



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

**Appeal Number:
RP/00018/2018**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 14 June 2022**

**Decision & Reasons
Promulgated
On the 06 October 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ASJA-S
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rutherford instructed by Duncan Lewis & Co, Solicitors.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a citizen of Somalia born on 1 September 1960, appealed a decision of the Secretary of State dated 4 January 2018 to revoke his refugee status, refuse his claim for international protection, and/or for leave to remain on human rights grounds.

2. The appellant's appeal initially came before First-tier Tribunal Judge Robertson on 21 August 2018 who found that the appellant had rebutted the presumption under section 72, that the Secretary of State had not established that the appellant's refugee status should be revoked, and that the appellant will be subject to Article 3 risk if returned to Somalia based on his mental health due to the likelihood of him living in an internally displaced person's camp. That decision was set aside by the Upper Tribunal on 19 November 2018 on the basis it was found Judge Robertson had erred in finding that the Article 3 threshold had been met on mental health grounds and the law on conditions in Somalian IDP camps confirmed that they would not meet the article 3 threshold.
3. The appeal was remitted and heard by First-tier Tribunal Judge Moan who in a decision promulgated on 5 March 2020 dismissed the appellant's appeal on human rights grounds pursuant to article 8 ECHR.
4. The appellant was granted permission to appeal, and the matter came before Upper Tribunal Judge Rimington on 6 October 2020. In her determination Judge Rimington noted that in addition to the initial grounds an application was made to amend to submit a third ground asserting that the decision of Judge Moan was vitiated by legal error in respect of the Article 3 ECHR claim on the basis of a contention that Judge Moan had failed to properly consider the appellant's Article 3 ECHR health claim.
5. Mr Howells, the Senior Home Office Presenting Officer who appeared before Judge Rimington, conceded that First-tier Tribunal Judge Moan's determination should be set aside particularly in relation to Ground 1 which alleged a breach of natural justice on the basis of a claim the appellant's representative before Judge Moan had been negligent and/or failed to competently represent the appellant and did not have any authority from either the appellant or his instructing solicitors to concede issues relating to the cessation of refugee status and/or Article 3 of the ECHR, resulting in the appeal being dismissed without important arguments being heard.
6. Judge Rimington at [20] of her decision noted:
 20. I made these observations. The written grounds of appeal dated 4 January 2018 clearly appealed the decision made by the Secretary of State of January 2018 on the basis of (i) the decision to refuse/cease the appellant's protection claim, (ii) the decision to refuse the appellant's human rights claim, (iii) the decision to cease the appellant's refugee status dated 20 November 2015. I emphasise that First-tier Tribunal Judge Robertson's decision set aside but the findings on Section 72 certificate were preserved by Upper Tribunal Judge Clive Lane. Judge Robertson explored the appeal under the Refugee Convention, Article 3, Article 15(c) and under Article 8.
 21. First-tier Tribunal Judge Moan determine that only Article 8 needed to be considered but in fact I have identified they

were written grounds of appeal which encompassed international protection grounds and Article 3.

7. Directions were given by the Tribunal requiring the parties to file further evidence in the following terms:
 2. The appellant shall no less than 14 days before the resumed hearing file and serve:
 - a. A schedule of the issues that the appellant will invite the Tribunal to address at the resumed hearing;
 - b. a skeleton argument setting out, with precision, the grounds of appeal relied upon by reference to the relevant evidence as set out in the consolidated hearing bundle and relevant authorities. Where the skeleton argument refers to particular evidence, the skeleton argument will identify the reference to that evidence or document in the consolidated trial bundle.
 3. The respondent shall file and serve a skeleton argument / position statement in reply no less than 7 days before the resumed hearing.
8. The Secretary of State of her position statement prior to that been filed by the appellant which was not provided in a manner anticipated by the directions, albeit for understandable reasons.
9. The Secretary of State's position is set out in the following terms:

Dear Judge,

Re: Mr Ahmed Sharif Jama-Al Sharif (1.9.1960) Somalia

Our Ref: S1171141

Appeal Ref: RP/00018/2018

Reps

Ref: N/K

UT Hearing (14.6.2022- Birmingham CJC)- SSHD Position Statement

Background:

The SSHD was directed [16.12.2021] to serve a skeleton argument /position statement seven days pre-hearing.

The Error-of-Law (E-o-L) decision of UTJ Rimington [20.10.2020] set aside the decision of FTTJ Moan for retained re-hearing by the UT [28] albeit with s72 findings made previously by FTTJ Robertson seemingly preserved [20].

The Appellant served a consolidated bundle (CB) for the re-hearing [13.8.2021] running to 429 pages; hereafter referred to as **CB [page reference/paragraph]**.

Subsequent to the E-o-L hearing there have been two relevant reported decisions:

- OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC)

1. In an Article 3 "living conditions" case, there must be a causal link between the Secretary of State's removal decision and any "intense suffering" feared by the returnee. This includes a requirement for

temporal proximity between the removal decision and any "intense suffering" of which the returnee claims to be at real risk. This reflects the requirement in Paposhvili [2017] Imm AR 867 for intense suffering to be "serious, rapid and irreversible" in order to engage the returning State's obligations under Article 3 ECHR. A returnee fearing "intense suffering" on account of their prospective living conditions at some unknown point in the future is unlikely to be able to attribute responsibility for those living conditions to the Secretary of State, for to do so would be speculative.

Country Guidance

2. The country guidance given in paragraph 407 of MOJ (replicated at paragraphs (ii) to (x) of the headnote to MOJ) remains applicable.

3. We give the following additional country guidance which goes to the assessment of all the circumstances of a returnee's case, as required by MOJ at paragraph 407(h).

4. The Reer Hamar are a senior minority clan whose ancient heritage in Mogadishu has placed it in a comparatively advantageous position compared to other minority clans. Strategic marriage alliances into dominant clans has strengthened the overall standing and influence of the Reer Hamar. There are no reports of the Reer Hamar living in IDP camps and it would be unusual for a member of the clan to do so.

5. Somali culture is such that family and social links are, in general, retained between the diaspora and those living in Somalia. Somali family networks are very extensive and the social ties between different branches of the family are very tight. A returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact.

6. In-country assistance from a returnee's clan or network is not necessarily contingent upon the returnee having personally made remittances as a member of the diaspora. Relevant factors include whether a member of the returnee's household made remittances, and the returnee's ability to have sent remittances before their return.

7. A guarantor is not required for hotel rooms. Basic but adequate hotel accommodation is available for a nightly fee of around 25USD. The Secretary of State's Facilitated Returns Scheme will be sufficient to fund a returnee's initial reception in Mogadishu for up to several weeks, while the returnee establishes or reconnects with their network or finds a guarantor. Taxis are available to take returnees from the airport to their hotel.

8. The economic boom continues with the consequence that casual and day labour positions are available. A guarantor may be required to vouch for some employed positions, although a guarantor is not likely to be required for self-employed positions, given the number of recent arrivals who have secured or crafted roles in the informal economy.

9. A guarantor may be required to vouch for prospective tenants in the city. In the accommodation context, the term 'guarantor' is broad, and encompasses vouching for the individual concerned, rather than assuming legal obligations as part of a formal land transaction.

Adequate rooms are available to rent in the region of 40USD to 150USD per month in conditions that would not, without more, amount to a breach of Article 3 ECHR.

10. There is a spectrum of conditions across the IDP camps; some remain as they were at the time of MOJ, whereas there has been durable positive change in a significant number of others. Many camps now feature material conditions that are adequate by Somali standards. The living conditions in the worst IDP camps will be dire on account of their overcrowding, the prevalence of disease, the destitution of their residents, the unsanitary conditions, the lack of accessible services and the exposure to the risk of crime.

11. The extent to which the Secretary of State may properly be held to be responsible for exposing a returnee to intense suffering which may in time arise as a result of such conditions turns on factors that include whether, upon arrival in Mogadishu, the returnee would be without any prospect of initial accommodation, support or another base from which to begin to establish themselves in the city.

12. There will need to be a careful assessment of all the circumstances of the particular individual in order to ascertain the Article 3, humanitarian protection or internal relocation implications of an individual's return.

13. If there are particular features of an individual returnee's circumstances or characteristics that mean that there are substantial grounds to conclude that there will be a real risk that, notwithstanding the availability of the Facilitated Returns Scheme and the other means available to a returnee of establishing themselves in Mogadishu, residence in an IDP camp or informal settlement will be reasonably likely, a careful consideration of all the circumstances will be required in order to determine whether their return will entail a real risk of Article 3 being breached. Such cases are likely to be rare, in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps.

14. It will only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which would be reasonable for internal relocation purposes.

15. There is some mental health provision in Mogadishu. Means-tested anti-psychotic medication is available.

16. Hard drugs are not readily available in Mogadishu, and the focus of substance abuse is khat, cannabis, alcohol and tobacco. It is not reasonably likely that an ordinary returnee, without significant means or pre-existing connections to criminal elements in Mogadishu, would be able to procure hard drugs, such as heroin and cocaine, upon their return.

Other country guidance given by MOJ

17. The country guidance given at paragraph 408 of MOJ ((xi) of the headnote) is replaced with the country guidance at paragraph (14), above. Paragraph 425 of MOJ ((xii) of the headnote) should be read as though the reference to "having to live in conditions that will fall below

acceptable humanitarian standards" were a reference to "living in circumstances falling below that which would be reasonable for internal relocation purposes".

And Ainte (material deprivation – Art 3 – AM (Zimbabwe)) [2021] UKUT 00203 (IAC):

(i) Said [2016] EWCA Civ 442 is not to be read to exclude the possibility that Article 3 ECHR could be engaged by conditions of extreme material deprivation. Factors to be considered include the location where the harm arises, and whether it results from deliberate action or omission.

(ii) In cases where the material deprivation is not intentionally caused the threshold is the modified N test set out in AM (Zimbabwe) [2020] UKSC 17. The question will be whether conditions are such that there is a real risk that the individual concerned will be exposed to intense suffering or a significant reduction in life expectancy.

(iii) The Qualification Directive continues to have direct effect following the UK withdrawal from the EU.

Key Points:

1. The SSHD will ask little weight be attached to the expert report of Professor Markus Hohne (13.2.2020) where it contradicts the findings/guidance of the subsequent binding authority of OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC).
2. Whilst the Appellant claimed in his WS of 4.2.2022 [**CB253- Para 37**] that his former wife and daughters live on the Ethiopian side of the border [see also **CB278- Para 13**] he has also given evidence that they had previously returned to reside in Mogadishu during the Covid-19 pandemic [**CB290- Para 49**].
3. As regards the presence and location of other family members the Appellant [**CB252- Para 35/36**] he claims an inability to contact his siblings notwithstanding his ability to contact his father [**CB252-Para 35**-“*I have very little contact with him*”].
4. The SSHD does not accept at this time that the Appellant would be without potential family support within Somalia or via remittances from family abroad in light of headnote 5 of ‘OA’ (set out above).
5. The Appellant’s ability to access mental health treatment [**CB291- Para 56, CB292- Para 59**] may be informed by the nature and extent of family support found to be available noting headnote 15 of ‘OA’ that there is some mental health provision in Mogadishu and *means-tested* anti-psychotic medication is available. The Appellant having ‘good insight into his mental disorder’ (**CB293- Para 62**, see also **CB291-Para 54**).
6. The SSHD notes that the Appellant was recalled to Tamarind medium secure unit [15.12.2020], after only a week in a more independent property and despite apparent compliance with his treatment regime [**CB285-286 Para 33-35**].
7. The SSHD will invite the Tribunal in light of the Appellant’s risk of relapse [**CB291- Para 55**] even when receiving treatment culminating in a need for recall to re-consider whether s72 should apply in terms of the Appellant posing a ‘real risk’ of serious harm.

The SSHD will contend that his offending is linked to his mental health [**CB292- Para 57**] which is prone to relapse and whilst there may have been no recent offending the risk remains 'real', the consequences may be serious and need not be imminent.

8. The appeal remains opposed.

NB- the SSHD notes the Representative's email of 6.6.2022 providing reasons for the delay in the Appellant's skeleton argument. The SSHD has therefore drafted this position statement without sight of that to comply with directions as they stand. Due to pre-booked annual leave (10th- 14th June) the author is unable to await the proposed revised service date of 10.6.2022.

As will be apparent from the above the author shall not be presenting the appeal on 14th June and would therefore direct any correspondence to UTDirections@homeoffice.gov.uk

Yours Sincerely,

Mr C N Bates (Senior Presenting Officer)
SAT (Manchester POU)

- 10.** The appellant's position was set out in the skeleton argument dated 10 June 2022 drafted by Mr Rutherford. The appellant's assertion he could not return to Somalia is repeated for the following reasons:
- a) The situation in Somalia has not changed to such an extent that it can be said that there is a fundamental and durable change which justifies the cessation of his refugee status.
 - b) Further and alternatively that due to his personal is likely to find himself living in conditions which will breach Article 3 ECHR.
 - c) In addition the appellant's removal will breach Article 3 ECHR on health grounds.
 - d) Finally, his removal will breach Article 8 ECHR on the basis is asserted that on the facts of this case there are very compelling circumstances which outweigh the public interest in his deportation.
- 11.** It is not disputed the appellant is a foreign criminal law or that he is a person who is very unwell.
- 12.** There are within being appellant's appeal bundle a number of reports from medical professionals, including from Dr Rajesh Malhokar a Consultant Forensic Psychiatrist. The first such report is dated 20 September 2017 and is described as being a psychiatric report for the First-tier Tribunal prepared by Dr Kamila Haider. That report contains a diagnosis for the appellant of F317 Bipolar Disorder (most recent episode of manic with psychotic symptoms).
- 13.** Dr Haidar in relation to the appellant's past psychiatric history wrote:

7. **Past Psychiatric History**

- 7.1 It has been noted that he has been referred on multiple occasions from a custodial setting to mental health services and there have been concerns regarding his mental health in a custodial setting, but he has never been formally assessed by community mental health services. ASJA-S does not have any past history of admissions to psychiatric hospital.
- 7.2 By 1 November 2012 he was noted to be throwing objects from his cell and also flooding out his cell. On 2 November 2012 he was noted to be elated in mood. On 4 November 2012 it was noted that he was involved in an incident where superficial cuts were noted to the forehead of an officer and a further officer received a painful back following restraining him. He also continued pressing his bell. On 6 November 2012 he was declared fit by Dr Russell to attend court and there was liaison with Dr Kennedy at Meadowcroft requesting a mental health assessment for his transfer to Meadowcroft Intensive Care Unit.

- 14.** The report refers to the appellant being admitted to the Reaside Clinic, a specialist mental health unit in Birmingham, on 7 November 2012 after an alleged assault on prison officers at HMP Birmingham and increased concerns in the prison regarding his mental state. The appellant was detained under Section 47/49 of the Mental Health Act. At section 8.3 of the report, under the heading "Progress at Reaside Clinic" it is written:

- 8.3 When assessed by Dr Russell prior to his transfer to Reaside Clinic his conversation was "quite grandiose. He spoke about his family in Denmark having millions of pounds. He also made reference to all of his papers which is a warning sign for him that he is unwell". Dr Russell also noted that his paranoid beliefs extended to that people were trying to kill him. He was noted to present as very loud in a disinhibited manner he had very little sleep the previous night and was banging constantly on the cell hatchway. He had no insight into the nature of his difficulties and continued to refuse medication. Dr Russell formed the impression that he was presenting as being manic and required urgent admission to hospital.

- 15.** The report records that by the first week of December 2021, as a result of treatment within the clinic environment, including depot medication, the appellant's mental state gradually improved although further concerns are still recorded.
- 16.** The appellant's forensic history is set out at section 11 of the report, which details his conviction in the following terms:

11 **Forensic History**

- 11.1 ASJA-S has previous convictions as follows:

2004

- Affray for which he received a Community Rehabilitation Order
- Use of disorderly behaviour for which he was fined
- Drunken disorderly behaviour for which he was fined

2005

- Destroying damaging property for which he was fined.
- Common assault for which he imprisoned for 10 weeks.
- Destroying damaging property and failing to surrender to custody for which he was imprisoned for four weeks and one week respectively.
- Failing to surrender to custody and imprisoned for 42 days.

2006

- Using threatening, insulting words or behaviour with intent to cause fear for which he was imprisoned for 18 weeks and 61 days on remand.
- Using threatening, insulting words or behaviour with intent to cause fear for which he was imprisoned for 18 weeks.
- Disorderly behaviour and failing to surrender to custody and fined £100.
- Sexual assault by intentional touch of a female. No penetration. Imprisoned for four months.
- Damaging destroying property. Imprisoned for four months.

2007

- Drunk and disorderly. Fined £100.
- Disorderly behaviour or threatening, abusive and insulting words. Conditional Discharge for 12 months.
- Failing to surrender to custody at appointed time. Imprisoned for two weeks consecutively. What
- Used to disorderly behaviour or threatening, abusive or insulting words. Fined £150
- Used to disorderly behaviour or threatening, abusive or insulting words. Fined £150.
- Convicted of failing to surrender to custody at appointed time. Imprisoned for two weeks.
- Breach of Conditional Discharge. Fined £150.
- Drunk and disorderly. Fined £100.
- Common assault. Imprisoned for three months.
- Use of disorderly behaviour. He was fined £100.

2008

- Disorderly behaviour or threatening, insulting and abusive words. Conditional Discharge
- Used disorderly behaviour. Imprisonment for 15 months.

- Sexual assault intentional touching. He was imprisoned for 15 months.

2009

- Drunk and disorderly behaviour. Fined £200.
- Breach of Antisocial Behaviour Order. Fined £100.
- Theft by shoplifting and racially, threatening, abusive or insulting words Conditional Discharge for 24 months.
- Racially or religiously aggravated harassment, alarm or distress and failing to comply with notification requirements. 42 days imprisonment.
- Breach of Antisocial Behaviour Order. Fined £100.
- Used disorderly behaviour or threatening, abusive or insulting words. Fined £100.
- Used to disorderly behaviour. Fined £50.

2010

- Used to disorderly behaviour and supplied false information. Imprisonment for 12 weeks.
- Sexual assault and intentional touching. Imprisoned for 22 weeks.
- Used disorderly behaviour. Fined £100.
- Used disorderly behaviour. Fined £100.
- Assault on a constable, battery and a further assault on a constable. Imprisoned for 18 weeks.
- Used to disorderly behaviour. One day detention.
- Drunk and disorderly. Fine £65.
- Failing to comply with notification changes. Imprisoned for 12 weeks.

2011

- Use of disorderly behaviour. Fined £100.
- Drunk and disorderly, racially aggravated harassment. Fined £60.
- Battery. Imprisoned for 11 weeks.
- April 2011 - Failing to surrender to custody.
- June 2011 - Breach of Antisocial Behaviour Order. Fined £50.
- September 2011 - Breach of Antisocial Behaviour Order. Imprisoned for two months.
- He also has further convictions for breach of Antisocial Behaviour Order and imprisoned totalling 48 weeks.
- In February 2012 convicted of breach of an Antisocial Behaviour Order twice and imprisoned for 16 and 20 weeks.
- In March 2012 convicted of use of disorderly behaviour or threatening, abusive or insulting words and fined £100.
- In September 2012 convicted of breach of an Antisocial Behaviour Order and received a 12 month sentence.

12 Index Offence

12.1 I understand that on 7 November 2012 there was an incident at HMP Birmingham where he attacked several prison officers with a broken piece of glass, which he had hidden from an earlier breakage of a television which he carried out. This resulted in serious injuries to at least three members of staff.

- 17.** As a result of the index offence ASJA-S was charged and convicted of two charges of wounding with intent and two charges of assault and made subject to section 37/41 of the Mental Health Act.
- 18.** In the most recent report, an addendum report prepared by Dr Moholkar, dated 5 August 2021, comment has been made in relation to why ASJA-S was recalled to hospital and his conditional discharge and why he remained in the Reaside clinic from December 2022 June 2021, ASJA-S current risk, and what will happen to ASJA-S if he does not receive the treatment he is on and whether a lower level of treatment would be sufficient.
- 19.** ASJA-S was recalled to hospital as a result of a relapse of his mental illness despite his continuing to take the prescribed medication. ASJA-S was moved from highly supported accommodation to less supported accommodation which the report indicates may have been a stressful situation for him. I note in his own statement that ASJA-S describes the very negative impact of stress upon him and how his mental health deteriorates if he is faced with a stressful environment. The negative impact of stress was also raised by Ms Rutherford at the hearing who indicated that there had been a recent further assessment by the treating medical team.
- 20.** The impact of the transfer to less supported accommodation resulted in ASJA-S demonstrating early warning signs of his mental illness described as being elated mood, pressure of speech, flight of ideas (jumping from one idea to another idea quickly), some paranoia and irritability. The decision to recall him was based on the fragility of his mental condition, previous history of serious violence when ill and potential risk to other people if he continues to get worse.
- 21.** In relation to the question of what would happen if ASJA-S did not get the current treatment and whether a lower level of treatment will be sufficient it is written:
 8. During his first hospital admission, after his index offence, it was very difficult to gain control of ASJA-S mental illness due to its severity. Ultimately, he settled down on a combination of mood stabiliser (Sodium Valproate) and antipsychotic Depot injection (Risperidone). Apart from slight changes in the dose of Risperidone Depot injection, there have been no changes in his medication since. Despite being compliant to treatment, the recent relapse indicated that ASJA-S mental illness remained fragile, susceptible to any stress. Therefore, it would be ill-advised to make further changes in his medication regime as this would increase the risk of a relapse. Also, the Depot injection he is on, is the least likely to cause side effects such as weight gain which has been a big problem for ASJA-S.

9. If ASJA-S was started on a lower level of treatment (oral medications or injections, this would certainly risk a relapse of his mental illness which would in turn, escalate the risk to other people from him. He is closely monitored by staff at his accommodation and by my community team. If this was not available, I would have doubts about his compliance to treatment. Any relapse is likely to be rapid and severe. Therefore, I do not believe the lower level of treatment will be clinically advisable or sufficient to keep him well in the community.

22. In relation to the assessment of current risk it is written:

10. The current risk to others and risk to self is low. This is because ASJA-S has remained compliant with his current treatment and has cooperated with changes of dosages of his injection. He engages well with our community mental health team including myself and with the staff at his accommodation provider. He has remained polite and calm and has not been in conflict with anybody in the community so far. He has stayed away from illicit drugs and is drug tested on a regular basis. His drug tests have returned negative.
11. He has also suffered from significant physical health problems, such as problems with his knees and obesity, for which he has continued to receive treatment from his GP. He does not appear to be suffering from a Personality Disorder. His illness has now responded very well to treatment and he is currently not experiencing any symptoms. This would indicate that his risk to other people is quite low.

23. The nature of the illness described by Dr Holker is clearly set out in an earlier report dated 18 May 2021 in the following terms:

OPINION AND RECOMMENDATIONS (SIC)

55. ASJA-S suffers from a serious mental disorder - Schizoaffective Disorder. The nature of his mental disorder is chronic and relapsing. His disorder has responded well to treatment during his current admission to Reaside Clinic.
56. The treatment of his mental disorder involves medication - Sodium Valproate and a Depot antipsychotic injection - Risperdal Consta every two weeks. His response to treatment and his mental state will need to be frequently monitored after his conditional discharge into the community. Weekly or fortnightly follow-up by a community psychiatric nurse and by social worker is necessary. Three monthly Psychiatric reviews will be required.
57. Although he is currently stable, his mental state remains fragile, and he may experience a relapse of his symptoms if he experienced a high degree of stress. Although he has a significant offending history, he has not exhibited any antisocial behaviour or committed any offence since receiving a Hospital Order in 2013. This indicated that his mental illness played a significant role in his offending behaviour.
58. When in the community, ASJA-S requires intensive follow-up a specialist forensic mental health team to monitor his mental state, his risks and his compliance with treatment. Formal conditions

laid out in his conditional discharge and oversight by the Ministry of Justice and power of recall are essential to keep him safe in the community.

59 I understand that health services in Somalia are poorly equipped to treat someone with a severe and complex mental disorder such as ASJA-S. In particular, injection Risperdal Consta is quite expensive (around £120 per injection). I have my doubts if this medication is available in Somalia. Even if it was available, I have my doubts that ASJA-S would be able to afford this. It is essential that he stays on his current medication regime to remain well in the community. There is a very high risk of relapse and his risks would escalate further if he were not to receive specialist mental health follow-up in the community where he was not given the medication he is on.

60 Therefore, in summary, I believe deportation to Somalia will be detrimental to ASJA-S mental health and it is almost certain that he would experience acute symptoms of his mental illness if he was deported.

24. It is the opinion of the medical experts that the current prognosis of ASJA-S case is good as there is an indication of a good response to treatment, good engagement with his mental health team, lack of offending behaviour after treatment was initiated, good insight into his mental disorder and remorse about previous offending, and abstinence from substance abuse.
25. The evidence shows is a direct correlation between ASJA-S offending behaviour and his then undiagnosed mental illness and a greater awareness by way of insight into his mental disorder and the positive impact of treatment since the making of the Hospital Order.
26. The early reports refer to the fact that ASJA-S did not accept he was mentally ill and concerns about his compliance with medication in the past. It is interesting to note that one of the key drugs with which the appellant has been treated, Risperdal Consta, an antipsychotic medication, is being administered in Depot format as this takes away any risk of ASJA-S not taking such medication or believing that as a result of the medication he is given he is now well, does not need to continue the medication, and therefore stops taking it. It is known that in such a situation an individual can deteriorate very quickly becoming very ill until such medication is re-administered.

Discussion

27. In relation to the section 72 certificate, it was found that the presumption the appellant is a danger to the community had been rebutted in the determination of First-tier Tribunal Judge Robertson. That remained the position before Upper Tribunal Judge Rimington.
28. The fact ASJA-S has been made the subject of a Hospital Order does not mean that his position has altered to the extent that he has become a danger to the community.

- 29.** The reason for his admission, the identification of his severe mental health issues, treatment regime, and prognosis as to both the effectiveness of treatment and risk to himself and others in the community, is clearly set out in the medical evidence. The more recent addendum report explains the reasons for his recall to hospital in December 2020 and the reasons why he remained in hospital until June 2021. The addendum report sets out the procedure to be followed before an individual in a position such as that of ASJA-S can be released which includes escorted visits followed by unescorted visits and then an overnight period of stay. There is also the period of delay caused by Covid-19.
- 30.** Whilst Mr Bates, in the Secretary of State's position statement, refers to risk of relapse the evidence available at the date of this hearing, whilst accepting that there is a clear link between ASJA-S offending and his mental health, does not support a finding that the section 72 exclusion should apply so long as ASJA-S continues to engage with the medical professionals and to receive his medication as he has for a considerable period now and will continue to do so if permitted to remain in the United Kingdom. It is not just the prescribed drugs that assist ASJA-S but also the total package involving community psychiatric services and the appointed social worker.
- 31.** It is not appropriate to find that the section 72 certificate should be reinstated on the facts.
- 32.** The appellant was granted refugee status on the basis that he faced a real risk on return to Somalia as a member of the Ashraf clan back in 2002. The appellant in support of his appeal against the revocation of his refugee status places reliance upon a country report prepared by Dr Hoehne. I find there is merit in the submission made by the Secretary of State that where the opinion of Dr Hohne contradicts the findings/guidance in the more recent country guidance decision of OA, greater weight should be given to those findings.
- 33.** It cannot be disputed that there have been considerable sustainable changes in Somalia since the date that the appellant left.
- 34.** The position of clan members within Mogadishu was reviewed by the Upper Tribunal in MOJ (Return to Mogadishu) CG [2014] UKUT 00442 in which it was held that *"The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members"*.
- 35.** Paragraph 338A of the Immigration Rules reads:
- 338A. A person's grant of refugee status under paragraph 334 shall be revoked or not renewed if any of paragraphs 339A to 339AB apply. A person's grant of refugee status under paragraph 334 may be revoked or not renewed if paragraph 339AC applies.
- 36.** Paragraph 339 A reads:

Refugee Convention ceases to apply (cessation)

339A. This paragraph applies when the Secretary of State is satisfied that one or more of the following applies:

- (i) they have voluntarily re-availed themselves of the protection of the country of nationality;
- (ii) having lost their nationality, they have voluntarily re-acquired it;
- (iii) they have acquired a new nationality, and enjoy the protection of the country of their new nationality;
- (iv) they have voluntarily re-established themselves in the country which they left or outside which they remained owing to a fear of persecution;
- (v) they can no longer, because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, continue to refuse to avail themselves of the protection of the country of nationality; or
- (vi) being a stateless person with no nationality, they are able, because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, to return to the country of former habitual residence

In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

37. I find the evidence does not support the appellant's argument that the changes that have occurred within Mogadishu in particular, are of a temporary nature or that any subjective fear of persecution on return, based upon his clan membership, is objectively well-founded. I do not find the appellant has established an entitlement to be recognised as a refugee or to a grant of humanitarian protection.

38. Paragraph 339 C of the Immigration Rules reads:

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
- (ii) they do not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of origin, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country; and
- (iv) they are not excluded from a grant of humanitarian protection.

339CA. For the purposes of paragraph 339C, serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of origin; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

- 39.** Whilst the appellant satisfies the first two conditions is not shown he can meet (iii) on the facts.
- 40.** The Key aspect of this appeal, as discussed in court, is article 3 ECHR with specific reference to the appellant's medical situation.
- 41.** In OA at [346] to [352] it was found:

MENTAL HEALTHCARE AND ILLICIT SUBSTANCES

346. Somalia consists of three different administrative zones, each with its own health administration: South Central, Somaliland and Puntland. Mogadishu sits within the South Central region. The Danish Immigration Service's November 2020 report, Somalia: Health system states that the country's fragile governance has led to a lack of overall, centralised health governance, with the effect that healthcare services are offered by multiple actors, including the federal state, local authorities, for-profit private entrepreneurs, international development partners and NGOs. The majority of health facilities in Somalia are located in Mogadishu. Their provision is limited; none is said to provide the full range of secondary or tertiary care. A number of private facilities offer specialised and sometimes advanced treatment, but may be out of reach of the affordability of many ordinary Somalis.

347. We do not propose to summarise the contents of the healthcare-related background materials; the detail involved would be unnecessarily unwieldy, and would be unlikely to cater for the inherently case-specific considerations likely to arise in many health-based cases, which will have to be considered on evidence specific to the proceedings. We highlight here the main themes emerging from the materials to which we were taken.

348. The TANA Report of Study Findings, July and September 2020, Medical Region of Origin Information for Somalia: Mogadishu outlines the provision made by six private and public medical facilities in Mogadishu. There are two main hospitals in Mogadishu. Benadir Hospital is a university hospital, and was described by the FIS in 2018 as "well equipped". It is said to undertake basic operations and to be unable to provide more advanced treatment, such as for cancer. The Somali Turkish Recep Tayyip Erdogan Training and Research Hospital, known as the "Turkish Hospital", is said to be considered by the UN to be the leading hospital in the country as far as capacity is concerned. It is co-managed by the Somali and Turkish authorities. The Ladnan Hospital is fully private, requiring patients to fund their care, save for Thursdays, when doctor consultations are free for the poor. The Forlanini Hospital treats tuberculosis, mental health and nutrition. The Wardi hospital caters for the poorest of the city, including IDPs.

Pharmacies are also available in the city, although Mogadishuites are reported to prefer to visit a doctor at a hospital.

349. We accept Mr Hansen's submissions that there is limited but nonetheless meaningful provision of mental health medication in Mogadishu; the evidence demonstrates that mental health medication has been available for some time, and that some, albeit limited, provision is available for those with mental health conditions. An August 2014 Landinfo report, Somalia: Medical treatment and medication, records that in 2009 the World Health Organisation cited an overview of available drugs prepared by the owner of the Habeb Hospital stating that chlorpromazine was available in the country.
350. The Forlanini Hospital has a mental health centre with a staff of 32 and 100 inpatient beds. According to 2020 TANA Medical Region of Origin Information for Somalia report referred to above, the staff include a specialist psychiatric doctor, a psychologist, a general practitioner, specialist nurses, a pharmacist and a lab technician. The TANA report records that questions have been raised about the prospect of physical force being used in the hospital, but that the study upon which the report is based found no sign of any rough treatments being used in the hospital. A doctor interviewed by the authors of the report said that only sedatives and medications are used to treat the patients, and that the condition of most improves immediately upon the commencement of the treatment. Elsewhere the report states that Olanzapine is available at four hospitals; chlorpromazine is available in at least three; haloperidol is available in five; risperidone in at least four; and sertraline in at least two hospitals. At Forlanini, patients who cannot afford the consultation fees are treated free of charge, including 'drug abusers' referred by the police. The hospital treats those from poor socio-economic groups, and, of those who do pay on their first visit, 60% are not charged any fees for their second visit.
351. TANA is a respected organisation. We see no reason not to accept the product of this fact-finding report. We accept its contents and make findings accordingly.
352. Ms Harper's written evidence addressed the Habeb Public Mental Hospital in Mogadishu, which provides some mental health services. Although Ms Harper dealt with the Habeb Hospital in the context of addressing 'cultural rehabilitation centres', she specifically stated that it was not a 'cultural rehabilitation centre' of the sort outlined in the previous section, but rather that it sought to treat mental illnesses arising from drug abuse. The manager of the Habeb Hospital, Mr Omar Ahmed, was one of Ms El Grew's interviewees in her second report. Ms Harper writes in her answer to question 74 posed by the Secretary of State that conditions in the hospital were "poor" (with no further elaboration) but that it has a "no chains" policy, and that it had prescribed Olanzapine to its patients in the past.
- 42.** What the evidence does not show is that the holistic care regime in place for ASJA-S in the UK is available in Somalia. Whilst there is some medication it is clear that that recommended for meeting ASJA-S needs is not available, or affordable.

- 43.** I accept that a comparison between that available in the UK and that available in Somalia is not the correct test per se, and the advocates quite correctly focused their submissions upon the relevant case law.
- 44.** The decision of the Supreme Court in *AM (Zimbabwe)* ruled that the correct test to be applied in a case such as this is that set out in *Paposhvili v Belgium* (Application No. 41738/10) (13 December 2016) [2017] Imm. A.R. 867, in that the appellant was required to establish a real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, to his being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.
- 45.** Mr Williams, in his submissions, focused upon the second aspect of the test which he stated was not met.
- 46.** The evidence clearly supports the findings that there is an absence of appropriate treatment in Mogadishu to meet ASJA-S specific needs.
- 47.** I also find that there is clear evidence that as a result of there being no appropriate treatment or ASJA-S being exposed to a lower standard of treatment, that he will suffer a serious, rapid and irreversible decline in his state of mental health. I also find that he faces that the prospects of return and actual return, even if the current treatment regime is maintained there is a real risk of serious decline as a result of the impact of the stress of the situation the appellant will face.
- 48.** I find there is merit, based upon the evidence, that the economic reality facing the appellant who has been out of Mogadishu for a considerable period of time, with no credible evidence of family in Mogadishu or a network that he is able to turn to, or evidence that he realistically will be able to secure employment especially if he becomes ill as a result of being unable to obtain required medical treatment to keep up him stable, of being able to afford the medication he will require.
- 49.** The second aspect of the test is that whether as a result of such decline in his state of health ASJA-S will experience intense suffering or a significant reduction in life expectancy.
- 50.** The use of the word “significant” in the context of the new criterion identified by the Court in *Paposhvili* means ‘substantial’.
- 51.** It is not made out that the impact upon ASJA-S as a result of a loss of or change to his medication will directly lead to a reduction in his life expectancy. The question is therefore whether he will experience intense suffering.
- 52.** Such a term refers to intense feelings of suffering, acute mental or physical pain. The evidence suggests ASJA-S when unwell exhibits signs of intense mental pain through torment, delusional beliefs, and psychosis; a term referring to “a severe mental disorder in which thought and emotions are so impaired that contact is lost with external reality”.

- 53.** ASJA-S offending history also shows that when he becomes unwell his conduct is such that he will pose a risk to others as well as himself which may in certain circumstances result in harmful repercussions.
- 54.** I have considered whether the appellant is entitled to be recognised as a refugee following the decision in DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC).
- 55.** I accept based upon the evidence that ASJA-S will qualify as a member of a Particular Social Group as such individuals will be viewed as being different in Mogadishu and that he shares a characteristic that cannot be changed. What is not made out is that as a result of being a member of the PSG ASJA-S will face persecution for this reason. I am therefore satisfied it has not been made out he is entitled to be recognised as a refugee on this basis.
- 56.** I do find, however, that when carefully assessing all his circumstances, it is clear that without the type of support that has been essential to enabling ASJA-S to function at the level that he currently is, and in light of there being no evidence of family support, no evidence of remittances from abroad. That he will realistically have no prospects of securing access to a livelihood on return, exposing him to having to live in circumstances falling below that which would be reasonable for internal relocation purposes, giving rise to a real risk in this case the breach of article 3 ECHR.
- 57.** Whilst the Facilitated Returns Scheme may enable individuals with lesser needs than ASJA-S to find accommodation and re-establish themselves the destructive and considerable impact of stress in this case means that the perception of Mogadishu as a place of relocation will have a catastrophic effect upon ASJA-S already very fragile mental health.
- 58.** This is therefore an appeal in which the facts genuinely support a finding that if returned to Mogadishu ASJA-S will find himself living in circumstances falling below that which it would be reasonable to expect him to do and where his continuing deterioration in his mental health will give him little prospect of being able to adequately re-establish himself anywhere within Somalia.
- 59.** I find ASJA-S has established he will face a real risk of being exposed to intense suffering as a result of his deteriorating mental health.
- 60.** As I allow the appeal pursuant to article 3 ECHR there is no scope for a proportionality assessment or need to consider article 8, as this is an absolute provision. What is important in this case, as is it also provides protection for the population of the whole in the UK, is that ASJA-S remains engaged with those providing him with the holistic support and mental health care that he so desperately requires to stay well.

Decision

- 61. I allow the appeal.**

Anonymity.

- 62.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.
- 63.** I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....

Upper Tribunal Judge Hanson
Dated 24 June 2022