



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00107/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4 December 2017

Decision & Reasons Promulgated
On 28 June 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A--- S---

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Ms M Benitez, Counsel instructed by OTS Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Respondent. Breach of this order can be punished as a contempt of court. I make this order because it is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against decisions of the Secretary of State on 8 August 2016 that he had ceased to be a refugee and refusing him leave to remain in the United Kingdom on human rights grounds following the

revocation of his status as a refugee. The appeal has already been determined unsatisfactorily and I have found the First-tier Tribunal's decision to be wrong in law and I have given reasons for that decision and my decision to set aside its decision on 25 September 2017 and those reasons are appended to this decision.

3. Having heard submissions from the parties I am satisfied that I can re-make the decision without any further hearing and for reasons that I will explain below it is my decision to dismiss the claimant's appeal against the decisions of the Secretary of State.
4. Ms Benitez began by relying on the original grounds of appeal to the First-tier Tribunal and repeating her contention that the decisions complained of are completely misconceived because they arise from a decision under Section 32(5) of the UK Border Act 2007 requiring a deportation order to be made whereas it is the claimant's case that that Act does not apply.
5. This submission is misconceived for two reasons. First, it is wrong, being based on a misreading of statute, and second, even if it were right, it would make no difference because the appeals before me are against the decisions identified and not against the decision to deport the claimant. If there is anything wrong in that decision, then the remedy lies elsewhere. For the purposes of an article 8 balancing exercise the decision is lawful in the sense that it is made on an identified, albeit disputed, legal basis.
6. In outline, it was the claimant's case that his deportation was contemplated before the United Kingdom Border Act came into force and the Act had no application in his case. This argument depended on the commencement date of the UK Border Act 2007 and was said to be reinforced by a Practice Direction from the Immigration Directorate Instructions from April 2015 which said that the 2007 Act did not apply where "the criminal had not been served with notice to deport before 1 August 2008".
7. It was the claimant's contention that such a notice had been served in this case and therefore the case came out of the scope of the Act. There is no evidence before me that a Notice of Decision to Deport was served before 1 August 2008. It is the claimant's pleaded case that he was served with a Notice of Liability to be deported but that is not a Notice of Decision to Deport.
8. It is plain from the UK Borders Act 2007 (Commencement No. 3 and Transitional Provisions) Order 2008 SI 2008/1818 that the relevant provisions of Section 32 of the UK Borders Act 2007 were in force at the relevant time and they applied to persons convicted before the passing of the Act provided they were in custody at the time of commencement and that the person had not been served with a Notice of Decision to make a deportation order. I am therefore satisfied that there is no merit in that contention.
9. Ground 4 of the skeleton argument dealt with the cessation of refugee status. I deal with this first. It is for the Secretary of State to justify the decision to take away a person's status as a refugee.
10. As indicated in my Reasons for Finding Error of Law I am not satisfied that paragraph 339A(v) of HC 395 is relevant but the decision was also made under Article 1C(5) of the 1951 Refugee Convention which provides that the Convention shall cease to apply to any person if:

“he can no longer, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality”.

11. In summary it is the Secretary of State’s case that the circumstances have changed and the claimant can now look to the government in Somaliland for his protection. It is right to emphasise that this is a case where return is contemplated to Somaliland and I have not found it appropriate to consider elsewhere in the regions known broadly as Somalia and Puntland.
12. The Secretary of State noted that the claimant arrived in the United Kingdom on 2 March 1990 and he was dependent on his mother’s claim. The claimant was then 11 years old. His mother was not recognised as a refugee and her claim for asylum was refused in July 1992 but he was given different kinds of leave to remain and was recognised as a refugee in September 2000 under the relevant policies applicable at the time.
13. His close relatives had become naturalised and are British citizens but the claimant was not allowed to become a British citizen because of his bad behaviour.
14. The Secretary of State reminded himself that before taking away a person’s status as a refugee he must be satisfied that there had been a change and that it was “significant” or “fundamental” and not something that was temporary or transitory.
15. The reasons for allowing the application for asylum are not entirely clear. The claimant’s mother’s claim was based on constant harassment from the Barre regime so that she fled Hargeisa with the appellant and siblings and went to Ethiopia in June 1988. She identified herself as a member of the Isaaq clan and the subclan Habar Awal. It is plain from reading her initial application in interview that her real concern was fear of violence having suffered displacement in the disturbances that were rife in Somaliland at the time that she left.
16. The Barre regime collapsed in 1991 but residual support continued to tear apart the country.
17. However, in 2004 there was a new transitional parliament inaugurated at a ceremony in Kenya and Abdullahi Yusuf was elected President of the Transitional Federal Government of Somalia. In February 2006 parliament met in Somalia for the first time.
18. The Secretary of State then considered the status of the Isaaq clan and concluded in the light of evidence that the Isaaq group was not a minority group within Somalia, and particularly not in Somaliland where the claimant would be returned.
19. The Secretary of State then addressed his mind to background material particularly from the Austrian Centre for Country of Origin and Asylum Research and Documentation in a report dated December 2009. This showed that Somaliland was a self-declared independent state not recognised as such internationally, that the clan identification was of declining importance, that Somaliland was becoming economically more active and prosperous and was “relatively calm” although there were isolated clashes. The Secretary of State acknowledged that health facilities were “poor” and also noted “that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub-clans”.

20. It was the Secretary of State's view that the circumstances surrounding the initial claim for asylum no longer existed, that there had been a "fundamental and durable change in Somalia/Somaliland since your grant of asylum" and was satisfied that the claimant could now be expected to look to the authorities in his country of nationality for any protection that was needed. Mr Avery relied on this detailed explanation to establish his case.
21. Ms Benitez argued, in summary, that the claimant would not be able to establish himself in Somaliland. He had not lived there for many years and should not be seen as a person who could establish himself there, but even if that was wrong he was still a refugee because he could not establish himself in that country given the present conditions there and his present circumstances.
22. I note there was reference in the grounds of appeal to the Barre regime having fallen in 1991 and that the Secretary of State should not write as though the claimant was afraid of the Barre regime. That is not entirely fair to the Secretary of State although the point could have been made more clearly in the decision. The Secretary of State clearly realised that the Barre regime was not in power when the claimant left or when he was recognised as a refugee but the Secretary of State's point was the disruption following the fall of the Barre regime has now come to an end.
23. With respect to Ms Benitez I can see nothing which undermines the Secretary of State's assertion that conditions have now changed.
24. Appropriately the UNHCR were invited to comment and they wrote a letter dated 1 April 2016. The letter includes the following clear paragraph:

"It is the considered opinion of UNHCR that the situation currently prevailing in Somalia does not warrant the application of Article 1C(5) on an individual or collective basis. Indeed, its application in this instance is without merit and appears only to have been triggered by his criminal convictions. The situation in Somalia has not fundamentally changed in the sense that would permit a reasonable and well adjusted application of Article 1C(5). It is important that the [Secretary of State] objectively discharges the burden of proof, by presenting material facts, demonstrating the specific fundamental changes in Somalia that warrant the application of this provision. Moreover, as this is being applied on an individual basis, there must be a clear nexus between the fundamental changes being relied upon by the [Secretary of State] to apply Article 1C(5) and the individual circumstances of [the claimant]. From the papers, before UNHCR, this has not been done and, as such, the burden of proof has not been discharged".
25. This extremely sharp criticism needs to be read with the rest of the letter. UNHCR noted the Secretary of State's intention to return the claimant not to Somalia but to Somaliland and recognised the Secretary of State had "cited numerous sources to support the conclusion that [the claimant], as a member of the Isaaq subclan Habar Awal, will not have a fear of persecution if returned to Somaliland".
26. The UNHCR urged the Secretary of State to make an individual decision based on this claim in circumstances remembering that he was a young child when he left Somalia and had not returned there since 1988. I do not read the UNHCR's submissions as saying that no one who has been recognised as a refugee from Somaliland can be returned there.

27. I see no reason to doubt the Secretary of State's conclusion about the claimant's clan membership or the status of the Isaaq clan and sub-clan in Somaliland.
28. In order to consider the Tribunal's own guidance on returning people to Somaliland it is necessary to consider several country guidance cases and "follow a trail".
29. The most recent decision is **MOJ and Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**. This makes clear that although wide ranging the decision in **MOJ** does not cover all eventualities and that the guidance given in **AMM and Others (conflict: humanitarian crisis: returnees: FGM) Somalia CG [2011] UKUT 44 (IAC)** remains the relevant country guidance where it has not been contradicted or overruled by **MOJ**.
30. The decision in **AMM** is of limited value in cases involving Somaliland. It did emphasize that travel to Somaliland can be difficult but this is a case where the Secretary of State clearly intends to return the claimant to directly to Somaliland. In **AMM** the Tribunal said at paragraph 14 of the head note that "there is no evidential basis for departing from the conclusion in **NM and Others** that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or subclans". **NM and Others** is a reference to the decision in **NM and Others (lone women - Ashraf) Somalia CG [2005] UKIAT 00076**. There the Tribunal accepted the evidence of Professor Ian Lewis that "regional administrations would accept back former Somaliland residents or persons from clans originating from Somaliland, they would not accept back outsiders" (paragraph 84).
31. At paragraph 105 in **NM** the Tribunal accepted that internal relocation to Somaliland "is only a viable option for those formerly resident or having clan connections in those areas". This decision relied in part on recent background material and also in part on a still earlier country guidance case **AJH (Minority group - Swahili speakers) Somalia CG [2003] UKIAT 00094**, and particularly paragraphs 41 and 58. I set out below paragraph 41 because I consider it important:
- "Nor were we persuaded that the Adjudicator's reasons for concluding that the first appellant would have a viable internal relocation alternative in Somaliland or Puntland were sustainable. He correctly noted the International Organisation for Migration (IOM) had stated that political, economic and social conditions in Puntland are suitable for return and reintegration and that UNHCR has facilitated the return of one tribe from southern Somalia. However the October 2002 IND Operational Guidance Note states that: 'The authorities controlling Somaliland, Puntland and the Bay and Bakol regions have each made it clear that they would only admit to the territory they control those who are of the same clan and who were previously resident in that particular area. Internal flight for other Somali groups to those relatively safe areas is not therefore a viable option' (emphasis added)."*
32. The point is that a man can only establish himself in Somaliland if he will be accepted by the communities there and that requires clan identity to be acceptable and that he has some link with the area. I do not read this background evidence to indicate that it is a requirement that the returned person has any conscious knowledge of the area. It is not a question of his resuming old acquaintances or knowledge of the area. Rather it is a question of his being accepted and having come from the area in the first place is a pre-condition of acceptance. This claimant does come from Somaliland. The evidence is that he will be accepted there.

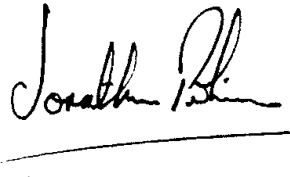
33. I recognise too the age of the decisions relied on. The fact the decision is, by the standards of this Tribunal, quite old does not mean it is unreliable. In fact the contrary may well be the case. There has been no new jurisprudence because there has been no need for new jurisprudence. Nevertheless, I have considered the claimant's bundle. The claimant relies on some reports about conditions in Somalia but there is nothing there that I can see that illuminates conditions in Somaliland.
34. It is clear to me that there is proper evidence before the Tribunal to show that the Secretary of State was entitled to conclude that a person who had come from Somaliland and is a member or associated with the Isaaq clan can return there and establish himself there without fear of persecution or other ill-treatment.
35. It follows therefore that I find that I agree with the Secretary of State's assessment of the risks in this case and I agree that he was entitled to revoke refugee status.
36. It is for the appellant to make out his claim on Refugee Convention, European Convention on Human Rights grounds to the "real risk" standard.
37. He has clearly failed to do that. There is little in his own written evidence about how he would cope on return. The background evidence shows that he is in a category of people who can establish themselves in Somaliland. I do not suggest that life will be easy for him there. The fact that he has spent a lot of time in the United Kingdom will no doubt give him some difficulties and also some advantages. He is no doubt a fluent speaker of English and will have something to offer employers on that account. He would have to face really quite serious conditions to make out a claim on Article 3 grounds and he has wholly failed to do that. He has also failed to show that he is now a refugee even though the conditions have changed because he has failed to show that he would face anything like the kind of harsh conditions that are necessary to establish the refugee claim for a convention reason or at all.
38. I now consider the claim under Article 8 of the European Convention on Human Rights. This requires me to consider Part VA of the Nationality, Immigration and Asylum Act 2002 and particularly Section 117C(6). The Section recognises that the deportation of foreign criminals is in the public interest and the more serious the offence committed, the greater is the public interest in removal. There are exceptions. Exception 1 applies when a person has been resident in the United Kingdom for most of his life and is socially and culturally integrated into the United Kingdom and there would be very significant obstacles to his integration into his country of nationality. Clearly the claimant has been in the United Kingdom for most of his life and is culturally and socially integrated into the United Kingdom. I make that finding aware of his criminal past but also aware of the considerable evidence before me in how he has tried to establish himself by honest work and taking advantages of opportunities for learning.
39. Nevertheless, I do not accept there would be "very significant obstacles" to his integration. There is nothing here that is above and beyond the points considered in the Article 3 exercise. The claimant says little in his statement. There are obvious problems for someone who has not lived in the country for a very long time but that is as far as it goes and that is not far enough to assist the claimant.

40. Exception 2 applies where there are genuine and subsisting relationships with a partner or child but that is not relied on here.
41. However, even if I am wrong and Exception 1 is made out, Section 117C(6) provides “in the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2”.
42. The claimant has been sentenced to at least four years’ imprisonment. At the Crown Court sitting at Snaresbrook on 26 October 2007 he was sentenced to a total of six years and four months’ imprisonment for offences including possession of ammunition without a firearms certificate and possessing a controlled drug of class A with intent to supply and also possession of the proceeds of crime in the form of cash. It is not necessary or helpful to dwell on these matters. I have the judge’s sentencing remarks before me. He is clearly a foreign criminal who has committed serious offences. The public interest requires deportation unless there are very compelling circumstances. I find none.
43. Ms Benitez relies on two things. She relies on the delay and she relies on the considerable efforts made by the claimant to rehabilitate himself. I do not find either of these important or impressive points. They are certainly not “very compelling circumstances” over and above the statutory exceptions.
44. A delay is always regrettable but this is not a case where the Secretary of State has given the claimant reason to think that he was not going to be deported. The possibility of deportation was raised soon after the sentence. There have been various representations and efforts to persuade the Secretary of State to take a different view and undoubtedly decisions could have been made more quickly but the Secretary of State can only work within the available resources. This is not the kind of case I see occasionally where the Secretary of State has given no thought to a deportation order, or at least has not communicated such concerns to the claimant, and where the prospect of deportation arrives as a bolt from the blue after many years of industrious living. I do not say that delay is never relevant but it will not easily amount to “very compelling circumstances” and there is no such delay here.
45. I do not wish to make light of the rehabilitation element in this case. I have not said very much about the claimant’s own case but I have considered the papers. It is right to record that the claimant has made considerable efforts at putting his criminal past behind him. His risk assessment from prison recorded the OASys indicated a “medium risk of harm to the public and of reconviction” but that was in 2009. I think the claimant was released in September 2010 and as far as I am aware has not committed any offences since. Clearly, he must have been aware that any further trouble would have almost certainly destroyed any slim chance there may have been of his appeal succeeding and that should act as a very strong incentive to good behaviour but the fact remains he has done all that is required of him and must be given credit for that.
46. There is also background material praising him. I note, by way of example, a letter from “Teach Skills International” dated April 25 April 2017 where the executive director says: “I was really impressed with A’s honesty and he eloquently spoke about his troubled past. I decided to take a chance with A and he has never let me down in the past seven years”.

47. The writer then commented that in his opinion the claimant was “fully reformed” and had developed into a “mature and responsible member” of the community.
48. There is similar support from the Haringey Somali Community and Cultural Association in a letter dated 24 April 2017. The writer felt the claimant’s life would be put in danger by reason of deportation but that was on the premise he would be returned to Somalia which is not the Secretary of State’s intention and the opinion was, in any event, unexplained. The writer described the claimant as “friendly” and “confident”.
49. There is praise from an employer and other educators.
50. I have no reason to doubt the sincerity of these opinions. In some cases they are explained rather carefully. The problem from the claimant’s point of view is that deportation is not very much to do with rehabilitation. Clearly, a person who has not rehabilitated is in an even worse position than a person who has but that is all that can be said. A person who has committed criminal offences when a foreign national does not become entitled to remain in the United Kingdom by reason of an entirely genuine resolution not to commit further criminal offences. Deportation is there to express society’s disapproval and it must be done because that is what Parliament has said.
51. There is less need to deport a reformed person but this counts for very little against the heavy weight in favour of deportation that is required by s117C(6).
52. I also set back and just ask myself if there is any basis on which this appeal ought to be allowed on human rights grounds notwithstanding the clear and binding obligations imposed on me by Part VA of the 2002 Act. The short answer is that there is not.
53. I also remind myself of what this decision involves. The claimant left Somaliland as a small boy. Most of his conscious memory and certainly his formative years have been spent in the United Kingdom. He lives in the United Kingdom where he learned to become a criminal and behave badly and where, subsequently, he has learned, apparently, to behave himself. He is being removed to a country which although I find safe for him, is poor and challenging. He will not be able to return to the United Kingdom for many years, and possibly not at all.
54. From the claimant’s perspective his deportation must look like condign additional punishment.
55. I do not wish it to be thought by anyone that I am unaware of the seriousness of the decision that I feel I have to make.
56. As I have indicated above, the matter is determined by statute and my interpretation of the statute makes my duties clear.
57. It follows therefore that I find the appeal against the Secretary of State’s decisions must be dismissed and are.

Notice of Decision

The First-tier Tribunal erred in law and set aside its decision. I substitute a decision **dismissing** the claimant’s appeals against the decision of the Secretary of State.

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 27 June 2018



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP 00107 2016

THE IMMIGRATION ACTS

Heard at Field House
On 21 August 2017

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

[A S]

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr R Singer, Counsel instructed by OTS Solicitors

REASONS FOR FINDING ERROR OF LAW

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. I make this order because the respondent claims to, and might, be a refugee and publicity could put him at risk. I invite representations on the need for this order when the appeal is finally determined.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State on 8 August 2016 that he has ceased to be a refugee and a further decision of the Secretary of State on 11 August 2016 to refuse him leave to remain in the United Kingdom on human rights grounds following the revocation of his status as a refugee.

3. The claimant was born in July 1979. He entered the United Kingdom with his mother and siblings in March 1990 and on 20 September 2000 he was given indefinite leave to remain as a recognised refugee.
4. The claimant has committed criminal offences which are considered in more detail below. In November 2007 and again in November 2008 he was served with a Notice of Liability to Deport. In December 2008 his solicitors responded to the notice and further representations were made first in July 2015 and then in July 2016.
5. On 23 June 2015 (or thereabouts) the Respondent made a “Decision to Deport” the Appellant pursuant to the Immigration Act 1971 and the Borders Act 2017. This decision is required by section 32(5) of the UK Borders Act 2007 and is not appealable to the Tribunal but the fact of, and reasons for, the decision are likely to be highly pertinent in any claim for leave to remain on human rights or protection grounds.
6. The decision to deport him was based on his criminal activity. He has convictions in 1998 at the Crown Court sitting at Wood Green for offences of theft and battery and at the same Crown Court in January 1999 for robbery when he was sentenced to 30 months in a young offenders’ institute. He was in trouble again in September 2005 for disorderly behaviour and in September 2007 he was convicted before the Crown Court sitting at Snaresbrook for possessing ammunition without a certificate and possessing controlled drugs of Class A with intent to supply. He was sent to a total term of 76 months’ imprisonment including a concurrent term of nineteen months for the firearms offences.
7. It is clear that the claimant is a “foreign criminal” within the meaning of the phrase in the Nationality, Immigration and Asylum Act 2002, who has been sentenced to a term of imprisonment of four years or more. When the Tribunal is undertaking a balancing exercise pursuant to an appeal relying on article 8 of the European Convention on Human Rights Section 117C(6) of that Act shows that the public interest *requires* deportation unless there are very compelling circumstances over and above his length of residence, extent of integration and obstacles in the way of integration into his country of return and over and above the disruption that his removal would cause to the appellant’s relationships with any qualifying partner or child.
8. It was the claimant’s case that he continued to need protection and, additionally, that removing him from the United Kingdom to Somalia or Somaliland would breach his rights under Article 8 of the European Convention on Human Rights.
9. On 8 August 2016 he was sent a Revocation (Cessation) of Refugee Status letter.
10. It is clear from that letter that it was the Secretary of State’s view that the claimant no longer needed international protection because the changed circumstances in Somalia or, for that matter, Somaliland or Puntland meant the claimant would not be at risk in the event of his return.
11. The First-tier Tribunal allowed the appeal.
12. The First-tier Tribunal considered the operation of Section 72 of the Act and found at paragraph 14 of the Decision and Reasons that the claimant had rebutted the presumption that he was a danger to the community and the Secretary of State does not have permission to challenge that finding. The decision does not condone his criminal

behaviour in any way but, the Tribunal found, the claimant did not, at the time of the decision, constitute a danger to the community because he had put his criminal past behind him. Neither does this finding mean that the claimant is a refugee but it does mean that he is not prevented from being a refugee because of his criminal record.

13. It follows that the First-tier Tribunal was satisfied that the claimant was not disqualified from the protection of the Refugee Convention or the Qualification Directive by reason of his criminality.
14. Much was made before the First-tier Tribunal about the Secretary of State's erroneous attempts to treat the claimant as if he had been given protection under the Qualification Directive whereas he was given protection before the Qualification Directive was effective in law. The distinction was explained in the decision in **Dang (refugee - query about revocation - Article 3) [2013] UKUT 00043 (IAC)**.
15. The First-tier Tribunal then found that the Secretary of State had no power to revoke a decision granting him recognition as a refugee but contemplated his return whilst still recognised as a refugee. The Tribunal then said at paragraph 16:

"It does not follow that he may not lawfully be returned to Somalia. That depends on the cessation issue and the outcome of his Article 8 case wherein the burden falls on the respondent to show that a durable change in circumstances has been discharged."
16. However, although the letter of 8 August 2016 referred inappropriately to Paragraph 339A(v) of HC 395 it also relied on Article 1C(5) of the 1951 Refugee Convention and I see no material error arising from the reference to paragraph 339A(v). Further, as the decision is immaterial to the decision complained of it can be revisited if necessary in the event of the case being decided again.
17. The grounds seeking permission asserted that the First-tier Tribunal Judge had failed to give clear reasons for deciding that the cessation clause under Article 1C(5) of the Refugee Convention do not apply. The Respondent's point is that the claimant ceased to need the protection of the Convention because of a change of circumstance. I have reflected on the judge's findings. Mr Singer said all that he could. Certainly the First-tier Tribunal judge has made an unequivocal finding. He said at paragraph 18 that his:

"overall assessment of the country evidence after careful consideration, is that the [Secretary of State] was not entitled to find a durable and fundamental change in circumstances in Somalia since the [claimant] left in 1990".
18. The judge then found at paragraph 18, having considered a number of documents in the claimant's bundle and the opinion of the UNHCR, that:

"My overall assessment of the country evidence after careful consideration, is that the [Secretary of State] was not entitled to find a durable and fundamental change in circumstances in Somalia since the [claimant] left in 1990. The evidence shows that he would be at real risk founded on the facts given to his original claim. It follows that the [Secretary of State] has not established that the cessation clause under Article 1C(5) applies."
19. In short the First-tier Tribunal decided the claimant remains a refugee.
20. As an additional precautionary measure the judge went on to decide if the claimant's removal contravened his rights under Article 8 of the European Convention on Human Rights.

21. The First-tier Tribunal resolved this point in the claimant's favour. The judge directed himself, expressly, that the claimant had been sent to prison for six years and four months for serious crimes. He also reminded himself of the need to consider Section 117C of the Act and that the public interest required deportation "unless there are very compelling circumstances over and above those described in Exceptions 1 and 2 which are set out in s.117C(4) and (5)" of the Act. The judge then went on to find that there were such circumstances. He said at paragraph 22:

"The [claimant] has shown very significant obstacles to his integration in Somalia or very compelling circumstances over and above those described in Exception 1. Notwithstanding the very serious offences for which the [claimant] has been convicted and sentenced, the fact that the [Secretary of State] unduly delayed without any explanation in arriving at decisions in this appeal constitutes very compelling circumstances added to the many years when the [claimant] has been here and the ties that he has established."
22. The judge then found that the claimant had shown:

"that s.32(5) of the UK Borders Act 2007 applies and is unlawful".
23. The judge then explained clearly that he had allowed the appeal on the basis that revocation of the claimant's refugee status would breach the United Kingdom's obligations under the "Convention" and that additionally the "ancillary decision that Article 1(C)(5) of the Convention applies in order to cease the [claimant's] refugee status was not a decision properly open to the [Secretary of State].
24. The Tribunal said that the "decision to revoke the [claimant's] protection claim is allowed" and that the "appeal against the decision to refuse the [claimant's] Article 8 claim is allowed".
25. The Secretary of State asked for permission to appeal this decision.
26. The First-tier Tribunal refused permission on a ground contending that the Tribunal had decided wrongly that the presumption under Section 72 of the Act that the claimant was excluded from the protection of the Refugee Convention because of his crimes had been rebutted. The First-tier Tribunal Judge giving permission noted that the grounds wrongly characterised the reasons for making that decision and refused permission on that ground. It follows that the decision that the claimant is not excluded from the protection of the Refugee Convention by reason of his criminality is not challengeable before me. The point behind the decision is that the Tribunal gave proper reasons for finding that the claimant was no longer a risk to society because he had kept out of trouble and made changes in his life. It is not for me to make any comment on this finding. The finding has been made and permission to challenge it has been refused. It follows therefore that the Tribunal must now decide the appeal on the finding that the claimant is not a danger to the United Kingdom and is not excluded for the protection of the Refugee Convention.
27. There was a considerable mass of evidence produced before the Tribunal dealing with a very detailed explanation on the part of the Secretary of State before concluding the claimant could be returned safely. The clear finding of the judge that the claimant cannot be returned is unsupported by any reasoning. I cannot accept that his decision is good in law just because he asserts that it has been made properly. The workings are not there and for something as fundamental as this I have to find that the reasoning is

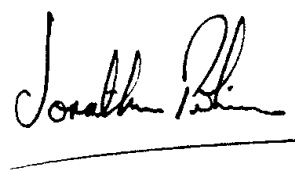
completely inadequate and I set aside that part of the decision. That is to say I am satisfied that the judge has not explained lawfully his conclusion that the claimant remains entitled to protection under the Refugee Convention. I do not say that it is the wrong conclusion. I say that the reasoning is wholly inadequate.

28. The grounds then complain that the First-tier Tribunal should not have allowed the appeal on Article 8 grounds. The Article 8 assessment is governed by Statute and, as indicated above, includes the "over and above" requirements set out in Section 117C(6). Mr Singer contended that the reasoning given is sufficient. He said that the Secretary of State knows why she lost. I do not agree. The only "over and above" requirement that is identified, and that not particularly robustly, is the time it has taken the Secretary of State to make her decision after the claimant had been released into the community. It is a matter of constant puzzlement to those deciding appeals such as this that the Secretary of State often finds it safe to release a person into the community on licence but then takes some years to realise that his continued presence, during which time, as appears to be the case here, he has applied himself industriously to rebuilding his life and keeping free of trouble, means that he has to be removed. Nevertheless I am satisfied that the reasons given in the Decision are insufficiently well explained to support an "over and above" finding. One obvious and strong reason for this finding is that the risk of re-offending in the United Kingdom is only a small weight in a balancing exercise involving a serious criminal.
29. It follows that I set aside the decision of the First-tier Tribunal.
30. I have decided that this is a case that should be kept in the Upper Tribunal for final resolution. For the avoidance of doubt I find the First-tier Tribunal erred in law and I set aside the decision to allow the appeal. I particularly set aside the decision that the claimant remains in need of protection and is therefore entitled to recognition as a refugee and I set aside the decision to allow the appeal based on the alternative reasons relying on Article 8 grounds because I find that the reasons are inadequate to show that Section 117C(6) of the Act has been followed.
31. The Upper Tribunal is bound by the finding that the claimant is not disqualified from refugee protection because he is not now a danger to the community.
32. The Upper Tribunal will hear argument to determine the appeal finally. Given the summary of the claimant's case at paragraph 10 of the Decision and Reasons I do not expect it to be necessary to hear oral evidence repeating evidence that has previously been given. If it is considered desirable to rely on evidence not served for the hearing before the First-tier Tribunal then an appropriate application must be made pursuant to rule 2A of the Tribunal Procedure (Upper Tribunal) Rules 2008 at least 10 days before the day fixed for hearing. Failure to heed this direction is likely to lead to any attempt to rely on further evidence being refused.

Decision

The decision of the First-tier Tribunal is set aside to the extent indicated above. The case will be decided again in the Upper Tribunal. Directions concerning evidence that he next hearing are given in paragraph 32 above.

Signed



Jonathan P. Singer

Jonathan Perkins
Judge of the Upper Tribunal

Dated 25 September 2017