Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/16557/2019**

THE IMMIGRATION ACTS

Heard at Bradford IAC	**Decision & Reasons Promulgated**
On the 27 July 2022	**On the 13 September 2022**

Before

UPPER TRIBUNAL JUDGE REEDS
DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

A IA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Dirie, Counsel
For the Respondent: Ms Young. Senior Home Office Presenting Officer

DECISION AND REASONS

ANONYMITY :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

The FTT Judge made an anonymity order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) upon the grounds that the appeal concerns sensitive medical evidence pertaining to the Appellant's mental health. Neither party urged us to revisit that direction. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Appellant originated from an area in Somaliland.

2. The Appellant claimed to have left Somaliland when he was about nine years old and that prior to coming to the United Kingdom he lived with his family in Saudi Arabia. He entered the United Kingdom on 8 January 1987, then aged 18 years, with his father, a sister F and his older brother M. His mother and another three sisters entered the United Kingdom sometime later.

3. His father claimed asylum on arrival and including the Appellant and his siblings his claim which was initially refused, however all were granted exceptional leave to enter and remain until 19 March 1988. Following a review they were recognised as refugees on 24 April 1989 and granted a further period of leave until 19 March 1991. On 21 May 1991 the Appellant was granted indefinite leave to remain as were his family members. The Appellant's mother died in 1995.

4. In or about 1993 the Appellant married a Somali national in the United Kingdom, M A, and they have three daughters who are now aged 26, 19 and 13 years of age respectively. The Appellant and his wife separated in or about February 2015.

5. The Appellant's brother, M, voluntarily returned to Somalia in 2014

6. The Appellant accrued 28 convictions for 51 offences between August 1994 and May 2016 for offences including burglary, theft, criminal damage, robbery, deception, driving whilst disqualified, assaulting a police officer, possession of an offensive weapon and threatening and abusive behaviour. During this period he received fourteen custodial sentences including 9 months imprisonment in November 2015 for possession of offensive weapons.

7. On completion of this last sentence he was deported, due to an administrative error, to Somaliland on 14 March 2016. He was permitted to return to the United Kingdom on 12 April 2016 and on arrival he was then served with notice of the Respondent's intention to deport him on non-conducive grounds. On 27 April 2016 the Appellant's former solicitors advanced grounds as to why he should not be deported placing reliance on articles 2, 3 and 8 ECHR.

8. On 7 May 2016 he was convicted of being drunk and disorderly and battery for which he received a sentence of four weeks imprisonment. On 12 May he was served with notice of the Respondent's intention to cease his refugee status. He failed to respond to this and on 23 August 2016 the Respondent made a decision to evoke his refugee status and his human rights application was refused. His appeal against these decisions were

dismissed by Judge Murray in a decision promulgated on 1 December 2016. Permission to appeal was refused by the Upper Tribunal.

9. On 25 April 2017 Respondent made an order that he should be deported from the UK on non-conducive grounds, but the directions for his removal were cancelled upon receipt of further submissions which made reference to the Appellant suffering from mental health issues. The Respondent refused these submissions on 5 March 2018, but removal directions were deferred as a result of a High Court injunction.

10. Further submissions were then made on his behalf on 16 April 2018 which again made reference to his mental health issues and these submissions were supported by a report dated 10 April 2018 by Dr Ragunathan.

11. On 22 June 2018 the Appellant appealed the Respondent's decision to refuse to revoke the deportation order on human rights grounds.

12. The appeal was listed before Judge of the First-tier Tribunal Hemborough (hereinafter referred to as the FTT Judge) on 16 March 2020 and in a decision promulgated on 1 April 2020 he dismissed the Appellant's appeal.

13. Permission to appeal was submitted to the First-tier Tribunal and it was refused on 10 June 2020. Grounds of appeal were renewed and on 11 August 2020 these were considered by Upper Tribunal Judge Norton-Taylor who found there was an arguable error in law stating:

> *"1. The Appellant, a citizen of Somalia, seeks permission to appeal against the decision of FTT Judge... by which he dismissed the Appellant's appeal against the Respondent's refusal of his human rights claim made in the context of deportation proceedings.*
>
> *2. The first ground of appeal asserts that the FTT Judge failed to adequately consider medical evidence relating to the Appellant's mental health and the consequences of his conditions were he to be deported to Somaliland. Ground 2 asserts that the FTT Judge erred in respect of Exception 1 under section 117C(4) NIAA 2022.*
>
> *3. Both the grounds of appeal are arguable, although in my view second perhaps holds greater merit than the first."*

14. This appeal was initially listed before us on 30 March 2022 when both representatives appeared remotely via Cloud Video Platform (CVP).

15. Ms Dirie addressed us as to why she believed the FTT Judge had erred in law, but unfortunately mid-submissions Ms Young's connection failed, and she was unable to hear the remainder of the submissions or take any further part in the hearing. We decided that it was in the interests of justice to adjourn the hearing to a date suitable to all the parties.

16. This matter came back before us on 27 July 2022 and on this occasion Ms Dirie appeared remotely via CVP, but Ms Young appeared in person.

17. Due to the fact Ms Young had not heard all of Ms Dirie's submissions and there had been a passage of time, we invited her to re-make her argument. Both representatives were content to proceed in this manner.

DOCUMENTS

18. Prior to commencing the hearing we confirmed with both parties that we all were in possession of the relevant documents. The Appellant's representatives had provided a consolidated bundle which consisted of 814 pages, and we were also provided with a 158 page bundle that had originally been before the FTT Judge together with a Respondent bundle that consisted mainly of papers that had been before the FTT Judge.

SUBMISSIONS ON ERROR IN LAW

MS DIRIE'S SUBMISSIONS

19. Ms Dirie adopted her renewed grounds of appeal dated 15 July 2020 and submitted that the FTT Judge had erred in law for the reasons given in those grounds of appeal.

20. She argued that the main challenge began with the second ground of appeal (erroneous approach to assessment of section 117C) and submitted that the FTT Judge had materially erred in his approach to the section 117C assessment. She acknowledged that in order to succeed under Section 117C the Appellant had to satisfy all three limbs of that particular provision.

21. With regard to lawful residence she submitted that the FTT Judge had erred in finding he had not been here lawfully for most of his life despite the fact it was accepted he had arrived, aged 18, in this country in 1986 whereupon he was granted leave to remain as a refugee in 1991. The Respondent's decision taken on 22 August 2016 acknowledged at paragraph [111] that the Appellant had been lawfully resident in the United Kingdom for most of his life. Judge Murray had accepted that the Appellant had been lawfully resident in the United Kingdom when he heard the Appellant's previous appeal and it therefore followed that the FTT Judge had erred in finding the Appellant had not been lawfully resident for most of his life. She submitted the FTT Judge had confused the test for lawful residence under the EEA Regulations with what was required of him in this case.

22. Turning to the second limb of the second ground of appeal, Ms Dirie submitted that the FTT Judge failed to take into account Judge Murray's findings and in particular the finding at paragraph [54] in which the Judge accepted the Appellant was socially and culturally integrated. That should have been the FTT Judge's starting point and Ms Dirie submitted there was nothing to enable him to depart from that finding. Additionally, whilst the FTT Judge referred to CI (Nigeria) v SSHD [2019] EWCA Civ 2027 at paragraph [67] of his determination, Ms Dirie submitted that the FTT Judge

failed to apply what the Court of Appeal stated and in particular by placing weight on his offending behaviour the FTT Judge erred.

23. As to whether there would be very significant obstacles to the Appellant's removal, Ms Dirie submitted that the FTT Judge failed to take into account key evidence when finding that there would be no very significant obstacles to his removal. The FTT Judge placed weight on his language skills, the fact he spent one month in Somalia after being unlawfully removed and the finding that his brother could provide assistance but failed to place any weight, when considering whether there would be very significant obstacles to his removal, to the following:

    (a) Up until wrongly removed he had been absent from country for 43 years

    (b) In the month there he was destitute

    (c) Brother lived in dire circumstances

    (d) No money from UK and no evidence that monies would be sent. His family did not attend this hearing or before Judge Murray

    (e) He was homeless in UK which suggests his family could not help him abroad

    (f) Finding at paras 55-56 said mental health not so severe as engaged solicitors and engaged in asylum process. This cannot be compared to being returned to Somalia and trying to find a job etc.

    (g) He was diagnosed with PTSD and paranoid schizophrenia.

    (h) No evidence to suggest he would have the $7 he would need for his medication

    (i) At para [61] the FTT Judge noted his mental health as he sets out his problems. His finding here minimises the evidence.

24. Ms Dirie submitted that Ground 2 of the renewed grounds of appeal identified a material error in law.

25. Ms Dirie further submitted that the FTT Judge had applied an erroneous to the medical and expert evidence and had failed to properly consider material evidence contained in the bundle. There were a number of medical reports and Ms Dirie submitted that the FTT Judge did not deal with the medical evidence in the manner that he should have done.

26. Ms Dirie referred us to Dr Reddy's report that was contained on pages 191-200 and was dated 9 March 2020. At paragraph [18] of her report Dr Reddy stated that the Appellant's primary psychiatric illness was either paranoid schizophrenia, schizoaffective disorder as well as post-traumatic stress disorder. She stated that Dr Reddy reported that the Appellant retained his mood symptoms such as depression and also was displaying psychotic symptoms and that the combination of these two domains would mean a diagnosis of schizoaffective with the post-traumatic stress disorder to be a secondary diagnosis no less relevant. Dr Reddy stated that the

Appellant's account and the subsequent psychological impact upon him was consistent with him suffering from a schizoaffective illness and at the time of assessment his mood was progressively worsening as he was in detention.

27. The FTT Judge did not criticise this report when he discussed the findings at paragraphs [47] to [49] of his decision and did not challenge the approach suggested in paragraph [28] of the report including the statement "his prognosis would be much poorer should he be returned to Somalia for a number of different reasons".

28. Dr Reddy had set out a number of concerns and also commented at paragraph [30] of her report that the Appellant's auditory hallucinations and perceptual abnormalities had worsened since he last saw Dr Ragunathan two years earlier.

29. Ms Dirie further submitted that the FTT Judge did not challenge or take issue with what Dr Reddy reported at paragraph [31] of the report when she stated that the appellant had "a clear and very sincere belief that he will be in an extremely vulnerable state should he be returned at this stage". She submitted that none of these factors had been assessed by the FTT Judge.

30. Ms Dirie further submitted that the FTT Judge failed to give weight to what Mr Hoehn had stated in his expert report with regard to access to healthcare and provisions. He stated that in order to access outpatient care the Appellant would need to pay $7 something the FTT Judge did not challenge. At paragraphs [51] and [52] of the FTT Judge's decision he set out what treatment would be needed including medication, but he failed to take into account the Appellant's claim that he was destitute and would have no support. This lack of support was further evidenced by the fact his family did not attend and support or provide witness statements for his appeal hearing and Ms Dirie submitted that the finding he would have financial support was without any evidential foundation. Mr Hoehn discussed support and noted that although the Appellant came from a majority clan in Somaliland he did not have any clan support as this was through family. Mr Hoehn made clear that clan support was essential and without it he would be unable to secure living. There was no social housing or assistance available and none of this was challenged by the FTT Judge. The Respondent suggested that the Appellant could be returned but Ms Dirie submitted the evidence pointed to him having been abandoned by his family and suffering with paranoid schizophrenia.

31. In the circumstances, Ms Dirie submitted that the FTT Judge had materially erred, and the decision should be set aside and remade.

MS YOUNG'S SUBMISSIONS

32. Ms Young adopted her colleagues skeleton argument dated 30 June 2021 which she submitted addressed the renewed grounds of appeal drafted

and adopted by Ms Dirie.

33. Dealing firstly with the first ground of appeal, Ms Young submitted that the grounds of appeal selected specific parts of the medical evidence whereas Ms Young submitted the FTT Judge went into the medical evidence in considerable detail.

34. In particular, Ms Young referred to paragraph [60] of the FTT Judge's determination which made it clear that the FTT Judge had regard to Mr Hoehn's report as a whole and between paragraphs [45] to [49] the FTT Judge considered the report of Dr Ragunathan, the medical records and the findings of Dr Reddy. Ms Young submitted that the FTT Judge had carefully considered all the available medical evidence and his findings on that evidence was given after assessing the evidence in the round.

35. With regard to the second ground of appeal and the approach to Section 117C, Ms Young acknowledged that the FTT Judge had erred in finding the Appellant had not been in this country lawfully for the majority of his life but submitted that the error was not material because he could not satisfy the remaining requirements of Section 117C. The FTT Judge had considered the issues of whether the Appellant was socially and culturally integrated and whether there were any very significant obstacles to his return and his findings were open to him.

36. Ms Young submitted that contrary to Ms Dirie's submissions the FTT Judge did have regard to the previous determination of Judge Murray and took that determination as his starting point.

37. The FTT Judge set out at paragraph [68] of his decision why the Appellant was not socially and culturally integrated and did not simply rely on his offending behaviour. The FTT Judge concluded that since Judge Murray's decision he had continued to commit offences, had spent considerable period of time in prison and had not demonstrated any evidence of employment. Ms Young submitted that the FTT Judge was entitled to depart from Judge Murray's finding that he was socially and culturally integrated and had given adequate reasons for this.

38. The Appellant also had to show that there were very significant obstacles to his integration in his home country and Ms Young submitted that the Judge considered the Appellant's circumstances in his home country and at paragraph [55] he had rejected the Appellant's claim to have had no contact with his brother and gave detailed reasoning for that finding and went on at paragraph [69] to consider the Appellant's mental health condition and gave adequate reasoning for why he would be able to access treatment.

39. Ms Young invited the Tribunal to reject Ms Dirie's submission that there had been an error in law in the decision of the FtT.

DISCUSSION AND FINDINGS

40. Having heard submissions from both representatives we reserved our decision but indicated that if there was an error in law we would remit this appeal back to the First-tier Tribunal for further evidence to be served and given. Both representatives agreed this was the correct approach.

41. This appeal was brought on two grounds namely (1) erroneous approach an assessment of section 117C of the 2002 Act and (2) erroneous approach to the medical and expert evidence and a failure to properly consider material evidence contained in the bundle.

42. The Appellant's immigration history is contained in Judge Murray's decision (pages R1 to R22 of the Respondent's bundle). He was born in 1968 and he came to the United Kingdom with his father and siblings on 8 January 1987. He was therefore eighteen years of age when he arrived in this country and given the decision to cease his refugee status and refuse his human rights claim was only taken on 22 August 2016 it would seem he had lived lawfully in this country for over twenty-nine years. Whilst we did not have an up-to-date PNC printout for the Appellant we had sufficient information within the papers to identify the full extent of his offending behaviour.

43. We firstly considered whether the FTT Judge had erred in his approach to section 117C of the 2002 Act. For the Appellant to succeed under this exception he must satisfy <u>all three elements</u> of section 117C (4) of the 2002 Act. These are:

> *"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."*

44. Ms Young conceded the FTT Judge erred in paragraph [67] when dealing with Section 117C(4)(a) of the 2002 Act when he found *"I have found it impossible to calculate whether the Appellant has in fact been lawfully resident most of his life given the numerous terms of imprisonment to which he has been subject. "* Judge Murray had found at paragraph [53] of her decision that the Appellant, at that time, had lived in this country lawfully. In fact, the Respondent never disputed this fact and Ms Young sensibly agreed the Appellant had been lawfully resident in the United Kingdom for most of his life. This concession by Ms Young did not mean the FTT Judge materially erred because when considering whether Section 117C was satisfied the Appellant had to meet all three limbs.

45. Ms Dirie has submitted the FTT Judge erred in his approach to Section 117C(4)(b). The FTT Judge adopted Judge Murray's findings at paragraph

[66] of his decision and stated that since Judge Murray's decision the Appellant had spent the majority of his time in prison save for a brief period when he was at liberty and went on to commit further offences. Both Ms Dirie and Ms Young agreed that the starting point for this issue was paragraph [54] of Judge Murray's decision that the Appellant was socially and culturally integrated.

46. Ms Dirie submitted the FTT Judge wrongly applied the guidance in CI and erred by not following Judge Murray's decision. Judge Murray had found at paragraph [54] of her decision that he had family ties, had been here for over twenty-nine years and had come here as a young man aged eighteen years of age. Judge Murray also found there was no strong evidence of private ties and although he was a persistent offender she concluded he was socially and culturally integrated.

47. We were satisfied the Judge was aware of the correct starting point and then considered the Appellant's employment situation at paragraph [68] concluding "*he had no real track record of employment in the United Kingdom and it would appear that when not in prison he had largely been dependent upon welfare benefits, assistance from his family and the proceeds of crime*". The FTT Judge concluded that "*taking also (into account) the breadth and duration of his offending I do not accept that he is socially and culturally integrated into the United Kingdom*".

48. Having looked at the FTT Judge's decision we do not agree with Ms Dirie's submission. From paragraph [66] of his decision, the FTT Judge considered the relationship of the Appellant's offending behaviour and to him being socially and culturally integrated and set out what the Court of Appeal said in CI (Nigeria).

49. The FTT Judge was entitled to consider the period of time since the decision of Judge Murray and her assessment. During that period of time the FTT Judge found that the Appellant had spent most of his time in custody save for a brief period when he was at liberty and had gone on to commit further offences (at [66]). The FTT Judge found at [39] and [68] that he had provided no evidence of a significant private life beyond the relationship with his family and that when not in prison he had been largely dependent on welfare benefits, assistance from family and the proceeds of crime. The FTT Judge did not make the mistake of finding the Appellant was not socially and culturally integrated solely through his offending behaviour but provided other reasons for finding he was not socially and culturally integrated. We are satisfied the FTT Judge was entitled, on the evidence, to reach that conclusion and in doing so he justified his conclusion with reasons. It therefore follows the Appellant could not succeed under section 117C(4) because he as unable to satisfy all of the limbs of this subsection.

50. Although the Appellant cannot succeed under section 117C(4) we went onto consider whether there "would there be very significant obstacles to his integration into the country to which he is proposed to be deported" as

this in part is linked to the other ground of appeal namely whether the FTT Judge failed to properly consider medical and expert evidence.

51. The Appellant claimed he was homeless in this country, and he would be homeless in Somaliland. Judge Murray found at paragraph [40] of her decision that the Appellant had one brother in Somaliland and four sisters in this country and rejected his claim he was destitute in Somaliland finding at paragraph [54] of her decision that not only did he have a brother there, but he was also a member of a majority clan. Whilst Judge Murray found he may initially have difficulties the FTTJ found that he would be able to reintegrate.

52. The FTT Judge set out the medical findings between paragraphs [43] and [49] of his decision. We reminded ourselves that Judge Murray was not concerned with any mental health issues when reaching her decision and it was therefore incumbent on the FTT Judge to properly consider this significant new evidence.

53. The FTT Judge took into account the previous finding that the Appellant's brother had helped him when he was unlawfully returned, that he spoke the local language and then he also set out what the Appellant had told the various doctors.

54. Ms Dirie argued that the FTT Judge had failed to take into account a number of matters. They are summarised as follows:

    (a) Up until wrongly removed he had been absent from country for 43 years

    (b) In the month there he was destitute

    (c) Brother lived in dire circumstances

    (d) No money from UK and no evidence that monies would be sent. His family did not attend this hearing or before Judge Murray

    (e) He was homeless in UK which suggests his family could not help him abroad

    (f) Finding at paras 55-56 said mental health not so severe as he was able to engage solicitors and engage in asylum process. This cannot be compared to being returned to Somalia and trying to find a job etc.

    (g) He was diagnosed with PTSD and paranoid schizophrenia.

    (h) No evidence to suggest he would have the $7 he would need for his medication

    (i) At para [61] the FTT Judge noted his mental health as he sets out his problems. His finding here minimises the evidence.

55. Ms Dirie placed weight on Dr Reddy's report who at paragraph [18] confirmed that that since Judge Murray refused his last appeal on 1 December 2016 his mental health has not only become an issue but had worsened in the two years leading up to her writing her report which was

dated 9 March 2020. At paragraph [18] Dr Reddy provided her diagnosis of paranoid schizophrenia or schizoaffective disorder as well as post-traumatic stress disorder. Dr Reddy's opinion was that a schizoaffective disorder was more likely as this would explain the mood symptoms as well as the psychotic symptoms.

56. At paragraph [30] of her report she stated his auditory hallucinations and perceptual abnormalities had worsened and if adequate healthcare facilities (in Somaliland) were not available "this would lead to a worsening and poorer prognosis of his mental health and ….. his problems would also affect his functioning on a daily basis and further hamper his abilities to reintegrate."

57. Mr Hoehn's report was prepared on 9 March 2020, albeit his report was prepared without seeing Dr Reddy's report. At paragraph [29] of his report Mr Hoehn considered a number of issues which this Appellant would face were he returned and these included:

    (a) Back in Somaliland, where many people (also from majority clans) are rather poor (like all over Somalia), no one, not even close relatives, will be willing to take the appellant on an offer him shelter for long. Maybe for a few days or some two weeks he could stay with relatives. But soon, he would become too much of a burden for ordinary people without sufficient income.

    (b) Without social support, and without any considerable educational or work related skills, it will be hard for the Appellant to survive, let alone by the antidepressants or other medicine he needs.

    (c) Financial hardship and related to it, stress with basic survival, will, most likely, drive the Appellant into destitution. This again will, likely, worsen his state of mental health. If he goes through episodes of psychosis it is very likely that family members or strangers will chain him.

    (d) Given that only very few places for inpatient treatment are available at public hospitals with mental wardens, is unlikely that the Appellant will get treatment there when he needs it.

58. Whilst the FTT Judge referred to the Appellant's medical condition and availability of medical care in his decision (see paragraphs [43], [44]-[49] and [50] to [52]) we consider that the FTT Judge's assessment of the medical evidence and when set against the evidence contained in Mr Hoehn's report (paragraph [61] – [64]), the FTT Judge did not properly assess how the Appellant would be able to successfully reintegrate given his mental health difficulties and how this would impact him on return.

59. We observe that the FTT Judge did not challenge any of the conclusions made by either Dr Reddy or Mr Hoehn and he also accepted that Mr Hoehn was an expert in relation to Somalia.

60. The fact the FTT Judge concluded the Appellant had an insight into his alcohol issues and could make a voluntary decision on whether to drink, use Khat or other psychoactive substances failed to address the real issue of how he would, with his specific health issues, successfully re-integrate into Somaliland.

61. We did not find the FTT Judge's assessment that his prior unlawful return would have amounted to "a short and sharp lesson in integration" was one supported by any evidence. We also accepted there was merit in Ms Dirie's submission that the FTT Judge was wrong to find he had the full support of his UK based family as all the evidence suggested he was not in contact with them and there was no evidence he actually received any financial support from them. This would be relevant to the assessment on whether he would be able to support himself in Somaliland.

62. We were satisfied that whilst Judge Murray was entitled to find there were no "very significant obstacles" to his re-integration, there was a substantial material change since that 2016 decision. Whilst we accept the FTT Judge considered the available evidence we nevertheless find for the reasons set out in the above paragraph that the FTT Judge's assessment of the medical evidence was undermined for the reasons set out above. The issue is whether this amounted to a material error.

63. The FTT Judge had to consider whether the treatment envisaged by Dr Reddy was both available and accessible in Somaliland.

64. The FTT Judge clearly placed weight on the fact that at paragraphs [9] and [12] of Mr Hoehn's report where he stated that public and private hospitals and mental health centres existed in part of Somaliland [Hargeisa] delete. However, the country evidence, and in particular paragraphs [29], [40] and [41] clearly highlighted the difficulties the Appellant not only perceived he would face but would actually face.

65. The FTT Judge's assessment of this issue was limited and was only considered in the last three paragraphs of the FTT Judge's decision. No reasons were given for finding there were no compelling circumstances which outweighed what would be the public interest in his removal.

66. The Appellant had been diagnosed with significant mental health issues since the last appeal in 2016. We are satisfied the assessment made of the medical evidence did not take account of the diagnosis, and the effect of that diagnosis on his ability to function in Somaliland and when taken with the factors set out in the expert evidence. The FTTJ was also in error by not taking into account that the appellant had been lawfully resident for most of his life despite the finding made by Judge Murray which was not disputed by the respondent. We are satisfied that the errors were material to the outcome as the failure to undertake an assessment by taking into all the relevant factors affected the assessment of whether there were compelling circumstances which outweighed what would be the public interest in his removal.

67. The FTT Judge's decision goes back to March 2020, and it is entirely likely that there has been a change in his medical and personal circumstances. We further note that the FTTJ did not undertake a factual assessment as to what had happened to him when deported to Somalia as set out in his witness statement and that the findings made as to family support were not in accordance with the evidence. Further evidence is likely in this appeal and given it is now almost 30 months since the last appeal hearing we find this case should be remitted back to the First-tier Tribunal for a further hearing on all matters albeit the starting point, as ever, should be not only the findings of the previous two Judges but also that the parties are in agreement that the Appellant met S117C (4) (a) that he had been lawfully resident in the United Kingdom for most of his life.

68. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

    (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

    (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

69. In our judgment, given that it is necessary for all the issues in this case to be considered afresh on the merits, this case falls within para 7.2 (a) and (b) because further evidence, including oral evidence is likely, and findings of fact on the issues will need to be made.

NOTICE OF DECISION

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety.

This case is remitted to the First-tier Tribunal for a fresh hearing on all issues on the merits by a Judge other than Judge of the First-tier Tribunal Hembrough.

Signed Date 1 September 2022

Deputy Upper Tribunal Judge Alis