IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003115
UI-2022-003959

First-tier Tribunal No: RP/00011/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 January 2023

Before

THE HON. MRS JUSTICE THORNTON DBE
UPPER TRIBUNAL JUDGE BLUNDELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHSO (Somalia)
(by his Litigation Friend the Official Solicitor)
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: David Sellwood, instructed by Wilson Solicitors LLP
For the Respondent: Stephen Whitwell, Senior Presenting Officer

Heard at Field House on 8 December 2022

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. We make this order because the appellant is a recognised refugee and because he suffers from significant mental health problems which would likely worsen in the event that his identity became known.

© CROWN COPYRIGHT 2022

DECISION AND REASONS

1. On 8 June 2022, First-tier Tribunal Judge T Lawrence issued his reserved decision in this appeal (FtT reference RP/00011/2020). He dismissed the appeal insofar as it was brought on Refugee Convention grounds. He allowed the appeal on Humanitarian Protection (Article 15(b) QD) and human rights grounds (Articles 3 and 8 ECHR).

2. The appellant sought permission to appeal against the dismissal of the appeal on the Refugee Convention ground. Permission to appeal was granted by the First-tier Tribunal (Judge Veloso). The appellant's appeal is under Upper Tribunal reference UI-2022-003115.

3. The respondent sought permission to appeal against the decision to allow the appeal on Humanitarian Protection and human rights grounds. Permission to appeal was refused by the First-tier Tribunal but granted, on renewal to the Upper Tribunal, by Judge Lane. The respondent's appeal is under Upper Tribunal reference UI-2022-003959.

Background

4. The appellant is a Somali national who was born on 3 November 1985. He entered the United Kingdom in January 2003 and sought asylum. The application was refused by the respondent but an appeal against that decision was allowed by an Adjudicator. There was no application for permission to appeal against that decision and the appellant was duly recognised as a refugee and granted Indefinite Leave to Remain in accordance with the practice at that time.

5. The appellant subsequently developed substance abuse and mental health problems, including paranoid schizophrenia. As the judge in the First-tier Tribunal recorded, he accrued some 27 convictions in the period February 2012 to April 2019. The respondent initially issued him with warning letters but took no further action.

6. On 26 April 2019, the appellant received further convictions at South London Magistrates' Court: a single conviction for failing to comply with a notification requirement and two convictions for committing further offences during the operational period of a suspended sentence. He was sentenced to a total of 34 weeks' imprisonment.

7. On 10 May 2019, the respondent notified the appellant that she had decided to make a deportation order against him on the basis that his presence in the United Kingdom was not conducive to the public good. The respondent also gave the appellant notice that she intended to cease his refugee status.

8. The appellant responded, setting out reasons why she should not do so and why his deportation from the United Kingdom would be in breach of the respondent's international obligations. On 22 November 2019, however, the respondent rejected those submissions and decided to cease the appellant's refugee status. She also rejected the human rights submissions which had been made on the appellant's behalf.

The Appeal to the First-tier Tribunal

9. The appellant appealed to the First-tier Tribunal. There were delays in the matter being listed occasioned by, amongst other matters, the need for the respondent to consider whether the appellant was a victim of trafficking and deciding whether to give him discretionary leave thereafter.

10. The appeal came before the judge, sitting at Taylor House on 12 April 2022. The appellant was represented then, as he is now, by Mr Sellwood of counsel. The respondent was represented by a Presenting Officer (not Mr Whitwell).

11. The appellant had been deemed to lack capacity to give instructions and the Official Solicitor had been appointed as his Litigation Friend, although it is not clear from the papers when that appointment was made. The appellant did not give evidence, although he attended the hearing with his care coordinator. The judge therefore heard submissions from the advocates before reserving his decision, which was to be delivered after he had received written submissions on an important issue to which we will refer in due course.

12. The judge's reserved decision is lengthy and, in almost all respects, cogently reasoned. It spans 28 pages of single-spaced type and we will not attempt to give a comprehensive summary of it. What follows will suffice to frame the arguments advanced in this appeal.

13. It was not contended in this appeal that the appellant should by his conduct be deprived of protection from refoulement under Article 33(2) of the Refugee Convention and section 72 of the Nationality, Immigration and Asylum Act 2002. Logically, therefore, the judge began his analysis by considering whether the appellant's refugee status should be ceased by operation of Article 1C(5) of the Refugee Convention. Having reminded himself of the test and the relevant jurisprudence, the judge made reference to the country evidence including the country guidance given by the Upper Tribunal in MOJ (Somalia) CG [2014] UKUT 442 (IAC) and OA (Somalia) CG [2022] UKUT 33 (IAC). At [32], the judge concluded in light of the changes in the country situation, as analysed in the country guidance decisions, that the circumstances which caused the appellant to be a refugee (risk as a member of the Reer Hamar) had ceased to apply.

14. From [33] onwards, however, the judge considered whether there was 'another basis on which [the appellant] should be held to be a refugee'. He noted in this connection what was said by the appellant's country expert, Mary Harper, about the risk to the appellant as a criminal, an alcoholic and a drug-user and a person with serious mental health problems. The judge undertook a thorough analysis of the medical evidence, which included a detailed report from a Consultant Forensic Psychiatrist named Dr Kahtan, who opined that the appellant's recurrent offending (which notably includes masturbating in public and offences of exposure) were 'strongly related to his mental illness, drinking, poor memory and homelessness'.

15. At [50], the judge concluded that there was a reasonable likelihood that the appellant would not find any support on return to Somalia, whether from his family or his clan. That absence of support would lead, the judge found, to severe self-neglect and self-damaging behaviour on the appellant's part. The judge found at [51] that the appellant's situation would in turn activate the risk of his reoffending as he had in the past, including masturbating in public or urinating in public without regard to the offence which it might cause. The lack of tolerance of such behaviour would, the judge found, lead the appellant to suffer ill-treatment contrary to Article 3 ECHR, whether at the hands of AMISOM or the

population. At [52] and [53], the judge found that there would be no sufficiency of protection available to the appellant and no internal relocation possibility which might obviate these risks.

16. Having found that the appellant would be at risk on return to Somalia for those reasons, the judge considered whether the appellant's return to Somalia would breach the United Kingdom's obligations under the Refugee Convention. He concluded that it would not, for the following reasons, which we must set out in full:

> [54] Mr Sellwood noted that a person living with disability or mental ill health may qualify as a member of a Particular Social Group either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin: DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC). I consider that [sic] that the evidence establishes a reasonable likelihood that the Appellant's mental ill health would be reasonably likely to deter potential guarantors and members of his clan from assisting him, and that he would be shunned and isolated on return to Mogadishu for that reason. The risk of serious harm from similar offending to the masturbating in public view and urinating in a public place without regard to his genitals being in view for which he has been convicted in the UK would, in my consideration, result from disinhibited behaviour arising out of the several risk factors for further offending that are identified in the OASys assessment, which includes poor mental health. However, I consider that such harm would not be sufficiently connected to poor mental health such as to establish the necessary causal nexus between such serious harm and his mental illness per se. I do not consider that the necessary causal nexus has been established between the risks of serious harm that I have identified and any innate characteristic, common background that cannot be changed, or perceived identity in Somalia. I therefore find that the Appellant is no longer a refugee.

17. The appeal was dismissed on Refugee Convention grounds on that basis. The judge then turned to the Humanitarian Protection and human rights grounds of appeal. With regard to his earlier conclusion about Article 3 ECHR, and having noted that the protection in Article 15(b) broadly replicates that provided by the ECHR, the judge allowed the appeal on Article 15(b) grounds. Having noted the relevant holding in OA (Somalia), he found against the appellant on Article 15(c).

18. The judge then turned to consider Mr Sellwood's submission that the appellant had a freestanding Article 3 ECHR claim on medical grounds. He reminded himself of what had been said in AM (Zimbabwe) v SSHD [2020] UKSC 17; [2021] 1 AC 633 and he concluded, at [57], that

> I find that there are particular features of the Appellant's circumstances are such that there are substantial grounds to conclude that there would be a real risk that be unable to establish himself in Mogadishu, and that if he does survive the risk of serious harm arising from disinhibited behaviour, he would be forced to reside in an IDP camp or informal settlement where his condition would deteriorate further through his severe self-neglect and self-damaging behaviour and he would be reasonably likely to suffer extreme material deprivation,

leading to intense suffering or a significant reduction in his life expectancy, meeting the test set out in AM (Zimbabwe).

19. The judge held that this was a risk for which the respondent could properly be held responsible and noted that she had not sought any specific assurances from the Somali authorities. In all the circumstances, therefore, he allowed the appeal on Article 3 (medical) grounds. For reasons which he set out at [59]-[60], however, the judge found against the appellant on his claim under Article 4 ECHR.

20. In the final substantive paragraph of his decision, the judge turned to consider Article 8 ECHR. We should note that this part of the judge's decision was informed by the respondent's acceptance, given in writing after the hearing, that the judge was able to consider (as a new matter) the fact that the appellant had, during the course of the appeal, accrued sufficient length of residence in the United Kingdom to mean that he had been lawfully resident for most of his life. With that point in mind, what the judge wrote at [61] was this:

> The Respondent asserts that the Appellant is a persistent offender within the meaning of that term under ss117D(2)(c)(iii) of the Nationality, Immigration and Asylum Act 2002 Act. I consider that that description of the Appellant is correct. I also find that the Appellant has now been lawfully in the UK for most of his life and that he is socially and culturally integrated in the UK, through his interaction with and dependency on professional support networks at least. I find that the risks he is reasonably likely to face in Somalia present very significant obstacles to his integration in Somalia, even on the higher standard of a balance of probability, and therefore that his deportation is not in the public interest by operation of ss117(c)(4). Moreover, given such risks, his removal would not be in the public interest despite the negative impact of his lack of financial independence, which is the only negative consideration of the public interest considerations in s117B of the 2002 Act.

The Appeals to the Upper Tribunal

21. Mr Sellwood advanced four grounds of appeal, all of which are directed to the sustainability of the judge's conclusion that the facts of the appellant's case did not attract the protection of the Refugee Convention. It is said that the judge misdirected himself in law, that he failed to give adequate reasons, that he failed to take material evidence into account and that his conclusion was Wednesbury unreasonable. Judge Veloso considered each of the grounds to be arguable and granted permission to appeal.

22. The Secretary of State also advanced four grounds of appeal. The first was that the judge had failed to consider whether the appellant should be excluded from Humanitarian Protection under paragraph 339D of the Immigration Rules. The second and third were that the judge had failed to give adequate reasons for allowing the appeal on Article 3 ECHR grounds. The fourth was that the judge had made no finding that Article 8 ECHR was engaged in either its private or family life aspect, such that his assessment of that article was defective.

23. Skeleton arguments were filed and served, albeit that the respondent's skeleton argument was not filed in compliance with directions. We note at this stage that the respondent abandoned the first of her grounds in her skeleton argument,

thereby accepting that the appeal had been correctly (or permissibly) allowed on Article 15(b) grounds.

24. We intend no discourtesy to the advocates in providing only an outline of their submissions at this stage.

25. For the appellant, Mr Sellwood asked us to note the basis upon which the judge had concluded that the appellant would be at risk on return to Somalia. It was simply not possible, he submitted, to reconcile the judge's conclusion at [54] with his earlier conclusions about the reason why the appellant would be at risk in Mogadishu. The judge had apparently accepted that the appellant would likely exhibit the same disinhibited behaviour which he has exhibited in the UK as a result of his mental health problems. It was that disinhibited behaviour which would place the appellant at risk. It was not possible, Mr Sellwood submitted to 'separate out the moving parts' so as to conclude that the appellant would not be at risk on account of his mental health. The case was materially indistinguishable from DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC), and the judge had erred in concluding otherwise. It was not clear whether the judge had found the appellant not to be a member of a Particular Social Group in Somalia or whether he had found that the appellant would not be at risk on account of his membership of that group.

26. Mr Sellwood took us briefly through the background evidence which, in his submission, the judge had left out of account. This included passages which had been drawn expressly to his attention in the detailed schedule which appeared at Tab H of the bundle. Whether the challenge was expressed as a material misdirection in law, a failure to take material matters into account or a failure to provide adequate reasons, it was clear in Mr Sellwood's submission that the judge had fallen into error at [54].

27. Mr Sellwood suggested, and we agreed, that it would be of most assistance if he made his response to the respondent's grounds after we had heard from Mr Whitwell.

28. For the respondent, Mr Whitwell submitted that the judge had reached a sustainable finding on the Refugee Convention. The respondent did not dispute the correctness of DH (Afghanistan) and accepted that individuals with mental health problems might form a Particular Social Group ("PSG") in a given society. The point had not been dealt with in either of the respondent's decisions in this case. The judge must have concluded that the appellant was a member of a PSG but that he would not be targeted for that reason. The judge's [54] was to be read in context and, in particular, in the context of the OASys report, which linked the appellant's offending not to his mental health problems but to his excessive alcohol consumption. The root cause of the risk was not the appellant's paranoid schizophrenia, therefore, but his addictions. He would be perceived by Somali society as an addict and a ne'er-do-well, rather than a person with mental health problems.

29. As for the respondent's grounds, Mr Whitwell wished to say very little. The first ground had been withdrawn in the skeleton argument. He did not wish to develop the second and third. As for the fourth, Mr Whitwell attempted to submit that it was wide enough to encompass a challenge to the judge's findings on the private life exception to deportation in s117C(4), but he was constrained to accept when pressed that the ground was not framed in that way. He stated that

he would not attempt to amend the grounds midway through the hearing and had nothing further to add.

30. We rose to consider whether we needed to hear from Mr Sellwood on the Secretary of State's grounds of appeal. After deliberating on the point, we informed the advocates that we did not need to hear from Mr Sellwood on those grounds, as we were satisfied that they were wholly devoid of merit.

31. We also intimated that we were content that the judge had erred in law in relation to the Refugee Convention and that [54] of the FtT's decision, dismissing the appeal on that basis, would be set aside. We stated that we were minded to substitute a decision to allow the appeal on that basis. We asked Mr Whitwell whether he wished to make submissions to the effect that the appellant was not a member of a PSG or that he would not be at risk of ill-treatment for reasons of that membership. Mr Whitwell did not seek to dissuade us from allowing the appeal on the basis we had outlined.

32. We therefore announced at the hearing that the appellant's appeal would be allowed; the respondent's appeal would be dismissed; and that the ultimate decision on the appeal would be that it was allowed on Refugee Convention, HP and human rights grounds. We indicated that our reasons for those conclusions would follow in writing.

Analysis

33. We propose to begin our analysis of the appeal by turning to the respondent's grounds first.

34. The respondent was undoubtedly correct to withdraw her first ground. It was submitted in that ground that the judge had erred in failing to consider whether the appellant should have been excluded from HP by operation of paragraph 339D of the Immigration Rules. It is unnecessary to set out that provision. The difficulty with the ground of appeal is twofold.

35. Firstly, as Mr Sellwood noted in writing, the point was not taken by the Secretary of State before the FtT, orally or in writing. Secondly, it is impossible to see how this appellant's criminality and his propensity to commit further crimes of a similar nature comes close to engaging the threshold in that provision. The crimes have not on any view been serious and the appellant cannot sensibly be said to present a danger to the security of the UK. This is, frankly, a case in which mention or consideration of that provision before the FtT would have been surprising, and we are surprised that the ground of appeal was ever advanced.

36. Mr Whitwell did not withdraw the second ground but he chose not to develop it. We consider that he was correct not to say anything about this ground. This ground of appeal focuses on the adequacy of the judge's reasons for allowing the appeal on Article 3 ECHR grounds, in the 'non-medical' sense. It was contended in the grounds and in the skeleton argument that the judge had given inadequate reasons for concluding that the appellant could not obtain some support from his clansmen and had overlooked the possibility of the appellant securing financial assistance from the Facilitated Returns Scheme. We consider those points in turn.

37. In our judgment, the judge gave wholly adequate reasons for concluding that the appellant would not obtain support from his clan. Those reasons were based

squarely in the evidence before the judge and included the fact that the clan would be likely to know about the appellant's criminality in the UK and that Somali society has, at best, little sympathy for those with mental health problems. Also factored into the judge's assessment was the fact that the appellant would be known amongst the diaspora as an alcoholic and a drug user, which would create further difficulties for him in terms of accessing a support network.

38. This was not a case in which recourse to the FRS was a realistic solution for the difficulties faced by this appellant. In that respect, the case is very different from the latest country guidance decision and the cases cited in the Secretary of State's grounds of appeal. The appellant is seriously mentally unwell. He does not have capacity to conduct litigation. He has long-standing paranoid schizophrenia and alcoholism. The respondent did not, as far as we can discern, pursue any submission before the FtT that he was man who could access the FRS and then put that support to the kind of use considered in OA (Somalia).

39. Given the evidence about the appellant's alcohol dependency and the (limited) availability of alcohol in Mogadishu, we think that there is every likelihood that the provision of a fairly significant sum of money to him upon return would be likely to place him in greater danger. He would be unable to make informed decisions about how that money should be spent and he would be very likely to attempt to purchase alcohol with that money, thereby encountering criminal elements and, if he managed to procure alcohol, increasing the risk of behaviour which would place him in conflict with societal and Islamic mores. In short, the appellant has been adjudged for proper reason to be unable to conduct litigation and he would be unable to make any use of the FRS for like reasons. Had the judge been asked to consider the point, the answer is entirely plain. We very much doubt that the judge erred in failing to consider the point but, if he did, any such failure was clearly immaterial to the outcome.

40. By ground three, the respondent criticises the judge's analysis of the Article 3 ECHR claim on medical grounds. It is said that the judge failed to follow the approach required by AM (Zimbabwe) v SSHD [2020] UKSC 17, in that he considered not whether the appellant would be able to obtain appropriate medical treatment but, instead, whether he would suffer 'extreme material deprivation'. Those words are from [57] of the judge's decision.

41. Mr Whitwell wisely opted not to say anything about this ground of appeal either. Again, we think he was correct to take that course. The difficulty with ground three is quite plain. Even if the judge failed to undertake the staged analysis required by the decisions of the Supreme Court and the Upper Tribunal in AM (Zimbabwe), any such failure was obviously immaterial in light of the judge's earlier conclusions. This is not primarily an Article 3 'medical' case, based (as such cases are) on a serious illness, an absence of treatment in the receiving state, and the suffering which will follow from the combination of those factors. Instead, it is primarily a case about how third parties will react to the appellant, given the interlocking risk factors which were detailed by the judge at length. It was open to the judge to conclude that the appellant would be positively at risk on return to Somalia as a result of those factors and any infelicity in [57] was immaterial to the decision to allow the appeal on Article 3 ECHR grounds.

42. Mr Whitwell did attempt to make some submissions on the respondent's fourth ground but, as we noted during the hearing, the respondent's ground of appeal is so badly expressed that it fails to come to grips with the actual basis upon which

the judge allowed the appeal. The judge found that the appellant met the tripartite test in s117C(4) and that he was accordingly exempt from deportation. There were separate findings that the appellant had spent most of his life lawfully in the UK; that he was socially and culturally integrated; and that there would be very significant obstacles to his reintegration to Somalia. These findings were determinative of the appeal on Article 8 ECHR grounds, since the statutory exemptions to deportation are self-contained and dispositive. The judge was not required, as suggested in the ground of appeal, also to consider whether Article 8 ECHR was engaged in its private or family life aspect.

43. In fairness to Mr Whitwell, he recognised that the ground was poorly framed and that the argument he originally sought to advance (which was that the judge had made no finding as to social and cultural integration) was not in the scope of the ground and was, in any event, incorrect with reference to the judge's assessment at [61].

44. For these reasons, we concluded that the respondent's grounds of appeal fail to establish any material legal errors in the FtT's decision to allow the appeal on HP and ECHR grounds. Those findings shall accordingly stand.

45. Turning to the appellant's grounds, it is equally plain that the judge fell into error in dismissing the appeal on Refugee Convention grounds. It is not entirely clear from [54] (which we have reproduced in full above) whether the judge concluded that the appellant was not a member of a PSG or that he would not be targeted *for reasons of* his membership of such a group. Given the reference to a nexus, and given the way in which the final sentence is expressed, we consider Mr Whitwell was correct in his submission that the judge found against the appellant on the latter basis, however. It was accepted by the judge, in other words, that those with mental health problems in Somalia form a PSG but he did not accept that the appellant would be targeted 'for reasons of' his membership of that group, as required by Article 1A(2) of the Refugee Convention.

46. As Mr Sellwood submitted, there are several difficulties with that finding. The first, in our judgment, is that the judge misdirected himself in law in requiring a 'causal nexus between such serious harm and his mental illness *per se*'. The way in which that sentence is expressed suggests that the judge considered that the appellant was required to establish that his mental illness was the sole or predominant cause of the harm which was reasonably likely to befall him on return to Somalia. The judge's reasoning is compressed but we assume that he proceeded on the basis that the appellant was likely to be at risk because of a number of different factors, including his criminality, alcohol abuse, lack of support and his mental health problems. We understand the judge to have held that because the appellant was unable to show that his mental health problems were the sole or predominant cause of the likely persecution, he was unable to establish the necessary nexus.

47. If that was the judge's conclusion, we are satisfied that it was legally erroneous. Whilst the domestic and international authorities have grappled for decades with the strength of the causal connection required between the expected risk and the Convention ground, it is quite clear in the United Kingdom that the law does not require the Convention ground to represent the sole or even the predominant cause of the persecution which is feared.

48. In SSHD v Sivakumar [2003] UKHL 14; [2003] 1 WLR 840, for example, Lord Rodger noted, at [40], that 'persecutors may act for more than one reason'. The

applicant in that case was a Tamil who had been arrested and subjected to torture. The Special Adjudicator had attributed that torture, and the risk of its repetition, not to the appellant's race or his actual or imputed political opinion but to the actions of the Sri Lankan state in attempting to prevent terrorist activity. That conclusion was held to be vitiated by legal error, with the House of Lords upholding the Court of Appeal's conclusion that claims for refugee status should be considered globally, having regard to the cumulative effect of the relevant facts and that the adjudicator had failed to consider whether the security forces had mistreated the appellant for a reason additional to their suspicion that he was involved in terrorism. Lord Rodger concluded paragraph [40] by observing that:

> In such a case the appropriate inference may be that, if the applicant returned home, he would be ill-treated for a combination of Convention and non-Convention reasons. If so, the person considering the claim for asylum will properly conclude that the applicant has a well-founded fear of persecution for that combination of reasons.

49. Three years later, in SSHD v Fornah & K [2006] UKHL 46; [2007] 1 AC 412, Lord Bingham (with whom the other members of the Committee agreed) gave guidance on the nexus requirement at [17]-[18] of his opinion. Amongst other things, he said that

> The ground on which the claimant relies need not be the only or even the primary reason for the apprehended persecution. It is enough that the ground relied on is an effective reason.

50. That approach accords with the statement at Article 9(3) of the Qualification Directive (2004/83/EC) that 'there must be a connection' between the reasons for the persecution and the acts of persecution.

51. Having considered the judge's findings and the material which was before him, including the background and expert evidence to which we were taken, there can be no real doubt that the appellant's mental health problems would be an effective reason for the ill-treatment he fears on return to Somalia. The fact that there might be other causes is immaterial, and what the appellant was not required to do was to show that his mental health problems would be the sole or dominant cause of those difficulties. In concluding otherwise, we are satisfied that the judge fell into legal error.

52. We also agree with Mr Sellwood that it is difficult to reconcile the judge's conclusion with the preceding parts of his decision and his acceptance of the country material before him. At [46], he cited approvingly and at length from an OASys report which was written in November 2021. Under the subheading 'Why did he do it (motivation and triggers)', the author stated that

> [The Appellant] has a well established history of excessive alcohol consumption and substance misuse. He also suffers from Paranoid Schizophrenia. It would appear from the record that [the Appellant] 's mental illness, his excessive use of alcohol and drugs and his criminal and anti-social activity are all likely to have had a simultaneous onset. It is very likely that these factors act in combination as triggers and disinhibitors in [the Appellant]'s offending.'

53. In support of his submission that the appellant would be perceived merely as an addict and a 'ne'er-do-well', Mr Whitwell took us to a subsequent part of the report which highlighted the involvement of alcohol in much of the appellant's offending behaviour. We note the reference but we do not consider it to alter the picture presented by the rest of the report and the evidence as a whole. When considered as a whole, the evidence clearly shows that the appellant would be at risk on return to Somalia for the combination of reasons set out by the judge at [50]-[51] of his decision. One of the effective reasons for that ill-treatment is the appellant's mental health, and that suffices to establish the requisite nexus for the purpose of Article 1A(2) of the Convention.

54. With respect to Mr Sellwood, we consider that the remaining grounds merely represent different sides of the same coin. It might legitimately be said that the judge failed to consider some background material, in particular the detailed schedule of evidence which appeared at Annex H of the appellant's bundle before the FtT. That provided further information about the treatment of those who suffer from serious mental health issues in Somalia. Ultimately, however, whether the judge's error is categorised as one of legal misdirection, failure to consider material evidence, or a failure to provide adequate reasons, the clear conclusion we reach is that the judge's [54] is unsustainable and must be set aside.

55. Having reached and announced that conclusion at the hearing, we gave Mr Whitwell an opportunity to address us as to whether the appropriate course was not simply to allow the appeal on Refugee Convention grounds. He did not wish to make any submissions. We wish to record our clear view that this was not merely a pragmatic stance; it was a legally proper one which Mr Whitwell was obliged to adopt, given the remaining findings in this case. Applying the law as set out above, the only available conclusion is that this appellant – who would be targeted on return to Somalia partly as a result of his paranoid schizophrenia and the acute disinhibition it causes – is a man who satisfies the definition of a refugee in Article 1A(2) of the Refugee Convention. There is no suggestion that he is a refugee to whom the obligation of non-refoulement does not apply and we find, therefore, that he is entitled to succeed in this appeal on the basis that his removal would be contrary to the Convention.

Notice of Decision

The respondent's appeal is dismissed. The FtT's decision to allow the appeal on humanitarian protection and human rights grounds stands.

The appellant's appeal is allowed. The FtT's decision to dismiss the appeal on Refugee Convention grounds involved the making of an error on a point of law. That decision is set aside. The decision on the appeal is remade by allowing the appeal on this ground.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 December 2022