Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **DA/01189/2013**

THE IMMIGRATION ACTS

At **Field House** Decision signed: **13.01.2016**
on **07.01.2016** sent out: **23.02.2016**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[A D]

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: *Emma Daykin* (counsel instructed by Irving & Co)
For the respondent: Mr Keith Norton

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Stuart Walker and a lay member), sitting at Hatton Cross on 5 March 2014, to dismiss a deportation appeal by a citizen of Somalia, born 1 January 1988. On 29 July 2014 the Upper Tribunal (Judge Peter Moulden) found the panel's decision wrong in law and set it aside, apart from their findings of fact on the appellant's individual case. However no further order was made, pending the publication of new country

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

guidance, now to be found in *MOJ & others* (Return to Mogadishu) (CG) [2014] UKUT 442 (IAC).

2. **History: crime/detention** This appellant arrived here unlawfully with his aunt on 27 February 1998: his aunt claimed asylum on arrival, on the basis that they were from the minority Ashraf clan. This was refused, but on 20 September 2000 they were both given exceptional leave to remain till 2004. Before that ran out, the aunt applied for them to have indefinite leave to remain, which was given on 4 February 2005.

3. The appellant's criminal record began with four offences of minor vandalism and hooliganism in 2009, for which he received a community order, and, following breach of that in 2010, curfew and unpaid work orders. In March 2011 he received eight weeks' imprisonment for battery, with another consecutively for breach of bail. In April that year he received another community order for shoplifting, replaced with a week's imprisonment in May after he broke its terms. In August, again for vandalism he was sent to prison for two months.

4. In September 2011 the appellant appeared before a Crown Court for the first time, for assaults, one sexual, at the end of April, and sent to prison for six months, with seven years on the sexual offenders' register. What must have been a minor piece of hooliganism in February 2012 received a nominal one-day sentence, while another shoplifting in February got him 28 days on 5 March. The appellant must have served most of that sentence already, or been released very early, as on 28 March he was already being sent to prison for 56 days for shoplifting and burglary. In May the appellant received two months' imprisonment for assault and vandalism, and in September he was fined for more hooliganism.

5. At this point the more serious part of the appellant's criminal record starts: for attempted theft, committed in September 2012, he was sent to prison in February 2013 for 13 months. He had already been warned on three separate occasions in 2011 that further crimes might result in deportation, and in March 2013 he received a letter telling him he was liable to it. Since he made no reply, an order followed on 7 June, which he appealed to the panel. Before the hearing took place, the appellant was bailed on 10 October, and he remained at large till 30 January 2015, when he was sentenced to a total of 52 weeks' imprisonment for burglary, including ten weeks' previously suspended (it is not clear when, or what for) and now put into effect. Since then he has been either in prison or immigration detention.

6. The facts of even the more serious of the appellant's offences may be of limited importance under the present legislation, but it is only right to note that, while it is accepted that the latest burglary involved an opportunistic attempt to break into an off-licence, the offence charged as attempted theft had been at least on the borderline with robbery. As the sentencing judge recorded, the appellant had spotted a man of 75 drawing money from a cash-point at 0100 and followed him, encircling him with his arms so that he fell to the ground. The victim lost £100, though this was not found on the appellant when he was arrested.

7. **History: family/personal** The evidence as recorded by the panel is that the appellant's parents died before he left Somalia; so his aunt [S] had been looking after him for several years before she brought him here: she is still living in this country, with her husband and the appellant's grandmother. The appellant's sister [L] arrived in 2003, and now has six children, as well as a cousin living with her. She said the appellant had moved in with her after she arrived, and lived with her on and off for about two or three years. After that, and until he was first sent to prison in 2011, he had just come to eat with them and then left: if he had been drinking, then she wouldn't let him in. From 2009 – 11, he hadn't had a job; but, after he was given immigration bail in October 2013, he was working full-time till he was sent to prison in 2015.

8. Besides his Somali family, the appellant discovered by chance in April 2014 that he had become the father of twins, born in 2006 to a woman of Jamaican descent, with whom he had had a casual liaison. The biological relationship between them has been confirmed by DNA tests; but there is no further evidence of any contact, other than what the appellant says himself, to which I shall turn in dealing with his oral evidence.

9. **History: health** There is a report on the appellant's mental health by a consultant forensic psychiatrist, Dr Piyal Sen, dated 9 December 2015. From this it can be seen that the appellant's drinking had led to problems in the past, including being taken into hospital overnight; he was also a *qat* user. It was in 2010 that he had first started 'hearing voices', which went on till the next event, though stilled when he drank. That event took place in August 2014, when the appellant was waiting for a bus on his way home from work, wearing an Arsenal shirt. He was hit from behind with a bottle by a person unknown, perhaps a rival supporter, and woke up in hospital.

10. The records showed he had a subdural hæmatoma and a fractured jaw: there were further complaints about the voices, and a neurologist, whom he saw when he was detained at HMP the Verne in June 2015, diagnosed 'organic psychosis secondary to head injury'. There is a very comprehensive review of the records by Dr Sen, which there is no need to repeat here. The appellant had seen an occupational therapist ([EP]) and a speech therapist. He gave a history of being visited by a transvestite *djinn* called Hilip, who "… took him from the prison to different worlds to meet characters like Christopher Columbus and Henry VIII and his wives." He also regarded the prison officers in charge of him as *djinns* themselves.

11. The appellant is presently receiving Quetiapine, an anti-psychotic, and Sertraline (not explained by Dr Sen, but Wikipedia confirms it is an anti-depressant), as well as another drug for a specific problem. He had also consulted, and paid, someone he described as a 'witch doctor'. However, he says he has received the greatest relief from being soundly whipped by a priest, apparently a chaplain in the removal centre where he is detained. He has taken overdoses, apparently of his own medication, in the past, but not since August 2015. There had been a 'complex case meeting' about him on 25 August, when a member of staff reported him as telling them "… about

being impregnated by the truck dog and … asking [the welfare department] for dog biscuits as the baby was half Djinn and was called Theresa May".

12. The view had been expressed at the meeting that the appellant might be "… acting out, as he had stated that he would demonstrate to the Home Office that he was unfit for detention and had threatened to go on food refusal and stop medication. He had put in a transfer application to go to another removal centre in the London area". As it happens, Dr Sen had not been instructed by the experienced specialized solicitors acting for the appellant on this appeal, but by another firm, who he had chosen to instruct on a separate challenge to the lawfulness of his detention. This needs to be borne in mind in considering Dr Sen's conclusions.

13. There were further reported comments about *djinns* and dogs. Dr Sen went on to review various reports by others since that meeting. On one occasion there had been a further trip with the *djinn* to Columbus and English royalty, this time Henry II. Dr Sen endorsed the view that the appellant's head injury might have exacerbated his previous delusions. His belief in *djinns* was 'culturally appropriate', but could not be explained by that factor alone: Dr Sen does not deal with the suggestion (see **11**) that the appellant was making up the delusions from which he claimed to be suffering.

14. So far as any attempt to verify the appellant's claimed history by personal observation is concerned, Dr Sen does not go further than "… some simple tests of retention and concentration that I carried out during my assessment, including the Serial 7's test, where he was able to answer only two of the five questions". There is no attempt in the very lengthy report to explain what the 'Serial 7's test', is, and nothing to show any steps taken to verify the spontaneity of the appellant's answers to it.

15. Dr Sen also opines that

> "There is also evidence of impaired self-control characterised by impulsivity, lability of mood as well as impaired ability to reflect and behavioural rigidity, which are characteristic behavioural features following traumatic brain injury."

However he does not give any examples of this evidence, or make clear whether it comes from his own observations, or reports by others.

16. Dr Sen goes on to refer to the appellant's drug treatment, and to say that "Due to his brain injury, his tolerance for anti-psychotic medication would also be reduced, which has meant that he cannot be treated with adequate doses of Quetiapine". The doses given would need to be closely watched; but while in detention the appellant is not getting the specialist neuro-rehabilitation treatment he had previously been promised. He was said however to have partially responded to the medication he had been getting, but still to have "… complex neuro-rehabilitation needs with regards to managing his day-to-day functioning with his reduction of attention and concentration and reduced memory, which are in significant part the effects of his head injury". (Recreational) drugs and drink had not done him any good either, and he might go back to them, if released without proper follow-up.

17. Dr Sen suggests that the appellant has long-term problems with his mental health, in terms of attention, memory, low mood and hallucinations. These were likely to last for longer than 12 months, and quite possibly for the rest of his life. Dr Sen recommends admission to a specialist brain injury service for assessment and a plan for him to be managed in the community. He suggests that the appellant should be placed in a suitable hostel; but if none could be found, then his sister should be approached to see if she would offer support, and if so to educate her in the warning signs of a relapse, such as drinking too much.

18. **Oral evidence** The appellant said he had no contact with his Somali family, except for one teenage niece, who called him on the quiet. As for the Somali man called Yusuf who had given evidence for him before the panel, he had neither known him before or since, though he was known to his sister. So far as his twins are concerned, he said he spoke to them every month on the phone; but they were living with their maternal grandmother, and that was the most she would allow. The appellant produced a copy of a typewritten letter, dated 19 November 2015, which he said he had sent them from detention. It is in very good English and expresses the intention of including £10, as well as other good wishes. He said his Somali family had been unwilling to have anything to do with his children, when he had taken it up through his sister, though she herself had not been unsympathetic, and he had been seeing them every week when he was at large. He had enlisted the British Red Cross to help trace his extended family, but so far without success.

19. The appellant was cross-examined about what [EP] (the occupational therapist) had said about him in her 'Discharge Summary' of 30 June 2015. She noted that he hoped to be released, and, if so, would return (from the Verne in Dorset) to "… K&C borough at his sisters". The appellant agreed that he had planned to return to Kensington and Chelsea, where he had lived for 15 years, and had his GP and other contacts; but to a hostel, and not to his sister's. When last at large, his appearances there had been limited to going round to collect his post, which a nephew would bring out to him.

20. The appellant went on to say that his life was "… taken over by these miserable *djinns*", though he said he hadn't seen his transvestite familiar lately. He mentioned three suicide attempts in the course of the last year, and said he would have nowhere to go in Somalia. Otherwise he loved his motherland, and would be happy to return there, if he had any family, or any life in the place.

21. **Country guidance** The relevant part, assuming that the appellant knows nothing about his origins but what his aunt said on their arrival, can be seen at paragraph (xii) of the judicial head-note to *MOJ & others*:

> … it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial

support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

22. **Conclusions: s. 117B & C** This is an appeal against a decision to make a deportation order, taken as long ago as 7 June 2013; but it has to be decided in accordance with ss. 117B and C of the Nationality, Immigration and Asylum Act 2002, introduced by the Immigration Act 2014 . So far as s. 117B is concerned, all that needs to be said is that this appellant speaks good English, which is in his favour; but he is not financially independent, nor likely to be, at least in the short term, which is not. The parts of s. 117C relevant for present purposes follow.

> **'117C Article 8: additional considerations in cases involving foreign criminals**
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> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.'

23. This appellant is a foreign criminal, and one who has been convicted of serious offences, not only the mugging of a much older man, the sentence for which led to the decision to deport him, but also the sexual assault, which, apart from six months' imprisonment, led to his being put on the sexual offenders' register for seven years. There is a clear public interest in deporting him, subject to exceptions 1 and 2. On exception 1

(a) he has been lawfully resident here since 2000, which is more than half his life, and, since he was still a child at that point, this requirement may be taken as satisfied;

(b) I do not regard him as 'socially and culturally integrated' in this country: even where his Somali family are concerned, his sister's evidence before the panel (see **7**) shows he had led a fairly casual life with them, to the

extent that he was there at all. After that time, he had received no less than six short sentences of imprisonment in the course of 2011, with longer ones in 2013 and 2015. He has worked while at large, but it seems on a casual basis.

24. It follows from my conclusion on (b) that exception 1 cannot apply in this case, though it will still be necessary to consider some of the questions posed by (c) in terms of articles 3 and 8 of the Human Rights Convention. On exception 2, while the appellant is the biological father of two nine-year old qualifying children, and I accept has been in some kind of contact with them, I do not think even on his evidence that could be considered a 'genuine and subsisting parental relationship'; and there is certainly no evidence to suggest that the effect of his deportation on them would be unduly harsh, whether compared to the public interest in removing him or not.

25. **Article 3: country guidance** It follows from the appellant's failure to qualify under either exception to s. 117C (3) that the public interest must require his deportation, unless there is a Convention reason against it. Miss Daykin realistically did not argue any Refugee Convention reason; but she did rely on article 3 of the Human Rights Convention. For his part, Mr Norton accepted, following *MOJ & others*, that, if the appellant faced no alternative but life in an IDP [*internally displaced persons'*] camp on return to Somalia, then article 3 would prevent his return.

26. So far as the qualifying factors under *MOJ* are concerned, the appellant was not challenged on his origins, and I am prepared to accept for present purposes that he is a minority clansman with no former links to Mogadishu. The issue before me was whether he had "*no access to funds and no other form of clan, family or social support*". Mr Norton suggested that he had invented the rupture with his Somali family in response to what the first-tier panel had said (see their paragraph 32 (6)) about useful links he would have on return. So far as any further findings by me are concerned, on article 3 the appellant must show that any facts on which he relies are at least reasonably likely to be true, while on article 8, as under the law and Rules, he has to show they are more likely than not to be true.

27. The only evidence of continuing links is his own expressed intention, recorded in [EP]'s discharge summary of 30 June 2015 (see **19**) of returning to his sister's if released. He denies that; but it is not something that can be written off as careless form-filling, since it does not appear in her previous joint report of 29 December 2014 [AB 12 – 15]. I am not prepared to accept it is reasonably likely to be mistaken, nor that the appellant does not have continuing links with his sister. There may well have been a rift, dictated by the family elders she approached, over his siring of mixed-race children; but, if the appellant were returned to Somalia, necessarily without them, then there would be no reason for this to continue.

28. The appellant's sister has not of course given evidence before me, though it follows from the finding I have just reached that he could have called her if he wanted. She has an established life in this country, and was granted indefinite leave to remain on

21 September 2000 [AB 201], after arriving on 21 March that year and claiming asylum [AB 202]. Those documents show she was born in 1980, so, unlike this appellant, already grown-up when she came here. I am not prepared to accept that she does not have either funds or contacts available to the appellant on return to Somalia.

29. It follows that the appellant cannot succeed on article 3, in terms of paragraph (xii) of the guidance in *MOJ & others*. Miss Daykin also argued article 3 in terms of his medical condition; but that is better dealt with when I have reached the necessary findings of fact to deal with this argument, both in that context, and on article 8.

30. **Medical evidence** As already mentioned, Dr Sen's report suffers from the disadvantage of having been prepared in aid of a challenge to the appellant's detention in this country, rather than his appeal against deportation to Somalia. However, it is the only comprehensive review of this evidence. I am prepared to accept Dr Sen's conclusion that the appellant suffers from problems with attention, memory, low mood and hallucinations, as a result of the injury he received in August 2014.

31. I saw and heard the appellant giving evidence for some time: he appeared entirely lucid, though he complained from time to time of a headache (for which unfortunately there were no suitable analgesics in the building). I bear in mind that the detention centre staff were clearly supervising his medication; but, on his current dose, even without the monitoring recommended by Dr Sen, he is clearly stable, with some support. Given the potential support I have found would be available for him in Somalia, I have no doubt that he would be able to cope with daily life on return there, even in the short term, so long as supplies of Quetiapine and Sertraline were available. Even without monitoring, he is obviously intelligent enough to know he needs to take them regularly.

32. **Article 3: health** It is quite clear from *N v United Kingdom* [2008] ECHR 453 that states parties to the Human Rights Convention are not obliged by the terms of article 3 to export their own health-care standards world wide. There is no evidence that Quetiapine and Sertraline are available in Somalia; but so long as the appellant was sent back with enough to tide him over his return, any adverse consequences of withdrawal would be a question of Somali resources, and not the responsibility of Her Majesty's Government. It follows that the appeal fails on article 3.

33. **Article 8** The provisions of paragraphs 399 and 399A of the Rules are now replicated in s. 117C, and, for the reasons already given, this appellant cannot satisfy them. It follows from paragraph 398 that here

> "… the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A."

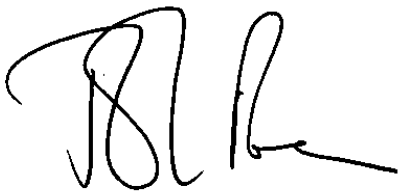
34. There is nothing in this case arguably capable of amounting to such 'very compelling circumstances', except for the appellant's health care needs. I am prepared to accept

that he might go off the rails, to use the common expression, without Quetiapine and Sertraline. It is hard to rate that probability, given the basis on which Dr Sen was asked to report; but I will assume for present purposes that, without them, the appellant is more likely than not to suffer some kind of relapse.

35. As for what form this would take, the appellant has recounted a number of what on their face are florid delusions: see **10, 11** & **13**. These have been accepted at face value by Dr Sen, without any attempt at expert evaluation, other than to note that the *djinns* are 'culturally appropriate'. Whether this extends to transvestite *djinns* is equally beyond common knowledge, and Dr Sen's expertise. However, some common sense has to be applied to the appellant's reported account as a whole, and I have to say that mine does not allow me to accept as a genuine delusion the appearance of an *avatar* of the Secretary of State, in the form of an imaginary offspring, out of the appellant by an imaginary dog. In the light of this, I am not prepared to accept that this appellant suffers from delusions as he claims.

36. Doing the best I can on the evidence available, while I am prepared to accept that, without Quetiapine and Sertraline, this appellant might, at least in the short term, require some family or clan support to maintain a reasonable existence in Somalia, that support is likely to be available. Even if it were not, I do not see anything in this appellant's prospects capable of showing 'very compelling circumstances' to outweigh the serious public interest in his removal, and the appeal fails under article 8 too.

Appeal dismissed



(a judge of the Upper Tribunal)