Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03221/2020

THE IMMIGRATION ACTS

Heard by way of remote hearing	**Decision & Reasons Promulgated**
On 3 November 2021	**On 20 December 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

AND

HUSSAIN MOHAMMED ALLY
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Bates, Senior Presenting Officer
For the Respondent: Mr Habtemariam, Counsel instructed on behalf of the respondent, Mr Ally.

DECISION AND REASONS

Introduction:

1. On 13 February 2019 the Secretary of State made a decision that the appellant is to be deported from the United Kingdom ('UK'), following his criminal conviction as it was considered that his presence in the UK was not conducive to the public good. The respondent refused the appellant's protection and human rights claim in a decision letter dated 8 April 2020.

2. The appellant, a citizen of Somalia, appealed this decision to the First-tier Tribunal (Judge Turner) (hereinafter referred to as the "FtTJ"). In a decision sent on 14 May 2021, the FtTJ allowed his appeal on human rights grounds, and the Secretary of State has now appealed, with permission, to the Upper Tribunal.

3. Whilst this is the appeal brought on behalf of the Secretary of State, for sake of convenience I intend to refer to the parties as they were before the First-tier Tribunal.

4. The FtT did not make an anonymity order and no grounds have been raised by the appellant in support of such an order during these proceedings.

5. The hearing took place on 3 November 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing with the parties' advocates at the Tribunal centre. The appellant was also in attendance so that he could hear and see the proceedings. No technical problems encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.

6. I am grateful to Mr Bates and Mr Habtemariam for their detailed and clear oral submissions.

Background:

7. The appellant's immigration history and claim is summarised in the decision of the FtTJ at paragraphs 6-24. The appellant was born in Somalia. He has no siblings. The appellant did not attended school in Somalia due to the war and due to issues that his father had. The appellant arrived in the UK as a child aged 13 in 2003 to join his father who had been granted asylum. The appellant was informed that his mother was killed in a house fire in Somalia in 2008. When he arrived in the UK he began attending a community college where he learnt English. He lived with his father and his 2 cousins who were not blood relatives. The appellant was granted indefinite leave to remain in the UK on 9 April 2009.

8. On 22 January 2019, the appellant was convicted of 3 counts of supplying class A drugs, and he was sentenced to a period of 30 months imprisonment.

9. In light of his conviction, a decision to deport him was issued on 13 February 2019. This was responded to by the appellant by two letters

where he made a protection claim and a human rights claim. He was interviewed on the 7 February 2020 concerning his protection claim. A decision was made on 8 April 2020 to refuse his protection and human rights claim. He concluded his custodial sentence on 3 April 2020.

The decision of the Secretary of State dated 8April 2020:

10. The decision letter is a lengthy document extending to 13 pages. The FtTJ summarised the decision letter and case at paragraphs [25]-[45]. I intend to summarise the parts most relevant to this appeal.

11. Having set out the appellant's immigration history, the respondent set out the reasons for deportation namely that on 22 January 2020 he was convicted of 3 counts of supplying a controlled drug of class A and was sentenced to 30 months imprisonment on each count to run concurrently. It is right to observe that the respondent considered the conviction in the light of the claim made for asylum and section 72 of the NIAA 2002.

12. The sentencing remarks of the judge are set out in the decision letter. The respondent considered that objectively any crime which resulted in a sentence of 30 months is considered a serious crime as reflected in the sentencing remarks. Having reached that conclusion, it was considered that the appellant had failed to rebut the statutory presumptions.

13. The respondent addressed the submissions made in respect of the protection claim at paragraphs 19 – 35 and did so by reference to the country guidance decision of MOJ and others (return to Mogadishu) Somalia CG [2014]. It is right to note that the appellant did not pursue his protection claim before the FtTJ.

14. In respect of his article 8 claim the respondent set out the nature of his claim noting that he did not have a partner or child. Consideration was given to paragraph 399A in the context of the appellant's private life.

15. It was accepted that he had been lawfully resident in the UK for most of his life; this was because he had arrived in the UK at the age of 13 and since then had lived in the UK. He had been granted leave to remain in April 2009, after the initial application had been made in 2003. He was now aged 30 years and had lived for the majority of his life in the United Kingdom.

16. It was not accepted by the respondent that he was socially and culturally integrated in the UK because the appellant had not demonstrated any such integration and the appellant had been convicted of an offence which leads to a detriment to the community

in the UK. The appellant had spent time in custody following his conviction which further isolated him from the community. The appellant had not demonstrated membership of any clubs or associations.

17. The respondent did not accept that the Appellant would face very significant obstacles to reintegration to Somalia as he had spent his formative years in Somalia. It was stated that the appellant was considered to be a young man in good health and had skills acquired in the UK that could be utilised to establish himself in Somalia, he spoke English and Arabic and had an aunt and cousins in the UK who may be able to offer financial support initially to the appellant upon his return. He also may be able to access the facilitated return scheme for further support. He would be able to maintain any friendships using modern means of communication.

18. Under the heading “very compelling circumstances”, the respondent noted that his deportation was conducive to the public good and there was a “significant public interest” because he had been convicted of offences for which he had been sentenced to a period of 30 months for drug offences and thus in order to outweigh the very significant public interest in deporting him, he would need to provide evidence of a very strong article 8 claim over and above the circumstances described in the Exceptions to deportation. The respondent did not accept that there would be very compelling circumstances relating to the Appellant’s private life which would outweigh the public interest in proceeding with the Appellant’s deportation. As to the claims that he suffers with headaches and is currently taking medication, the respondent set out that the WHO website confirmed that medical services are available in Somalia should he require this.

19. In conclusion, the respondent considered that his deportation would not breach
the UK’s obligations under Article 8 of the ECHR and the public interest in deporting him outweighed his right to a private and family life.

<u>The Decision of the First-tier Tribunal:</u>

20. The appeal came before the FtTJ on 12 May 2021. The FtTJ heard oral evidence from the appellant and his cousin. The FtTJ also had a bundle of documentation including a skeleton argument, a witness statement of the Appellant, Appellant’s qualifications and objective evidence. The Respondent submitted a bundle which contained the grant of indefinite leave to remain, judge’s sentencing remarks, notice of decision to deport, letters from the Appellant, letters of support, section 72 letter, OASys report and guidance, AIR, medical report, CIA world fact book Somalia, deportation order and the decision letter.

21. The FtTJ findings of fact and analysis of the issues are set out at paragraphs [59]-[100]. I shall set out a summary of the factual findings made, and the decision reached by the FtTJ. The FtTJ began her analysis by considering the section 72 certification and the protection claim at paragraphs [59]-[63]. The judge observed that the appellant's counsel had clarified that he did not press the issue of the protection aspect of the appeal. The judge concluded on the evidence before her that she had been presented with no evidence as to who the appellant may fear on return, what he feared may happen to him and whether there was any possibility of internal relocation or protection. Thus she did not find it necessary to consider the issue as to whether in accordance with section 72 the appellant had rebutted the certifiable presumption that he was a danger to the community nor the asylum or protection appeal in any further detail.

22. As regards the human rights claim, the judge found that the appellant had no partner or children in the UK and therefore could not fall within the exemptions are set out in paragraph 399 (a) or (b). The FtTJ therefore considered the exception relevant to private life under paragraph 399A. At paragraph [65] the FtTJ recorded the acceptance by the respondent that the appellant satisfied the first part of the exception as he had been in the UK for the majority of his life having arrived in the UK in 2003 at the age of 13.

23. As to the 2nd limb of the test as to whether the appellant was "socially and culturally integrated in the UK", the judge set out the respondent's submission that the criminal activity of the appellant was an indication that the appellant was not integrated and also that he had failed to provide evidence of attending clubs, associations or anything else within the community. The judge also referred to the fact that the appellant had spent 15 months in custody which isolated him from the community. The judge also referred to the Home Office guidance (as set out at paragraph [67] of her decision). Applying matters set out in the guidance, the judge found that the appellant spoke English and whilst not determinative it would weigh in his favour. The judge found that he was educated in the UK to college standard and that he had gained qualifications. As to his financial independence, the judge found that the appellant was working from 2009 – 2013 but that it was more likely than not that the appellant was not working to any significant extent from 2013 due to his drug addiction and associations. (at [68]). At [70] the FtTJ found the appellant was managing to support himself financially, through sporadic agency work or with the occasional assistance of his cousin. The judge found that the appellant was a fit and capable man who had the ability to secure work to be financially independent and whilst this was not a "strong factor" in the appellant's favour noting that there was a lack of evidence of strong, stable and ongoing employment and financial independence, she nevertheless found that it did weigh in his favour as opposed to against. As to his immigration status, the appellant has had indefinite leave to remain since he was

13 and during that time of legal residence the appellant attended school and college and then later worked in the UK. The judge found this also to be a strong factor in favour of the appellant's integration in the UK (at [71]). The FtTJ addressed the appellant's criminal offending at paragraphs [72]-[74], and by finding that this was a factor against the appellant. At [73] and by reference to the sentencing remarks, the judge set out that the appellant was caught selling drugs by undercover police officers on 3 occasions over the period of one month. He also told the officers that he had been selling drugs for some time and had intended to continue. The judge acknowledged the early guilty plea and also observed that the appellant was given more credit than that which should have been given which indicated to the judge had found there to be significant mitigation in the case. The judge also referred to the sentence remarks which stated "the period of custody imposed was unhappily too long to be suspended". Whilst the judge had not been provided with the details of mitigation, the FtTJ considered the sentencing judge's remarks indicated that the judge had the mitigation in mind when reducing the custodial sentence. However overall the judge found that the offending behaviour to be an indicator against the appellant's integration but did not find that that in isolation "tipped the balance".

24. The judge also considered the probation report (Oasy's) dated 23 January 2020. This indicated that the appellant recognised the impact and consequences of his offending on the wider community and that the report considered the risk factors and whether a more detailed assessment was required. The judge took into account that there were no factors which required a more detailed analysis and that the report had been compiled by a probation officer who had been trained in assessing people in the appellant's situation who would not be fooled into accepting a concession or acknowledgement unless properly thought to be genuine. The judge noted that there was a detailed plan of work to be undertaken with the appellant to reduce the risk of reoffending. The judge therefore noted that whilst the report lacked some detail, she placed some weight on the report in the appellant's favour. At [75] the judge noted there was a lack of evidence from the appellant in terms of involvement with community but that he had a relationship with his cousin, and this was indicator of "links to the community". At [76] the judge gave reasons as to why she did not give weight to this factor noting his particular background and limited means and in the light of his previous lifestyle and drug addiction.

25. At [77] the judge concluded that having undertaken the analysis, the factors that she had identified in the round "tipped the balance in favour of the appellant" and therefore found that during the course of time in the UK since 2003 had "integrated socially and culturally in society".

26. As regards the 3rd limb as to whether there were very significant obstacles to the appellant's integration into Somalia, or more specifically Mogadishu, the FtTJ resolved this issue also in favour of the appellant for the reasons set out at paragraphs [78]-[100]. The FtTJ found that the appellant had not been back to Somalia since he left in 2003 and as the respondent acknowledged in the decision letter, the appellant had spent the majority of his life in the UK. Whilst the respondent relied heavily on the fact that the appellant had gained qualifications and work experience in the UK so that he could obtain employment in Mogadishu, the judge considered that if the appellant were returning to a country with a stable economy then that may be a relevant consideration. However by reference to the objective evidence the FtTJ found that this was not the case as set out at paragraphs 81 – 84, and also set out her reasoning in relation to the decision of the CG decision of MOJ. The judge concluded that she had to consider the fact that the appellant had no experience of life in Somalia since 2003 and even then, he was only a child. The judge noted the very difficult circumstances described in the objective evidence and considered how likely it would be that the appellant would be able to secure some form of employment even with the skills and work experience he had. Having asked those questions, the judge concluded that it would be "highly unlikely that he would be able to secure such employment independently".

27. The judge addressed the issues of family ties and contact with family or others in Somalia. The FtTJ set out her reasons as to why she accepted the appellant's evidence that both his parents were dead (at [85]-87]) and that the appellant had no siblings. As to another cousin in Somalia, the judge found at [88] that there was no evidence that the appellant had any formal ties or relationship to the extent that she would be in a position to support the appellant if he were returned to Somalia. The judge accepted the appellant's evidence that he had no ties or support from anyone in Somalia who may be able to assist him upon return.

28. As to the respondent's submission that the appellant could be supported by friends or family from the UK, the judge gave reasons at paragraphs [89]-[90] in support of her overall conclusion that it had not been demonstrated on the evidence that the appellant could be supported by way of remittances from the UK should he return to Somalia. The FtTJ found that the appellant had no family support and would not be in receipt of remittances from abroad. In respect of the objective evidence, the judge found that on balance it was unlikely that he would be able to secure access to a livelihood; he had left Somalia when he was 13 years of age and had no knowledge of his clan. Due to the passage of time and his westernisation, the judge questioned how we would be able to demonstrate membership of the clan in any event. The judge considered the country guidance decision of MOJ, and in the light of her factual assessment found that the appellant's living conditions would be likely to fall below

standards which would be acceptable in humanitarian protection terms and whilst that was relevant to a protection claim, the judge also found that that would also be the case when considering whether there were significant obstacles for the appellant's return. When considering headnote (ix) of MOJ, the FtTJ found that the appellant had been supported by his mother before departing Somalia; support which was no longer present. He had been absent from Somalia for the majority of his life; he had no family or clan to call upon the support upon return and had no access to financial resources; he had limited prospects of employment and no availability of remittances from abroad.

29. The FtTJ considered the guidance set out in the decision of Kamara at [98] but concluded that the appellant had spent the majority of his life in the UK and had been "westernised". His first language was now English and that even if he could speak sufficient Somali language, it would be obvious to anyone in Mogadishu and in Somalia that this was no longer the appellant's first language. In the light of the appellant's lack of experience and the culture in Somalia and the lack of support he had there, the judge found that he would be unlikely to be able to build up within a reasonable period of time relationships to give substance to his private or family life. Thus the judge having undertaken a balancing exercise and balancing the matters both for and against the appellant, concluded that there were " factors in the appellant's favour when considering not only whether he would face very significant obstacles to his integration but also found that generally speaking his removal from the UK would be a disproportionate interference with his right to private life, pursuant to article 8 of the ECHR and weighing this against the public interest in his deportation."

30. The FtTJ therefore allowed the appeal.

The Appeal before the Upper Tribunal:

31. The Secretary of State sought permission to appeal that decision on 20 May 2021. Permission was refused by Upper Tribunal Judge Martin on 7 June 2021 but on renewal permission was granted by UTJ Lane on 10 August 2021.

32. The Secretary of State was represented by Mr Bates, Senior Presenting Officer. The appellant was represented by Mr Habtemariam, who had represented Mr Ally before the FtTJ.

The grounds and submissions:

The respondent:

33. Mr Bates relied upon the written grounds. No further written submissions have been filed on behalf of the respondent. However, Mr

Bates made oral submissions to which I have given careful consideration.

34. There are 4 grounds relied upon by the respondent. Ground 1 submits that the FtTJ erred in her conclusion that the appellant has shown integration in the UK and ignored the principles in Akinyemi v SSHD [2017] EWCA Civ 336 at paragraph 73, "the mere fact that an appellant has been present in the UK from young age and the absence of any family or connections with the country's return is not a trump card; such factors are likely to be outweighed by any serious and persistent offending. "This was in contrast to the serious criminality and failure to demonstrate any form of employment, community involvement or other contribution.

35. It is also asserted that there were contradictory findings in the decision at paragraphs 68 and 71. The respondent submitted that the judge appeared to provide mitigation for the appellant's lack of involvement in society due to his chaotic lifestyle prior to being imprisoned and as such it should have been a feature that weighed heavily in demonstrating a lack of integration. The judge misdirected herself in law by giving it no weight in her assessment.

36. The grounds also assert that the judge made a similar misdirection at paragraph [70] and that the judge's assessment that he was a fit and capable man but had failed to show that he was gainfully employed was not a feature which supported a positive finding but would point against a lack of integration. Ground 1 concludes that had the judge properly considered the case law it would be likely that she would have reached a different conclusion.

37. Ground 2 submits the judge failed to give adequate consideration to the appellant's ability to re-establish himself in Somalia. The judge failed to take into account his age when he left Somalia, that his life in the UK centred around Somali culture and therefore the finding that lack of knowledge as to societal norms would prevent his assimilation was contradictory in the light of positive private life finding that he had a relationship with his cousin and failed to consider the evidence before the tribunal.

38. Ground 3 submits that the FtTJ's acceptance that the appellant had no potential support on return to Somalia without more was an error in law. The finding made by the judge was based on the appellant's evidence that he was no longer in touch with the cousin he described as living in Mogadishu. The grounds submit that it as for the appellant to demonstrate his case and that he had failed to provide reasons as to why he could not resume that relationship. The same was true about his claim to have no idea about his clan membership and that the FtTJ's acceptance of this was equally misdirected.

39. Ground 4 submits the judge erred in her conclusion at [94] that the appellant would have no access to remittances or support on return to Somalia. In respect of the findings made in relation to his friend, the findings are based on conjecture and supposition which also ignores the presumption that the appellant was not in receipt of benefits (at [69]) which she found went to his credit under section 117 criteria. The appellant as a fit and able young man would be capable of work, he had family connections in Mogadishu and would be wholly supported by his family in the UK and thus the respondent asserts that he fits squarely within the category of safe returnees set out in MOJ.

40. In his oral submissions, Mr Bates submitted that when considering whether he was socially and culturally integrated in the UK, the judge found that he was not in employment in 2013 onwards. However, there was a significant period before his imprisonment when the appellant was not in a position to integrate because of his conduct. Also from his release into the community there is no evidence of employment and the judge found that he demonstrated links to the community at paragraph 75 solely because the judge had accepted he had a relationship with a family member. Mr Bates submitted that the evidence of links to a family member do not show integration in UK society. He further submitted that the judge identified enough points to demonstrate that he was not integrated in the UK; he had no employment since 2013, no evidence of community involvement and had been imprisoned. All of those points undermined his integration in the UK and therefore the FtTJ's conclusion was inadequately reasoned.

41. Mr Bates made reference to the decision of CI(Nigeria) but that whilst imprisonment did not necessarily break integrative links, it was not the case here because the appellant was already leading a chaotic lifestyle before his imprisonment. Also the facts in CI Nigeria were different from the present facts.

42. As to integration to Somalia, the appellant had lived in Somalia until he was 13 and had lived in a household with a Somali background thereafter. When looking at whether the appellant would face very significant obstacles, it was argued on behalf of the respondent that the judge failed to give adequate consideration of his Somali background and ties which would support a conclusion that he could properly integrate to Somalia. He submitted that when taken with the appellant's education in the UK and his language ability they were 2 positive factors towards integration which the majority of Somali nationals would not have. He submitted that the judge had not considered adequately the appellant's background when stating that he had lost all ties to Somalia.

43. As regards the issue of remittances, the witness J had provided money to the appellant. The FtTJ had set out the respondent's submission

that the sums of money would mean £30 per month however the FtTJ rejected this submission. Mr Bates submitted that if it was the appellant's case that the money was not sufficient it was for the appellant to demonstrate that £30 in Somalia would not be a sufficient sum and that the FtTJ erred materially in law by reversing the burden of proof upon the respondent to provide evidence. Furthermore the judge speculated in the absence of evidence as the financial ability of a 2nd person (the appellant's friend), to provide financial support. In this respect the judge accepted that he had a friend who was in employment as a driver but stated that as he was in such employment it was likely that he would be on a minimum wage. Mr Bates submitted that this was based on speculation because the judge had no evidence. This offended the principle that a losing party should understand why they had not succeeded and there was no reasoning given as to why a driver would be assumed to be on minimum wage. This would depend on the hours of work and the range of variables of earning capacity. He had not provided a witness statement but there were 2 potential resources for remittances and therefore the FtTJ's decision on this aspect was inadequately reasoned.

44. Mr Bates then turned to the lack of knowledge of clan membership in Somalia. He submitted that the judge gave inadequate reasons for finding that the appellant did not know his clan membership. The appellant came to the UK when he was 13 and lived with his father and therefore would be aware of his clan background. He submitted that it was difficult to see without any more explanation why the appellant would not be aware of his clan membership. He submitted that the judge accepted the appellant's evidence at face value because of his age and whilst that may be understandable, it is a significant not be aware of clan heritage. Overall it was submitted by Mr Bates that the decision was unsustainable due to inadequate reasoning.

The appellant:

45. Mr Habtemariam confirmed that there had been no Rule 24 response filed on behalf of the appellant.

46. In his oral submissions, he referred to the original refusal of permission by Upper Tribunal Judge Martin who had stated that the grounds did little more than to provide a disagreement with the findings of the FtTJ but did not disclose any arguable error of law. He submitted that when looking at the decision the FtTJ had made clear findings of fact both for and against the appellant and had undertaken a careful analysis of all of the evidence.

47. When considering the issue of integration, the factual circumstances were that the appellant came to the UK when he was 13 and that applying CI (Nigeria) integration also concerns links with education

and society in the UK. He submitted that it is a composite test and is one which is a question of fact. He submitted that the judge heard the evidence of the appellant and the witnesses and reached a reasoned decision on that evidence.

48. He submitted that the judge took into account the appellant's criminality that also looked at his length of residence in the UK and that this had been only one offence in 18 years of residence. Furthermore when looking at the issue of integration, the judge properly took into account his age when he arrived in the UK but also having been educated in the UK and also attending college obtaining qualifications and having obtained employment. The judge carefully looked at the sentencing remarks in the mitigation facts, she identified that he was "westernised" due to his language and his identity in the UK.

49. In respect of the issue of whether there were "very significant obstacles to his integration, the judge properly applied the decision set out in Kamara at paragraph [98] and had undertook a "broad evaluative judgement", noting that he spent the majority of his life in the UK, that he had been "westernised" and that it would be obvious to anyone in Somalia that his first language was not Somali; the judge highlighted the lack of experience in his culture and supporting ties in that country. The decision of the FtTJ was a very detailed one and properly balanced the factors which were for and against the appellant.

50. Mr Habtemariam submitted that when looking at the issue of remittances, the judge found as a fact that J was a single parent with limited means and would not be in a position to provide sustainable remittances that the appellant would need. That was a factual finding open to the judge on the evidence before her. Similarly at paragraph 88, the judge accepted that the appellant had no ties with Somalia and also accepted the appellant's evidence that following his father's death he had no connections with a family relative known as H. Therefore contrary to the grounds, the judge had provided adequate reasoning and explained why she had reached her conclusions.

51. As to the family friend, it was submitted that it was a reasonable inference for the judge to make that a driver would be on minimum wage. However in any event, it did not take the matter any further because at paragraph [90] the FtTJ concluded that the appellant could not be supported by way of remittances. He submitted that there was no reversal of the burden of proof but that the judge had made a reasoned decision on the evidence .At paragraph 91 the judge also made reference to the country background materials in the DFAT report, and the conditions to be met by returnees and accepted that he had no fixed address in Somalia nor would he be able to return with the amount of funds necessary. He submitted the judge properly applied the relevant case law in MOJ at paragraph [96] and the

findings of fact were consistent with that decision. He invited the tribunal to uphold the decision.

52. By way of reply, Mr Bates submitted that the judge failed to take into account the period of time before his imprisonment and there was no evidence that he was integrated in the UK before he had been imprisoned. As to the exceptions of deportation, the risk of reoffending was irrelevant to the issue of integration and again demonstrated the judge had made an unsustainable decision and that the errors made affected the overall consideration of the issue of proportionality.

53. At the conclusion of the hearing, I reserved my decision.

Discussion:

54. I have carefully considered the submissions made by each of the advocates and I am grateful for the careful and clear submissions made by each of them as reflected above.

55. The legal framework that the FtTJ was required to apply and relevant to this appellant's appeal can be summarised as follows:

The Legal Framework

56. Section 32 of the UK Borders Act 2007 ('the 2007 Act') defines those, such as this appellant, who have been sentenced to a period of imprisonment of at least 12 months as a 'foreign criminal'. Pursuant to subsection (5), the Secretary of State must make a deportation order in respect of such a foreign criminal. There are a number of Exceptions contained in section 33, of which the only relevant Exception is that 'removal of the foreign criminal in pursuance of the deportation order would breach – (a) a person's [ECHR] rights…' (see section 33(2)(a)).

57. For the purposes of this appeal, the relevant legal framework concerns Art 8 of the ECHR and Part 5A of the NIA Act 2002 and, principally, as it applies in deportation cases. In particular, the appeal is concerned with Exception 1 in s.117C(4). It is common ground that the judge was required to apply s.117C in determining the issue of whether the appellant's deportation would be disproportionate and a breach of Art 8 of the ECHR.

58. Sections 117C (1) and (2) set out the position regarding the "public interest" as follows:

"(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal."

59. By virtue of s.117C(3), if a 'foreign criminal' has been sentenced to at least twelve months' imprisonment but not to four years or more imprisonment, then if Exception 1 or Exception 2 applies, deportation is not in the public interest (see, HA (Iraq) v SSHD [2020] EWCA Civ 1176 at [29]).

60. Section 117C (4) sets out Exception 1 as follows:

"(4) Exception 1 applies where –

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported."

61. It is against that background that I engage with the submissions advanced on behalf of the Secretary of State.

62. There is no dispute that the appellant satisfies the definition of foreign criminal as he is not a British citizen and has been convicted of an offence which led to a period of imprisonment of at least 12 months: (see section 117D (2) of the 2002 Act).

63. The appellant's conviction and sentence fall into section 117C (3) of the 2002 Act; he has not been sentenced to a period of imprisonment of four years or more, with the effect that, if Exception 1 or 2 applies, his deportation will not be in the public interest.

64. The respondent's grounds challenge the FtTJ's assessment of that the appellant was socially and culturally integrated in the UK.

65. The written grounds assert that in reaching that conclusion the FtTJ fell into legal error by "ignoring the principles in current case law". The case identified and cited in the grounds is that of Akinyemi v SSHD [2017]EWCA Civ 236 at paragraph [73] as follows:

"[73] … The mere fact that an appellant has been present in the UK for a young age and the absence of any family or other connections with the country of return is not a trump card; such factors are unlikely to be outweighed by any serious and persistent offending.."

66. Later on in the grounds reference is made to the case of Bossade (SS 117A-D -interrelationship with the rules) [2015] UKUT 415.

67. Whilst the respondent submits that the FtTJ ignored the principles set out in "current case law", none of the more recent case law has been either cited in the grounds. I also observe that it does not appear that

any case law was cited on behalf of the respondent to the FtTJ on this issue.

68. When considering the issue of social and cultural integration, each case is necessarily “fact sensitive” and in my judgement it is necessary to consider the relevant principles from the case law rather than seeking to refer to the facts of particular cases which is what the respondent has sought to do in the written grounds.

69. With that in mind, I return to those grounds. It is submitted on behalf of the respondent that the judge was unable to identify anything other than the appellant’s length of residence and an “unremarkable relationship” with his cousin. In this respect Mr Bates submitted that such a relationship is not relevant to the issue of integration.

70. The grounds also centre upon the appellant’s criminality and the submission that the judge had failed to take that properly into account when reaching her overall assessment.

71. In this respect, the nature and context of offending is only part of the overall assessment of the issue of social and cultural integration. Whilst criminal offending and any subsequent imprisonment can affect how a person is socially and culturally integrated in the UK, the assessment that the FtTJ was required to make was not only to consider the criminal offence or offending and the seriousness of that criminality but to undertake a holistic assessment of whether the appellant was socially and culturally integrated in the UK despite his criminal conduct.

72. Therefore such an assessment included a consideration of a number of relevant factors including the length of residence, his education and upbringing, employment, friendships and relationships and also the adoption of cultural norms of UK society (I refer to the decision in Binbuga at [56] and the decision relied upon by Mr Habtemariam in CI (Nigeria) at [58] and [62].

73. In *CI (Nigeria) v The Secretary of State for the Home Department* [2019] EWCA Civ 2027 "social and cultural integration" was explained as follows:

> *The nature and formation of private life*
>
> 57. In assessing whether a "foreign criminal" is "socially and culturally integrated in the UK", it is important to keep in mind that the rationale behind the test is to determine whether the person concerned has established a private life in the UK which has a substantial claim to protection under article 8. The test should therefore be interpreted and applied having regard to the interests protected by the concept of "private life". The nature and scope of the concept was explained by the Grand Chamber of the European Court of Human Rights in *Ãœner v The Netherlands* (2006) 45 EHRR 14, para 59, when it observed that:

"... not all [settled] migrants, no matter how long they have been residing in the country from which they are to be expelled, necessarily enjoy 'family life' there within the meaning of article 8. However, as article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitute part of the concept of 'private life' within the meaning of article 8." (citations omitted)

58. Relevant social ties obviously include relationships with friends and relatives, as well as ties formed through employment or other paid or unpaid work or through participation in communal activities. However, a person's social identity is not defined solely by such particular relationships but is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging. The importance of upbringing and education in the formation of a person's social identity is well recognised, and its importance in the context of cases involving the article 8 rights of persons facing expulsion because of criminal offending has been recognised by the European Court. Thus, in the *Ãœner* case at para 58, the court considered it "self-evident" that, in assessing the strength of a foreign national's ties with the "host" country in which they are living, regard is to be had to "the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there."

59. The European Court returned to this theme in *Maslov*, stating (at para 73) that:

"... when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult."

Relevance of offending and imprisonment

61.Criminal offending and time spent in prison are also in principle relevant in so far as they indicate that the person concerned lacks (legitimate) social and cultural ties in the UK. Thus, a person who leads a criminal lifestyle, has no lawful employment and consorts with criminals or pro-criminal groups can be expected, by reason of those circumstances, to have fewer social relationships and areas of activity that are capable of attracting the protection of "private life". Periods of imprisonment represent time spent excluded from society during which the prisoner has little opportunity to develop social and cultural ties and which may weaken or sever previously established ties and make it harder to re-establish them or develop new ties (for example, by finding employment) upon release. In such ways criminal offending and consequent imprisonment may affect whether a person is socially and culturally integrated in the UK.

62. Clearly, however, the impact of offending and imprisonment upon a person's integration in this country will depend not only on the nature and frequency of the offending, the length of time over which it takes place and the length of time spent in prison, but also on whether and how deeply the

> individual was socially and culturally integrated in the UK to begin with. In that regard, a person who has lived all or almost all his life in the UK, has been educated here, speaks no language other than (British) English and has no familiarity with any other society or culture will start with much deeper roots in this country than someone who has moved here at a later age. It is hard to see how criminal offending and imprisonment could ordinarily, by themselves and unless associated with the breakdown of relationships, destroy the social and cultural integration of someone whose entire social identity has been formed in the UK . No doubt it is for this reason that the current guidance ("Criminality: Article 8 ECHR cases") that Home Office staff are required to use in deciding whether the deportation of a foreign criminal would breach article 8 advises that:
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> "If the person has been resident in the UK from a very early age it is unlikely that offending alone would mean a person is not socially and culturally integrated."

74. I have therefore considered whether the factual assessment undertaken by the FtTJ was in accordance with the principles set out in CI (Nigeria) and I have done so by taking into account the grounds of challenge.

75. Contrary to the grounds, the FtTJ did not only consider the length of residence but also identified a number of other relevant issues.

76. The FtTJ plainly addressed the arguments advanced on behalf of the respondent as demonstrated at paragraph [66] where the judge set out that the respondent had relied upon the appellant's criminal activity and that the appellant had no links to the community via clubs and societies etc. From paragraphs [67] onwards the FtTJ referred to the current guidance "Criminality: Article 8 ECHR" that the Home Office staff caseworkers are required to take into account, which included issues of language, education, qualifications, financial independence, employment, immigration status as well as criminal offending, work in the community relationships with others and issues of rehabilitation/conduct since criminal offending.

77. The FtTJ's assessment is set out between paragraphs [67]-[77].

78. Having considered the assessment in the light of the grounds, I am satisfied that the conclusion reached by the judge that the appellant had demonstrated that he was socially and culturally integrated in the UK was one that was open to the judge on the evidence and that the judge had given adequate reasons for reaching that conclusion. I shall set out my reasons for reaching that view.

79. In undertaking the assessment the FtTJ was entitled to take into account the appellant's language ability. At [67] the judge considered the issue of the appellant's language and did so in the context of his history, residence, upbringing and education. The judge found at paragraph [67] that the appellant spoke English, and that he had been educated to

college standard and had gained qualifications. At [99] the judge concluded that the appellant's first language was English.

80. The FtTJ's assessment of the evidence was that the appellant had arrived in the UK as a child aged 13 and had not been able to speak English. He had attended school and community college where he had learnt to speak English. He had stayed at the community college for a few years before moving to the 6th form where he obtained qualifications as exhibited in the appellant's bundle (BTEC certificate from College; June 2007).

81. It was therefore open to the FtTJ to conclude that from that factual background the adoption of the English language as his first language and his subsequent educational qualifications were factors that weighed in the appellant's favour when considering the issue of social and cultural integration. The judge properly acknowledged that it was not "determinative" (at paragraph [67]) but she was entitled to identify these as factors in the assessment that was to be undertaken.

82. As to the issue of financial independence and employment, the judge undertook an assessment of this between paragraphs [68]-[71]. The respondent challenges that assessment. It is submitted that the FtTJ made contradictory findings at paragraphs [68] and [70] and that the judge failed to take into account the evidence of the period prior to his imprisonment which the respondent describes as a "chaotic lifestyle".

83. When considering the issue of the appellant's employment in the UK, whilst the judge noted that the appellant had failed to provide "objective evidence" as to his employment (I take that to mean documentary evidence in support), the judge went on to accept the appellant's evidence that after he had attended school and college and after obtaining some qualifications he was in employment from 2009 until 2013. The evidence in the witness statement was that between those years he had worked in a number of different jobs which he had identified by name until August 2013. The appellant's evidence was that after August 2013 he had worked for various agencies and the FtTJ concluded that the appellant had little recollection of this because he had been moved between jobs by the agencies.

84. As to the FtTJ's findings about this period, the judge found at [68]: "I find that it is more likely than not that the appellant was not working after 2013, certainly to any significant extent, due to his drug addiction and associations with like-minded people. I find that this is the reason why there is a lack of evidence regarding the appellant's work history." In this context the judge relied upon the appellant's own evidence and that from about 2015 to the criminal proceedings in November 2018, the appellant was going through a "difficult time" when his father with whom he had lived left the UK to live in Tanzania without telling him and later on had died in 2016 and that was the background from which the appellant stated he had been taking drugs.

85. From her assessment of the facts, the judge accepted the appellant's account that he had been in employment up until 2013. Thereafter the judge found that he had not been working to any "significant extent" thereafter (at[68]).

86. When this paragraph is viewed alongside paragraph [71] there is no merit in the respondent's submission that the judge had made a contradictory finding at [68].

87. At paragraph [71] the FtTJ said this:

> "71. The Appellant's immigration status is said to be a factor. The Appellant has had indefinite leave to remain since he was 13 years of age. During that time of legal residence, the Appellant has attended school and college and then later worked in the UK. This is a strong factor in favour of the Appellant's integration in the UK".

88. When the FtTJ's decision is read in its entirety, it is clear that at [68] the FtTJ accepted his work history up until 2013 and that thereafter other than "sporadic employment" he did not demonstrate any regular employment. At [70] the judge summarised the period of lawful residence from 2003 taking into account that he had attended school and college and had later worked in the UK. The reference to the work in the UK at paragraph [71] reflected the FtTJ's finding set out at paragraph [68] that he had worked since leaving school and up until 2013 and thereafter had worked "sporadically".

89. Whilst the FtTJ found that there was a lack of evidence of strong, stable and ongoing employment at paragraph[70] that did not mean that the finding relating to previous employment between 2009, and 2013, and sporadic employment thereafter alongside his education and qualifications obtained were not factors to place in the balance. This was what the judge had explained at paragraph [70] when the judge said, "I do nevertheless find it does weigh in the appellant's favour as opposed to against".

90. Looking at the other factors that the FtTJ identified and took into account, at paragraph [71] the judge took into account his immigration status and that he had been granted ILR since he was 13 and that during the period of lawful residence he had attended school and college and later worked in the UK. The judge was entitled to reach the conclusion at [71] those were "strong factors in favour of the appellant's integration". At [72] whilst the judge noted that mere presence could not be evidence of integration, the judge was entitled to take the view that the lengthy duration of his legal residence was a factor that should be placed in the balance.

91. The judge did not fail to take into account the appellant's criminality or treat this as an immaterial factor in the overall assessment of social and cultural integration. At paragraph [72] the judge expressly stated that she took his criminality as a factor against the appellant and at [73]

set out the appellant's criminal history and was entitled to take into account the sentencing remarks observing that there was some mitigation in the appellant's favour. Whilst it is submitted by Mr Bates that the judge failed to take into account the period prior to his imprisonment which he described as the appellant's "chaotic lifestyle", the FtTJ was plainly aware of that evidence which she had previously set out at paragraph [68] and also had made reference to his previous conduct at [73]. I observe that the description of "chaotic lifestyle" is not one made by the FtTJ in her assessment, but one made by the respondent in the grounds. The factual finding made by the judge was that this was a "difficult time" set against the background of the appellant's father, with whom he had lived leaving the family home to live in Tanzania (in 2015) and subsequently having died in 2016 and that the appellant started to take drugs during this period.

92. Whilst I would accept that this is relevant to the assessment of whether the appellant was socially and culturally integrated, it was a matter that the FtTJ was plainly aware of and had taken into account in her assessment. Having done so it was not a matter that would by itself undermine the conclusions reached by the judge, who had identified a number of relevant factors that she had placed in the balance before reaching her overall assessment.

93. Additionally the FtTJ at [74] took into account the appellant's re-engagement with society as evidenced by the probation report. It was open to the judge to take into account in her assessment that the appellant had recognised the consequences of his offending and its impact on the wider community and that the probation officers report was entitled to some weight in the assessment. In this respect, I observe that whilst the judge referred to the lack of evidence thereafter, there were documents in the 2nd bundle exhibiting the qualifications that the appellant had obtained in 2019 and 2020 and therefore after his offence. Indeed it was the respondent's case set out at [79] that the appellant had gained qualifications and work experience in the UK which would stand him in good stead should he be removed from the UK.

94. At [75] the judge took into account as a factor in her overall assessment the relationship between the appellant and his cousin. Whilst Mr Bates submitted that it was not evidence of integration, in my view the judge was entitled to look at the issue of relationships forged in the UK as this was a relevant aspect of the appellant's private life and thus of social integration. It was not a factor which judge gave any great or significant weight, but it was a factor in the balance, nonetheless.

95. The respondent submitted that the appellant had not demonstrated any work in the community. The judge addressed this at paragraph [76] and in the context and against the background of what an "average person" could provide in this regard. I do not consider that this is an impermissible approach and that her observation that if she were to "ask an average person to demonstrate what they had done to contribute to

the local community, many would come up with little", was open to her to make. What is important is that the judge considered the appellant's own upbringing and circumstances finding that he was not from an affluent background and his family were of limited means and therefore he would have limited means to engage with paid activities such as clubs and societies. The FtTJ also made reference to the pandemic. Nonetheless she weighed against him that he was not in a position to undertake any such activity before imprisonment due to his lifestyle but having weighed up all of those factors reached the conclusion "I therefore place little weight on the lack of evidence of actions on the appellant's part to practically contribute to the community."

96. Finally at paragraph [77] the judge balanced the factors that she identified as both in favour of the appellant and those against the appellant and having balanced those factors reached the conclusion that the appellant had demonstrated that he was socially and culturally integrated in the UK since his arrival in 2003. The judge had properly identified the relevant factors not only taking into account the length of residence in the UK, and that he lived in the UK for the majority of his life (a factor which the respondent accepted), but additionally took into account the social and cultural integration demonstrated by his language, that he had no family in Somalia and thus no cultural links, that he had been educated and had worked in the UK. His criminal offending was properly taken into account including the seriousness of the offending but when carrying out the balance the judge was entitled to find that offending had not broken the social and cultural integrative links that he had previously had. The weight given to those particular facts identified were a matter for the judge.

97. Therefore I accept the submissions made by Mr. Habtemariam that the grounds advanced on behalf of the respondent amount to no more than a disagreement with the factual findings made by the judge and that the FtTJ had properly balanced the negative and positive factors before reaching her overall conclusion which was reasonably open to her on the evidence.

98. I now turn to the second issue which relates to whether there would be very significant obstacles to integration to Somalia.

99. The grounds submit that the FtTJ failed to give adequate consideration to the appellant's ability to re-establish himself in Somalia. It is submitted that whilst it was accepted that he had not lived there for a considerable period of time, to find that he would be unfamiliar with the culture is to ignore the fact that when he left Somalia he would be fluent in the language and would have significant memories of both life and culture there (I refer to the written grounds; ground 2).

100. Having considered the FtTJ's factual assessment set out to in paragraphs 38-99, I am satisfied that submission has no merit. Firstly, it fails to pay any regard to the evidence that was before the FtTJ, and the

factual findings made by her on the evidence. There was no dispute that the appellant had left Somalia at the age of 13 and as a child and at the time of the hearing he was an adult aged 30. He had not been back to Somalia since he was a child and had no relatives with whom he was in contact with in Somalia. As to his language skills, the appellant's evidence was that his ability to speak Somali had diminished over time (at [14]). The FtTJ made a finding of fact that English was his 1st language and even if he was able to speak some or sufficient Somali, the judge found that it would be obvious to anyone in Mogadishu that Somali was no longer the appellant's 1st language (at [99]).

101. Ground 2 amounts to no more than an alternative submission but does not demonstrate that the FtTJ's assessment was not open to her on the evidence that was before the First-tier Tribunal.

102. The 2nd point made is that the judge failed to take account of the appellant's life centring upon Somali culture. On this point, I can see no evidence before the FtT either adduced in evidence in chief or elicited in cross examination to suggest that the appellant's life centred upon Somali culture. In fact, the FtTJ found the opposite to be the position in her description of the appellant being "westernised" and that if in Somalia he would quickly be recognised as someone who had not lived in that country for many years. I am therefore satisfied that there is no merit in ground 2.

103. Dealing with ground 3, Mr Bates submits that the appellant failed to explain why he was not aware of his clan and that the FtTJ acceptance of this without reasons is an error of law. He submits that the issue of clan membership is integral to someone's upbringing and that the appellant would have known this. In essence, he submits that the appellant had good reasons for stating that he did not know his clan and that this claim was an attempt to disguise the true picture.

104. In addressing the submission, I have had regard to the FtTJ's decision, and the factual findings made by her on the evidence advanced during the hearing. When undertaking an analysis of the evidence, the FtTJ made a very careful assessment of the evidence concerning how the appellant came to the UK whereabouts of family members (I refer to paragraphs [85]-[88] of the FtTJ's decision). The appellant's claim was that he had not been to Somalia since he had left the child in 2003. His father had left him aged 7 with his mother before reuniting with him in the UK in 2003 at the age of 13. The appellant was interviewed by the respondent and was asked questions about his time in Somalia but was unable to provide any detail beyond knowing that he was born in Mogadishu and referred to the area of Kismayo. The appellant's claim was that he had no siblings and that both his mother and father were dead.

105. In my view the FtTJ undertook a careful assessment of that account and did not accept it at face value but gave reasons for the factual

findings made and on the background and circumstances. Firstly, as to the claim that he had no siblings either here or in Somalia, the judge found that that was supported by the evidence. She identified that if the appellant had siblings "it was more likely than not that they would have come to the UK at some stage to join him" (at [85]). As to his father's death, at [85] the judge gave reasons for accepting the evidence that he was dead. The judge noted that in any event noting that the appellant's father had been granted refugee status in the UK some time ago, it was safe to assume on balance that he would not have returned to Somalia. As to his mother's death, it was said to have occurred in 2008. There was no evidence to confirm this. However for the reasons set out at paragraphs [86]-[87] the FtTJ concluded that there was no evidence that his mother had joined the appellant in the UK and there was no evidence that the appellant continued any communication with his mother. The judge reasoned that given that the appellant had been in the UK since 2003, it would be reasonable to conclude that if the appellant's mother was still alive, and in the light of the evidence that the appellant had no siblings, that there would have been some contact during this time. The judge was satisfied that had not been any contact during the period since 2003 nor had there been any application for the appellant's mother to join the appellant in the UK. The judge observed the respondent had not presented evidence of any applications made by the appellant's mother to join him and therefore on balance she found "that the appellant has been consistent that his mother has died and that there is little documentary evidence that could be that could be provided to substantiate his claim. As such, I accept on balance at the appellant's mother has also passed away" (at [87]).

106. At [94] the FtTJ found that the appellant had left Somalia at the age of 13 and claimed to have no knowledge of his clan. When set against the factual findings made in the earlier part of the decision, I do not accept that the FtTJ failed to give reasons as to why she accepted the appellant's evidence. The judge had stated earlier that the respondent had been directed to provide evidence as to the nature of the appellant's father's claim for refugee status. Given the length of time, no evidence was available. It was therefore not possible to determine the appellant's clan or evidence of his "tribal" background (see paragraph [60]). The appellant was not able to provide any further information either as to his father's reasons for coming to the UK or whether it was due to his clan membership. At [61] the judge found that in light of the appellant's age upon arrival in the UK that she did not "contribute any blame to the appellant's lack of knowledge with regards to the issues faced by his father" and later found that the appellant's father had left him aged 7 and that was an age when the appellant was too young to have any real understanding as to what took place in Somalia. The appellant had no siblings to obtain information from (at [62]) and the appellant's parents were both dead.

107. Against those evidential findings and background, the FtTJ gave adequate reasons for finding overall that given the length of time that

the appellant had been absent from Somalia and the lack of contact with anyone in that country and having not returned since he left in 2003, the appellant did not have any real knowledge of his time in Somalia. Those findings plainly factored into her assessment at paragraph [94] that he would not be able to demonstrate membership of any clan given the lack of knowledge that he possessed. At [99] the judge found that the appellant had a lack of experience of the culture in Somalia and the lack of support and ties in that country. Notwithstanding the general submissions made on behalf of the respondent that clan membership is an important feature of Somali society, the FtTJ provided adequate reasons for distinguishing the circumstances of the appellant from the norm. I observe that the UK-based cousin was not a blood relative, and it was not suggested that she had any knowledge of the appellant's upbringing or clan membership. I further observe that the grounds do not challenge the FtTJ's assessment and factual finding that the appellant was "westernised". Having considered the grounds in the context and against the background of factual findings made, there is no error on the basis set out in ground 3.

108. Turning to ground 4, the ground focuses upon the issue of financial support on return to Somalia and in particular the issue of remittances.

109. The grounds seek to challenge the factual findings made by the judge at paragraphs [89] and [90] which led to her overall conclusion at [94] that the appellant would not be in receipt of remittances from abroad.

110. At paragraph [89] the FtTJ stated as follows:

> "89. The Respondent submits that if this is the case, the Appellant may be supported by friends or family from the UK. J was present to give evidence to the Tribunal. She claimed that she is a single parent with limited means. She conceded that she would give the Appellant small amounts of money from time to time when he needed it. This may be £5 or £10 perhaps three times per month. Mrs Fell submitted that £10 provided three times per months is £30 which may be sufficient support for someone in Somalia. I did not find this submission had substance. I have not been directed to any objective evidence to suggest that this would be sufficient to meet the basic needs of the Appellant should he return to Somalia. In any event, J claimed that this support was provided on an informal basis. I do not accept that support from J could be maintained reliably, even for an initial period when the Appellant returned. I do not accept that remittances from J would be provided to the Appellant should he return to Somalia".

111. In my view, the FtTJ gave adequate and sustainable reasons for concluding that J would not be in a position to provide remittances to the appellant in the event of his removal. The evidence as to the money given to the appellant in the UK was that the sums given were on an irregular and ad hoc basis and were described by the FtTJ as "small amounts from time to time". Thus the judge found that they were not regular nor were they given on any "formalised basis". The grounds fail to take into account the evidence given before the tribunal as to the way in which the money had been provided which was on an irregular basis.

112. I also reject the submission made Mr Bates that at [89] the judge reversed the burden of proof. The FtTJ set out the evidence and that the small amounts given from time to time may be between £5 or £10 and perhaps 3 times per month. The judge also recorded the submission made by the presenting officer that £10 provided 3 times per month would amount to £30 which would be sufficient support for someone in Somalia. As the judge set out, she found this submission to be without any evidential foundation. It was not a matter of the judge reversing the burden of proof but that the judge did not accept the presenting officer submission that £30 would be sufficient in Somalia. There had been no benchmark provided in support of such a submission as the judge properly stated and therefore in my view the judge was entitled to reject this in her assessment of the evidence.

113. Furthermore, the submissions made in behalf of the respondent failed to take into account the other factual findings made that this was an informal arrangement, and this was not one binding on J and that she was a single parent with limited means and that it could not be maintained reliably even for an initial period. Consequently, it was open to the FtTJ to find that J would not be in a position to send remittances for the appellant's support.

114. The grounds also refer to paragraph [90] and the evidence relating to J's brother who was a friend of the appellant. There had been no evidence from this friend given either orally or in a witness statement. There was no evidence about his means other than he was in employment as a driver. Importantly there was no evidence that he had ever provided any money to the appellant. Mr Bates submits that the finding at [90] was speculative and without foundation and that it was for the appellant to prove that his friend could not provide the remittances.

115. In my view there is no merit in that submission. Paragraph 90 referred to J's brother who was a friend and that he had not provided any evidence before the FtT either in written or oral terms and there was no evidence as to his means other than he was in employment as a driver. The FtTJ was therefore right to state that there was no evidence as to his financial circumstances. Again that was not a matter of the judge reversing the burden of proof but the judge properly noting that there was an absence of evidence. Even if it could be said that the judge engaged in speculation when she referred to the income of someone as a driver suggesting a "minimum wage" the real answer to this is that it had not been suggested by the appellant that he had ever provided financial support for him or could do so in the future. When viewed in the totality of the evidence, the FtTJ's factual finding that she was satisfied that the appellant could not be supported by way of remittances from the UK was a finding that was reasonably open to her on the evidence.

116. The last point identified in the grounds is that the appellant fell within the categories of safe returns when applying the CG decision in MOJ

based on the fact that he was capable of work, had family connections and could be supported by his family.

117. Again this submission fails to take account of the factual findings made by the FtTJ and her assessment of the evidence. The FtTJ undertook a careful assessment of the issue of very significant obstacles to integration to Somalia by reference to the appellant's claim and the points raised in MOJ and by reference to the background country materials. In particular the FtTJ considered the appellant's ability to support himself by obtaining employment. At paragraph [80] she properly took into account that the appellant had a qualifications in IT. I see no error of law in addressing the issue in the context of the background material. No error is in fact argued in the written grounds. It was open to the judge to consider the appellant's return in the context of the position in Somalia and that if he were returning to a country with a stable economy then his qualifications may be more relevant. At paragraph [81] the judge cited [x] from the headnote of MOJ acknowledging that it was for the appellant to explain why he could not access the economic boom. At paragraphs [82] –[84], the FtTJ addressed the issue as follows:

> "82. MOJ was promulgated in 2014. Since then, the Home Office have produced the CPIN Somalia, December 2020 which paints a very different picture. The CPIN refers at 4.3.4 to the UN Somalia Common Country Analysis 2020 report which states: '*The UN Somalia Common Country Analysis 2020 report, based on a range of sources, noted: 'Multiple concurrent crises – COVID-19, locusts, flooding, droughts – have disrupted Somalia's economic recovery trajectory. As the direct impact of COVID-19 on the health of the Somali people becomes clearer, so will the secondary consequences and the required mitigating and response measures…Even without the current crises, Somalia's economic growth would have remained too low to improve the lives of most Somalis and help alleviate poverty'*.
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> 83. I also note the DFAT country information report Somalia June 2017 which is found at page 17 of the Appellant's bundle. This states at 5.16 the Federal Government of Somalia welcomed voluntary returnees but could not accept them on a large scale given the '*security, political and economic instability*'. The report goes on to list a number of conditions that must be met for a returnee to be accepted. This report supports the evidence cited in the CPIN above that Somalia is no longer experiencing an economic boom but quite the opposite. The various factors including the Covid pandemic has had a significant impact upon this.
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> 84.The CPIN goes on to say at 4.4.1 that '*The UN Somalia Common Country Analysis 2020 report noted: 'It is estimated that nearly seven out of ten Somalis live in poverty, making Somalia one of the poorest countries in sub-Saharan Africa, and this rate is higher among children below 14 years of age, at 73 per cent…About 69 per cent of the population live on under US$ 1.90 a day…, and per capita GDP is estimated at US$ 314.5…Around one-fifth of Somali households depend on overseas remittances…*'. I need to consider the fact that the Appellant has had no experience of life in Somalia since 2003 and even then, he was only a child. Noting the very difficult circumstances described in the objective evidence, I have to consider how likely it is that the Appellant would be able to secure some form of employment, even with the skills and work experience that he now has. I find that it is highly unlikely that he would be able to secure such employment independently."

118. Against that background the assessment made by the FtTJ was that even with his skills and experience it would be highly unlikely that he

would be unable to secure employment independently. At paragraph [91] the FtTJ also addressed the issue of the conditions needed to be met by returnees, one of the conditions noting that the returnee must have a fixed address in an accessible part of Somalia. The respondent to confirmed that the appellant would be returned to Mogadishu, the appellant's evidence which the judge stated she accepted was that he had no fixed abode to return to. The judge stated at [91 and [92]:

"Presumably this requirement is in place in light if the significant number if IDPs in Somalia following the floods, droughts and locus invasions referred to in the Amnesty Internal report 2020 produced at page 25 of the Appellant's bundle. The report states that these factors have *'worsened the humanitarian crisis and resulted in the displacement of over 1.2 million people by November, in addition to the nearly 2.6 million already displaced in the country.'* In addition, a further condition states that *'Deporting governments must give each deportee $10,000 USD to restart their lives in Somalia'*. The Respondent relies on the Facilitated Returns Scheme in the UK which would provide to the Appellant money in the sum of £750 upon return. This is clearly far short of the required amount. As such, these two factors are likely to be a further barrier to the Appellant's return to Somalia".

119. In MOJ, the Tribunal stated that if it was accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all the circumstances. Those considerations would include, but were not limited to, circumstances in Mogadishu before departure, length of absence from Mogadishu, family or clan associations to call upon in Mogadishu, access to financial resources, prospects of securing a livelihood, whether that be employment or self-employment, availability of remittances from abroad, means of support during the time spent in the United Kingdom, why his ability to fund the journey to the West no longer enabled the appellant to secure financial support on return. In effect therefore the person facing return will have to explain why he would not be able to access the economic opportunities that had been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away. Therefore only those with no clan or family support who would not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return would face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

120. That was an assessment undertaken by the FtTJ when addressing the private life exception and expressly considered at [93]-[97].

121. Having assessed the evidence before the FtTJ and having made those findings of fact, the FtTJ correctly identified the test to apply was whether the appellant would face very significant obstacles to integration in Somalia. At [98] the FtTJ directed herself in law to the decision and guidance given in SSHD v Kamara [2016] EWCA Civ at [14]:

> "in my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C (4) and paragraph 399A is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language is subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgement to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other countries carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

122. The focus of the assessment was not on the general difficulties of life but was based on the difficulties the appellant would face into functioning effectively within society in Somalia taking into account the lack of experience of life and culture in Somalia, having become "westernised", lack of support available and issues of language. Even if his friends would be able to send some remittances, that would not change the difficulties identified by the judge based on the lack of social integration and his inability to build relationships in society where he has no connections and no one to provide him with that practical support.

123. Considering the position as a whole, and adopting the forward-looking focus which the subsection requires, it was open to the FtTJ to find that the appellant would not have a reasonable opportunity to be accepted in Somalia and to operate on a day to day basis and to build up within a reasonable time a variety of human relationships and to establish a private life.

124. I remind myself that an appeal to the Upper Tribunal may only lie where there is an error of law. It is trite law that many judges will approach the same set of facts very differently. The mere fact that one judge adopts a relatively favourable interpretation of the evidence they have heard does not necessarily render that finding irrational, simply on the basis that other judges, even many other judges, may have approached the same question in a different manner.

125. I also remind myself of the observations of Floyd LJ in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095 at paragraph 19:

> "19. I start with two preliminary observations about the nature of, and approach to, and appeal to the UT. First, the right of appeal to the UT is "on any point of law arising from a decision made by the [FTT) other than an excluded decision": Tribunal, Courts and Enforcement Act 2007 ("the 2007 Act"), section 11 (1) and (2). If the UT finds an error of law, the UT may set aside the decision of the FTT and remake the decision: section 12 (1) and (2) of the 2007 Act. If there is no error of law in the FTT's decision, the decision

will stand. Secondly, although "error of law" is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v SSHD at [30):

"Appellate courts should not rush to find such misdirection simply, because they might have reached a different conclusion on the facts or express themselves differently."

126. Ultimately the answer for each First-tier Judge to make is a value judgment and a set out in the decision of AA (Nigeria)[2020] EWCA Civ 1296 at [38] : "Different tribunals might [reach] a different conclusion, but it is inherent in the evaluative exercise involved in these fact sensitive decisions that there is a range of reasonable conclusions which a judge might reach." Even if the decision could be characterised as a generous one, it has not been demonstrated by the respondent that on the particular factual circumstances of this appellant's case and on the evidence before the FtTJ that the decision was either inadequately reasoned by FtTJ Turner or that she failed to apply the correct legal principles in substance and that the decision Judge Turner reached was one that was reasonably open to her on her own assessment of the evidence that was before her. For those reasons, the decision of the FtTJ did not involve the making of a material error on a point of law so that the Upper Tribunal should set aside the decision. I therefore dismiss the appeal brought by the Secretary of State.

Notice of Decision

The decision of the First-tier Tribunal did not not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

Signed

Dated 7/12/2021

Upper Tribunal Judge Reeds

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a

written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email