



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006463

First-tier Tribunal No: HU/04867/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
On 25 September 2023

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**  
**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AMIN SHARIFF HUSSEIN**

Respondent

**(PARTIAL ANONYMITY ORDER MADE)**

**Representation:**

For the Appellant: Ms S. Cunha, Senior Home Office Presenting Officer  
For the Respondent: Mr R. Toal, instructed by Wilsons Solicitors LLP

**Heard at Field House on 04 September 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the partial order prohibiting disclosure or publication of the information contained in Annex 1 of Judge Povey's decision sent on 12 October 2022 shall remain in force. On 02 December 2022 Judge Povey discharged the order that the appellant should not be identified in these proceedings.**

**For the avoidance of doubt, section 1 of the Sexual Offences (Amendment) Act 1992 prohibits the identification or publication of the victim of a sexual offence or any information that might lead to 'jigsaw identification' of a victim.**

**Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. For the sake of continuity, we will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant (Mr Hussein) appealed the respondent's (SSHD) decision dated 19 October 2021 to refuse a human rights claim in the context of an application to revoke a deportation order.
3. First-tier Tribunal Judge Povey ('the judge') allowed the appeal in a decision sent on 12 October 2022. When the decision was promulgated, the judge made an anonymity order. In a further order dated 02 December 2022 Judge Povey discharged the order in so far as it related to naming the appellant, but maintained the order in so far as it prohibited the disclosure or publication of the information contained in Annex 1 of his decision. There was no renewed application before us. For these reasons, we make no anonymity order in relation to the appellant's identity.
4. In the decision, the judge referred to relevant law applicable to this case [9]-[12]. He reminded himself of the test relating to Article 3 of the European Convention on Human Rights (ECHR), that the burden of proof was on the appellant, and how to treat findings made in the same case by a previous tribunal. He also made clear that he had considered the applicable country guidance decisions in *OA (Somalia)* CG [2022] UKUT 00033 (IAC) and *MOJ & Ors (Return to Mogadishu) Somalia* CG [2014] UKUT 442 (IAC) [13].
5. It was not disputed that the appellant had a history of serious offending behaviour. The judge made clear that he was fully aware of this history throughout the decision [15]. Nor was it disputed that the appellant suffered from addiction and mental health issues that contributed to his offending. However, the case was put on the narrow ground that further evidence relating to the appellant's mental health, which was not before the previous tribunal, would give rise to a real risk of a breach of Article 3 ECHR if the appellant is removed to Somalia.
6. The judge conducted a detailed analysis of the expert psychiatric reports of Dr Nuwan Galappathie and Professor Neil Greenberg [22]-[31]. He also considered the joint expert statement that he had ordered from the mental health professionals. The judge noted where their opinions converged and where they differed in emphasis.
7. Judge Povey went on to consider various factors that he considered relevant to the assessment of risk on return, including the appellant's clan, family and social links [32]-[42], and his financial and employment circumstances [43]-[47]. In relation to the appellant's family circumstances, the judge recorded that there was a conflict in the evidence. He noted the appellant's claim that he lost contact with his family when he left Somalia in 2009, that he has no family in the UK, and that he avoided contact with the Somali community in the UK [33]. He noted that this appeared to be at odds with evidence the respondent relied upon, which indicated that the appellant had referred to family members when in contact with various professionals while in detention and/or in prison [34]. At [35]-[42] the judge went on to evaluate the conflicting evidence before concluding that he was satisfied that the appellant does not have any contact with any family members (whether in the UK or elsewhere) and does not have any social ties with members of his clan or the wider Somali diaspora in the UK [42].

8. The judge then considered the appellant's financial circumstances, which included evidence of funds already available to him and the likelihood of him being given a grant under the Facilitated Returns Scheme (FRS). He also noted that the appellant said that he had worked with his adoptive father selling fruit in the past. The appellant had also completed vocational courses and held various jobs while in prison [43]-[47].
9. Under the heading 'Application of the Law to My Findings', the judge went on to consider factors considered in *OA (Somalia)* and *MOJ (Somalia)* to assess whether there was a real risk that removal would breach Article 3. He noted that the Upper Tribunal in *OA (Somalia)* reminded itself that Article 3 needed a 'careful assessment of all the circumstances' [48]. He went on to consider whether, in light of his finding that the appellant would have no family or diaspora support from the UK, he would be able to support himself in Mogadishu. He concluded that a combination of the appellant's lack of familial support, likely inability to find guarantors for work or accommodation due to the nature of his criminal convictions, the evidence showing that it was likely that the appellant's substance misuse issues would lead to further offending behaviour, and the evidence to show that his mental health was likely to deteriorate with a potential risk of suicide, was sufficient to give rise to a real risk of a breach of Article 3 [49]-[70].
10. The Secretary of State applied for permission to appeal the decision of the First-tier Tribunal on the following grounds:
  - (i) In assessing conflicting evidence as to the extent of familial or community support the appellant might have access to in the UK, the First-tier Tribunal erred in purporting to place the burden of proof on the respondent to show that he did have such ties.
  - (ii) The First-tier Tribunal erred in failing to give adequate reasons for accepting the appellant's evidence about the level of family contact when he had admitted that previous statements made about family to medical staff and probation officers while in a detention environment were made up to garner sympathy. The judge also failed to give adequate weight to the fact that the appellant had been assisted by two members of the Somali community with financial transactions, which was 'surely representative of wider or deeper social interactions'.
  - (iii) The First-tier Tribunal's findings relating to risk on return were contrary to the country guidance in *OA (Somalia)*. In particular:
    - a. The finding that the appellant's criminal record was likely to act as a bar to him securing accommodation and employment were contrary to the findings made in *OA (Somalia)* at [261] and [280].
    - b. The First-tier Tribunal noted a preserved finding from the Upper Tribunal in 2014 that the appellant was not likely to be from a minority clan. The First-tier Tribunal went on to quote expert evidence considered in *OA (Somalia)* at [235]. The respondent submits that this provided an incomplete picture because the Upper Tribunal in *OA (Somalia)* at [234] also quoted from the earlier country guidance decision in *MOJ (Somalia)* at [407(f)], which stated that a returnee from a majority clan might be able to seek assistance from clan members, but such help was likely to be less forthcoming for minority clan members.

- c. The First-tier Tribunal's error relating to the availability of family or other support in Somalia was compounded by a failure to consider what was said in *OA (Somalia)* at [253]-[254] about the importance of familial and clan networks. The grounds submit that the First-tier Tribunal's findings were 'at odds' with the evidence about Somali culture.

11. We have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but we will refer to any relevant arguments in our findings.

### **Decision and reasons**

12. In our assessment, the grounds of appeal make general submissions on the evidence without identifying any errors of law that would have made any material difference to the outcome of the appeal.
13. The first ground of appeal has no merit. The judge began his decision by directing himself to the correct burden and standard of proof [11]. When the section of the decision containing the judge's findings relating to the availability of familial or diaspora ties in the UK is considered, it is clear that the judge recognised that there was conflicting evidence. He considered the evidence produced by both parties and gave adequate reasons for preferring the evidence given by the appellant. The judge considered the evidence relied upon by the respondent, which related to records of statements made by the appellant to various professionals about his family while in detention or custody. He went on to assess the credibility of the appellant's response.
14. In assessing whether the appellant was likely to have any significant familial ties in the UK, it was open to the judge to take into account the fact that, despite a long period of detention, there appeared to be no record of personal visits. The evidence relied on by the respondent related to an area that was within her control i.e. detention and probation. In such circumstances, it was open to the judge to observe that, if friends or family members had visited the appellant in detention, he might expect the respondent to be able to produce a record of it. When the comments made at the end of [38] are placed in the context of his findings in this section of the decision, the judge was simply making an observation about the relative weight of the evidence before him in order to resolve the conflict in the evidence. The decision does not disclose an improper reversal of the burden of proof.
15. The same point is repeated in the second ground with an additional assertion that inadequate reasons were given for the findings. We find that the judge gave adequate reasons to explain why the fact that two Somali men assisted the appellant with his finances did not constitute significant ties in the diaspora. It was within a range of reasonable responses for the judge to find that this was a transactional relationship for a fee and not a significant social tie within the diaspora community [41].
16. The second ground also asserts that the judge failed to consider adequately the possibility that the appellant might have adoptive family members in Somalia. The decision letter focussed on the possibility of clan support and the possibility of support from his sister, who was said to live in the UK. The judge had already found that there was no evidence of a meaningful relationship between the

appellant and his sister. The possibility of support from adoptive parents in Somalia did not appear to form part of the arguments put forward by the respondent at the hearing. Nor was any emphasis placed on this issue in the skeleton argument prepared by the respondent's representative.

17. In any event, we find that this is not an issue that was likely to have made any material difference to the judge's conclusion when the weight of the evidence suggested that his adoptive parents were not likely to be alive. Paragraph 1.1. of Professor Greenberg's report stated that the appellant had said that his adoptive mother had died and that the appellant had also lost his brother and sister at an early age. At 1.3 Professor Greenberg recorded that the appellant's family had been killed in or around 2004. At 2.4 he recorded that both the appellant's adoptive parents were deceased. The OASys report before the First-tier Tribunal also recorded the appellant as having said that his adoptive parents were deceased.
18. The third ground makes submissions in relation to several aspects of the country guidance decision in *OA (Somalia)* and concludes by submitting that 'a correct application of OA should've result in this appeal being dismissed.'. We begin by noting that nothing in the country guidance binds a First-tier Tribunal judge to a particular course of action. The Upper Tribunal made clear that each case must be considered on the particular facts.
19. Any findings made in *OA (Somalia)* about the impact of criminality, clan membership, and likely community ties were all qualified. The Upper Tribunal considered that, in general, returnees with family and diaspora links in the UK were likely to be able to contact members of their clan through friends and relatives when returned. At [14] of the headnote, the Upper Tribunal acknowledged that there might be some categories of people with no clan or family support who would not be able to secure access to a livelihood on return, and who might face the prospect of living in dire circumstances.
20. Judge Povey considered the country guidance carefully and applied it to the particular facts of this case. It was not necessary for him to quote the country guidance extensively. We are satisfied that he understood the relevant factors and gave reasons for his findings that were with a range of reasonable responses to the evidence in this case. The unusual facts of this case were that the judge had found that the appellant had no meaningful familial or diaspora ties in the UK. On the appellant's own evidence, which appeared to be accepted, his adoptive parents were deceased. It was open to the judge to also take into account the particular nature of the appellant's convictions, which included offences relating to children. Such offences are likely to attract revulsion and a social stigma over and above the usual type of criminal offences. It was also open to the judge to take into account the additional complications relating to the appellant's addiction and mental health issues, which were likely to act as additional barriers to him being able to re-establish himself in Somalia.
21. The First-tier Tribunal decision was structured and well-reasoned. It considered the relevant law and country guidance. Another judge might have come to a different decision, but we conclude that the judge's decision was within a range of reasonable responses to the combination of circumstances in this case. For these reasons, we conclude that the points made in the third ground amount to disagreements with the outcome and do not identify any errors of law that would have made any material difference to the decision.

**Notice of Decision**

The First-tier Tribunal decision did not involve the making of an error on a point of law

**M.Canavan**  
Upper Tribunal Judge Canavan

07 September 2023