



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

Appeal Number: UI-2021-001016  
PA/03435/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> June 2022**

**Decision & Reasons Promulgated  
On 8<sup>th</sup> August 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

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

Appellant

**and**

**'JJY'**

**(ANONYMITY DIRECTION MADE)**

Respondent

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify her. Failure to comply with this order could amount to a contempt of court. The reason is because of the allegations concerning the respondent's claimed sexual mistreatment in her country of origin and her claim to have been the victim of FGM.

**Representation:**

For the appellant: Ms A Nolan, Senior Home Office Presenting Officer

For the respondent: Ms P Solanki, instructed by Duncan Lewis Solicitors

**DECISION AND REASONS**

## **Introduction**

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 17<sup>th</sup> June 2022.
2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge C Scott (the 'FtT'). I refer to the respondent in this appeal, who was the appellant before the FtT, as the 'Claimant,' for the remainder of these reasons, to avoid confusion.
3. The FtT considered the Claimant's appeal in the context of a deportation order having been made against her, pursuant to the automatic deportation provisions of section 32 of the UK Borders Act 2007. This was as a result of an index offence, for which the Claimant was convicted on 10<sup>th</sup> October 2014, of six years' imprisonment, later reduced to four and half years, for false imprisonment and three years for offences of assault occasioning actual bodily harm, to be served concurrently. The FtT also considered whether the Claimant had rebutted the presumption that she constituted a danger to the community of the UK pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002, such that her protection claim fell for refusal, and if she had, whether she had a well-founded fear of persecution. Persecution was said to be on the basis that on her return to Somalia, her country of origin, the Claimant had a well-founded fear, as a lone female, with no family or clan support. The Secretary of State contested this. The FtT also considered her human rights claims by reference to articles 2,3 and 8 of the ECHR. The latter in particular related to the Claimant's claimed mental health issues. The Secretary of State did not regard the Claimant as a credible witness. She had claimed in 2004 to have no family in Somalia, but also referred to relatives of her husband living there.

## **The FtT's decision**

4. The FtT considered at §26 onwards expert medical evidence as to the Claimant's PTSD and depression. This was in the context of the Claimant having been severely traumatised as a victim of sexual assault in Somalia. At §28, the FtT noted country expert evidence in relation to Somalia, and at §§30 to 53, set out at length the relevant law and country guidance, as to which there has been no challenge.
5. The FtT began with an analysis of a previous Tribunal determination in 2004, and at §§67 to 75, analysed and concluded that the Claimant had not rebutted the presumption that she constituted a danger to the community of the UK. Her appeal on protection grounds therefore fell to be dismissed.
6. The FtT went on to consider the article 3 and 8 ECHR claims. He made findings at §82 respect of the Claimant's mental health and at §83 in relation to her physical health. He concluded that it was likely she would struggle to adapt to life in Somalia and that there was not a functioning

healthcare system there (§86). Moreover, she would be highly stigmatised for her mental health conditions in Somalia (§92) and her mental health would suffer as a result of her return (§98). She would be unable to access medical facilities (§100). Although at §107, the FtT concluded that the Claimant would initially be assisted by ‘clan’ members for support, that support would be short-term. In the long term, she would end up displaced. Her prospects for remunerative work be limited (§121) and she will be at risk of sexual and/or gender-based violence on return. As a vulnerable woman with mental health conditions, she was at real risk of inhuman or degrading treatment contrary to article 3 ECHR (§122) and her article 2 rights would also be breached (§123). Applying the facts in relation to article 8 ECHR and the provisions of section 117C of the 2002 Act, the FtT carried out a detailed balancing exercise and concluded that there were very compelling circumstances over and above ‘Exceptions 1’ and ‘2’ as set out in section 117C of the 2002 Act (§135).

### **The grounds of appeal and grant of permission**

7. The Secretary of State contends that the FtT erred in finding that the article 3 threshold was met, noting the high threshold, for example in medical cases as discussed in AM (Zimbabwe) [2020] UKSC 17. It was unclear on what basis any withdrawal of current treatment would result in such a rapid and irreversible decline. The Secretary of State also contends that with the benefit of remittances, which the FtT had accepted will occur, the FtT failed to look at the evidence holistically and consider why the Claimant’s family would not provide ongoing assistance. The FtT had impermissibly separated consideration of that factor from others when assessing the feasibility of return. On a third ground, the FtT had erred when concluding that very compelling circumstances existed, based on the same flawed assessment.
8. First-tier Tribunal Judge O’Garro granted permission on 13<sup>th</sup> October 2021. The grant of permission was not limited in its scope.

### **The hearing before me**

#### **The Secretary of State’s submissions**

9. In terms of the submissions that were developed before me today, Ms Nolan relied upon the analysis in AM (Zimbabwe). In contrast, at §43 onwards of the FtT’s decision, the FtT had only referred to Bagdanavicius [2013] EWCA Civ 1605 and HKK (Article 3: burden/standard of proof) Afghanistan [2018] UKUT 00386 (IAC) and had not referred to, let alone applied, the substantive analysis required under AM (Zimbabwe) and in particular consideration of the staged approach, including whether she had shown she was seriously ill and that her removal would result in the relevant suffering.
10. The medical reports, as referred to at §26 of the FtT’s decision, did not support the conclusions about the consequences for the Claimant of her

return. They certainly referred to a serious condition of PTSD but not the alleged consequences of removal. The further analysis at §§96 to 99 did not engage with AM (Zimbabwe). The FtT's findings that the Claimant would struggle to cope with life in Somalia, that there would be a deterioration in her health and that treatment would be unavailable, did not come close to the Article 3 test as now understood after AM (Zimbabwe).

### **The Claimant's response**

11. In her Rule 24 reply, the Claimant says that the Secretary of State has, in her grounds, misunderstood the article 3 claim. This was not a case where the Claimant's medical condition alone was relied upon, rather the risk was from third parties, in the context of the Claimant returning as a woman with health issues. At §77, the FtT had made clear that he was considering Article 3 in the light of a list of risk factors set out in MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC). The FtT's analysis by reference to MOJ was unchallenged. The FtT's analysis, at §§78 to 120, had considered in detail a wide variety of factors: sexual and physical abuse in Somalia; having lived in the UK for 30 years, 19 of which were lawful, with no relatives in Somalia and limited support on return; an inability to work owing to ill-health; the risk to her as a woman of sexual violence, and with little or no protection offered by the authorities of Somalia. In that context, the FtT's conclusion at §§121 to 122, applying MOJ, was inescapable and unarguably open to the FtT to reach by reference to inhuman and degrading treatment, contrary to article 3 ECHR.
12. In relation to the second ground and the suggestion that the Claimant's medical treatment would be affordable and the that FtT had erred by failing to consider why extended family members like the Claimant's sister and children could not contribute, this ground ignored the FtT's detailed findings made at §§85 to 89; 96 to 100, and §108, which had not been impugned. The FtT had heard evidence about financial support from the sister and children, including details of the limited financial means of a sister who is a single parent and student. In respect of the adult children, she only had one daughter who had supported her buying clothes and food and on only two occasions. The FtT's conclusion that the Claimant had no other financial support, as indicated by correspondence from the Hibiscus organisation where she had relied on food banks (§108) meant that there had been an holistic analysis by reference to the Claimant's family. There was no error of law.
13. In relation to the third ground, just as there were no errors in relation to the first two grounds, the FtT had made a detailed 'balance sheet' analysis in respect of Article 8. Ms Solanki cited Quarey v SSHD [2017] EWCA Civ 47 as support for the proposition that an appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of a judge, by a narrow textual analysis.

### **Discussion and conclusions**

14. I do not accept that the FtT erred in law in failing to consider or apply AM (Zimbabwe). This was clearly not a case that focussed solely on the Claimant's medical conditions such that the guidance in relation to AM (Zimbabwe) would be directly applicable. While it is unnecessary for a judge to cite all relevant evidence, here, the FtT carried out a structured, clear and detailed analysis of article 3 by reference to a whole variety of risks, as guided in MOJ. That included but, crucially, was not limited to, the Claimant's mental health issues not only in relation to access to treatment but also in relation to the societal stigmatisation that attached to mental health issues. This was not a simple "medical condition" appeal, to which AM (Zimbabwe) would be directly applicable.
15. In relation to the second ground, I am satisfied that for the reasons outlined by Ms Solanki, the FtT expressly considered in detail both the cost of medical treatment and the Claimant's likely access to financial support from family members (§108). The FtT did not consider that issue in isolation, but holistically, including the Claimant's reliance on food banks. This ground discloses no error of law.
16. In relation to the third ground, this relied upon the first two grounds, which I have concluded are not sustained. Also, the FtT carried out what, in my view, was a 'textbook,' detailed and structured balance-sheet analysis and it is trite that I must not impose my view of how I would have decided the appeal for what the FtT decided.

### **Decision on error of law**

17. I conclude that there are no errors of law in the FtT's decision. Therefore the Secretary of State's challenge fails and the decision of the First-tier Tribunal shall stand.

### **Notice of Decision**

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

**The anonymity directions continue to apply.**

Signed J. Keith

Date: 24<sup>th</sup> June 2022

Upper Tribunal Judge Keith