



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001876

First-tier Tribunal Nos: PA/55868/2021
IA/17728/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMA
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant:

Mr. E. Terrell, Senior Home Office Presenting Officer

For the Respondent:

Ms. J. Fisher, Counsel, instructed by Rashid and Rashid Solicitors

Heard at Field House on 6 July 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 Clemes (the "Judge"), promulgated on 24 March 2023, in which she allowed AMA's appeal against the Respondent's decision to refuse to grant leave on human rights grounds. AMA is a national of Somalia who appealed

against the decision on Article 3 and Article 8 medical grounds.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to AMA as the Appellant reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted by Judge Aldridge on 2 June 2023 as follows:
 - “1. The in time grounds assert that the judge erred in law by failing to apply the principles of *Deevaseelan* and take into account the previous findings of the FTT which found the witnesses and Appellant to be unreliable and they had tampered with evidence and lacked credibility. The previous assessment of the FTT is the starting point to the judge in this matter. The judge also failed to provide adequate reasons for weight attributed to medical reports and failed to deal with any criticism lodged by the Respondent in respect of failing to consider GP records and the previous decision.
 2. The grounds are arguable. Whilst the judge acknowledged the previous determination it is not apparent that the judge fully considered the relevance of the previous findings in respect of the evidence presented to the tribunal and issues surrounding credibility. In respect of the second ground, the judge has acknowledged the limitations of the sources and provided reason why he has accepted the medical evidence and attributed significant weight to it”.

The hearing

4. Ms. Fisher submitted a skeleton argument. I heard submissions from Mr. Terrell and Ms. Fisher following which I reserved my decision.

Error of Law

5. Ground 1 alleges that the Judge failed to apply Devaseelan with particular reference to the evidence of the Appellant’s siblings. The Appellant was accepted to be a vulnerable witness and did not himself give evidence. The Judge found at [31] that the Appellant’s siblings were credible and honest witnesses.
6. In the previous decision promulgated on 15 March 2010 in relation to the Appellant’s asylum claim, the Appellant and his siblings were found to be unreliable witnesses. The Appellant’s siblings’ evidence of clan membership and whether or not the Appellant had been born in Mogadishu was found to be unreliable. However the present claim was brought on a different basis, and the issues before the Judge were therefore completely different to the issues being decided in 2010. This claim was brought solely on Article 3 grounds in relation to the Appellant’s mental health.
7. I find that the Judge was aware of the previous decision and, as was acknowledged before me by Mr. Terrell, although she has not specifically mentioned Devaseelan this is not an error of law in and of itself given that it is clear that she considered the previous decision. However, the Judge was also aware that what she was deciding was different to that which had been decided in 2010.
8. The evidence before the Judge from the Appellant’s siblings was in relation to the care and support that the Appellant received from family members in the United Kingdom, and family in Somalia. I find that the Judge was entitled to put

weight on the evidence of the Appellant's siblings. The Respondent had accepted that the Appellant had serious mental health problems, as acknowledged by the Judge at [30] where she states that she has "borne in mind that most - in fact nearly all - of the appellant's health issues are uncontentious between the parties". The Appellant's siblings' evidence of the support and care that he needed was corroborated by the medical evidence.

9. In relation to family in Somalia, the Judge's findings are comprehensively set out at [34].

"I am also satisfied that there are no other family members who would be able to support and/or accommodate the appellant. It is more likely than not that the appellant will have lost contact with family members. I bear in mind his severe mental health problems here as they would play a significant part in radically inhibiting his ability to establish and maintain any such contact. I rule out his former wives (or estranged if not former wives) as being able or prepared to offer him any assistance. They are most unlikely to feel any sort of loyalty to him even if he was able to get hold of them. They would not be obliged legally or morally to care for him. The evidence about his children was thin and yet the respondent argues that any of them would be able to care for the appellant, their father. I reject that argument - it ignores the reality of a very ill man somehow being able to trace and establish contact with offspring that he has had little or no contact with since 2009, i.e. the bulk of their formative and young adult lives. It is quite possible that they are unaware of his existence after he left them to travel to the UK."

10. The Judge did not rely only on the evidence of the Appellant's siblings, but also on the evidence of the Appellant's mental health. She took into account the effect of the Appellant's severe mental health problems on his ability to maintain relationships with family in Somalia. She rejected the Respondent's argument that the Appellant's children would be able to care for him. She found that it ignored the reality of the Appellant's situation. The Judge had to consider whether the Appellant would be able to obtain support from family members rather than just whether he had any family members in Somalia. She finds at [33] that she is satisfied that he has no family in Somalia upon whom he could rely. I find that this finding is properly reasoned. I find that Ground 1 is not made out.
11. In any event, even if the Judge had found that there were family members on whom the Appellant could rely, this would not address the issue of the availability of medical care for the Appellant in Somalia. His claim under Article 3 would not fail simply because he had family support given that he would also need medical care for his serious mental health problems. The Judge states at [33]:

"I find that the facilities to receive or continue with such treatment are virtually non-existent in Somalia as identified by the respondent herself in her refusal letter."

12. There was no challenge to this finding.
13. In relation to Ground 2, that the Judge gave inadequate reasons for relying on the medical report, while the Respondent set out in her decision reasons why this evidence should not be relied on, mainly in respect of the documents which were not made available to the psychiatrist, it was acknowledged by Mr. Terrell that there was no challenge to the expertise of the witness.
14. In her decision the Respondent stated:

“In consideration of the report it is noted that Dr Azmathulla Khan Hameed does not specifically say what documents he was provided with by your representatives other than background information and your statement. Dr Hameed states that the report is based on your factual information from your solicitor however this has not been provided. It is also noted that Dr Hameed does not state that he was provided with the findings of the Immigration Judge or the Home Office considerations of your subsequent further submissions.

It is further noted that Dr Hameed details the information he has in relation to your family. The report fails to make any mention or consideration that you have four adult children in Somalia as well as your wife, mother and a sister.”

15. At [32] the Judge states:

“Despite criticisms by the respondent of the psychiatric report submitted for the appellant, I am satisfied that it carries substantial weight and that I can rely on its findings. I note that the sources said to have been used by the witness seem limited but I am not satisfied that anything else that he might have seen would have been likely to alter his opinion, based as it is on clinical findings and his consultation with the appellant.”

16. I find that this assessment was properly made. The Judge has acknowledged the Respondent’s concerns. However, given that the psychiatrist was making a clinical diagnosis based on an assessment of the Appellant’s clinical presentation, the Judge finds that his opinion was unlikely to be altered by these other documents. This finding was open to her. The other documents referred to by the Respondent would not be relevant to an assessment of the Appellant’s mental health. His mental health condition was not disputed and the GP records confirmed it.

17. I find that the Judge has given adequate reasons for relying on the evidence in the psychiatric report at [32]. It is clear that she was aware of the Respondent’s concerns but was not satisfied that any other sources the psychiatrist might have seen would have been likely to alter his opinion. She then applied AM (Zimbabwe) [2020] UKSC 17 from [36] onwards with specific reference to the Respondent’s own CPIN evidence which was set out in the skeleton argument.

18. I find that there was no dispute as to the Appellant’s mental illness. I find that the Judge was gave adequate reasons for relying on the psychiatrist’s report. I find that Ground 2 is not made out.

19. I further note that there was no challenge made by the Respondent to the Judge’s findings on the Article 3 destitution claim at [38] to [40]. Therefore, even had I found that there was an error made out in Ground 2, given that I have found that Ground 1 was not made out, the appeal would fall to be allowed in any event.

Notice of Decision

20. The decision does not involve the making of a material error of law and I do not set it aside.

21. The decision of First-tier Tribunal Judge Clemes stands.

Kate Chamberlain

Appeal Number: UI-2023-001876
First-tier Tribunal Numbers: PA/55868/2021
IA/17728/2021

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 July 2023