



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004807

First-tier Tribunal No: PA/50997/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AM

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr. S. Walker, Senior Home Office Presenting Officer
For the Respondent: Mr. R. Toal, Counsel instructed by Wilson Solicitors LLP

Heard at Field House on 14 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

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.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Nightingale, (the "Judge"), dated 16 October 2023, in which she allowed AM's appeal against the Secretary of State's decision to refuse his human rights claim. The Secretary of State intends to deport AM to Somalia.

2. For the purposes of this decision I refer to AM as the appellant, and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
3. Given the evidence of the appellant's mental health and vulnerability, I have made an anonymity order.
4. Permission to appeal was granted by First-tier Tribunal Judge Parkes in a decision dated 10 March 2023 as follows:

“The grounds argue that the Judge failed to take into account the availability of clan support in Mogadishu, the Appellant's mother being from a majority clan sub-group and the findings in MOJ. It is also argued that the Judge erred in respect of the treatment of the Appellant against the decision in OA. It is asserted that the Judge did not address the evidence of the Appellant's family in Somalia and his contact with them (from the psychiatric report) and descended into the arena in suggesting a ground of appeal and allowing submissions regarding the lack of witnesses and possible explanations for their absence.

3. The appeal proceeded by way of submissions with Appellant's representative relying on Devaseelan and asserting that there had been no material change in Somalia so far as the Appellant's circumstances were concerned. At paragraph 34 the Judge accepted that the Appellant had contact with his cousin in Somalia and his brothers. She found the absence of family members from the appeal hearing significant but that could have been explained by other factors, the absence of the individuals or witness statements was neutral as a factor. The Judge's concern that the Appellant would not comply with his medication without active support and found that that would not be available in Somalia. With some hesitation it is arguable that the finding in paragraph 44 that the Appellant would be without effective support in Mogadishu is erroneous given the evidence of his clan and family contact there.

4. The grounds disclose arguable errors of law and permission to appeal is granted.”

5. There was no Rule 24 response.

The hearing

6. The respondent had not provided a bundle until late on the day prior to the hearing. This bundle did not contain all of the relevant documents, and I had some difficulty at the hearing in locating these as they were in different bundles. In addition to the bundle prepared for this appeal, I had before me the stitched hearing bundle from the First-tier Tribunal, the appellant's appeal bundle and the respondent's Review, neither of which were included in the First-tier Tribunal stitched hearing bundle. However, I was content that I had all of the necessary documents before me.
7. Mr. Walker relied on the grounds of appeal. I heard oral submissions from Mr. Toal. I reserved my decision.

Error of law

8. I find that grounds of appeal are not made out. In a careful and thorough decision the Judge has addressed all of the issues before her. Her findings were

open to her on the basis of the evidence before her. The grounds do not identify any material errors of law.

9. Ground 1 asserts that the Judge “has not taken into account the availability of clan support and protection available to the appellant on return to Mogadishu, Somalia”. First I note that the respondent has not demonstrated in the grounds of appeal how the availability of clan support would address the very significant needs of the appellant. There was a large amount of medical evidence before the Judge regarding the support that the appellant would need in order to avoid a relapse of his paranoid schizophrenia. Even if the Judge were to have erred, the respondent has not shown how it would be material.
10. As submitted by Mr. Toal, who took me to the Reasons for Refusal Letter, the Review, and Mr. Bassi’s submissions as set out by the Judge in her decision, the availability of clan support has not been raised by the respondent at any point prior to the grounds of appeal to the Upper Tribunal. In the Reasons for Refusal Letter (page 131 of the respondent’s bundle before the First-tier Tribunal), the respondent relied on the appellant having “extended family or family friends remaining in Mogadishu who could assist with your integration and family members in the United Kingdom would have the opportunity to provide financial assistance whilst you resettled in Somalia”. There was no reference to clan support. When considering the appellant’s mental health needs in the Review at [10] and [13] there is no reference to clan support being able to assist him.
11. At [21] of her decision the Judge set out Mr. Bassi’s submissions and the questions that he stated he would like to have asked the appellant had he given evidence. He did not submit that he would have asked him about his clan and how his clan could assist him on return to Somalia. At [22] the Judge records that Mr. Bassi submitted “there was no persecution of minority clans, there was a large diaspora returning to Mogadishu and an economic boom in the city and significant prospects for returnees to the country”. There was no submission that the appellant’s clan could provide a material contribution to address his particular individual circumstances.
12. Mr. Toal submitted that the respondent was now advancing a case in the grounds of appeal which he had “not troubled anyone with” prior to these grounds. He had not shown how support from the appellant’s clan was materially relevant given his circumstances.
13. I find that Ground 1 is not made out. The availability of clan support was never advanced by the respondent as a means for the appellant to be able to maintain his mental health or access support for his mental health. It was clear from the evidence before the Judge that the appellant would require significant support in order to prevent a relapse in his paranoid schizophrenia. The grounds do not address how the availability of clan support after an absence from Somalia of 28 years would be able to do this.
14. Ground 2 asserts that the Judge made “a misdirection of law in finding the appellant cannot return to Mogadishu without a real risk of being restrained with chains or suffering other ill-treatment due to his mental health issues”. It is asserted that she had departed from the country guidance in OA (Somalia) CG [2022] UKUT 33 (IAC).

15. I find that this ground is not made out. At [16] the Judge summarises the appellant's representative's submissions. She states:

"Mr Toal referred me to the reports, from page 25 of the appellant's bundle of the type of treatment people with mental illnesses could be subjected to in Somalia. Containment with chains was widespread. The First-tier Tribunal had noted, in 2014, that the authorities did detain people who are mentally disturbed, sometimes for six months and up to two years. At paragraph 25 of the first decision, the Tribunal accepted that the appellant ran the risk of being "stoned, chained or imprisoned" due to his mental health problems which were, the Tribunal had accepted, reasonably likely to suffer a relapse in Somalia. The respondent had taken no issue with that factual finding in either the refusal letter or in her review. OA did not deal with the chaining and detention of mentally ill people and, consequently, there was nothing new that could be relied upon by the respondent to go behind the finding made by the Tribunal. Page 48 of the appellant's bundle referred to the US State Department Report of 2022. It was noted by the US State Department Report as recently as 2022 that it was common for people with mental health issues to be chained to a tree. This was also referred to in the September 2022 UNHCR report. This was also referred to in the World Health Organisation report. People with recognised mental illnesses ran a real risk of treatment contrary to Article 3 of the ECHR."

16. She has referred to evidence which postdates OA which shows that the practice of chaining continues in Somalia. Mr. Toal referred me to the September 2022 UNHCR report - "International Protection Considerations with Regard to People Fleeing Somalia, September 2022". It refers to people with mental illnesses often being chained to trees (page 362 of the appellant's bundle). It states that people with mental disabilities "may be in need of international refugee protection".

17. At [23] of her decision the Judge set out the submissions of Mr. Bassi on this issue. He referred to the same UNHCR report:

"Mr Bassi asked me to note that the UNHCR had stated that individuals with mental health conditions "may be in need of international protection" but did not go so high as to say that everyone would need protection or that everyone would be chained or stoned if they had a mental health condition."

18. It was submitted that Mr. Bassi had not advanced an argument relating to OA. Further, the previous decision in 2014 had found that, given the appellant's particular circumstances and likely presentation, he was at real risk of being chained. No submissions were made either at the hearing in the First-tier Tribunal or in these grounds of appeal that there was anything wrong with that finding.

19. The Judge found at [41] and [42]:

"41. The First-tier Tribunal in 2014 also found that the treatment of those with mental health conditions in Somalia, including containment with chains, was reported to be prevalent in both urban and rural areas and was widespread regardless of gender. This was used as a locally accepted treatment in many health facilities. In addition, discrimination and stigmatisation, expressed through violent acts such as throwing of stones, represented the most common behaviour and attitudes towards the mentally ill. I am urged to find that this practice has ceased with the opening of some limited facilities for the treatment of mental health in Somalia. However, the up-to-date reports referred to by Mr Toal, including the 2022 US State Department Report and the 2022 Human Rights Watch Report, indicate that the practice of chaining up individuals is still regarded as an alternative to

medication. The evidence before the Tribunal in 2014 is repeated in the up-to-date evidence of the background situation in Somalia for those with mental health conditions. I find no reason to go behind the finding of the Tribunal in 2014 summarised at paragraph 10(28) that without medication and treatments, which he is unlikely to access, the appellant will display the symptoms detailed and faces a real risk being stoned, chained or imprisoned as a result. The Tribunal found “the appellant’s case is not simply about cessation of treatment in the UK and a naturally occurring illness taking force but it will lead to a worsening of his condition.”

42. I find nothing on the evidence which has been submitted that leads me to go behind the findings of the First-tier Tribunal in 2014 with regard to Article 3 of the ECHR.”

20. As submitted by Mr. Toal, I find that OA does not give any Country Guidance which is inconsistent with the finding of the Judge in relation to chaining. There is no reference in the reformulated Country Guidance to the risk of chaining for those with mental illnesses, as set out in OA at [22] and in the headnote. I was referred by Mr. Toal to the paragraphs of OA referred to in the grounds. These discuss cultural rehabilitation centres and a particular hospital in Mogadishu. They do not set out any general Country Guidance about the risk of being chained outside of these placements.
21. I find that Ground 2 is not made out. There is no relevant Country Guidance on the practice of chaining which the Judge was obliged to follow.
22. Ground 3 asserts that the Judge provided inadequate reasoning and “failed to note key facts and information within the documentary evidence when finding that the appellant would be without family or support on return to Mogadishu”.
23. I find first, as submitted by Mr. Toal, that this ground must be referring to family in the United Kingdom rather than in Somalia. There is nothing in the grounds of appeal which challenges the Judge’s finding at [33] that there was no reason to revisit the finding of the 2014 Tribunal which found that “the appellant has no family in Mogadishu for support and would be unable to work”.
24. Further, I find that the matters referred to at [3(b)] of the grounds of appeal were referred to by the Judge and set out in the decision. At [34] she states:

“34. I accept that the appellant has resumed some contact with his mother and, also, with a cousin named Ali who he claims supports him in the United Kingdom. That is a change to the situation in 2014. However, there was a specific finding that there was no evidence that the appellant’s brothers in the United Kingdom would be able or willing to support him in Mogadishu. The appellant appears, from the earlier decision, to have had some contact with his brothers in 2014 and there is nothing on the evidence before me which leads me to go behind the findings made with regard to their ability or willingness to support him. Indeed, there has been no appearance by any family member of this appellant to support him through this appeal notwithstanding his vulnerable mental health. There are no supportive statements or letters. I find this indicative of a lack of willingness or ability to provide him support in the United Kingdom and I find it highly unlikely that any family member would support him in Mogadishu if he were to return.”

25. At [42] she refers again to the appellant’s contact with his mother and cousin:

“42. I find nothing on the evidence which has been submitted that leads me to go behind the findings of the First-tier Tribunal in 2014 with regard to Article 3 of the

ECHR. Mr Bassi raised in his submissions the fact of the appellant's resumption of some relations with his mother and his cousin Ali. This was, of course, a matter which was canvassed in the reports before the respondent at the time of writing the review. No issue was raised in the review with regard to the family members becoming a source of support or help to the appellant on return to Mogadishu. Certainly, as I indicated to Mr Toal, I find the fact that no family member has written a letter of support or made a statement or attended the Tribunal to give evidence or even to support this appellant through his appeal hearing, is highly indicative of a lack of any real involvement to the extent that they would support him on his return to Somalia. I find a very real risk that that this appellant would be returned to Somalia where, I accept, he has no family members and I accept there is a real risk that he would receive no support, either emotional or financial, from those family members in the United Kingdom with who he has now regained contact."

26. The complaint at [3(b)] of the grounds of appeal is not made out. The Judge is aware of the family contact in the United Kingdom. She reasonably infers from the circumstances that the Appellant would not have support from these family members on return to Somalia. There is no error of law in this finding.
27. Further, even if she had erred, it could not have been material as the support from family members in the United Kingdom would not have made a material difference given the appellant's acute needs and the support that he would need in Somalia in order to avoid a relapse in his mental health. The grounds of appeal do not explain how family in the United Kingdom could address these needs and provide the treatment, support and close monitoring of his mental health in Somalia.
28. Mr. Toal additionally submitted that the respondent had diminished the appellant's relationship with family members in the United Kingdom for the purposes of Article 8. In the Reasons for Refusal Letter it states "With respect to family life, you have failed to demonstrate anything compelling with respect of family life in the United Kingdom. Whilst it is claimed your mother and siblings reside in the United Kingdom, there is no evidence of further elements of dependency beyond normal emotional ties" (page 127 of the respondent's bundle). He submitted that the respondent's case was that the appellant should have been capable of supporting himself, but the respondent now argued that those same relationships would make a difference for the purposes of Article 3.
29. I find that the height of the respondent's case, as set out in the Reasons for Refusal Letter (page 131 of the respondent's bundle), and in Mr. Bassi's submissions, is that family members in the United Kingdom will be able to provide financial assistance, but that is not what the appellant needs to avoid relapse in his mental health to avoid a breach of Article 3. The respondent has not explained how financial remittances could address the concerns raised in the psychiatric evidence.
30. The Judge made unchallenged findings at [35] in relation to the very serious situation which occurs when the appellant is not properly treated. At [36] she finds:

"The need for the appellant to access his Olanzapine but, also, to be supported whilst doing so is echoed in the report of Dr Stein, who noted that the risk the appellant presented arose when he was not on his Olanzapine which then led him to self-medicate with alcohol and that violence, disinhibition and irritability followed. The Tribunal noted Professor Katona's report with regard to the appellant's need for

close supervision from the Community Mental Health Team and encouragement to comply with his antipsychotic medication. The Tribunal noted that “stress and life events make remission in schizophrenia hard to achieve and relapse is more likely to occur.” The later medical reports before me largely echo those before the First-tier Tribunal. The appellant is still suffering from chronic paranoid schizophrenia with symptoms of depressive disorder. The risk rises when the appellant is non-compliant with his medication.”

31. At [39] she sets out the evidence of the appellant’s most recent relapse. At [43] she concludes, in reliance on the expert medical evidence before her:

“The most recent addendum report notes that the appellant has support in the United Kingdom from Avenue House CMHT and his care coordinator and his psychiatrist alongside some of the local Somali community and his mother and his cousin. This support network is keeping the appellant “relatively stable” at the present time. I find a very real risk that the appellant would struggle to remain stable in Somalia in the absence of his current support network. Professor Sen notes that the appellant has “residual paranoid symptoms which are likely to worsen considerably if he was moved back to Somalia as he is extremely mistrustful of any services in Somalia.” Those residual paranoid symptoms, I find, make the matter of his accessing any of the scarce services that might be available to him in Somalia highly doubtful. That is not because, as is urged upon me by the respondent, he has “chosen” to become unwell again but, rather, that the paranoia and mistrust, which is part of the characterisation of his condition, is such that he would not access services due to his own fears. In the absence of any family to support him and assist him, I find Dr Sen’s view that returning the appellant to Somalia carries a substantial risk of a significant deterioration of the symptoms of paranoid schizophrenia to have merit.”

32. The unchallenged evidence is that the appellant needs significant support from family and community mental health services. He would have neither in Somalia. The respondent has not explained how financial support from family in the United Kingdom could replace the need for family support in Somalia. It is clear from the Judge’s findings that the appellant requires a significant support network. Given his paranoia, which is a symptom of his mental illness, he is not likely to seek treatment from services in Somalia. There is very high risk of relapse which financial support from the United Kingdom will not prevent. Ground 3 is not made out and identifies no material error of law.
33. Ground 4 submits that the Judge descended into the arena “by providing the appellant’s legal representative, Mr Toal, with a ground of appeal on which they have then made a submission on at the hearing”. At [27] she states:

“27. At this stage in the proceedings, I indicated to Mr Toal that it was my view that the family’s involvement or lack thereof could go either way given that no person from his family had written a letter or a statement or turned up to support him at his appeal hearing. Having not supported him in the United Kingdom, I considered that the argument could easily be made that it was unlikely they would be sending him financial money remittances to Mogadishu.”

34. I find that the Judge has not improperly “descended into the arena”. She has quite properly indicated to both parties what was on her mind in order to allow them to make submissions on that point. She has given both parties the opportunity to address this. Had the respondent considered that there was anything wrong in this approach, I find that it would have been raised at the hearing. However, there is no record of any objection being raised by Mr. Bassi,

who had the opportunity to address the Judge on this point. I find that ground 4 does not identify any unfairness or procedural irregularity.

35. This is a comprehensive and thorough decision from an experienced judge. She has carefully considered the issues before her. Her findings are well reasoned with reference to the evidence before her. The grounds are no more than a disagreement with these findings, and do not identify any errors of law. Further, the grounds fail to explain the materiality of these alleged errors, given the unchallenged findings in relation to the significant support and care which the appellant needs to avoid the risk of relapse in his mental health.

Notice of Decision

36. The appeal is dismissed.
37. The decision of the First-tier Tribunal does not involve the making of material errors of law and I do not set the decision aside.
38. The decision of the First-tier Tribunal stands.

**Kate
Chamberlain**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 December 2023