IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001979

First-tier Tribunal No: RP/00031/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 June 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHMED ALI JAMA

Respondent

Representation:
For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer
For the Respondent: Mr G O'Ceallaigh, instructed by Wilson Solicitors LLP

Heard at Field House on 12 May 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Jama's appeal against the respondent's decision to refuse his protection and human rights claim further to a decision to deport him under section 32(5) of the UK Borders Act 2007.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and Mr Jama as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Somalia, born on 14 July 1994. In 1999/2000 he left Somalia because of the war and travelled to Ethiopia together with his two sisters, Lucky and Fadumo. He and his sisters entered the UK on 4 June 2004 after being granted indefinite leave to enter as refugees, in order to join their father who had arrived in the UK on 6 September 2000 and had been granted refugee status and indefinite leave to remain on 29 July 2001. The appellant lived with his father until 2013 when they were evicted for non-payment of the rent and he then lived in a hostel and subsequently with his sister and various friends.

4. On 13 September 2013 the appellant was convicted of possession of a knife and was sentenced to 26 weeks' imprisonment. On 1 June 2015 he was convicted of affray following a violent incident on 27 December 2014 arising out of a fight outside a kebab shop and was sentenced on 27 July 2015 to 13 months' imprisonment. On 14 September 2015 he was served with a notice of intention to deport him and on 24 March 2016 the respondent notified him of the intention to cease his refugee status to which he responded on 11 April 2016. On 12 October 2016 a deportation order was made against the appellant and a decision was made to deport him from the UK, against which he lodged an appeal.

5. On 30 May 2018 the appellant was convicted of conspiracy to supply a controlled Class A drug, heroin, and conspiracy to supply a controlled Class A drug, cocaine, and on 27 July 2018 he was sentenced to four years and eight months' imprisonment. On 26 February 2019 the deportation order previously issued against the appellant was revoked for reconsideration and the previous deportation decision and the appeal against that decision were withdrawn. On 7 May 2019 the appellant was issued with a further decision to deport him and he was invited to seek to rebut the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) that he had been convicted of a particularly serious crime and constituted a danger to the community. He responded on 11 June 2019. On 12 June 2019 the respondent notified the UNHCR of the intention to revoke the appellant's refugee status. Written representations were received from the UNHCR in response, on 26 November 2019, recommending that cessation was not appropriate.

6. On 21 May 2020 the respondent signed a deportation order against the appellant and on 28 May 2020 made a decision to refuse his protection and human rights claim. In that decision the respondent noted that the appellant had been granted refugee status on the basis of his father's claim to be at risk as a member of the minority Midgan clan but considered that he was no longer dependent upon his father and that the circumstances in Somalia had changed such that minority clan members were no longer at risk, as set out in the case of MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442. The respondent considered that the circumstances in connection with which the appellant had been recognised as a refugee had therefore ceased to exist and that paragraph 399A(v) of the immigration rules and Article 1C(5) of the Refugee Convention accordingly applied such that his refugee status had therefore ceased. The respondent considered further that the appellant would not face an Article 3 or Article 15(a) and (b) risk of harm on return to Somalia as he would be able to find employment in Mogadishu and support himself there. The respondent noted the appellant's claim to be at risk on the basis of being associated with his father and sister who were known as popular Somali singers but found that she could not consider that submission since the supporting evidence in the form of YouTube and Facebook printouts had not been translated into English. The respondent did not consider that the appellant was at risk as a result of Al-Shabaab's presence in Mogadishu or as a result of drought or a lack of family or clan support. Furthermore, it was considered that the appellant did not qualify for humanitarian protection in any

event since he was excluded under paragraph 339D of the immigration rules as a result of his conviction and sentence. The respondent also certified that the presumption in section 72(2) of the NIAA 2002 applied to the appellant and that Article 33(2) of the Refugee Convention applied such that the Convention did not prevent his removal from the UK. As for Article 8, the respondent considered that there were no very compelling circumstances outweighing the public interest in the appellant's deportation.

7. The appellant became eligible for release on license on 2 June 2020 and he was detained under immigration powers. He was released on bail on 5 June 2020 and went to live with his sister Fadumo and her son. His license was due to expire on 26 March 2023.

8. The appellant appealed against the respondent's decision and his appeal was heard on 7 January 2022 in the First-tier Tribunal by Judge Hone. Judge Hone heard oral evidence from the appellant, his father and his two sisters. He had before him two country expert reports from Mary Harper, a psychological assessment from Robert Sellwood and a forensic psychiatric report from Dr Amlan Basu. The judge found that the appellant would be at risk in Mogadishu for two reasons: firstly, because he was a vulnerable man from a minority clan with no knowledge of Mogadishu and no family support in Somalia; and secondly, because his sister's activities as a singer would not be approved of by Al-Shabaab who would connect him to her owing to her high profile which would then put him at risk. The judge found that the appellant was not excluded from refugee status as he had rebutted the presumption in section 72, being a low risk and of no danger to society. On the same basis he found that the appellant was not excluded from humanitarian protection and that his removal to Somalia would therefore be in breach of Article 3 of the ECHR and Article 15(c) of the Qualification Directive. The judge found further that the requirements of the private life exception to deportation in section 117C(4) of the Nationality, Immigration and Asylum Act 2002 were met and that there were very compelling circumstances over and above those requirements. The judge allowed the appellant's appeal in a decision promulgated on 29 March 2022.

9. Permission to appeal against that decision was sought by the respondent on four grounds. Firstly, that the judge had failed to give adequate reasons for his findings in regard to the appellant's asylum claim, since he had failed to consider the respondent's decision to cease the refugee status derived from his father's claim as a minority clan member and to have regard to the relevant caselaw as to whether there had been any material change in circumstances in that respect, and he had failed to give adequate reasons for finding that the appellant had rebutted the presumption under section 72 of the NIAA 2002. Secondly, that the judge had failed to give adequate reasons for allowing the appeal on Article 3 ECHR and humanitarian protection grounds. Thirdly, with regard to Article 8, that the judge had erred in finding that very significant obstacles prevented the appellant's integration into life in Somalia and had made no finding in respect to whether the appellant was socially and culturally integrated into life in the UK for the purposes of Exception 1 of section 117C. Fourthly, that the judge had failed to have regard to the high threshold for demonstrating very compelling circumstances and had failed to have adequate regard to all elements of the public interest.

10. Permission was refused in the First-tier Tribunal, but was subsequently granted on a renewed application in the Upper Tribunal on 11 October 2022 on the following basis:

> "3. As to 1(a), it is arguable that he judge failed properly to assess risk on return on the basis of all the evidence, rather than whether it would be unreasonable to live in Mogadishu applying MOJ and others. As to (1)(b), the judge arguably gave inadequate reasons at [46] for treating the presumption of risk to the community to be rebutted given the finding that there was a risk, albeit a "very low risk" of re-offending given the very serious drugs crime the appellant was convicted of.
> 4. As to (2), the same points make this ground arguable in relation to Art 3 and HP. In addition, it is arguable that the judge at [47] gave inadequate reasons why the appellant's crime was not a "serious crime" such that he was not excluded from HP.
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> 5. As to (4), the judge arguably erred in applying the very compelling circumstances test – having regard to the public interest – in s.117C(6).
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> 6. As to (3), I see less merit in the judge's assessment of Exception 1 but would not exclude consideration of it, although it may ultimately lack merit."

11.The appellant's solicitors filed a Rule 24 response resisting the appeal on all grounds.

Hearing and Submissions

12.At the hearing, Ms Isherwood raised a preliminary matter, namely that there had been no consideration by Judge Hone of the recent country guidance in OA (Somalia) (CG) [2022] UKUT 33 which had been issued on 2 February 2022, after the hearing before him but prior to him promulgating his decision. She relied upon the decisions in NRS and Another (NA (Libya)in Scotland) [2020] UKUT 349 and NA (Libya) v Secretary of State for the Home Department [2017] EWCA Civ 143 in submitting that the failure to consider the most recent country guidance was an error of law and that that was irrespective of the fact that it had not been raised by the Secretary of State in the grounds of appeal. We asked Ms Isherwood to clarify in what respect any changes to the previous country guidance made by OA had impacted upon the decision of Judge Hone. She submitted that OA was of particular relevance in light of Judge Hone's reliance upon the expert reports of Mary Harper, given that the Upper Tribunal in OA had, from [193], criticised Ms Harper as an expert, albeit not in as strong terms as in AAW (expert evidence - weight) Somalia [2015] UKUT 673.

13.Mr O'Ceallaigh objected to what was essentially an application to amend the grounds of appeal on the basis that the application was being made over a year out of time after two sets of grounds had been submitted, and that it was not clear how the proposed new ground relating to the country guidance in OA was material to the decision reached by Judge Hone, considering that he had made his findings on the very specific facts in the appellant's case. We asked Ms Isherwood how a failure to consider OA materially impacted upon the judge's decision, given that we could not see that there was anything in the country guidance that went against the judge's findings. She relied upon the judge's findings at [40] to [42] in which he accorded weight to Mary Harper's expert reports.

14.We then rose to consider the matter and, having done so, refused Ms Isherwood's request to amend the grounds, for two reasons. Firstly, the only aspect of OA which Ms Isherwood was able to identify as possibly impacting upon Judge Hone's decision was the criticism made by the Upper Tribunal of Mary Harper as an expert. However the criticism of Mary Harper as an expert pre-dated OA, having being raised in the case of AAW, whereas the Tribunal in OA was significantly more supportive of her expertise. Accordingly, any failure by the judge to consider OA was therefore not material in that respect and the real challenge that Ms Isherwood was seeking to raise was in fact to the judge's reliance upon Mary Harper's evidence, a matter which had not been raised

in the grounds of appeal. Ms Isherwood was not able to offer any reason why it had not been raised and we saw no reason why we should permit an amendment to the grounds on that basis at such a late stage. In any event, and secondly, we did not see how Mary Harper's report materially impacted upon the main basis for the judge finding the appellant to be at risk on return to Somalia, namely as a result of being linked to his sister's and father's activities. Ms Isherwood was not able to assist us in that regard and neither was she able to identify any other basis upon which the judge's decision could have been materially affected by the more recent guidance in OA. In the circumstances we found there to be no reason why the appeal could not proceed on the basis of the grounds of appeal considered in the grant of permission.

15.We heard submissions from both parties. Ms Isherwood relied upon the grounds of appeal. With regard to the first ground she submitted that the judge had failed to consider the question of risk in the context of the country evidence and had failed properly to explain why, on the facts of the case and on the findings of fact he had made, the appellant was at risk on return. She submitted that the judge's findings were to do with reasonableness of return to Mogadishu, rather than real risk. With regard to the second part of the first ground, Ms Isherwood submitted that the judge had failed to set out any reasons for concluding that the presumption in section 72 had been rebutted. She submitted that the judge had failed to consider the length of the appellant's sentence, the number of offences and nature of his offending, the seriousness of the offence and the public interest and had failed to explain why he concluded that the appellant was not a danger to the community. The losing party was unable to understand why they had lost. In relation to the second ground, Ms Isherwood relied upon her submissions for the first ground. As for the third and fourth grounds, Ms Isherwood submitted that the judge had failed to consider the public interest and had failed to explain why there were very compelling circumstances.

16.Mr O'Ceallaigh submitted that the judge's core finding, that the appellant would be at risk in Mogadishu because of his association with his sister, had not been challenged in the grounds, and was sufficient in itself to determine the appeal. The challenge to the judge's finding on section 72 was just a re-arguing of the appeal. The judge had looked at all the evidence and the expert reports and had reached his decision on the basis of that evidence. It was open to the judge to conclude that the appellant did not pose a danger to the community. As for the third and fourth grounds, the judge had found that exception one was made out and had provided reasons for concluding that there were very compelling circumstances over and above the exception. On the facts of the case and the evidence before him, the judge was entitled to reach such a conclusion.

17.Ms Isherwood responded briefly, submitting again that the judge had failed to explain how the public interest applied.

Discussion

18.We accept that Judge Hone's decision could have benefitted from more detailed and clearer findings in many respects and that there were aspects of the case with which he failed properly to engage. However, for the reasons we set out below, the flaws in his decision are ultimately immaterial when considered against the lack of any challenge in the grounds to what are essentially the judge's core findings. That was a point made by Mr O'Ceallaigh in his submissions and we agree with him.

19.We refer in particular to the respondent's challenge to the judge's decision in relation to the asylum/protection element of the appellant's case. The grounds

challenge the judge's decision in that respect on the basis that he failed to consider how the country information and the country guidance in MOJ impacted upon the appellant's continuing entitlement to refugee status. Specifically, that the judge had failed to consider that the circumstances upon which the appellant had been granted asylum, namely his father's claim based upon being a member of the Midgan minority clan, had ceased to exist, in light of the findings in MOJ. We accept that the judge did not make specific findings in that regard and we accept that it would have been appropriate for him to have addressed that matter as his starting point when considering the cessation issue, from [34] of his decision. However, we find that nothing material arises from that, given the judge's ultimate conclusion that the appellant remained at risk on return to Somalia in his own right on the basis of his current circumstances.

20.The judge's approach to the issue of cessation reflected the way in which it was presented to him in the appellant's skeleton argument before him and in the submissions made before him at the hearing, as recorded at [30] of his decision. The skeleton argument relied upon relevant caselaw on the issue of cessation, at annex 2, which would no doubt have been in the judge's mind even if not specifically cited. Annex 2 quoted from the judgments in the cases of Secretary of State for the Home Department v MA (Somalia) [2018] EWCA Civ 994 and Secretary of State for the Home Department v MS (Somalia) [2019] EWCA Civ 1345, both of which referred to the "mirror image" approach in cessation cases and, in the former at [2(1)], set out the relevant question as being: "*whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee*."

21.That was the approach adopted in the subsequent case of PS (cessation principles) Zimbabwe [2021] UKUT 283 where, at [27], the Upper Tribunal held that:

> "It is therefore for the respondent to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must be on: (i) the personal circumstances and relevant country background evidence including the country guidance ('CG') case-law appertaining at the time that refugee status was granted and; (ii) the current personal circumstances together with the current country background evidence including the applicable CG. In this case it is therefore for the respondent to show that the circumstances which in 2008 justified the grant of refugee status to the appellant have now ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must therefore be on both the 2008 and current circumstances of the appellant and Zimbabwe."

22.It was therefore for the judge to consider, and base his decision upon, not only the circumstances which existed at the time the appellant was granted refugee status, but also the circumstances existing at the current time. The judge's finding that the appellant was at risk in his own right on the basis of his current circumstances was, however, sufficient for him to find that his refugee status should not be ceased, irrespective of any findings on the circumstances which gave rise to the grant of asylum in the first place.

23.It was Ms Isherwood's submission that the judge's findings were not based upon real risk but on the reasonableness of relocation to Mogadishu and therefore did not

satisfy the relevant test. She referred in that respect to the judge's findings at [36] to [40] in relation to the difficulties the appellant would face in Mogadishu in terms of a lack of family and other connections, a lack of employment opportunities, a lack of accommodation and a lack of support. She submitted that the judge had provided no reasons for concluding as he did on those matters and had failed to show how the evidence before him supported such conclusions. However, as we pointed out to Ms Isherwood, the material finding made by the judge in relation to risk on return was at [45], based on his reasoning at [42] to [44], whereby he concluded that there was a real risk of the appellant being targeted by Al Shabaab because of his association with his sister who was well-known in the Somali community as a singer. That was a finding which had not been challenged in the grounds and the relevance of which appeared not to have been appreciated by the respondent, as is evident from [8] of the grounds. It was a finding that was independent of the factors referred to at [36] to [40] and, as we suggested to Ms Isherwood, was not contingent upon anything in the headnote to MOJ which was relied upon by the respondent in her grounds. As Mr O'Ceallaigh submitted, it was an independent finding based upon the appellant's specific and individual circumstances and was accordingly capable in itself of being determinative of the cessation issue.

24.We have taken account of the fact that the judge's findings and conclusions at [42] to [45] were made with regard to Mary Harper's report and, whilst we declined to admit Ms Isherwood's challenge based on Ms Harper's evidence, we have nevertheless reflected again upon the matter. We note from the paragraphs relied upon by Ms Isherwood in OA, from [193] onwards, that the Upper Tribunal considered there to be limitations to Ms Harper's evidence, in relation to living conditions in the IDP camps and gatekeepers, and employment opportunities for returnees. However the Tribunal otherwise found many parts of Ms Harper's evidence to be helpful and did not adopt the criticism made of her in AAW. We note their positive findings on her evidence at [229] about the conditions in Mogadishu for returnees. The Tribunal clearly regarded her as an expert in her field and an expert whose evidence ought to be accorded weight, albeit with the limitations noted. We fail to see how those limited and specific criticisms made of Ms Harper's evidence impacted adversely in any way upon Judge Hone's findings at [42] to [45] and we consider that the judge was perfectly entitled to accord the weight that he did to her reports when reaching his conclusion at [45]. We therefore maintain the position we took in response to Ms Isherwood's application, namely that the judge's conclusion at [45] as to a real risk arising from the appellant's association with his sister, was independent of any criticisms made about Mary Harper in OA and that nothing material arose from the judge's failure to consider the most recent guidance in OA.

25.Accordingly, whilst we consider that the judge's deliberations and conclusions on the cessation and protection issues could have been presented in a more organised and comprehensive fashion, we are in agreement with Mr O'Ceallaigh that the core finding at [45], supported by the reasoning at [42] to [44], was sufficient to entitle him to reach the conclusion that he did on the appellant's protection claim.

26.Turning to the second part of ground one relating to the judge's conclusion on the presumption in section 72 of the NIAA 2002, we do not consider the respondent's challenge to be without merit, given the brevity of the judge's findings and the absence of any detailed reasoning. The judge's findings were limited to a short paragraph at [46]. It is clear, however, that the judge was fully aware of the appellant's history of offending, as set out at [6] to [9] of his decision and that he had careful regard to the Crown Court Judge's sentencing remarks in relation to the index offence. It is also clear that he had regard to the evidence which addressed the risk of

re-offending, not only from the appellant's family members, whose evidence he found to be credible, but also the opinions of the experts, Mr Selwood and Dr Basu, whose evidence was not challenged by the respondent. It would have been helpful if the judge had articulated which parts of the expert evidence he relied upon to support his conclusions, and we concur with Ms Isherwood that his decision was flawed in so far as he failed to do that. However, having considered that evidence ourselves, we agree with Mr O'Cealleigh that it supported the judge's conclusions. We note that Dr Basu made his assessment after interviewing the appellant for an hour and a half and he gave careful consideration to all aspects of his life as well as his offending history and the circumstances of the offences. He took account of the OASys assessment conducted a year previously and concluded, at paragraph 12.2.7 of his report, that the appellant's risk of reoffending was low, although not negligible. We note that the assessment of low risk was supported by a letter from the probation service which post-dated the OASys reports and Dr Basu's report, at page 421 of the appellant's appeal bundle, although that was not specifically cited by the judge. Accordingly, despite the brevity of the judge's reasoning and findings, we are satisfied that nothing material arises from the grounds of challenge and that the conclusion reached by the judge was one which was properly open to him on the evidence before him.

27.The second ground, which challenges the judge's decision on Article 3 and humanitarian protection, is addressed by our findings above and, as a result of those findings, grounds three and four, which challenge the judge's findings on Article 8, are also essentially academic. In any event we do not consider that those grounds identify any errors of law in the judge's decision on Article 8. The respondent is clearly wrong in asserting, in [16] of the grounds, that Judge Hone failed to make a finding on whether the appellant was socially and culturally integrated into life in the UK, when it is clear that he did make such a finding at [69]. His finding, that the private life exception in section 117C was met, was adequately reasoned at [67] to [71], and the grounds of appeal challenging that finding are simply a disagreement. As for the judge's findings on "very compelling circumstances" over and above the exceptions to deportation, we concur with Ms Isherwood that they are very limited and lack any detailed reasoning. However we consider that there is sufficient at [73] to show that the judge had regard to the relevant factors and took account of all the evidence, including the expert evidence. We note that the judge did give consideration to the public interest and to the various facets of the public interest aside from the risk of re-offending, as is evident at [65], and it seems to us that he was accordingly entitled to reach the conclusion that he did.

28.For all these reasons we do not find the Secretary of State's grounds to be made out and we conclude that the judge's decision should stand. We accordingly uphold the judge's decision.

Notice of Decision

29.The Secretary of State's appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to alllow the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 May 2023