



IAC-AH-DP-V1

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

Appeal Number: DA/00632/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2015**

**Decision Reason Promulgated
On 7 January 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JUBRIL YUSUF GHELLE

Respondent

Representation:

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: Mr A Bandegani, Counsel instructed by Kesar & Co Solicitors

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal.
2. Thus, the appellant is a citizen of Somalia born on 24 October 1988. He arrived in the UK on 2 May 2002, when he was 13 years of age. On 12 February 2008 he received a sentence of two years in a young offenders' institute for an offence of robbery. As a result, a decision was made on 24 March 2014 to make a deportation order against him. He appealed against that decision to the First-tier Tribunal. His appeal was

heard by First-tier Tribunal judge Emerton on 12 February 2015 whereby the appeal was allowed under Article 3 of the ECHR.

3. In order to put into context the respondent's grounds of appeal and submissions before me, it is necessary to summarise the decision of the First-tier Tribunal, in terms of the hearing, the evidence before the Tribunal and the judge's conclusions.

The decision of the First-tier Tribunal

4. The First-tier judge referred to the history of the appeal proceedings whereby the appeal had previously been adjourned. When the appeal was listed on 9 May 2014 the appellant had failed to attend and was not represented. When the matter was next listed on 1 October 2014 the appellant's brother attended and provided information suggesting that the appellant was suffering from schizophrenia. He was advised to obtain further evidence.
5. On 29 December 2014, when the matter was again listed for hearing, the appellant failed to appear and the appeal was then relisted for 12 February 2015 which was the date of the hearing before First-tier judge Emerton. At that hearing the appellant was represented by Mr Bandegani, who also appeared before me. The judge set out in detail the documentary evidence that was before him, including information in relation to the appellant's mental health.
6. At [7] the judge noted that the appellant's counsel confirmed that his instructions were to proceed with the hearing, although he had advised the appellant of the need for a full assessment of his mental health. It was also confirmed that the only issue was risk on return in relation to mental health, and that the appellant relied upon Articles 3 and 8 of the ECHR.
7. Notwithstanding that counsel's instructions were to proceed with the hearing, it was suggested on behalf of the appellant that there was an "evidential gap" in the appellant's case in terms of his mental health. At [10] it is recorded that the respondent's representative also accepted that there was a gap in the appellant's evidence.
8. The hearing was then adjourned for a short while after which the judge announced that he intended to proceed with the hearing, not being minded to adjourn the hearing of his own motion. He explained the basis of that decision. He concluded that the appellant and his representatives had had sufficient time to obtain the necessary medical evidence. He also concluded that there was nothing to suggest that a likely lengthy adjournment would necessarily result in obtaining "usable" further evidence. He concluded that it was not in the interests of justice to adjourn, particularly bearing in mind that both parties had provided evidence and there was at least some medical evidence as to the appellant's condition.
9. After a further short adjournment it was indicated on behalf of the appellant that he would not be giving evidence. It was however also suggested on behalf of the appellant that there was a lack of medical evidence and the latest country guidance was "inadequate". In relation to Article 8 it was submitted that the appellant needed more time to prepare and that it was in the circumstances unfair to proceed, thus an

adjournment was required. On behalf of the respondent the application for an adjournment was supported, the suggestion being that there was not enough evidence upon which to make a decision. The appellant's mental state was the issue, it was said, and better evidence would be needed.

10. The judge then adjourned again for a short while and announced his decision to proceed with the hearing, notwithstanding the changed instructions on behalf of the appellant in terms of whether there should be an adjournment. Again, the judge explained his reasons for deciding to proceed with the hearing.
11. It was indicated on behalf of the appellant that there would be no oral evidence, either from the appellant or from his brother. The appellant's skeleton argument was relied on, without more, and on behalf of the respondent there appears to have been brief submissions.
12. At [23]–[26] of the determination the appellant's criminal offences are set out, and reference made to the sentencing remarks in relation to the offence which prompted the deportation decision. That offence of robbery involved a sum of £25,000 in a pre-planned robbery from a G4 Securicor employee, at knifepoint. The knife was apparently used by a co-defendant, not by the appellant. It was not alleged that the appellant was a ring leader. The appellant had pleaded guilty.
13. Subsequent to the appellant's release he was convicted of further offences of possession of a Class A drug, obstruction under the Misuse of Drugs Act, burglary, theft and taking a motor vehicle without consent. Those further offences resulted in various sentences of imprisonment, including two years' imprisonment for the offence of burglary. Again, in December 2013 the appellant was convicted of possession of Class A and B drugs and received a supervision order and a community order. It seems that he later breached the order for unpaid work.
14. The judge then summarised the respondent's reasons for deportation decision, and the written evidence before him. These included witness statements from the appellant and his brother.
15. The appellant's witness statement was summarised to the following effect. The appellant had arrived in the UK aged 13. He had been admitted to hospital in the UK and sought psychiatric help. He had been caused psychiatric problems by taking cannabis and other drugs. The statement continued that he would not be able to cope in Somalia if he was "in a bad place" without his medicines. It was said that he could speak limited Somali. His symptoms of mental illness had got worse and he had been signed off work.
16. The appellant's brother's witness statement was summarised, indicating that his brother thought that the appellant had wanted to change and that he would be able to see that the appellant was staying away from bad influences. It stated that there were no remaining family in Somalia and the family in the UK would not be able to support the appellant there.

17. The appellant's skeleton argument was also summarised, and the judge interpreted the skeleton argument as including reliance on Article 15(c) of the Qualification Directive.
18. At [36] of the determination it states as follows:

"At no stage did Ms Ololade refer me to the specifics of the respondent's case, and she did not respond to any of the arguments set out in the appellant's skeleton argument. Her very brief closing submissions were limited to indicating that she relied upon the decision of 24 March 2014, the reasons letter of 5 February 2014, section 117C (in respect of Article 8) and MOJ, and the public interest in removing criminals. She did not elaborate."
19. In the "Conclusions" section of the determination the judge stated that he did not find that either representative did much to assist his decision-making. He expressed surprise that there were no oral submissions from the respondent in response to the appellant's skeleton argument, when the skeleton argument had raised specific points which he might have expected the respondent to wish to answer. He also felt that the failure to call the appellant's brother as a witness was a "strange one" even if the appellant himself might not have been called because of his mental state. He went on to note that there was no suggestion from the respondent that he should not accept the witness statements. He stated that he had taken into account the material presented and had done his best to determine the appeal in a fair way.
20. At [39] it is stated that he attached little weight to the appellant's private life in the UK notwithstanding the lengthy period of time that he had been here. He concluded that there was no evidence of any weight before him suggesting that the appellant, an adult, enjoys family life with family in the UK. He referred to the fact that the Immigration Rules at paragraphs 398-399A had not been addressed on behalf of the appellant.
21. He referred in detail to the decision in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC). He noted that that decision does not deal expressly with mental health disorders but identified relevant paragraphs in the guidance in *MOJ* in terms of its possible relevance.
22. He then considered the appellant's mental health, noting that there was nothing in the respondent's evidence shedding much light on that issue. The determination refers to a letter from Crystall Solicitors dated 18 January 2013 which makes very vague references to mental health, and to the appellant's questionnaire which also made passing reference to the same issue. The judge noted that in the asylum interview at Brixton Prison on 12 August 2011 the appellant explained that he was currently on medication for a mental health issue and saw the psychiatrist every week. Apparently he had been diagnosed whilst in Brixton but the appellant was not sure of the details. A further letter on 11 September 2013 from the appellant's solicitors refers to hospitalisation for three weeks. He noted that the respondent was at pains to point out that the respondent's request at that time for medical evidence and clearer details were met by silence.

23. The judge expressed surprise at [43] that the appellant's family and two separate sets of solicitors had still not obtained all the evidence which should be available if the appellant is genuinely suffering as he alleges. Nevertheless, he stated that he had reviewed what had in fact been provided.
24. At [44] there is a summary of the further evidence. This included evidence from the appellant's GP in terms of GP records covering a period from 10 October 2014 to 30 January 2015. There is reference to the appellant having been diagnosed as suffering from schizophrenia and having been prescribed Olanzapine, an anti-psychotic.
25. With reference to an assessment by a Dr E Gibbs, a GP trainee, it is stated that there was a detailed assessment whereby it records that the appellant started hearing voices in 2010 whilst in prison. A tentative diagnosis of psychosis, possibly cannabis related or schizophrenia is described in that report albeit that schizophrenia was finally recorded as the diagnosis. Information in relation to follow up had not been provided to the judge save what is in the GP records.
26. He referred to a discharge summary following admission to Whipps Cross Hospital after the appellant had apparently punched a car whilst intoxicated on 5 August 2013.
27. At [47] there is reference to a letter from a Dr Tim Green, dated 10 February 2015. He is a consultant clinical psychologist to whom the appellant had been referred by his solicitors. The appellant had apparently declined to attend the consultation because he had voiced concerns as to the nature and purpose of the assessment and had not understood that the report would assist him. The letter from Dr Green refers to concerns over the appellant's mental capacity and that this might arise from his current psychotic illness but there had been no assessment of personality functioning or possible personality disorder, or of his intellectual or cognitive functioning.
28. At [48] it is stated as follows:

"I do not find that Dr Green's comments shed any real light on the appellant's mental condition, and are somewhat speculative, not being based (it would appear) on anything other than what the appellant's solicitors told him. I am also a little surprised that for an appellant who is said to be suffering from schizophrenia, the solicitors sought to rely upon a psychologist rather than obtaining a clearer diagnosis from a consultant psychiatrist. However, as no assessment was in fact carried out for the purposes of the appeal, there is nothing in the point."
29. In the next paragraph it is stated that the medical evidence "is not entirely clear" but Judge Emerton accepted that the appellant's condition in 2010/2011 was of sufficient concern that prison doctors prescribed the same anti-psychotic drug that he is currently receiving. It was considered that that was some reassurance that the psychiatric issue was not a recent invention for the purposes of the appeal.
30. It was then found at [50] that the medical evidence is

"... sufficiently clear that I should conclude, on a balance of probabilities (a higher level of certainty, in fact than is required in respect of Article 3 ECHR) that the appellant has been suffering from various mental issues from 2010 onwards".

He expressed the view that the appellant and his two sets of solicitors could easily have produced better evidence of the original diagnosis and treatment but had failed to do so. However, in the light of the diagnosis of 4 September 2014 which had not subsequently been changed, he accepted that the appellant is suffering from schizophrenia. He noted that on behalf of the respondent before him no submissions were made on the medical evidence or on the appellant's skeleton argument, although the opportunity to make such submissions was provided.

31. In considering the witness statements, Judge Emerton said that whilst normally he would attach little weight to assertions of fact from an appellant as to his medical condition, especially when the witness had not subjected himself to cross-examination, no submissions have been made before him on behalf of the respondent at all as to the weight to be attached to the witness statements and it had not been suggested that the assertions of fact might not be true.
32. He then summarised what is in the appellant's witness statement in terms of his mental health and the treatment that he had received for it.
33. Again, returning to the theme of the respondent not having made any submissions on the evidence before him, he stated that he did not know whether or not the respondent's representative had chosen to read the documents in the case but in any event she had not chosen to share her thoughts on that evidence with him. No real submissions were made on behalf of the respondent he stated. He noted that the refusal letters predated nearly all the medical and documentary evidence provided.
34. The determination then contains a summary of background material as set out in the refusal letters in terms of the availability of treatment for psychiatric conditions in Somalia. This included a WHO report with reference to the availability of medication, which did not include Olanzapine, the medication that the appellant had been prescribed from September 2014 onwards as well as previously. He stated that there was no evidence before him suggesting that any of the listed drugs were acceptable alternative treatments for the appellant's condition, and the point was not argued on behalf of the respondent.
35. He again concluded at [57] that the appellant is suffering from schizophrenia and needs ongoing treatment. He found that the evidence suggests that the drug that the appellant is currently receiving is not available in Somalia and that in any event there is extremely limited access to mental health care there, with the risk of being chained and perhaps starved to death, with little likelihood of effective treatment at all.
36. He expressed the view that it would not necessarily be the case that the appellant would succeed under Article 3 solely on the basis of an absence of adequate healthcare, although he would have an arguable case.
37. Again, with reference to the decision in *MOJ*, he noted that mental health is not specifically dealt with, although the context suggested that it would plainly be relevant. He concluded that *MOJ* was not seeking to set out a comprehensive list of factors which were to be taken into account.

38. In [58] certain findings of fact are made. It was found that the appellant had established that he left Somalia when he was no more than 13 years of age, with both parents dead or presumed dead. The appellant was 26 and had been absent from Mogadishu for some 13 years. He stated that on the appellant's own "undisputed evidence" he has now no family in Mogadishu, all surviving close members being in the UK. He accepted that the appellant does not know his clan and cannot access clan associations for support. His undisputed evidence was that he can now speak little Somali. He found that there was no evidence to suggest that he would have access to financial resources, as his UK family could provide only limited financial support. He found that, particularly in view of the appellant's medical condition and lack of available treatment, as well as limited fluency in Somali, it would be hard for him to obtain employment.
39. Judge Emerton concluded that on most of the factors set out in *MOJ* the appellant falls squarely within what might be described as the "risk factors". He stated that his schizophrenia, which is unlikely to receive treatment, and which might lead to his being chained up and starved to death, would in all probability make his situation considerably worse.
40. He concluded therefore, that the appellant's removal would amount to inhuman or degrading treatment such as to amount to a breach of Article 3 of the ECHR. At [60] he stated that until or unless the appellant has been cured of his mental health condition, returning him to Somalia would breach his protected rights.

The grounds of appeal and submissions

41. The respondent's grounds point out that the parties to the appeal were in agreement as to the merits of an adjournment to facilitate the acquisition of more up-to-date medical evidence in respect of the appellant's mental health. Having regard to the judge's observation that the medical evidence was not entirely clear, it is argued that the conclusion that the appellant was suffering from schizophrenia was not sufficiently made out on the evidence.
42. It is also argued that it was incumbent upon the appellant to provide cogent evidence of the nature, extent and severity of his condition in accordance with the high threshold in relation to Article 3.
43. It is further contended that the judge was required to have had sufficient evidence both in relation to the appellant's condition and of the medical treatment available to him, or any discrimination or ill-treatment that he would face as a result of his condition on return. The reports referred to by the judge date from 2012 with a piece of "press reporting" from 2013. That evidence did not demonstrate sufficiently up-to-date information about the healthcare available to those suffering from mental health problems.
44. As regards the decision in *MOJ* it is contended that the judge erred in concluding that the appellant fell within the "risk factors" set out in that decision. His ability to integrate should have been viewed through the prism of the facts as they stood before the judge rather than what the judge sought to infer from a claim that had not been sufficiently demonstrated. The appellant has family living in the UK who

would be able to offer him remittances and support. His ability to obtain employment, whilst relevant, should have been viewed through the possibility of familial assistance. It is argued that there was no basis to suppose that his family in the UK would not assist him and consequently, no reason to suppose that he would end up in an IDP camp.

45. In submissions Ms Brocklesby-Weller said that she was not making any complaint about the fact that there was no adjournment. However, there was no oral evidence and therefore no cross-examination. At [48] the judge had rejected the evidence of Dr Green and at [49] had said that the medical evidence was not entirely clear.
46. The appellant's own representative recognised that there was a gap in the evidence and the Tribunal was not furnished with sufficient evidence to make a full assessment of the appellant's mental health. It did not appear from the determination that the appellant had engaged in treatment apart from in terms of receiving medication.
47. Although the judge said that he had not been helped by the respondent's representative, she had relied on the refusal letter and there was little that could have been said in submissions since no oral evidence was called. The fact that the judge referred to the evidence not having been challenged, could only relate to the appellant's evidence, as the brother's evidence said nothing about his mental health.
48. The judge appears to have put the burden of proof on the Secretary of State to demonstrate the availability or otherwise of treatment in Somalia, but it was for the appellant to establish his case. It was for the appellant to demonstrate that none of the anti-psychotics available would be suitable for him.
49. Given the limited information before the judge it was all the more important for cogent reasons to be given for him to have allowed the appeal under Article 3. It would have been necessary to know the extent to which the appellant is engaging in services in the UK and how or to what extent that could be replicated in Somalia.
50. The evidence that the judge relied on in relation to the apparent chaining of mental health patients relates primarily to family members. The refusal letter refers to emerging mental health facilities and to 13,000 people having been provided with treatment.
51. Although it is said at [58] that there was no evidence suggesting that he would have access to financial resources in Somalia, he has family in the UK.
52. In the UK the appellant is living relatively independently as is clear from [39], and does not have family life here, despite his apparent medical condition.
53. Mr Bandegani relied on the rule 24 response. The respondent's case would have to be that there was no evidence before the First-tier Tribunal justifying its conclusions, otherwise the respondent's case is nothing more than a simple disagreement with the judge's conclusions.
54. Mr Bandegani referred to various paragraphs of the determination in relation to the judge's recording of the evidence he had before him and his assessment of it. It was

not true to say that he had rejected the evidence of Dr Green. At [48] he simply said that the evidence did not assist much. By that point however, it is clear that he had already concluded that the appellant was suffering from schizophrenia as can be seen from [45]. Although the judge acknowledged that the evidence was not entirely clear, that was a different matter from suggesting that the evidence was not 'clear enough'.

55. Although on behalf of the respondent it was argued that the refusal letter was relied on, on behalf of the respondent at the hearing before the First-tier Tribunal, that predated much of the evidence that was before the First-tier judge. The respondent's representative chose not to answer the points raised in the appellant's skeleton argument. It was not suggested at that hearing that the appellant's witness statement should be rejected. It is also to be remembered that the judge pointed out at [50] that the respondent's representative chose not to make any submissions on the medical evidence.
56. As regards treatment availability, at [55] the judge had simply stated that there was no evidence before him which suggested that any of the listed drugs are accepted alternative treatments for the appellant's condition, and the point was not argued on behalf of the respondent as is pointed out in the determination. Mr Bandegani referred me to the background evidence which was taken into account by the judge.
57. In the light of the judge's findings, his conclusions in relation to Article 3 with reference to *MOJ* are free from any error of law. He had made a finding to the effect that the appellant's family had only limited financial resources to provide support for him. The appellant's brother's witness statement, summarised at [33], was to the effect that the appellant had no remaining family in Somalia and the family in the UK would not be able to support him there.
58. In reply, Ms Brocklesby-Weller submitted that there was no evidence before the judge as to the seriousness of the appellant's condition and the decision letter had suggested that in any event there was alternative treatment available to the appellant. Although psychiatric services may be sparse in Somalia, they do exist.

My assessment

59. On behalf of the respondent it is not contended that there was any error of law in the judge's decision to refuse to adjourn the hearing. The issue of the adjournment relates to the extent to which the judge had before him sufficient evidence from which to make an assessment of the appellant's case. Naturally, there is no argument on behalf of the appellant in terms of the refusal to adjourn.
60. It is abundantly clear from the judge's determination that his task was made very difficult because of the rather fragmented and incomplete medical evidence. He nevertheless was entitled to decide that it was not in the interests of justice to adjourn the hearing, there having been plenty of opportunity for medical evidence to have been provided, and in circumstances where it was not apparent that an adjournment would advance matters much.

61. The judge's assessment of the available evidence was extremely detailed and comprehensive. In surveying the medical evidence he identified features of it which were unclear, uncertain or unhelpful.
62. It seems to me that Judge Emerton very carefully drew the threads of all the evidence together, not only the medical evidence but in the appellant's witness statement, in the GP's notes, and from the early stages of the asylum process, to form his conclusions. In my judgement he was entitled to conclude on that evidence that the appellant does have a mental health condition for which he is presently receiving treatment. The available evidence before him was that he was likely to be suffering from schizophrenia, which is the mental disorder referred to in the evidence.
63. The judge was aware of the fact that untested written evidence would in normal circumstances attract little weight. This is clear from [51] where he said that he would normally attach little weight to assertions of fact from an appellant as to his mental condition, especially when the appellant has not subjected himself to cross-examination. On the other hand, he pointed out that the respondent's representative made no submissions at all as to the weight to be attached to that evidence, and indeed did not effectively engage with any of the evidence that was before the Tribunal. Simply relying on the refusal letter when much of the evidence post-dated that document was hardly likely to have assisted the judge in his assessment.
64. Judge Emerton also pointed out that there was no challenge to the medical evidence before him. On that basis, it is not entirely surprising that he attached such weight to it as he thought proper, and relied on aspects of it in coming to his view as to the appellant's mental state.
65. Although he did say at [49] that the medical evidence was not entirely clear, that does not mean that it was not sufficient for him to found his conclusions. As I have indicated, his assessment of the medical evidence was detailed and thorough.
66. It is undoubtedly the case that the judge would have been assisted by more comprehensive and clearer medical evidence. However, this is not a situation of a judge unquestioningly accepting what was put before him, without critical analysis. I am entirely satisfied that Judge Emerton was entitled to conclude as he did in relation to the appellant's mental health.
67. Similarly, in the absence of challenge to the appellant's witness statement and the witness statement of his brother, and the judge being mindful of the limitations on attaching weight to evidence that has not been tested, he was similarly entitled to make the findings he did in terms of the availability of support for the appellant from his family in the UK on his return to Somalia. He was also entitled to find that the appellant had no family in Somalia who could assist him.
68. Judge Emerton was cognisant of the fact that the country guidance in *MOJ* does not deal specifically with persons with mental health conditions. However, he analysed that decision and tailored the guidance in it to the appellant's circumstances. He gave detailed consideration to the background evidence put before him in relation to the availability of treatment for the appellant's condition. In my judgement the

respondent's complaints about that assessment amount to no more than a disagreement with the judge's conclusions.

69. The judge did not in my view impose any burden on the respondent in his assessment of the extent to which alternative treatments that are available in Somalia would be suitable for the appellant, but made that assessment on the basis of the evidence that was before him. There was simply no evidence to indicate that the appellant's current treatment regime could be continued in Somalia. More to the point, he was entitled to conclude that the appellant would not have treatment available to him in the light of his assessment of the lack of resources for the availability of treatment for those with mental health conditions.
70. That being the case, he was similarly entitled to conclude that the appellant's return would involve a breach of his human rights in terms of Article 3 of the ECHR. His assessment was that the appellant would not be able to survive economically, his schizophrenia would be unlikely to be treated and he would not be able to turn to clan associations for support. He also pointed out that he could speak little Somali. Plainly, on those findings the appellant would not be able to take advantage of the 'economic boom' referred to in *MOJ*.
71. It may be the case that this or that feature of the evidence before the First-tier judge could support an alternative view of the appellant's circumstances on return. For example, it was submitted on behalf of the respondent before me that given that the judge had found that the appellant does not have family life in the UK, and appears to be living independently, that would suggest that he would be able to manage on his own in Mogadishu. However, the fact that there may be pieces of evidence here or there which might support the respondent's case is a far cry from establishing an error of law in the judge's assessment of the evidence.
72. I am not satisfied that there is any error of law in the judge's decision in any respect. Accordingly the decision to allow the appeal on Article 3 grounds stands.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to allow the appeal under Article 3 of the ECHR therefore stands.