr Walker contained a picture of mentally ill patients chained to a rock sitting within a mental health centre in Mogadishu.
18. I find that the chaining of mentally ill patients amounts to inhuman and degrading treatment and amounts to a breach of Article 3 ECHR. The ill-treatment is perpetrated by the mental health centre which is run by the authorities. The article said that “given the Somalia political and economic turmoil suffered during the civil war, the country’s mental health system collapsed, and mental health disorder became rampant across the country. To date, the government in Somalia does not have an official mental health plan of action to combat mental illness, rebuild facilities and grant funding to support programmes. The apparent lack of medicine, and adequately trained staff and professionals has forced families, and mental

health sectors to chain their patients to beds or rocks as it shows in the picture, leaving them with permanent trauma and physical injuries.”

19. The World Health Organisation (WHO) indicated in their recent study of Somalia Mental Health Care that people with mental illness face degrading and dangerous cultural practices such as being restrained with chains, which are not only widespread, but also socially and culturally accepted. WHO further expressed that Somalia has one of the world’s highest rates of mental-health disorder. Approximately, one-third of its eight million Somalis are affected by some kind of mental disorder, yet there are only three trained psychiatrists in the entire country who specialise in mental illness. Psychiatry as a profession is highly stigmatised in Somalia by both the general public and the medical community. Healing for mental problems is provided by religious leaders or by traditional healers, and it has become an ineffective method in the current Somalia society.
20. On this evidence alone I find that to return the appellant to Somalia would be a breach of Article 3 of the ECHR.

### **Notice of Decision**

21. I allow the appellant’s appeal under Article 3 of the ECHR.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Eshun