



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04619/2019 (V)

**THE IMMIGRATION ACTS**

Heard at Field House  
(remote hearing)  
On 22 January 2021

Decision & Reasons Promulgated  
On 12 February 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MAY  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr M Karnick, Counsel instructed by Citywide Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and neither party expressed any concern with the process.

**DECISION AND REASONS**

1. By my decision dated 7 October 2020 (a copy of which is appended to this decision) I set aside the decision of the First-tier Tribunal. I now remake that decision.

## **Background**

2. The appellant is a citizen of Somalia, born on 2 June 1994. He left Somalia at the age of nine and entered the UK in 2006, aged twelve, on a family reunion visa. In 2010 he was issued a Refugee Convention travel document valid until 30 October 2020.
3. Since entering the UK the appellant has not returned to Somalia.
4. The appellant has been convicted twice for criminal offences involving drugs. In 2013 he was convicted of possession of a class B drug. In 2017 he was convicted and sentenced to 42 months' imprisonment for possession with intent to supply a class A drug.
5. The appellant lives with his mother and cousin.
6. A deportation order was made against the appellant pursuant to section 32(5) of the UK Borders Act 2007. Section 32(5) is subject to the exceptions specified in Section 33. One of the exceptions is that deportation will breach the UK's obligations under the ECHR or the Refugee Convention.
7. The appellant made representations to the respondent arguing that his deportation would breach articles 3 and 8 ECHR. The appellant's arguments were rejected by the respondent.
8. The appellant appealed and his appeal came before Judge of the First-tier Tribunal Bulpitt. Judge Bulpitt dismissed the appeal, finding that deporting the appellant to Somalia would not be incompatible with his rights under either article 3 or article 8 ECHR.
9. In my decision dated 7 October 2020 I upheld the decision of Judge Bulpitt in respect of article 3 ECHR, but found that he had erred in law in respect of his consideration of article 8 ECHR. I limited the re-making of the appeal to article 8 ECHR. I also preserved the findings of fact made by Judge Bulpitt in paragraphs 20 – 31 of his decisions.

## **Legal framework and issues in dispute**

10. Section 117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), considered together with the rest of Part 5A of the 2002 Act, provides the framework to evaluate whether deporting a foreign criminal will breach article 8 ECHR.
11. Section 117C provides:
  - (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.
  - (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(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.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

12. The relationship between the Exceptions in sections 117C(4) and (5) and section 117C(6) was explained succinctly in paragraph 36 of *NA (Pakistan) v Secretary of State for the Home Department & Ors* [2016] EWCA Civ 662 (cited with approval in paragraph 30 of *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176):

"In relation to a medium offender, first see whether he falls within Exception 1 or Exception 2. If he does, then the Article 8 claim succeeds. If he does not, then the next stage is to consider whether there are 'sufficiently compelling circumstances, over and above those described in Exceptions 1 and 2'. If there are, then the Article 8 claim succeeds. If there are not, then the Article 8 claim fails."

The reference to a "medium offender" is to a foreign criminal, as defined in section 117D of the 2002 Act, who has been sentenced to less than four years imprisonment. The appellant is a medium offender.

13. Accordingly, if either Exception 1 or 2 applies, that will be determinative of the appeal. In the event that neither Exception applies, it will be necessary to proceed to consider Section 117C(6).
14. Exception 2 is not applicable to the appellant.
15. In respect of Exception 1, it was common ground that sub-paragraphs (a) and (b) are satisfied; that is, that the appellant has been lawfully resident in the UK for most of his life and that he is socially and culturally integrated in the UK. The sole area of contention was sub-paragraph (c): whether there would be very significant obstacles to his integration into Somalia. The appellant was born in - and if deported will be returned to - Mogadishu. It is therefore the obstacles (if any) that he will face integrating into Mogadishu that are relevant in this appeal.
16. The meaning of very significant obstacles to integration is not defined in the 2002 Act. A clear explanation of how integration should be understood, however, was given by Sales LJ in paragraph 14 of *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813, [2016]4 WLR 152 (cited with approval in paragraph 58 of *Akinyemi v The Secretary of State for the Home Department* [2019] EWCA Civ 2098). He stated:

"The idea of "integration" calls for a broad evaluative judgment 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 country is 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 to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

17. In *Parveen v The Secretary of State for the Home Department* [2018] EWCA Civ 932 at paragraph 9 the Court of Appeal commented on what is meant by "very significant". It is stated:

"It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as 'very significant'"

18. The two issues to be determined, therefore, are:
- a. First, whether there will be very significant obstacles to the appellant's integration into Mogadishu. If this is decided in the appellant's favour that will be determinative of the appeal as he will satisfy all of the conditions of Exception 1.
  - b. Second, whether there are sufficiently compelling circumstances over and above those described in Exceptions 1 and 2. This will only need to be considered if the appellant does not fall within Exception 1.

### **The hearing**

19. I heard oral evidence from the appellant, his mother and his cousin. In advance of, and at, the hearing Mr Karnick highlighted that the appellant's mother is vulnerable and that this should be taken into account. Mr Walker acknowledged this and his (brief) cross-examination of her was conducted in an appropriate way that did not give rise to any concerns.
20. The focus of Mr Walker's cross-examination of the three witnesses was on whether the appellant would receive any financial support from the UK and whether he would receive assistance from any family (or anyone else) living in Somalia. The consistent evidence of the witnesses was that they have no family (or any other contacts/connections) in Somalia. The evidence of the appellant's cousin was that she is in low-paid part-time employment and is a student and therefore will not be in a position to send funds to the appellant. The evidence of (and in respect of) the appellant's mother was that she is dependent on benefits and therefore would not have income available to send to the appellant.

21. In response to questions asked about the assistance and care provided by the appellant to his mother, the response from the witnesses was that he provides her with day-to-day assistance, for example with shopping, cleaning, preparing food and running errands.
22. In his submissions, Mr Walker described the oral evidence of the witnesses as credible. He accepted that the appellant would be unlikely to receive remittances from the UK and would not have the support of any relatives or friends in Somalia. He also observed that the appellant is from a minority clan and that this would be to his disadvantage in Mogadishu as explained in *MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)*. He acknowledged that in the light of these factors the appellant would face challenges integrating in Somalia but submitted that the threshold of very significant obstacles to integration was not reached. He also argued that in the overall Article 8 balancing exercise very significant weight must be given to the criminal offence and this is not outweighed by the factors weighing in the appellant's favour.
23. Relying on the respondent's recent Country Background Note on Somalia dated December 2020 and Country, Policy and Information Note on the security and humanitarian situation in the south and central Somalia dated November 2020, Mr Karnick argued that situation in Mogadishu has worsened since *MOJ*. He drew attention to the description in these reports of extreme poverty, food and housing insecurity, and discrimination faced by members of minority clans.

### **Finding of Fact**

24. The findings of fact preserved from the First-tier Tribunal include the following:
  - a. The appellant was born Mogadishu and is from the Ashraf minority clan. He left Somalia at the age of nine and entered the UK at the age of 12 with his mother.
  - b. The appellant committed a serious drugs offence.
  - c. The appellant is willing and able to work, and has experience in retail and warehouse work. He has some basic qualifications, including in IT.
  - d. He speaks Somalian.
  - e. He does not have any surviving family in Somalia.
  - f. He has a close relationship with his disabled mother but has exaggerated its extent and depth. He does not provide her with day-to-day care and did not live with her before going to prison.
  - g. The appellant's mother is in receipt of benefits.
25. I make the following further findings of fact, having considered all of the evidence before me. This includes the witness statements and oral evidence of the appellant, his mother and his cousin, the documents in the appellant's supplemental bundle

submitted prior to this hearing, and the respondent's reports on Somali referred to by Mr Karnick. My findings are:

- a. The appellant and his mother do not have any family or other connections in Somalia and the appellant will not have anyone to assist him in Somalia.
- b. The appellant will not receive any remittances from the UK. The only people in the UK who potentially might send him funds are his mother and cousin. However, neither are likely to be in a position to provide funds to him given his mother relies on benefits and his cousin only works part-time and is a student.
- c. There is significant poverty and unemployment in Mogadishu and it is a particularly challenging environment for someone who lacks family or other support.
- d. The appellant will face an additional challenge because he is from a minority clan.

### Analysis

26. There are several reasons why the appellant is likely to experience significant difficulties in Mogadishu. These are that:
  - a. He has no family or social support in, or links to, Mogadishu and there is no one in the city who will assist him with finding employment and accommodation.
  - b. He has no knowledge or experience of Mogadishu, having left at the age of nine and not having had any connection to the city since then.
  - c. He will not receive remittances from abroad.
  - d. He is from a minority clan.
27. This combination of obstacles/difficulties was found in *MOJ* to make relocation to Mogadishu unrealistic because of a real risk of destitution. The headnote states:

“[R]elocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.”
28. This passage from *MOJ* is relevant because although it concerns relocation to – rather than integration into – Mogadishu, the factors identified as making relocation “unlikely to be realistic” are also relevant to the difficulties a person is likely to face integrating in Mogadishu.
29. The difficulties identified above in paragraph 26 are mitigated to some extent because the appellant speaks Somali and is physically and mentally able to work. However, given the conditions in Mogadishu as described in *MOJ*, I am satisfied that

even with these mitigating factors the difficulties the appellant will face, when considered together and cumulatively, reach the elevated threshold of very significant obstacles to integration. The appellant therefore meets all of the conditions of Section 117C(4) of the 2002 Act.

30. As the appellant meets the conditions of Section 117C(4) of the 2002 Act, it follows that his article 8 claim succeeds and there is no need to consider Section 117C(6) and undertake a full proportionality assessment. See paragraphs 29-30 of *HA*.

### **Decision**

31. The appeal is allowed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

*D. Sheridan*

Upper Tribunal Judge Sheridan

24 January 2021



IAC-FH-CK-V1

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

Appeal Number: PA/04619/2019 (V)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 September 2020**

**Decision & Reasons Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MAY  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Karnick, Counsel instructed by Citywide Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and neither party expressed any concern with the process.

At the end of the hearing, I invited Mr Karnick and Mr Walker to make written submissions in respect of the jurisdiction issue that I raised at the hearing. Mr Karnick made written submissions, which I considered before deciding the appeal.



## **DECISION AND REASONS**

1. This is an appeal against a decision of Judge of the First-tier Tribunal Bulpitt (“the judge”) promulgated on 14 August 2019.
2. The appellant is a citizen of Somalia born in Mogadishu who came to the UK in 2006, aged 12, with his mother on a family reunion visa to join his father, who had been granted asylum. His immigration status is unclear. What is known is that in 2010 he was issued a Refugee Convention travel document valid until 13 October 2020.
3. The appellant has committed two criminal offences involving drugs. In 2013 he was convicted of possession of a class B drug. In 2017 he was convicted and sentenced to 42 months’ imprisonment for possession with intent to supply a class A drug.
4. On 9 December 2017 he was served with notice of a decision to deport him.
5. On 10 January 2018 representations were made by the appellant’s representatives arguing that Article 3 and 8 ECHR would be infringed by the appellant’s removal. It was not argued that his removal would breach the Refugee Convention.
6. On 20 January 2019 an asylum screening interview was held. On 28 February 2019 further submissions were made by the appellant’s representatives stating that the appellant maintained that removal would infringe Article 3 and that he should be granted humanitarian protection in lieu of full refugee status. On 5 March 2019 the appellant’s asylum interview took place.
7. On 30 April 2019 the respondent sent the appellant a decision refusing his protection and asylum claim on the basis that none of the exceptions in Section 33 of the UK Borders Act 2007 applied to him. The respondent’s position was that the appellant had committed a serious crime and constituted a danger to the community and therefore the presumption under Section 72 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) had not been rebutted. The respondent accepted that the appellant is a member of the minority Ashraf clan and that he has a genuine subjective fear of return to Somalia, but not that his fear is objectively well-founded. Relying on the country guidance case *MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)*, the respondent concluded that the appellant was not entitled to protection as a refugee or under articles 2 and 3 ECHR. The respondent also took the view that the appellant’s removal would not be contrary to Article 8 ECHR.
8. At no point did either party raise the question of, or identify as an issue, whether the appellant already had refugee status in the UK.

### **Decision of the First-tier Tribunal**

9. The appeal came before First-tier Tribunal Judge Bulpitt. In a decision promulgated on 14 August 2019 he dismissed the appeal.

10. The appellant limited his protection claim to Article 3 ECHR. At paragraph 16 of the decision the judge stated:

“At the outset of the hearing I confirmed with Mr Bassi and Ms Delbourgo that the issues in the appeal were those previously identified in this document. In particular Ms Delbourgo confirmed that the appellant is not appealing against the decision to refuse a protection claim but (consistent with his case throughout the process) was arguing that his deportation was unlawful under the Human Rights Act 1998.”

11. The judge went on to find that removal to Mogadishu, where the appellant was born, would not breach Article 3. The judge noted that the appellant’s representatives did not argue for a departure from *MOJ* and that no other evidence about the current conditions in Mogadishu was adduced. The judge found that although the appellant is unlikely to have any family or contacts in Mogadishu to help him - and even though he is vulnerable because of his alcohol and drug misuse, as well as his depression - he would be able to rely on remittances from his mother, cousin and father in the UK and would be relatively well placed to secure a livelihood. The judge concluded that the appellant would not suffer inhuman or degrading treatment on his return such that deportation would breach Article 3.
12. The judge then considered Article 8 ECHR. Applying Exception 1 in Section 117C of the 2002 Act the judge found that the appellant has been lawfully resident in the UK for most of his life and that he is socially and culturally integrated. However, the judge found that there would not be very significant obstacles to his integration in Somalia. The reasons given for this conclusion parallel those given in respect of Article 3: that although the appellant would not have family to assist him and has a history of drug and alcohol misuse, he speaks Somalian, would have financial support from family in the UK and would have the benefit of education and work experience obtained in the UK. For the same reasons, the judge found there were not very compelling circumstances.

### **Grounds of Appeal**

13. The appellant advanced two grounds of appeal.
14. The first ground relates to the protection claim and is in three parts.
- (a) Firstly, it is argued that the judge failed to address the appellant’s current status in the UK. It is argued that the evidence points to it being likely that the appellant was granted refugee status in line with his father. Reference is made to the respondent’s policy on revocation of refugee status, where it is stated:

“In the case of dependants granted under the family reunion provisions caseworkers must check and establish if the dependant was granted refugee status as well as leave in line. The previous policy on family reunion was to grant refugee status and leave in line as a matter of course...Caseworkers must review the reasons for the grant of asylum to the principal applicant and take this into account when reviewing the case.”

It is acknowledged that the appellant's status was not raised before the First-tier Tribunal but it is argued that this is a matter that goes to the heart of the appeal and needed to be considered by the judge nonetheless.

- (b) Secondly, it is also argued that the judge erred by not addressing Section 72 of the 2002 Act.
  - (c) Thirdly, it is argued that the judge erred by not considering article 15(c) of the Qualification Directive.
15. The second ground of appeal concerns the judge's assessment of Article 8 ECHR and contends that the judge erred in his approach to the assessment of Section 117C(4)(c) of the 2002 Act by not carrying out a broad evaluation. Reliance is placed on paragraph 14 of *SSHD v Kamara* [2016] EWCA Civ 813, where it is stated:
- "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)(c) 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. The idea of integration calls for a broad evaluative judgment 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 country is 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 to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."
16. The grounds also maintain that the judge erred by not factoring into the assessment of very significant obstacles that the appellant is a member of the Ashraf minority clan and as such, as recognised in *MOJ*, would face disadvantages.
17. It is also argued that there was nothing to suggest the appellant has Somali language skills that are advanced beyond that of a small child.
18. It is also argued that there was no evidential foundation for the finding that the appellant would receive remittances from his mother given that she is disabled and unemployed, or for finding that there are other people able and willing to provide him with ongoing financial support.

### **Permission to Appeal**

19. Permission to appeal was granted by Upper Tribunal Judge Blum on the basis that even though it did not appear to have been argued before the First-tier Tribunal that the appellant's protection claim should have been considered in the context of revocation of his refugee status it was nevertheless arguably important for the appellant's precise status to be clarified.

### **The Protection Claim**

20. As is apparent from paragraph 16 of the decision, as well as correspondence sent by the appellant's solicitor to the respondent prior to the hearing in the First-tier Tribunal (for example, the letter of 28 February 2019 stating that the appellant

maintained that deportation would infringe article 3 and humanitarian protection should be granted in lieu of full refugee status), the appellant explicitly and unambiguously limited the scope of his claim to articles 3 and 8 ECHR and did not claim that his removal from the UK would breach either the Refugee Convention or Article 15(c) of the Qualification Directive.

21. Parties are entitled to choose the legal strategy they wish to pursue. This includes the freedom to decide which claim to advance and which to not. If a party does not advance a claim, unless there is an obvious point of the type referred to in *R-v- SSHD ex p Robinson* [1998] QB 929, it is not the role of a judge to question this and a judge will not ordinarily fall into error by not addressing (or raising with the parties) a claim or argument that neither party made. See *GS (India) v SSHD* [2015] EWCA Civ 40 at [89] and *BM (Iran) v SSHD* [2015] EWCA Civ 491 at [17]. There was no “Robinson obvious” point in this appeal. The appellant, who had the benefit of legal representation, consistently maintained prior to the hearing that he was not relying on the Refugee Convention. There may - or may not - have been a good reason for this (perhaps he did not want to address the presumption under section 72 of the 2002 Act?), but it was not “Robinson obvious” that there was not a good reason. It was therefore not for the judge to look behind (or over-ride) the choice made by the appellant.
22. As the Refugee Convention was not relied on, there was no reason for the judge to consider - and the judge therefore did not err by not considering - whether or not the appellant already had status as a refugee. Likewise, the absence of any consideration of section 72 of the 2002 Act was not erroneous as this would only have been relevant if protection under the Refugee Convention was at issue. Similarly, as Article 15(c) of the Qualification Directive was not raised, the judge did not err by failing to consider it.
23. Mr Karnik, relying on an observation of Haddon-Cave LJ in *SSHD v JS (Uganda)* EWCA Civ 1670 at [89], argued that the Upper Tribunal can hear fresh points of law not argued below. That is indeed the case, but it does not follow from this that a judge in the First-tier Tribunal falls into error by not considering a claim or argument that a party chose not to pursue. This issue was considered by Laws LJ in *GS (India)* at [88] - [96]. Laws LJ recognised that an appellate court can consider a legal argument not raised previously but found that this did not extend to circumstances where a point in contention had in terms not been pursued in the tribunal below. He observed at [90] that:
 

“To allow such a state of affairs would, at the appellant’s choice, turn every appeal into an argument at large.”
24. The reasons given above are sufficient to dispose of the first ground of appeal. However, there is a further reason the judge did not err by failing to consider whether the appellant has status as a refugee such that there would need to be a decision to revoke his status before he could be deported. This is that there was no jurisdiction to consider this issue.

25. Under section 82(1)(c) of the 2002 Act there is a right of appeal against a decision to revoke a person's protection status. Under section 84(3) the ground upon which an appeal under section 82(1)(c) must be brought is that the decision to revoke protection status breaches the UK's obligations under the Refugee Convention or in relation to a grant of humanitarian protection.
26. Mr Karnik advanced a persuasive argument in respect of whether the appellant is likely to currently have refugee status. He noted, in particular, that at the time the appellant came to the UK refugee status was typically granted to members of a minority clan from Somalia and that the appellant was issued with a Refugee Convention travel document. Considering these factors alongside the respondent's policy on revocation of refugee status (cited above at paragraph 14(a)), I agree with Mr Karnik that the appellant may well have been granted refugee status in line with his father.
27. However, whether or not the appellant was granted, or currently has, refugee status does not determine whether he has a right of appeal. The right of appeal lies against a decision of the respondent to revoke a person's protection status, not a failure to acknowledge the existence of such a status. This is analogous to human rights claims where, as explained in *MY (refusal of human rights claim) Pakistan* [2020] UKUT 00089 (IAC), for a right of appeal under section 82(1)(b) to arise, there must have been a decision to refuse the human rights claim. If it was legally erroneous for the respondent, in the context of considering whether the appellant fell within the exceptions set out in section 33 of the UK Borders Act 2007, to not consider whether the appellant currently has refugee status, that might be judicially reviewable on public law grounds. However, it would not give rise to a right of appeal to the First-tier Tribunal.
28. Mr Karnik's response to this was to argue that the First-tier Tribunal had jurisdiction to consider the revocation issue because the respondent made an appealable decision which served as a "gateway". Section 82(1) of the 2002 Act provides for rights of appeal against three types of decision by the respondent: refusal of a protection claim, refusal of human rights claim, and revocation of protection status. Mr Karnik maintained that once the respondent makes a decision in respect of any one of these a "gateway" is opened to enable an appellant to appeal against any or all of them. He submitted that the cases of *Robinson v SSHD* [2019] UKSC 11 and *SM (Algeria) v ECO* [2018] UKSC 9 support the "gateway" approach as they demonstrate that a broad view of the jurisdiction should be taken.
29. The difficulty with Mr Karnik's argument is that there is nothing in the cases he cites to support his "gateway" theory, or the notion that sections 82(1)(c) and 84(3) should be interpreted otherwise than in accordance with their clear and plain meaning, which is that for there to be a right of appeal under section 82(1)(c) the respondent must have made a decision to revoke protection status. As, in this case, no such decision has been made, it follows that the appellant does not have a right of appeal under section 82(1)(c).

### The Article 8 Claim

30. The central issue before the judge was whether there would be “very significant obstacles” to the appellant’s integration into Somalia. At paragraph 38 of the decision the judge gave three reasons why, despite the length of time the appellant has been away from Somalia, his drug and alcohol misuse, and that he would not have “nuclear family accompanying him”, he was satisfied that there would not be very significant obstacles to integration. These are (a) that he speaks Somalian, (b) that he would have financial support from family in the UK, and (c) that he would have the benefit of education and work experience obtained in the UK. Earlier in the decision (at paragraph 34) the judge stated that the appellant would be able to rely on remittances from his mother, cousin and father in the UK. However, as submitted by Mr Karnik and acknowledged by Mr Walker, it is not apparent from the decision how the judge reached the conclusion that the appellant will in fact receive remittances from family in the UK.
31. The judge referred to three family members: the appellant’s mother, cousin and father. The appellant’s mother is disabled and dependent on benefits. It is not clear – and the judge has not addressed – how she would be in a position to provide ongoing financial support to the appellant. In respect of the appellant’s father, the appellant’s evidence, which does not appear to have been challenged, was that his father moved out and left him and his mother soon after they arrived in the UK and that he has seen him only occasionally. There is nothing in the decision to indicate that this evidence has been considered before reaching the conclusion that the appellant’s father would provide financial support. Likewise, the judge has not explained why he concluded that the appellant’s cousin would be able and willing to provide ongoing financial support to be appellant. I therefore accept Mr Karnik’s argument that the judge erred by failing to explain how the evidence supported his conclusion that the appellant would receive financial support from family in the UK.
32. Given the weight the judge attached to his finding that the appellant would receive financial support from relatives in the UK (which is unsurprising given the significance of such support, as explained in *MOJ*: see paragraph ix of the headnote), the error was clearly material. The decision in respect of article 8 ECHR is therefore not sustainable and must be set aside.
33. The judge made clear findings of fact at paragraphs 20 – 31. Apart from the finding at paragraph 29 that the appellant speaks Somalian, these findings were not challenged in the grounds of appeal. The challenge regarding the appellant’s language ability has no merit as the judge gave clear reasons for concluding that the appellant speaks Somalian: that he grew up in a household with only his mother (and therefore was likely to have communicated with her in Somalian); and that he did not adduce any evidence, even from himself, to support the contention that he is unable to speak Somalian. Accordingly, as the findings of fact in paragraphs 20 – 31 of the decision are not undermined by any error of law, they are preserved.

### **Notice of Decision**

34. With respect to the appellant's protection claim:
- (i) the decision of the First-tier Tribunal did not involve the making of an error of law; and
  - (ii) the appeal is dismissed.
35. With respect to the appellant's claim under Article 8 ECHR:
- (i) the decision of the First-tier Tribunal involved the making of an error of law and is set aside;
  - (ii) the decision will be remade in the Upper Tribunal; and
  - (iii) the findings of fact at paragraphs 20-31 are preserved.

### **DIRECTIONS**

36. The remaking of this decision will be limited to the appellant's Article 8 claim with findings of fact preserved as set out in paragraph 35 above.
37. I have reached the provisional view that the hearing for the remaking of this decision can and should be held remotely, by Skype for Business.
38. No later than 7 days after these directions are sent by the Upper Tribunal:
- (a) the parties shall file and serve by email any objection to the hearing being a remote hearing at all/by the proposed means; in either case giving reasons; and
  - (b) without prejudice to the Upper Tribunal's consideration of any such objections, the parties shall also file and serve contact/join-in details, were the hearing to take place remotely by the means currently proposed.
39. If there is an objection to a remote hearing, the Upper Tribunal will consider the submissions and will make any further directions considered necessary.
40. If there is no objection to a remote hearing, the following directions shall apply.
- (a) The parties shall, when complying with these directions, have regard to the Upper Tribunal Immigration and Asylum Chamber, Presidential Guidance Note No.1 2020: Arrangements during the COVID-19 Pandemic.
  - (b) The appellant shall, within 21 days of the date of this notice being sent, file with the Upper Tribunal and serve on the respondent any further evidence upon which he intends to rely at the resumed hearing along with a list of witnesses (if any) who will be giving oral evidence.
  - (c) The parties shall file with the Upper Tribunal and serve on each other skeleton arguments at least 7 days before the resumed hearing.
  - (d) The appellant shall be responsible for compiling and serving an agreed consolidated bundle of documents which both parties can rely on at the

hearing. The bundle should be compiled and served in accordance with paragraphs 23 – 26 of the Presidential Guidance Note at least 7 days before the resumed hearing.

41. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.
42. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

*D. Sheridan*

Upper Tribunal Judge Sheridan

7 October 2020