



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00116/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13 December 2017

Decision & Reasons Promulgated
On 16 November 2018

Before

THE HONOURABLE LADY RAE
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE PERKINS

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood, Counsel instructed by Wilson LLP Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because this is a protection case and there is an inherent risk that publicity could create a risk for the appellant in the event of his return and also because his personal vulnerability could attract people of ill-will in the United Kingdom.

2. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the Secretary of State refusing him leave to remain on human rights grounds and refusing him international protection. The appellant is subject to a deportation order.
3. The appeal turns on the tension between the public interest in removing foreign criminals and the particular difficulties that this appellant would face in the event of his return to Somaliland on account of his poor health and personal limitations.
4. By way of introduction we paraphrase the opening paragraphs in the grounds for permission to appeal to the Upper Tribunal.
5. This shows that the appellant was born in about 1984 (there is some inconsistency on the evidence) and he has significant learning difficulties. His IQ has been assessed at 55.
6. Additionally the appellant has a history of epileptic seizures and during one such seizure, in September 2013, he fell and sustained moderate to severe traumatic brain injury. He suffers from anxiety and depression and alcohol dependency and requires help to carry out daily tasks.
7. His family are in the United Kingdom lawfully except for one brother who is believed to be in Ethiopia. The appellant fled Somalia with his family in about 1991 going first to Ethiopia and then entering the United Kingdom in 1993. The appellant was recognised as a refugee and given leave to remain indefinitely on 13 June 1994. It follows that, at the time of writing he is about 34 years old and has lived in the United Kingdom for the last 25 years since he was aged 9 years old
8. However his behaviour has been unacceptable. He has been convicted on 32 different occasions for a total of 69 offences. At the Crown Court sitting at Harrow on 18 March 2007 he was sentenced to two years' imprisonment for attempted robbery and three years' imprisonment for breach of a community order, the sentences to be served consecutively. It was those convictions that led to the decision to deport him, and a deportation order was signed, on 15 April 2010. Save for any extension by reason of an appeal, any leave he had to be in the United Kingdom came to an end when the order was signed.
9. As we explain below, he has been in trouble since then.
10. He appealed against that decision and the appeal was dismissed. Nevertheless, however strong the public interest in removal may have been, the appellant was not removed.
11. He then made further submissions in 2012, 2014 and most recently 6 November 2015. On 25 November 2015 the respondent refused to revoke the deportation order but accepted that the further submissions did amount to a fresh claim and that led to the instant appeal. It was heard and dismissed by the First-tier Tribunal on 16 October 2017.
12. The concluding paragraph of the First-tier Tribunal's decision sets out well the judge's findings and concerns. The judge said:

"It is a tragic case. The conclusion may be considered harsh, however the UK is not responsible for his medical condition and very powerful weight is to be given to the public interest in deporting foreign criminals. The long line of cases since D v UK confirmed that 'Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited healthcare to all aliens without a right to stay within its

jurisdiction'. His removal will not lead to an early death. There are aspects of his lifestyle under his control to mitigate some of the consequences of his condition with available medical support. His parents are hesitant about extended family in Somalia or Somaliland. I am satisfied support can be available there. I find that there would not be a violation of Article 3 of the ECHR were the appellant to be deported and there would not be a very significant integration into Somaliland whereby the deportation order should be revoked."

13. At the start of the hearing before us Mr Tarlow made clear that it was the Secretary of State's intention to return the appellant to Somaliland. We are grateful for this unequivocal indication. It narrows the issues before us.
14. We now look with more care at the reasons of the First-tier Tribunal for dismissing the appeal.
15. It is quite clear that the First-tier Tribunal appreciated that the public interest lies in the appellant being deported. Without labouring the point, we appreciate it too. The appellant is a "foreign criminal" within the meaning of the phrase in part 5 of the Act. He is subject to "automatic" deportation because he has been sentenced to at least 12 months' imprisonment (but not "at least 4 years" because consecutive terms exceeding 4 years in aggregated do not count (section 117D(4)b)). He has also been found to be a "persistent offender". Additionally the First-tier Tribunal heard and accepted evidence from a police officer involved in Operation Nexus that the appellant was "identified as a high harm foreign offender under their criteria".
16. The First-tier Tribunal Judge had regard to part 5 of the Nationality, Immigration and Asylum Act 2002 and the substantially similar immigration rules.
17. The judge decided that paragraph 399 of HC 396 did not apply because the appellant does not have a partner or dependent child. For precisely the same reasons Exception 2 at Section 117C(5) of the 2002 Act does not assist this appellant. The judge decided that paragraph 399A does not apply because the appellant was not "socially and culturally integrated in the UK". This is the same wording as paragraph 117C(4)(b) of the 2002 Act. When the appellant last appeared before the Crown Court the sentencing judge commented that he had led a "totally useless and pointless life" in the United Kingdom. That might not be thought kind but was made in the light of the evidence of persistent criminal behaviour, some of it serious, and apparent inability to respond to penalties that tried to help him.
18. The first-tier tribunal judge clearly did not accept that the appellant was "socially and culturally integrated into the UK." Although there was some skimpy evidence that the appellant had started voluntary work he remained unemployable and alcohol dependant. There is no fault in the First-tier Tribunal's finding that the appellant was not "integrated".
19. It follows therefore that the judge was given clear reasons for finding that the appellant could not satisfy the requirements of Section 117C in an Article 8 balancing exercise.
20. It was still open to the judge to allow the appeal on article 8 grounds because there were compelling compassionate circumstances or "very compelling circumstances over and above" Exceptions 1 and 2.
21. The judge did ask herself if there "would be very significant obstacles to [the appellant's] integration into the country into which he would have to go. This is slightly surprising

because the “very significant obstacles” test is set out in Exception 1 under the Section 117C and under paragraph 399 which the judge found did not apply. Nevertheless the test is a useful if imperfect tool in considering the article 8 balancing exercise because it focusses attention on how the appellant could cope in the event of his return.

22. The appellant relied on both article 8 and article 3.
23. With this in mind the judge was looking for evidence of the effect of the appellant’s ill-health.
24. Although the judge, appropriately, took the relevant parts of the decision of the Tribunal in 2010 as her starting point she also noted that since then the appellant’s circumstances have changed. As well as continuing to drink and break the law the appellant suffered a traumatic brain injury in September 2013. In simple, non-technical language, this made his health significantly worse.
25. The appellant has been in trouble since his appeal against deportation was dismissed in 2010, most recently in 2015 but the judge did not give details. She did accept “Operation Nexus” evidence that the appellant had been bailed to attend the police station in December 2016 but that, in isolation, cannot take matter very far.
26. According to the First-tier Tribunal, the officer:

“wished to impress on the court police concerns about the appellant and his offending. She is concerned he will continue to reoffend and place members of the public at risk.”
27. Whilst the First-tier Tribunal was plainly entitled to give weight to that evidence without being in any way disrespectful to the police officer her evidence was wholly unremarkable. Whatever the reasons for the appellant’s offending may be it cannot be doubted that the appellant’s long history of offending supplemented by his failure to address his alcoholism makes it inherently likely that he will be in further trouble. The appellant’s case is not put on the basis that he is not a risk to the public but that his personal circumstances make him so vulnerable that he should not be removed.
28. The judge noted that the appellant is epileptic and suffers from “frequent seizures”. She noted too that he sustained a brain injury in 2013, that he has memory problems and, that he “relies on a carer.”
29. His epilepsy is not well controlled. He is a “frequent attender” at accident and emergency departments of hospitals and his general medical practitioner thought it would “helpful” if he was supervised by family members.
30. The judge considered medical evidence from Prof David Sharpe and Dr Steven White who are Consultant Neurologists in the National Health Service, from Dr Tony Goldstone, a clinical scientist and consultant Endocrinologist and Dr Frank Arnold a specialist in wound healing. Dr Arnold had contacted “Lookahead”, a charity that provided the appellant with social support.
31. The Judge also saw records from MNA Care Services confirming that the appellant “receives assistance with bath/shower and personal care 4 mornings a week”. This case began in June 2017 and that his mother and sisters support him with “shopping and meal preparation”.

32. This included evidence that Professor Sharpe would be “very worried” if the appellant were not able to get access to skilled medical support. The appellant has “severe epilepsy” and in the event of the appellant not getting proper control, something he found difficult in the United Kingdom where medical supplies are readily available, he would “be at a great medical risk”.
33. Difficulties associated with epilepsy were explained in more detail. There is no need to repeat them here. They are embarrassing for the appellant and anyone else present.
34. The medical practitioners could not envisage a point when the claimant could do without medical support. There were concerns about a sustainable supply of medication in the event of return.
35. The judge clearly found that drugs are available but not reliably and not necessarily the ones that clinicians in the United Kingdom would want to prescribe.
36. The Judge noted evidence that the appellant presently receives assistance with bathing and showering in his personal care four mornings a week. This is supplemented by support from his family.
37. She noted evidence that the appellant’s capacity for self-care is “very limited”. It is of particular concern that it is unsafe for him to bath or shower unless he loses consciousness and hurt himself. This is not just theoretical. It is a problem that has presented in the past.
38. We find the judge’s summary of the evidence of the appellant’s care needs at paragraph 60 to be very significant. The judge said:

“His capacity for self-care is very limited. He can dress himself but cannot cook or shop for himself. It is unsafe [for] him to bathe or shower unattended because he has lost consciousness while attempting to do so in the past. This is a known result with uncontrolled epilepsy and is a recognised cause of death in that condition. For this reason social services have provided a carer to help the appellant. A member of his family usually accompanies him when he goes out lest for example he has a fit in front of a moving vehicle. He has been assessed as unfit for paid work and is in receipt of Disability Living Allowance. The Lookahead a key worker has said that in an effort to address the appellant’s neurobehavioral problems and social dislocation he has been referred to and sought help from them with a view to obtaining a Personal Independent Payment and using this to support him in engaging in voluntary service within the limits of his abilities.”
39. The judge then noted in considerable detail the evidence of Dr Craig McNulty an independent clinical psychologist. It is Dr McNulty that assessed the appellant’s overall IQ at 55 subject to the rider that his verbal comprehension is rather better than might be expected for someone with that score. Dr McNulty finds that people such as the appellant were easily exploited and tended to be socially naïve and had poor problem solving skills.
40. At around paragraph 75 of her Decision and Reasons the Judge looked for things that had changed since the appellant’s previous appeal against deportation had been dismissed. She noted that the appellant claims to have given up using illicit drugs but still consumes alcohol to satisfy his addiction. Dr McNulty thought that the appellant would revert to his previous bad behaviour if the threat of deportation was removed.
41. The judge was unimpressed with evidence that the appellant risked imprisonment or being ostracised if he continued to drink alcohol, reasoning that even though he is an

alcoholic, he could choose not to drink and was not entitled to protection against the consequences of choosing to drink.

42. The judge was satisfied that some drugs are available in Somaliland for people suffering from epilepsy and some treatment is available for mentally ill people.
43. At paragraph 89 of her decision the judge accepted that the appellant “currently lives with his family and appears to have some support” the family could not keep him out of trouble and he was able to get about.
44. At paragraph 90 she said that the appellant remained a danger to the public, adding that there “was no real progress from his time in prison on release he continued to offend”. She said that it “is not the role of the UK to protect him from his own self damaging behaviour”.
45. She found that the apparent improvement in the appellant’s behaviour was the “inhibiting factor” of deportation.
46. The judge found that medications and treatment are available and that the “appellant has a number of relatives in the UK who can assist in funding the treatment”.
47. The judge dismissed the appeal.
48. Before us Mr Sellwood closely followed his written submissions. That is wholly appropriate. They are clear and are meant to be read but we did consider his oral submissions too.
49. Mr Sellwood had prepared 9 grounds of appeal. To some extent they overlap and we have not considered them each separately. We have read the Renewal Grounds as well as the grounds supporting the application for permission from the First-tier Tribunal. We have used the numbers on the earliest grounds.
50. We confirm that we have considered Mr Tarlow’s brief submissions and the Rule 24 Notice provided.
51. For reasons that are explained below we find that there have been material errors. Where we have redetermined issues we have reminded ourselves that the appellant must prove his case but when determining risk on return it is sufficient if he shows that there is a “real risk” to his human rights.
52. Ground 1 asserts that the judge did not take account of the background material, ground 2 says that the judge did not separate the two limbs in the “article 3 claims”, namely that the appellant risked article 3 severe ill-treatment in the event of his return and, additionally, should have consider if removing him in his state of health was contrary to this article 3 rights. Ground 3 complains that the judge misdirected herself when considering the “health” claim. Ground 4 alleges a failure to make sound findings of fact. Ground 5 alleges a failure to apply country guidance. Ground 6 alleges a failure to consider the medical evidence about treatment that was available in Somaliland. Ground 7 alleges a conflation of the tests concerning article 3 and article 8. Ground 8 alleges a misdirection concerning article 9. Ground 9 alleges an unlawful failure to consider post-decision evidence.
53. For reasons which we hope will become apparent, we begin at ground 4, alleging a failure to make sound findings.

54. The judge's decision to dismiss the appeal is premised on the appellant being able to access support in the country to which he would be returned. We find no justification for the finding that the appellant has relatives who would assist in supporting him financially. The evidence does not justify such a conclusion.
55. The appellant's mother gave clear evidence that she cannot support the appellant. She is disabled and depends on benefits. They are set to meet her needs. They cannot be expected to give her a surplus. The appellant's father gave evidence that he gets casual work attending an airport car park. He also receives job seekers allowance when his not working. It is no way to his discredit that he cannot earn more but there is no surplus from him to subsidise that appellant.
56. The appellant lives with two unmarried sisters. One them is employed and uses some of her modest income to support her mother. The appellant has a married sister and a married brother and another brother who is living in Ethiopia where he is almost destitute. There is nothing to suggest that the appellant's relatives are able to provide long term support even if they were so inclined. None of this was undermined by contrary evidence and none of it is implausible.
57. Further the appellant's mother said that the family had no links with Somaliland and there were no clan or similar links that could be expected to provide much support.
58. We have no good reason to reject these claims. We find that the First-tier Tribunal Judge was not entitled to conclude that the appellant would be supported in Somaliland. The evidence can only support a conclusion that he cannot be maintained from the United Kingdom.
59. We have considered the evidence about how the appellant could cope in the event of his return.
60. The judge is criticised in the grounds for not making clearer findings about how much the appellant depends on his family. We see considerable justification in that criticism. We have looked at the evidence behind the findings that the appellant "currently lives with his family and appears to have some support" We have already noted the judge's summary of the evidence.
61. In her statement the appellant's mother referred to his needing his relatives to check that he has taken his medicine, to help him dress and keep clean and to aid in the event of a "fit", something that she said happened nearly every week. His family in the United Kingdom was not in a position to send funds to Somaliland.
62. In his own statement the appellant wrote about his mother or sister cooking and washing for him. He never used an iron lest he had a fit and injured himself.
63. There are also papers from MN Homecare Services where the appellant is recorded as saying "I am able to mobilise independently however I will need supervision from my carer due to my seizures".
64. The judge clearly found that the appellant relied on his family to assist with his dressing, laundry, cooking, bathing and taking medication.

65. Whilst the appellant might, to some extent, have been indulged by his sister and mother it also clear that he could not manage on his own without a real risk of things going wrong, especially the ever present risk of his fitting and then injuring himself.
66. The judge has not made any sustainable findings about the appellant's economic circumstances. The appellant is unemployed and, we find, unemployable because of the combined disabling effects of his alcoholism and epilepsy. At the best he might be able to obtain very modest work in a sheltered environment but there is no reason to anticipate his obtaining such work in Somaliland.
67. We find that the appellant would find it very difficult to cope in Somaliland. He would not be able to earn a living. He would not be able to access adequate medication reliably and he would not be able to look after himself. His prospects are grim.
68. We note that it was established in the first appeal that the appellant came from Somaliland. He disagrees with that. We remind ourselves that it was only on the morning of the hearing that the respondent committed himself to returning the appellant to Somaliland rather than Somalia so there no obvious advantage in persisting in a dishonest claim not to have come from there. We cannot go behind that finding on the basis of evidence not tested before us but the finding that the appellant *came* from Somaliland nearly 30 years ago when his relatives were desperate to get out is not a finding that there are relatives there who are willing to support him now. There is no evidence that there are such people and we find that there are not.
69. We want to emphasise that the appellant is only able to cope to the extent that he does because he gets significant social support, mainly from his mother and sisters but significantly from paid carers. That care will not be replicated in Somaliland.
70. We are required to predict if there is a real risk of ill treatment.
71. We find it is likely that after a short time the combined effects of the appellant's epilepsy, alcoholism (whether or not he is able to indulge his cravings), unreliable supply of medication that is less than ideal and his (with respect) very low IQ mean that he can be expected to deteriorate in a very short times scale to being isolated, destitute and seriously ill. We have no hesitation in saying there is a reasonable likelihood that the appellant in the event of return to Somaliland will be perceived as someone with psychosocial disabilities and will risk treatment that would be regarded as abusive. We say this because of his very poor personal skills, his inability to control adequately his epileptic condition and the aggravating effectors of alcoholism. If in the United Kingdom where there is family support and considerable support from the state and excellent medical advice readily available to him he is still prone to fitting and risks hurting himself we do not see how there can be any realistic prospect of his not fitting and becoming a danger to himself and others in Somaliland.
72. Having made this finding it is convenient to consider ground 1, the alleged failure to consider background material.
73. The judge was required to consider the report "Human Rights Watch, "Somaliland: People with Disabilities Abused, Neglected", 24 October 2015. The report refers to there being only two psychiatrists for about 3.5 million people. Clearly this is not remotely enough to provide proper care.

74. Much more importantly for present purposes it referred to a detailed report “Chained Like Prisoners’: Abuses Against People with Psychosocial Disabilities in Somaliland.” This found that men with perceived or actual psychosocial disabilities face abusive restraints, beating, involuntary treatment, and overcrowding in private and public health centres. Most are held against their will and have no possibility of challenging their detention. In private centres in particular, those with psychosocial disabilities face punitive and prolonged chaining, confinement, seclusion, and severe restrictions on their movement”. The same report notes that “most” of a sample of 115 people in such institutions had faced abuse. There was no means of judicial oversight.
75. Further, whilst chaining was seen as a greater problem in private institutions it was not limited to them and involuntary detention without redress was characteristic of both private and public institutions.
76. Human Rights Watch reports can be expected to be well researched and we accept what it says.
77. We find that in the event of return to Somaliland there is a strong likelihood (although a real risk is sufficient) of the appellant being detained against his will indefinitely without legal redress in poor conditions and there is a real risk of his suffering the additional degradation of being chained.
78. We must ask ourselves if the real risk of his being exposed to such treatment violates his “article 3 rights”.
79. This is a convenient place to consider ground 2 alleging a misdirection concerning the claim that removing the appellant would violate his article 3 rights.
80. We agree with the First-tier Tribunal that the appellant cannot show that removing him to a country where health care is well below the standard to be expected in the United Kingdom contravenes his article 3 rights. It is almost trite law that the United Kingdom is not obliged to provide high quality care to all comers.
81. There is a distinction here that the First-tier Tribunal did not bring out. The concern is not just that the appellant will not get very good treatment. He will not. He will, we find, be locked up without trial or legal redress and that there is a real risk of his being locked in chains. Such detention, with or without chaining, is “inhuman or degrading treatment”. The appeal should have been allowed on article 3 grounds.
82. Ground 3 alleges that the First-tier Tribunal erred in not following **Paposhvili v Belgium** (App No 41738/10) but that is not binding authority and unless and until the Court of Appeal says otherwise, the Tribunal cannot apply it because it conflicts with national law.
83. Nevertheless we have considered its likely implications. We have provided ourselves at paragraph 183 in **Paposhvili** where the court decided:

“The court considers that the ‘other very exceptional cases’ within the meaning of the judgment in **N. v The United Kingdom** (§43) which may raise an issue under Article 3 should be understood to refer to situations involving the removing of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense

suffering or to a significant reduction in life expectancy. The court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.”

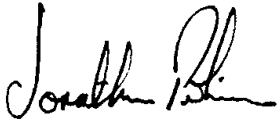
84. We do not see this case within the scope of the concerns in Paposhvili. The likely decline in health (something we accept) cannot be expected to be linked immediately with removal in the way that might be expected, for example, in the case of a person dependant on a kidney dialysis machine. The problem is not the actions of the United Kingdom but of poor conditions in the country of return.
85. Ground 5 is irrelevant. Now that it is clear that the appellant would be removed to Somaliland there is no error in not following country guidance relevant in the event of return to Somalia.
86. Ground 6 concerns medical treatment and adds nothing.
87. Ground 7 is made out. The judge was required to consider the claim under article 8 and was required when so doing to apply part 5 of the 2002 Act. There is no clear finding of “engagement” and then “balance” in the First-tier Tribunal’s decision.
88. We make it plain that we have not emphasised the “public interest” half of the article 8 balance because it is not in dispute and not because we have ignored it. It is clear that there is a strong public interest in the appellant being deported.
89. We find that that interest is enhanced in this case by reason of his propensity to reoffend. We remind ourselves that an appeal against a decision to deport the appellant had been dismissed in July 2010 and an appeal against that decision was dismissed on 20 December 2010.
90. Nevertheless he was convicted in October 2011 of theft from shops and of a similar offence in December 2011 and again in November 2013. Essentially he stole to fund his drug and alcohol abuse.
91. He sustained a head injury in 2013.
92. He was convicted of being drunk and disorderly and of assaulting a police officer in January 2014.
93. He was convicted of common assault in January 2015 (even though he was pursuing an application to revoke the deportation order) and in August and then September 2015 he was again convicted of being drunk and disorderly.
94. We are not aware of any further convictions but it is clear that neither the injury in 2013 nor the need to impress the authorities with his good behaviour have previously made him behave.
95. We acknowledge that he more recent offending is less serious than the older offending but persistently drunk behaviour, which is unpleasant and sometimes frightening for bystanders, can very easily escalate into much more serious crime. The appellant can be expected to engage in criminal behaviour which, at its best, is a nuisance and which could easily be a bigger threat to public order. In any event the prospect of future good behaviour is not a reason to allow an appeal such as this although they might make it permissible to allow an appeal where there are other reasons for so doing.

96. The appellant cannot rely on any close relationships. The United Kingdom is not obliged to promote family life between adults in the absence of special ties that do not exist here.
97. He does not come within the terms of Exception 1 or Exception 2 of Part 5 of the 2002 Act. He is not integrated into British society.
98. Nevertheless we do allow the appeal on article 8 grounds.
99. Clearly he has established a “private and family life” in the United Kingdom. It is also clear that he is reliant on his close relatives’ support and so we enhance the weight that we give to those relationships. They are not just the relationships between adults who are closely related. The appellant depends on them for his care. However they still less important than the relationship between parents and minor children or life partners and would not outweigh the public interest in his removal.
100. That said there are compelling reasons here, namely the risk of his being subjected to so such serious ill treatment in the event of his return that it would contravene his right under article 3 of the ECHR. Further, even if we are wrong and the predicted indignities do not reach article 3 level we find that they are such a violation of his physical and moral integrity that they outweigh the strong public interest in his removal.
101. It follows that grounds 7 and 8 are made out. This is one of the very few deportation cases that falls to be allowed for the sake of the appellant rather than the rights of a close family member of the appellant.
102. Ground 9 alleges that the First-tier Tribunal wrongly failed to consider post decision medical evidence. It is not clear that it ever came to her attention. If it had it would have supported our findings on the evidence that was before the First-tier Tribunal about the difficulties that the appellant would face in establish himself in Somaliland. The alleged error is not material.

Decision

103. For the reasons given we find that the First-tier Tribunal erred in law. We set aside its decision and substitute a decision allowing the appellant’s appeal against the respondent’s decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 16 November 2018