



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006154  
First-tier Tribunal No: RP/00008/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 27 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**  
**DEPUTY UPPER TRIBUNAL JUDGE BLACK**

**Between**

**MR ABDIRAHMAN MAHAMED**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R. Toal, instructed by Southwark Law Centre  
For the Respondent: Mr N. Wain (Home office presenting officer)

**Heard at Field House on 22 March 2023**

**DECISION AND REASONS**

1. The appellant, a citizen of Somalia, appeals against a decision made by the First-tier Tribunal (FTJ Cartin) ("FTT"), who dismissed his appeal in a decision and reasons promulgated on 22.9.2022. The appellant had been granted refugee status in 2000 on the grounds that he faced a risk on return as a minority clan member. The FTT appeal involved the deportation of a foreign national sentenced to a term of 7 years' imprisonment, cessation of refugee status, questions of humanitarian protection, Article 3 ECHR and (on medical grounds), and Article 8 ECHR. In the refusal letter the respondent revoked refugee status in light of changed circumstances in Somalia. A deportation order was made following the appellant's conviction for wounding with intent to do grievous bodily harm and in January 2018 he was sentenced to 7 years' imprisonment. The appellant was a vulnerable person who had variously been in prison, in detention, homeless and destitute and provided evidence of serious mental ill health. Procedurally, there had been a number of CMR hearings resulting in the issue of directions for the appellant to secure legal representation and produce a bundle for the hearing. At the FTT hearing the appellant remained unrepresented. There was no witness

statement or appellant's bundle for the hearing. It was apparent that the appellant had wanted representation but had been unable to secure it. There had been significant delay in providing a bail address notwithstanding the grant of bail, he had difficulty instructing solicitors from prison/detention and, as a homeless person, he had prioritised attempts to secure accommodation. He told the FTT that he wished to obtain further evidence of Facebook material relevant to his fears of Al-Shabab on return and that he wanted a lawyer to assist him in obtaining it [15]. The appellant stated that he wanted to go ahead with the hearing and relied on two pieces of evidence, namely a GP medical report dated 14.6.22 and a letter from his probation officer dated 29.6.22 . In evidence he raised his fears from Al Shabab [18].

2. The FTT considered whether an adjournment was "necessary in the interests of justice". He took into account that there had been no application made for an adjournment and that the (Facebook) "material seemed unlikely to be relevant to the matters in issue"[16]. He had in mind the procedural history and that the appellant had more than sufficient time to prepare his case.
3. The FTT found that there had been a significant durable change in Somalia [42]. He found that the appellant's refugee status was based on his clan membership and those circumstances now ceased to exist [56]. The appellant had failed to rebut the presumption that he had committed a serious offence pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002. The FTT found that the threshold for Article 3 was not met on medical grounds and that there was adequate treatment available in Somalia [68]. Article 8 was not breached as there were no "very compelling circumstances" in particular having regard to the appellant's mental health.

### **Grounds of appeal ("the grounds")**

4. Two sets of grounds were put forward on the appellant's behalf: the first accompanied the application for permission to appeal made to the First-tier Tribunal in October 2022; the second added to the first and were provided in November 2022, after permission was granted. We summarise the grounds here.
5. The FTT failed to adjourn the substantive hearing of its own motion for the appellant to secure legal representation, where the appellant was a vulnerable person, unrepresented and having regard to the complexity of the appeal which included deportation, cessation of refugee status and human rights [14-16].
6. The FTT failed to apply the Presidential Guidance Note No 2 of 2010 in dealing with a vulnerable witness who had epilepsy, diabetes, mental ill health with symptoms of paranoia and hallucinations.
7. The FTT erred by reaching a finding that was not properly open to him on any reasonable reading of the evidence of the probation letter dated 29.6.22.
8. The FTT erred by failing to have regard to relevant material as to the appellant's mental ill health in making a finding that the appellant was not ill at the time of the offence [68-70].
9. The FTT failed to have adequate regard of the relevant evidence in concluding that Article 3 threshold on medical grounds was not engaged.
10. The FTT failed to have adequate regard to the sentencing remarks as to the application of Article 33(2) of the Refugee Convention, rehabilitation and risk of reoffending.

11. The FTT failed to have proper regard to the UNHCR evidence and failed to adequately reason why the material was not given due weight.

**Permission to appeal**

12. FTJ Grey granted permission to appeal on the grounds that ...*“although the Judge’s reasoning for not adjourning appear valid and reasonable, having regard to the detailed circumstances and caselaw set out and relied on in the Grounds, and in particular the vulnerability of the appellant, it is arguable that the Judge erred in the manner asserted and permission is granted on all grounds.”*

**Error of law hearing**

13. At the outset of the hearing, and without opposition from Mr Wain, we granted permission for the appellant to rely on the additional grounds of appeal dated November 2022. The matters raised therein were arguable.
14. Mr Toal applied for permission to rely on an additional ground of appeal, namely that the FTT erred by in effect applying a higher standard of proof to demonstrate his fear of Al-Shabab.
15. The Tribunal refused the application on the grounds that there had been ample time in which the additional grounds could and should have been drafted and included well in advance of the hearing.
16. We heard submissions from both representatives in respect of the grounds.
17. We are satisfied that this is a case in which the FTT ought to have adjourned the appeal of its own motion on the grounds of fairness (Nwaigwe (adjournment: fairness)[2014] UKUT 00418. We fully accept that there was a significant history of CMR hearings (six in total, within a period 1.3.21 – 13.4.22) and delay, and that the appellant was given time in which to instruct solicitors. However, the fundamental concern was ensuring a fair hearing. We place significant weight on the fact that the appellant was a highly vulnerable person, who, although having been granted bail, remained in detention through no fault of his own and to that extent was faced with significant difficulties in obtaining legal representation. By the time of the substantive hearing he had still been unable to instruct solicitors and was homeless. Further, it was apparent to the FTT that this appeal was complex in terms of legal issues and whilst the appellant stated that he wanted the hearing to go ahead, the FTT had before it medical evidence recording serious mental ill health (a history of paranoid schizophrenia, which was not apparently in dispute). Further, the appellant had informed the FTT that he wanted to rely on Facebook evidence of his political activities, which, he claimed, demonstrated a risk from Al Shabab. The appellant had been unable to get that material himself. In considering the same the FTT noted that the respondent’s position was that “such evidence was unlikely to be material in any case” as the durable change meant there was no risk to the appellant [15].
18. In such striking circumstances and bearing in mind the key issue of fairness, it was, in our view an error of law for the FTT not to have adjourned the hearing of its own volition so as to afford the appellant a further opportunity to legal representation and/or provide the evidence he sought to rely on.
19. With respect to the FTT, the issue was not whether it was in “the interests of justice” to proceed, as self-directed by the FTT [15-16]. In this way, he failed to ask himself the right question.

20. The FTT ought not to have proceeded with the hearing by simply determining the issues on the basis of the evidence volunteered by the appellant. It was incumbent on the FTT to have sought further information from the appellant so that it would have been able to make a properly informed decision as to what the real issues were in the appeal and assess those considerations as against the procedural necessity to proceed with the hearing. We fully acknowledge that the appellant did not ask for an adjournment and wanted the appeal to go ahead. However, the FTT was in a better position and indeed required to assess and judge whether the appellant would get a fair hearing. Whilst acknowledging that the appellant was unrepresented, the FTT failed to have proper regard to the complexity of the issues and did not fully explain the case against the appellant to him.
21. We are satisfied that the main ground of appeal is made out.
22. We take the view that the further alleged errors arise arguably as a consequence of the appellant's lack of representation and of the unfairness caused therein. We do not propose therefore to deal in detail with the remaining grounds save to say that the FTT's error resulted in the ensuing unfairness as regards, in particular, as to its treatment of the evidence as to risk from Al-Shabab and the paucity of medical evidence material to the issues under appeal.
23. The FTT went on to make adverse findings because the appellant failed to "address" the point or put forward evidence or legal argument [60, 63, 64,68,69,70,76,85,95], which are fleshed out in the remaining grounds of appeal. In particular, as regards the issue of risk on return the FTT was fully aware that there was material the appellant wished to rely on and which the appellant stated he had not been unable to obtain. This ought to have highlighted to the FTT, together with the legal complexity and the appellant's vulnerability, that the protection claim was capable of falling outside the generality of the CG guidance of **MOJ** and that the evidence of the withdrawal of Al Shabab was not conclusive of the issues raised by this appellant. Clearly, the FTT was unable to reach an informed decision about the materiality of the Facebook evidence as he had not seen it. This failure was exacerbated by the failure to properly consider the positive independent evidence from UNHCR which confirmed that a person of the appellant's profile would place him at risk on return under Article 3 and on humanitarian protection grounds [43—47].
24. We are satisfied that the FTT had insufficient evidence as to the extent and nature of the appellant's mental illness and treatment and, being aware of the limited evidence and having accepted that the appellant had psychosis, hallucinations, paranoia and epilepsy, ought to have at least considered an adjournment for further medical evidence given that it was highly relevant to the Article 3 claim and the issue of very significant obstacles under Article 8.

### **Notice of Decision**

25. We find that there are material errors of law and the decision must be set aside. The matter is to be remitted to the First-tier Tribunal (excluding FTJ Cartin) for a fresh hearing with no findings preserved.

**GA Black**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

12.4.2023