Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06913/2018 (V)

THE IMMIGRATION ACTS

Heard at Field House *via Microsoft Teams*	**Decision & Reasons Promulgated**
On 8 November 2021	**On 25 January 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMQ
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms. J Isherwood, Senior Presenting Officer
For the Respondent: Ms. G Loughran, Counsel, instructed by Wilson Solicitors LLP

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the claimant, AMQ. This direction applies to, amongst others, the claimant and the Secretary of State. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appellant in this matter is referred to as the 'Secretary of State' in the body of this decision, the respondent as the 'claimant'.

2. This is an appeal by the Secretary of State against the decision of Judge of the First-tier Tribunal Bird ('the Judge') sent to the parties on 17 October 2019 by which the claimant's appeal against a decision (1) to refuse to revoke a deportation order, and (2) to refuse to grant him leave to remain on human rights (article 3 ECHR) grounds was allowed.

3. At the outset, I wish to thank the representatives for their careful, concise and helpful submissions.

Remote hearing

4. The hearing before me was a Teams video conference hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.

Anonymity Order

5. The First-tier Tribunal issued an anonymity order and neither representative requested that it be set aside.

6. The requirement that justice should be administered openly and in public is a fundamental tenet of the domestic justice system. It is inextricably linked to freedom of the press and so any order as to anonymity must be necessary and reasoned: *R. (Yalland) v. Secretary of State for Exiting the European Union* [2017] EWHC 630 (Admin).

7. The public enjoys a common law right to know about court proceedings and such right is also protected by article 10 ECHR.

8. As observed by the Supreme Court *In re Guardian News and Media Ltd and Others* [2010] UKSC 1, [2010] 2 AC 697 where both articles 8 and 10 of the ECHR are in play, it is for the Tribunal to weigh the competing claims under each article. Since both article 8 and article 10 are

qualified rights, the weight to be attached to the respective interests of the parties will depend on the facts. A Judge is therefore obliged to provide reasons as to why article 10 rights are given lesser weight than those given to the appellant's article 8 rights. Such reasons may permissibly be short, with reference to Guidance Note 2013, No. 1 which is concerned with anonymity orders, but they are required.

9. Though noting that it will usually be in the public interest for deportation proceedings to be conducted by means of open justice, I am mindful that the claimant has significant mental health concerns and in light of the particular circumstances arising in this matter I consider an anonymity order necessary to protect his article 8 rights. I confirm the order made by the First-tier Tribunal to avoid a likelihood of serious harm arising to the claimant from details of his mental health diagnosis being publicly known. The order is confirmed above.

Background

10. The claimant is a Somali national who is aged 62. He asserts that he entered the United Kingdom clandestinely in March 2002, when aged 42.

Criminal conviction - 2006

11. In February 2006 the claimant was convicted of wounding with intent to do grievous bodily harm and on 7 April 2006 he was sentenced to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 and directed to serve a minimum term of 20 months. He served in the region of 6 years before release and another 3 years in immigration detention.

12. At the time of the index offence the claimant was leading a chaotic lifestyle, moving between the homes of various individuals and being under the influence of khat whilst suffering mental health concerns.

Deportation proceedings - 2006

13. The Secretary of State informed the claimant as to his liability to deportation in August 2006. The claimant informed the respondent that he held both Dutch and Somali nationality. The Dutch Consulate informed the Secretary of State in November 2012 that the claimant is not a national of the Netherlands and consequently, on 25 March 2013, a deportation order was signed against the claimant.

14. The Secretary of State refused the claimant’s asylum application by a decision dated 29 July 2014. The claimant’s appeal was subsequently refused by the First-tier Tribunal (DJFtT Coates and Dr. Okitikpi). The

decision was dated 27 October 2014. The panel concluded that the claimant's account was not credible, given his inconsistent evidence on core issues and the timing of his asylum claim which they considered had been made solely for the purposes of frustrating removal. They upheld the section 72(2) certificate and accordingly dismissed the claimant's asylum appeal. As to article 3, they concluded that the claimant would not be at risk on return to Mogadishu and that his deportation would not breach his protected human rights.

15. The claimant was granted permission to appeal and by a decision dated 8 June 2015 his appeal was dismissed by the Upper Tribunal (UTJ Kebede and DUTJ Norton-Taylor, as he then was). As to the support available to the claimant in Somalia, as well as the opportunities of employment upon return to Somalia, the Tribunal observed, at [23]

> '23. In any event we consider that, based on the findings made by the panel and the parts of the guidance they relied upon at paragraph 45 of their decision, there was nothing material in the factors listed in paragraph (ix), or in the guidance at paragraph (xi), that could have assisted the appellant. It is clear from their findings at paragraphs 22 and 40 that the panel proceeded on the basis that the appellant was a member of the Isaaq clan from Hargeisa, which was the conclusion reached by the respondent. They referred, amongst other paragraphs of the head-note to MOJ, to paragraph (vii), albeit quoting from paragraph (viii), as being applicable to the appellant and thus relied upon the significance of clan membership and the support provided by majority clans. Accordingly, it is clear that they concluded that the appellant would not be returning to Mogadishu without any means of support. With regard to paragraph (x), which they relied upon at paragraph 45, there was no evidence before them from the appellant to explain why he would not be able to access the economic opportunities available in Mogadishu and we note that the evidence before them was that he was a qualified nurse and had previously worked as a nurse, as well as a driver, in Somalia. There was, furthermore, no evidence before the panel to suggest that a significant period of absence from Somalia would, on that basis alone, put the appellant at risk.'

Further representations

16. The claimant submitted further human rights representations on 11 July 2017 relying, in part, upon a psychiatric report authored by Professor Cornelius Katona. The Secretary of State accepted that the representations constituted a fresh claim for the purpose of paragraph 353 of the Immigration Rules but proceeded to refuse the application to revoke the deportation order by a decision dated 15 May 2018.

First-tier Tribunal decision

17. The appeal was heard by the Judge sitting at Hendon Magistrates' Court on 6 September 2019 and the claimant gave oral evidence. He relied upon two psychiatric reports from Professor Katona, a consultant psychiatrist, dated 4 December 2016 and 12 October 2018. He also relied upon a psychiatric report from Dr. Piyal Sen, a consultant forensic psychologist, dated 12 July 2019. Both psychologists diagnosed the claimant as having severe depression with features of post-traumatic stress disorder ('PTSD').

18. The Judge concluded that the claimant remains a danger to the community and so was unable to rebut the presumption established by the 'section 72 certificate', at [53]-[60].

19. When considering the First-tier Tribunal's conclusion as to article 3 in 2014, the Judge observed, at [64], that the panel did not have the benefit of the psychiatric evidence placed before the sentencing judge and there was no detailed consideration as to the claimant's mental health.

20. In respect of the claimant's clan membership, the Judge observed, at [71]:

> '71. Whilst it is accepted that the appellant is not a member of a minority clan, to the lower standard I find that he is a child of a mixed marriage between a majority clan member and a minority clan member. To the lower standard I am prepared to accept that because of this his father, a member of the Isaaq clan would have faced problems from his own clan members. It is also likely that as a consequence the appellant was brought up with closer ties to his mother's family and her clan – the Reer Hamar.'

21. The Judge noted that the claimant's mother and sister were killed during the civil war and the appellant, along with his wife, were required to leave Somalia in 1991 to escape violence. She accepted that the family were granted asylum in the Netherlands in 1992, at [72]. The claimant's wife relocated to the United Kingdom with their three children, who are Dutch nationals, in 2001 and the claimant joined them the following year, at [73]-[74].

22. It was found by the Judge that the claimant has not lived in Somalia since leaving the country and it was accepted that he has no family residing in Mogadishu. He has no accommodation in the city and there is no evidence of any other financial or social support to which he could have access.

23. The Judge also accepted that though the claimant has family living in the United Kingdom, it is unlikely that he would secure any meaningful financial support from them. She found, at [107]:

> '107. It was argued on behalf of the respondent that the appellant has family in the United Kingdom who can financially support him. The evidence that I have seen would not bear this out. The appellant has a daughter who did house and accommodate him for a short period of time but has her own commitments. The appellant's uncle with whom he lives would not be able to provide the support.'

24. The Judge found that in all likelihood the claimant would have no option but to stay in an IDP camp upon return to Somalia, at [76]-[77].

25. I note the contents of a witness statement from the appellant's 'uncle', MIA, dated 14 May 2019. MIA is actually a paternal cousin. He confirmed that he agreed for the claimant to reside with him so that the claimant could secure bail during these proceedings. Prior to making this offer there had been limited contact between them, the uncle having left Somalia for the USA in 1983 before permanently settling in this country. MIA confirmed that prior to the claimant moving in with him, the claimant had previously visited him at his home on one occasion and contact had been by means of phone calls once or twice a year made by the claimant whilst he was in prison.

26. Medical records establish that the claimant has been identified as suffering from mental health concerns since 1983 and has suffered from hallucinations since 2005. He attempted to hang himself in 2005 and tried to cut his wrists in 2012. He also tried to kill himself in 2016 by drinking bleach. Medical records further confirm that at the time of the index offence the claimant had a history of chewing khat, a leafy green plant containing stimulant drugs which can cause psychological dependency and exacerbate pre-existing mental health problems. It can cause paranoid and, relevant to the claimant, cause psychotic reactions.

27. The Judge noted evidence placed before the Parole Board in 2015 establishing that the claimant was admitted to a psychiatric ward in 2003 following separation from his wife, remaining there for four months. He was re-admitted to a psychiatric unit in 2005 because he attempted to jump onto a moving train. By 2010 he was diagnosed to be suffering from psychosis which was stabilised with medication, at [79]-[80].

28. Reports from two psychiatrists were filed with the Tribunal. They were consistent in the claimant having been diagnosed with severe depression and features of PTSD.

29. Professor Katona, Consultant Psychiatrist, opined that the claimant's major depression with psychotic features has been present since 2004 and has fluctuated in intensity throughout this time. His PTSD appears to have emerged during his time in prison. By 2018 the claimant was showing less evidence of psychosis, but he continued to have many features of PTSD including intrusive thoughts, avoidant behaviours and hypervigilance. Professor Katona further opined that because the claimant has a history of self-harm there was a significant risk that he would develop full-blown suicidal intent in the context of a forced return to Somalia which would spill over into a potentially lethal attempt, at [81]-[84].

30. Dr Sen, Consultant Forensic Psychiatrist, opined that in July 2019 the claimant fulfilled the criteria for a diagnosis of severe depression psychotic symptoms, at [66]. She agreed with Professor Katona's diagnosis of PTSD, but classified the condition as being complex, at [87].

31. The Judge noted Dr Sen's opinion that if the claimant were to be returned to Somalia this would have an extremely adverse effect on his mental health and lead to a significant deterioration and an increase in his risk of suicide, at [88].

32. Consideration was given by the Judge to the Home Office's Information Report, dated 10 May 2018, which references a report from the World Health Organisation ('WHO') sent to the Norwegian Country of Origin Centre - Landinfo - addressing medical treatment and medication in Somalia. The Judge noted, at [90]-[91]:

> '90. WHO in 2009 with others had noted that there was no national action plan for mental health and that treatment options in all parts of the country was seriously deficient. This meant that assessments, treatment and rehabilitation of individuals with mild or severe mental disorders - if assessment and rehabilitation set services were provided at all - do not adhere to standard protocols for assessment and treatment. There were 3 psychiatric hospitals in south and central Somalia but only 3 or 4 psychiatrists with one qualified psychologist but many had false credentials. There were no therapeutic support services for psychotic patients and it was quite common to see people with clear mental health disorders on the streets of Mogadishu.
>
> 91. The report went on to state that in 2005 there were 5 qualified nurses (with three months of training in psychiatric health care) who could prescribe antipsychotic medicines in south and central Somalia.'

33. I observe that whilst the WHO report is now of some age, the Secretary of State was content to rely upon it in her Information Report of 2018.

34. The Judge considered relevant Country Guidance: *MOJ and Others (Return to Mogadishu) CG* [2014] UKUT 00442, noting at [102]-[106]:

> '102. If one were to look at the country guidance given in MOJ it is clear that someone who is an ordinary civilian being returned to Mogadishu after a period of absence will face no real risk of persecution or risk of harm to require protection under article 15(c) of the Qualification Directive or Article 3 of the ECHR. Such a person would be able to look to his nuclear family if he had one living in the city for assistance in re-establishing himself and securing a livelihood.
>
> 103. Although a returnee may look for assistance from his clan members such help is only likely to be forthcoming for majority clan members as minority clans have little to offer. The UT further found that a careful assessment of further factors would have to be made in the case of a person returning to Mogadishu after a period of absence with no nuclear family or close relatives in the city in re-establishing himself on return. Such as circumstances before departure, length of absence, family or clan associations to call upon in Mogadishu, access to financial resources, prospects of securing a livelihood whether that be employment or self-employment, availability of remittances from abroad and means of support during the time spent in the UK.
>
> 104. An appellant returning from the UK would have to explain why he would not be able to access the economic opportunities that have been produced by the economic boom or further that they will not have any family support from abroad or be able to secure livelihood on return and as a consequence would face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.
>
> 105. The UT at paragraph 422-422 [sic] found that many thousands of people were reduced to living in circumstances of destitution in IDP camps and were experiencing adverse living conditions that engage the protection of Article 3 of the ECHR.
>
> 106. It is therefore conceivable that in some cases Article 3 may be breached if the appellant can show that because of the conditions in the IDP camp he will be subject to inhuman and degrading treatment which would breach his protected rights under Article 3.'

35. Upon considering the objective evidence placed before her concerning the provision of mental health support in Somalia, and noting relevant precedent including the House of Lords judgment in *N v. Secretary of State for the Home Department* [2005] 2 AC 296, and various judgments of the Strasbourg Court the Judge concluded, at [108]-[109]:

> ‘108. I have seen the psychiatric evidence in relation to the appellant’s mental health issues and from the background evidence from the WHO it is evident that the facilities providing any care for the kind of mental health issues that the appellant has are virtually non-existent. Professor Katona and Dr Sen are of the view that if the appellant were returned to Mogadishu his mental health would deteriorate as would the risk of suicide.
>
> 109. Given this and the fact that the appellant will have no support, the appellant is someone who if returned to Mogadishu will in all likelihood because of the conditions there will find himself living in an IDP camp where as the UT accepted in *MOJ* conditions exist which are likely to be inhuman and degrading and a consequent breach of this country’s obligations under Article 3.’

Grounds of Appeal

36. The grounds of appeal detail:

    i. The Judge misdirected herself by failing to properly apply the country guidance decision of *MOJ* when ‘going behind’ the findings of the First-tier Tribunal in 2014 concerning the claimant’s membership and affiliation with the Issaq clan, a majority clan.

    ii. The Judge erred in law in finding at [109] that the claimant’s article 3 rights would be breached if he were to reside in an IDP camp, in light of the decision in *MOJ*.

    iii. The Judge gave inadequate reasons for concluding that the claimant’s family provided him with no meaningful financial support in this country, at [76], and would be unable to provide him financial support upon return to Somalia, at [107].

37. The Secretary of State was granted limited permission to appeal on grounds 2 and 3 alone, with Upper Tribunal Judge Stephen Smith reasoning at [3]-[4] of his decision:

> ‘3. Grounds 2 and 3 have merit. Although the judge appeared to cite the correct authorities when preferencing [her] discussion of article 3, arguably [she] failed properly to reflect the distinction between the risk of future harm emanating from a naturally occurring illness (on the one hand; c.f. N and *D*), and the risk of cruel, inhumane or degrading treatment arising from the acts of the State or non-state actors (on the other). The risk to the appellant was arguably from the former, with the effect that article 3 would only prevent the appellant’s removal in extreme cases. Arguably, there was nothing extreme in this case.

> 4. Arguably, the judge failed to give sufficient reasons for accepting the appellant's apparent assertions that the family support he plainly enjoys in this country would cease upon his return to Somalia. Arguably, the reader of the decision is left wondering why the judge reached that conclusion.'

38. UTJ Stephen Smith identified ground 1 to be misconceived:

> '2. ... At [71] the judge was not arguably addressing the significance of clan membership and influence at the present time, but rather was addressing the pre-flight history of the appellant's family, which was unarguably at a time when clan membership and associated factors were significant.'

39. In a decision post-dating UTJ Smith's consideration in this matter, the Upper Tribunal confirmed in *EH (PTA: limited grounds; Cart JR) Bangladesh* [2021] UKUT 00117 (IAC) that rule 22(2)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 has the effect that in the absence of any direction limiting the grounds which may be argued before the Upper Tribunal, the grounds contained in the application for permission are the grounds of appeal to the Upper Tribunal, even if permission is stated to have been granted on limited grounds.

40. I confirmed to Ms. Isherwood that it was open for her, on behalf of the respondent, to advance ground 1 and she confirmed her intention to do so.

Decision on Error of Law

Ground 1: Misdirection in respect of CG decision

41. The respondent submitted that the judge misdirected herself as to the claimant's clan membership and affiliation. It was said that she further erred in relying upon clan-based discriminatory treatment, contrary to the conclusion in the country guidance decision of *MOJ*.

42. Ms. Isherwood succinctly submitted that the Judge erroneously found that the claimant would be more associated with his mother's minority clan but, in any event, "clan membership is not important anymore" in the consideration of persecutory risk and return to Somalia.

43. Though appreciative of Ms. Isherwood's help in respect of this ground, I conclude that it is misconceived for the reasons identified by UTJ Stephen Smith. The Judge noted the historical fact that the claimant secured refugee status in the Netherlands following his asylum application in 1992. In addressing the pre-flight history of the appellant and his family, which was at a time that clan membership and associated factors were considered significant when assessing

protection under the 1951 UN Convention, the Judge made lawful findings as to the basis of the grant of refugee status by the Dutch authorities. The Judge did not place significance upon clan membership and influence as to matters existing at the time of her decision, in accordance with the guidance provided in *MOJ.* There is no merit in this ground of challenge.

Ground 2: Material error in finding that article 3 rights would be breached upon residing in an IDP camp.

44. The Secretary of State submitted that the Judge erred in law when finding at [109] that the claimant's article 3 rights would be breached if he were to reside in an IDP camp. The grounds of appeal identify the challenge as:

> 'It is apparent that whilst Judge Bird noted the case of N at para [95], he [sic] applied the wrong legal test when considering Article 3 in light of the case of MOJ as he [sic] failed to adopt the approach identified in Said. This amounts to a material error of law s had Judge Bird considered Article 3 in line with the approach of the Strasbourg Court in the D and N cases the Judge would have come to a different outcome.'

45. The core of the challenge was that the Judge failed to lawfully consider the ratio of the House of Lords judgment *N* when considering the adverse impact of poverty and deprivation upon return to Somalia. The test identified by the House of Lords, and subsequently considered by the Strasbourg Court in *N v. United Kingdom* (26565/05) [2008] Imm. A.R. 657 is well known. I observe, in particular, Lord Hope's reasoning at [37] to [50] and Lady Hale's conclusion in terms which made limited allowance for conditions in the receiving state, at [69]:

> '69. In my view, therefore, the test, in this sort of case, is whether the applicant's illness has reached such a critical stage (ie he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity.'

46. Reliance was placed by Ms. Isherwood upon the Court of Appeal judgment in *Secretary of State for the Home Department v. Said* [2016] EWCA Civ 442, [2016] Imm AR 1084, at [18], [26] - [28]

> '18. These cases demonstrate that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty or deprivation on return which are not the responsibility of the receiving country or others in the sense described in para 282 of *Sufi and Elmi*, whether or not the feared deprivation is

contributed to by a medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg Court in the *D* and *N* cases.'

...

26. … The conclusion at the end of paragraph 408 [in *MOJ*] raises the possibility of a person's circumstances felling below what "is acceptable in humanitarian protection terms." It is, with respect, unclear whether that is a reference back to the definition of "humanitarian protection" arising from article 15 of the Qualification Directive. These factors do not go to inform any question under article 15(c). Nor does it chime with article 15(b), which draws on the language of article 3 of the Convention, because the fact that a person might be returned to very deprived living conditions, could not (save in extreme cases) lead to a conclusion that removal would violate article 3.

27. The Luxembourg Court considered article 15 of the Qualification Directive in *Elgafaji v Staatssecretaris van Justitie [2009] 1 WLR 2100* and in particular whether article 15(c) provided protection beyond that afforded by article 3 of the Convention. The answer was yes, but in passing it confirmed that article 15(b) was a restatement of article 3. At para [28] it said

> "In that regard, while the fundamental right guaranteed under Article 3 of the ECHR forms part of the general principles of Community law, observance of which is ensured by the Court, and while the case-law of the European Court of Human Rights is taken into consideration in interpreting the scope of that right in the Community legal order, it is, however, Article 15(b) of the Directive which corresponds, in essence, to Article 3 of the ECHR. By contrast, Article 15(c) of the Directive is a provision, the content of which is different from that of Article 3 of the ECHR, and the interpretation of which must, therefore, be carried out independently, although with due regard for fundamental rights, as they are guaranteed under the ECHR."

28. In view of the reference in the paragraph immediately preceding para 407 to the UNHCR evidence, the factors in paras 407(h) and 408 are likely to have been introduced in connection with internal flight or internal relocation arguments, which was a factor identified in para 1 setting out the scope of the issues before UTIAC. Whilst they may have some relevance in a search for whether a removal to Somalia would give rise to a violation of article 3 of the Convention, they cannot be understood as a surrogate for an examination of the circumstances to determine

> whether such a breach would occur. I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408, he would have established that his removal to Somalia would breach article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence which at para 34 UTIAC expressly understood itself to be following.'

47. Ms. Isherwood drew my attention to the judgment in *Secretary of State for the Home Department v. MS (Somalia)* [2019] EWCA Civ 1345, [2020] Q.B. 364, at [76]:

> '76. By relying upon and applying paragraph 408 of the MOJ decision in determining whether there would be a breach of Article 3 ECHR the FTT accordingly applied the wrong legal test, as Said v SSHD makes clear.'

48. The Secretary of State's case in respect of article 3 and whether being subject to poverty and deprivation in IDP camps could amount to a breach of article 3 was heavily reliant before me upon references to precedent. However, I consider it appropriate to initially observe the facts as they arise in this matter. The claimant has significant mental health concerns, which the Secretary of State properly did not dispute either before the First-tier Tribunal or this Tribunal. The Secretary of State did not dispute the opinion of Professor Katona that if returned to Somalia the claimant would be likely to experience substantial worsening in his depressive and PTSD symptoms, leading to a risk of psychotic relapse. Nor did the Secretary of State dispute Professor Katona's conclusion that consequent to his mental health concerns the claimant would not be able to work to support himself, and so be unable to secure his basic needs such as food and accommodation, which would cause him rapid and intense distress. The Judge properly noted the opinions of both Professor Katona and Dr Sen as to there being a significant risk of the claimant developing significant suicide ideation which could lead to a potentially lethal attempt. The claimant has previously made attempts to kill himself, the last known attempt being in 2016 when he drank bleach and required emergency admission to hospital.

49. The mental health concerns continue despite the claimant having exhibited himself as drug free to the Probation Service – he remains on life licence - nor are there concerns as to alcohol consumption since his release from detention. He has committed no further crimes. The 2019 OASys assessment identifies that he has shown a high degree of motivation to comply with his licence conditions.

50. In addition to the Secretary of State not challenging expert medical opinion, for the reasons detailed below there is no merit in the Secretary of State's challenge to the Judge's finding that the claimant would not receive support from persons residing in this country when returned to Somalia. The conclusion reached by the Judge that the claimant would be required to reside in an IDP camp on return was therefore reasonable and lawful in the circumstances. I observe as an aside that even if the claimant were able to secure accommodation on return for a short period of time time, which was not accepted by the Judge and was not advanced by the Secretary of State before me, the likely worsening of his mental health and his personal inability to secure employment because of his mental health would, in all likelihood, quickly result in his losing any accommodation secured.

51. I turn to the Judge's conclusions at [108]-[109]. The fundamental, and terminal, difficulty for the Secretary of State is that the Judge gave two reasons for there being a breach of protected article 3 rights if the claimant were returned to Somalia: (1) the lack of any adequate health care provision suitable for the claimant and his mental health concerns, resulting in deterioration of his mental health and the increase in the risk of suicide in circumstances where the claimant has previously tried to kill himself, and (2) inhuman and degrading conditions in the IDP camp. The conclusion identified at (1) is identifiable through the link between [108] and [109] by the adoption of 'given this' at the beginning of [109]. The Secretary of State has only challenged the conclusion reached in respect of (2). The reasoning at (1) is unchallenged.

52. In the circumstances, even if I were to consider (2) and find a material error of law, the Secretary of State's appeal would ultimately fail because of the unchallenged conclusion reached at (1). I observe that the conclusion reached at (1) is consistent with established authority in respect of article 3 and the risk of suicide upon removal: *J v Secretary of State for the Home Department* [2005] EWCA Civ 629, [2005] Imm AR 409 and *Y (Sri Lanka) v. Secretary of State for the Home Department* [2009] EWCA Civ 362, [2010] INLR 178. I note, in particular, that the Court of Appeal confirmed that an article 3 claim can succeed where the risk is one of suicide, that the treatment (suicide) was identified by the Judge as attaining the minimum level of severity and that the Secretary of State has not challenged the finding that there was no adequate health care provision available to the claimant upon return, such finding being based upon the Secretary of State's own documents. The Judge confirmed that she was aware of the test in *N*, at [96], and applied the principles in respect of suicide as required: *RA (Sri Lanka) v. Secretary of State for the Home Department* [2008] EWCA Civ 1210, at [49]. On the established facts, with the long history of significant suicide attempts, the lack of any adequate health care provision to aid the claimant upon

return and the real concerns as to risk identified by professional opinion, I am satisfied that the only reasonable conclusion that could be reached in this matter is that the claimant's removal would breach his protected article 3 rights in respect of suicide ideation.

53. I observe recent confirmation by the Tribunal in *OK (PTA; alternative findings) Ukraine* [2020] UKUT 00044 (IAC) that permission should not be granted on the grounds as pleaded if there is, quite apart from the grounds, a reason why the appeal would fail. There was no challenge by the Secretary of State to the allowing of the appeal on article 3/suicide ideation grounds. For the reasons detailed below, there is no merit to ground 3 and so permission to appeal should not properly have been granted in respect of ground 2. This ground is dismissed.

Ground 3: No reasons for finding that the claimant's family would not support him on return to Somalia.

54. The ground as advanced is that the Judge failed to provide adequate reasons as to why the claimant would enjoy a lack of financial support on return to Somalia, with such lack of reasoning denying the respondent the ability to properly understand how this conclusion was reached.

55. Ms. Loughran's reply was simply that adequate, cogent reasons were provided by the Judge. It was sufficient that she simply identified and resolved key conflicts in evidence, and to explain in clear and brief terms their reasoning: *Budhathoki (reasons for decisions)* [2014] UKUT 00341 (IAC).

56. The evidence, as presented on behalf of the claimant, is straightforward. His marriage had difficulties for several years. His wife left the Netherlands with the children and relocated to the United Kingdom having separated from the claimant. He travelled to the United Kingdom in 2002 to rejoin his family, but consequent to further arguments left the family home seven months later and moved on his own to Yorkshire, some distance from the family home. He then commenced a new relationship, and remarried, but the marriage quickly broke down. During this time, he was chewing khat and his mental health was worsening. He was sentenced in 2006 and remained in prison until he secured parole in August 2012. He was subsequently detained under Immigration Act powers. He was released from detention in December 2015. Consequently, he did not reside in the community for some nine years. Whilst in prison, he did not enjoy contact with his children until 2011, and during such time he was unaware that his daughter had married and that he had become a grandfather. By the time of the hearing, he enjoyed limited contact with his children, occasionally talking to them by telephone, but they have not visited his home with

MIA. His former wife has remarried and started a new family. The claimant's strongest family relationship was with his daughter, HQ, who had previously provided him with accommodation for some months. At that time, she resided with her husband and family in a one-bedroom property that was unsuitable to also accommodate the claimant. She could not support him financially. The claimant was required to leave the property in June 2016 after he experienced heightened mental health concerns and drank bleach seeking to take his own life. His daughter informed the Probation Service that she could no longer live with her father because of his acting strangely and her real concerns for her child.

57. Therefore, the core of the evidence before the Judge was that the claimant's wife had remarried, he had rarely lived with his children since 2002, his relationship with two children was limited to telephone calls. He had a stronger relationship with his daughter, but she lived in straightened circumstances and cannot afford to support him. He was living with a distant relative, MIA, who had provided accommodation so that he could secure bail after some 3 ½ years in immigration detention, but they had enjoyed minimal contact over previous years. MIA is employed as a taxi driver and is aged in his 60s.

58. This evidence was known to the Secretary of State at the hearing.

59. Though addressed briefly, I am satisfied that the Judge gave cogent, clear reasons for concluding, consequent to the facts identified above, that the claimant would not receive familial support, including financial support, on return to Somalia. On the facts as presented it was reasonable to conclude that the only two people close to him that have provided support in recent times are his daughter and MIA, both of whom have limited financial resources and could not provide the required support.

60. There is no merit to this ground.

Notice of Decision

61. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

62. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.

63. The anonymity order is confirmed.

Signed: D O’Callaghan
Upper Tribunal Judge O’Callaghan

Date: 17 January 2022

TO THE RESPONDENT
FEE AWARD

No fee was paid and so there can be no fee award.

Signed: D. O’Callaghan
Upper Tribunal Judge O’Callaghan

Dated: 17 January 2022