



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

Appeal Number: PA/10501/2018

THE IMMIGRATION ACTS

**Heard at The Royal Courts of Justice
On 14 January 2019**

**Decision & Reasons
Promulgated
On 16 May 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**BASHIR [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, Counsel, instructed by Duncan Lewis & Co
Solicitors (Harrow Office)

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Although this Decision was dictated immediately following the hearing, regrettably the file was then mislaid which is why this Decision is only now being promulgated. The Tribunal apologises to the parties for this delay.

The appellant is a national of Somalia who appeals against a decision of First-tier Tribunal Judge N M K Lawrence, who dismissed his appeal against the

respondent's decision refusing to revoke a deportation order which had been made against him, in a Decision and Reasons promulgated on 2 October 2018, following a hearing at Harmondsworth on 21 September 2018. It is not necessary for the purposes of this decision to deal with the merits of the appellant's case, nor, for the reasons which will follow, is it necessary to deal with the potential errors of law identified in Judge Lawrence's decision by First-tier Tribunal Judge Keane, when granting permission to appeal.

Before me, on behalf of the respondent, Ms Cunha stated as follows:

"It is arguable that the First-tier Tribunal Judge erred in his consideration of the medical report before him in relation to the appellant's previous history of mental ill health and did not consider this properly in his decision starting at paragraph 21.

I note that there is a reference within that paragraph to there being 'no evidence of any treatment he received during that period'. However, there was evidence that the appellant had been sectioned at around that time and there was also evidence of the appellant seeking the assistance of the NHS in relation to his health which was not considered by the judge.

What is worrying is that not only has the First-tier Tribunal Judge failed to consider this evidence, but he has used the omission of such evidence (which in fact existed) to undermine the appellant's credibility, thus making adverse findings.

For these reasons, we agree that the decision is unsafe because this error infects the whole decision."

Ms Cunha then invited the Tribunal to remit this appeal for a de novo rehearing before any judge other than Judge Lawrence, with no findings to be retained.

On behalf of the appellant, Mr Dhanji endorsed this approach, and, having given careful consideration to all the material contained within the file, the Tribunal agrees.

Although, as already noted above, these are not the reasons set out by Judge Keane for why he granted permission to appeal, they are sufficient to render Judge Lawrence's decision unsafe and for these reasons, I set aside his decision as containing a material error of law and direct that the appeal be remitted to the First-tier Tribunal, sitting at Harmondsworth (or wherever else is appropriate for logistical reasons) for a rehearing with no findings retained. It is accordingly unnecessary to make any findings with regard to the other potential errors of law identified by Judge Keane in his decision granting permission to appeal.

Decision

I set aside the decision of First-tier Tribunal Judge N M K Lawrence as containing a material error of law and direct that this appeal be remitted for rehearing before the First-tier Tribunal, sitting at Harmondsworth or, if necessary for logistical reasons elsewhere, for rehearing by any judge other than First-tier Tribunal Judge Lawrence.

No anonymity direction is made.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the letter 'g'.

Upper Tribunal Judge Craig
2019

Dated: 13 May