Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number: UI-2022-000715

PA/00704/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 July 2022	**On** 21 December 2022

Before

THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

YSA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Mr R. Toal* and *Ms U. Dirie*, instructed by Wilson Solicitors LLP
For the Respondent: *Mr R. Dunlop QC* and *Mr J. Anderson*, instructed by the Government Legal Department

DECISION AND REASONS

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1. Each of us has contributed to this decision.

A. THE APPELLANT'S CRIME

2. It concerns a Somali national, born in December 1988 who, for the past twelve years, has been under threat of deportation, arising from his conviction and sentence of nine years' imprisonment in 2008, following the rape of a 16 year old girl by the appellant and three other men on 10 August 2007.

3. The appellant and the three others found the victim alone, lost and without money in Trafalgar Square. They convinced her to go back with them to their flat in North London, where each of them raped her. An attempt was made to photograph the victim as she *was* being raped and one of the group (not the appellant) punched her in the face when she tried to escape. When the police arrived, they found the appellant and his co-defendants hiding in the flat.

4. The appellant and the co-defendants denied raping the victim. They claimed that she had consented to having sex with them. The sentencing judge described the appellant's suggestion that the victim had consented as "absurd". There was expert evidence to the effect that the victim would suffer severe and enduring psychological harm as a result of what she had endured. The judge said that the appellant and the co-defendants "have no respect for other human beings".

5. The appellant was released from prison on licence in August 2012. He was recalled to prison in May 2014, having been found to have breached a number of the conditions of that licence. In July 2015, whilst serving the remainder of his sentence, the appellant was convicted of an offence of causing another to convey a prohibited article into prison. For this, the appellant was sentenced to a further concurrent sentence of six months' imprisonment.

B. THE RESPONDENT'S ATTEMPTS TO DEPORT THE APPELLANT

6. Following his arrival in the United Kingdom, the appellant had been granted asylum. On 21 April 2015, the respondent decided to revoke the appellant's refugee status and his indefinite leave to remain. She also refused the appellant's protection and human rights claims, made in the light of the respondent's stated intention to deport the appellant.

7. Over the next three years, the appellant contested the respondent's decision-making, by way of appeal and judicial review of the Upper Tribunal's decision to refuse permission to appeal.

8. After the appellant became appeal rights exhausted, the respondent set removal directions to Somalia, via Turkey. The appellant became disruptive, having boarded an aircraft at Heathrow, bound for Turkey. Other passengers on the aircraft, who were unaware of all the circumstances, began to protest against the appellant's removal. Eventually, the appellant was taken off the aircraft. There

was subsequent media reporting of this incident, which pointed out that the appellant was a convicted rapist.

9. On 22 December 2018, the appellant made further representations to the respondent, contending that removal would breach the appellant's Article 3 rights because of the effect this would have on his mental health. The respondent refused to treat those representations as a fresh claim, pursuant to paragraph 353 of the Immigration Rules. This was not challenged by the appellant.

10. In February 2019, the appellant put forward further representations. These claimed that the appellant would be at real risk, as a result of press reports about him, his convictions and his mental health.

11. As those representations were being considered, the appellant was granted immigration bail in March 2019. This was on condition that he be electronically monitored by the wearing of an electronic tag and that he reside with his brother in Liverpool. Less than a month later, however, the appellant was arrested at the Docks in Liverpool attempting to travel to Dublin, via Belfast, using a false name and having removed his electronic tag. The appellant was returned to immigration detention.

12. The February 2019 representations were rejected in April 2019. The appellant sought a judicial review; but permission was refused by the Upper Tribunal, following a hearing in July 2019.

13. Directions were made for the appellant's removal to Somalia on 22 July 2019. The appellant sought a stay on removal. Dr Katona provided a psychiatric report which concluded that the appellant was not fit to fly and that there was a very high risk of him committing suicide. Shortly before the aircraft was due to take off, the Upper Tribunal stayed the appellant's removal, pending a full psychiatric assessment.

14. Dr Galappathie undertook such an assessment on 31 July 2019. He concluded that the appellant suffered from PTSD and severe depression. In August 2019, the appellant made further representations to the respondent in the light of Dr Galappathie's report. He also obtained a referral to the Single Competent Authority ("SCA"), on the basis that the appellant may have been a victim of modern slavery, whilst he had been a child in Somalia.

15. In October 2019, the SCA issued a decision concluding that the appellant had been the victim of modern slavery in Somalia. The same day, however, the respondent refused the appellant's further representations, concluding that they did not amount to a fresh claim.

16. In reaching that decision, the respondent relied on a psychiatric assessment prepared for her by Dr Nimmagadda, who concluded that the appellant was not suffering from PTSD or depression.

17. Directions were set for the appellant's removal on 22 October 2019.

18. The appellant sought a judicial review of that decision, as well as submitting further representations on 22 October 2019. Those representations were refused by the respondent on the same day. The appellant sought a stay of removal, which was granted by the Upper Tribunal, following an oral hearing in the absence of the respondent.

19. On 4 November 2019, Dr Galappathie provided a further report. This concluded that the appellant's depression and PTSD had worsened. In the light of that, the Upper Tribunal granted permission to bring judicial review proceedings.

20. On 6 January 2020, the respondent issued a supplementary decision, again refusing to treat the appellant's latest representations as a fresh claim.

21. Foster J, sitting in the Upper Tribunal, refused permission to bring judicial review proceedings. Her decision, given on 22 May 2020, concluded that the provision of mental health treatment in Somalia, which was to be paid for by the respondent, meant that the appellant's Article 3 claim in this regard was bound to fail.

22. Foster J, however, stayed the appellant's removal, pending an application to the Court of Appeal for permission to appeal against her decision. Such permission was granted by the Court of Appeal. In the course of proceedings before that court, the respondent served evidence concerning the support package to be provided to the appellant, on his return to Somalia. This included the provision of mental health medication and psychological services through a clinic in Mogadishu. The package also included a supply of one month's worth of antidepressant medication, full board accommodation for the appellant at the Peace Hotel in Mogadishu for fourteen weeks, transportation from the airport to that hotel in a "hard skin" vehicle and transportation between the hotel and the clinic for the appellant's medical appointments.

23. The parties jointly instructed Professor Greenberg, prior to the hearing in the Court of Appeal. He concluded on 13 October 2020 that the appellant's attempts to take his own life and to harm himself were strongly linked to the appellant's desire not to be deported, rather than to a pervasive mental health disorder. Professor Greenberg concluded that there was a substantial risk of the appellant trying to kill himself from the time removal directions were served on him, or when he realised they were likely, until such time as he was in Somalia. Professor Greenberg was unclear what risk there would be of the appellant trying to kill himself, once he had returned to Somalia; although Professor Greenberg did consider that the offer of psychiatric medication and psychosocial support in Mogadishu should meet the appellant's needs. Professor Greenberg also considered that the provision of accommodation for the appellant for fourteen weeks at the Peace Hotel was likely to be helpful in supporting the appellant's mental health during his initial return.

24. In the light of this evidence, the parties before the Court of Appeal agreed that the application for judicial review should be dismissed by consent and the stay on the appellant's removal lifted. The agreement included that there would be no further

submissions "based on the evidence as it stood" before that court. This included a document featuring in the appellant's submissions of February 2019, ostensibly from a commander of the Somali police force, and a document which featured in the appellant's representations in the hours before his scheduled removal in October 2019, apparently written in Somali, except for the name at the end "Gen. Bashar Abshir Gedi Deputy Commander of CID", together with contact details.

25. We shall have occasion to refer to these documents later, in connection with the appellant's present grounds of appeal.

26. Once again, removal directions were set for the appellant's removal to Somalia, this time scheduled for 4 November 2020. On 2 November 2020, the appellant submitted further representations. The respondent treated these representations as a fresh claim. The appellant's removal was, accordingly, cancelled whilst the respondent considered the representations.

27. On 6 January 2021, the appellant referred himself to the SCA as a potential victim of modern slavery, this time arising from matters said to have arisen in the United Kingdom between August 2012 and May 2014, when the appellant claimed he had been forced to deliver and store illegal drugs for a criminal gang. A consequence of this claim was a 45-day period of "reflection and recovery", during which a decision on the appellant's further representations could not be made by the respondent.

28. Following the completion of that period, however, the respondent, on 13 May 2021, made a decision refusing the appellant's human rights claim. On the same day, the respondent served a decision concluding that the appellant was not a victim of modern slavery whilst he had been in the United Kingdom.

C. THE PRESENT APPEAL

29. The appellant appealed against the refusal of his human rights claim. The appeal was heard at Hatton Cross on 8 and 9 November 2021 and 13 January 2022 by a panel of the First-tier Tribunal Immigration and Asylum Chamber comprising the President, First-tier Tribunal Judge Froom and First-tier Tribunal Judge Bulpitt. The Tribunal received further written submissions on 18 February 2022.

30. The First-tier Tribunal issued its decision on 8 March 2022, in which the appellant's appeal was dismissed "on all human rights grounds pleaded".

31. The reason why the respondent treated the submissions of 2 November 2020 as a fresh claim, within the meaning of paragraph 353 of the Immigration Rules, is that the submissions asserted that, following reporting about the appellant and his rape offence, in The Mail on Sunday on 18 October 2020, the appellant's cousin on 31 October 2020 came across a video, which had been posted on Facebook. In this video, threats were made to kill the appellant, if he returned to Somalia. The threats were said to have been made by Daesh/ISIS. It was also said that on 1 November 2020 various online media outlets in Somalia had reported on the

existence of the video. In the light of this, the appellant's submissions were that the appellant would be at real risk of being killed and/or facing inhuman and degrading treatment if removed to Somalia. He was also said to face persecution on the grounds of imputed religion and/or political opinion as Daesh perceived him as bringing "UK infidel culture to Somalia".

32. The First-tier Tribunal determined the appeal by reference to an agreed list of issues, set out at [35] of its decision, as follows:-

> "It is agreed between the parties that the issue to be determined by the tribunal is whether removal of the Appellant (A) to Somalia is in breach of s.6 of the Human Rights Act 1998 as incompatible with Articles 2, 3, 4, 5 and 8 ECHR on the basis that there is a real risk to the appellant of one or more of the following:
>
> a. being killed or otherwise seriously harmed by ISIS or Al Shabaab on account of his conviction for rape, and/or the publicity surrounding his case and/or the perception of him as having seriously violated ISIS or Al Shabaab's interpretation of Sharia and/or by transgressing Islamic religious and social norms;
>
> b. being killed or otherwise seriously harmed by Al Shabaab arising from suspicions of spying and/or acting as an agent of the UK government on account of the perceptions, arising from the manner of his arrival in Somalia and the arrangements for support, accommodation and medical treatment made by the UK government to address the Article 3 risks;
>
> c. being of adverse interest to and detained and/or ill-treated by the Somali authorities including its security forces arising from his past criminal conduct and/or the publicity surrounding his case and/or the links to ISIS through his co-defendant who is reported to have joined and died fighting for ISIS in Syria;
>
> d. being shunned, ostracized and denied access to the means of subsistence including accommodation and employment and at risk of exploitation/re-trafficking, because of his conviction for rape and/or the publicity surrounding his case and/or his transgression of religious/social norms;
>
> e. being destitute upon, or shortly after, the termination of the arrangements made by the UK government for support, accommodation and medical treatment; ..."

33. The parties were also agreed that there was a further issue, concerning the risk of the appellant committing suicide. The parties were, however, not agreed as to how that issue should be framed. In the event, the First-tier Tribunal dealt with this under the broad heading "The mental health issue", beginning at [137] of its decision.

34. Having set out the legal framework and described the evidence before it, together with the written submissions requested and obtained in the light of the handing down by the Upper Tribunal of the country guidance case OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC), the First-tier Tribunal addressed the burden and standard of proof:-

> "51. We directed ourselves that the burden of proof is on the appellant to show that there are substantial grounds for believing that his deportation to Somalia will cause the United Kingdom to breach its obligations under the Human Rights Convention because he faces a real risk of being subjected to ill-treatment such as to infringe his rights. In relation to these matters, the standard of proof is a low one. We are required to look at the position as at today's date."

35. Under the heading "Discussion and Findings", the First-tier Tribunal set out, first, its findings of fact. The first set of findings addressed what the First-tier Tribunal described as the "threat video".

36. The First-tier Tribunal's findings regarding the threat video were trenchant. They have not been specifically challenged by the appellant. At [55], the First-tier Tribunal concluded, having considered all the evidence in the round, that they were "left in no doubt that the video was a fabrication, manufactured at the behest of the appellant for the explicit purpose of creating a fresh claim to stay in the United Kingdom". The First-tier Tribunal's reasoning is detailed and unimpeachable, not only on the threat video but also on the Somali online media articles.

37. In making its findings, the First-tier Tribunal had regard to the overall pattern of behaviour of the appellant. This included telling one of the respondent's officers that "[a]ll this time you guys have been coming to see me I have been planning, I already knew this was coming, I'm 2 steps ahead. I will challenge this through the courts", when served with removal directions in October 2020: [60] and [73]; the appellant's becoming disruptive on the aircraft in October 2018, until the decision was taken that he had to be removed; the "consistent pattern of the appellant producing new evidence when on the brink of being removed": [70]; his having "no regard for human beings": [71]; his "total disregard for the prison rules": ibid; his absconding from immigration bail and attempting to deceive border officials: ibid; the appellant's "continued refusal to accept his conviction for rape", not only continuing to assert that the victim consented but going further by suggesting to Dr Galappathie that "now I can see she planned to make these allegations": [72]; his admitted lies to probation officers: ibid.

38. The First-tier Tribunal found that all of this demonstrated "a willingness to deceive whenever the appellant considers it advantageous to do so"; and that it was "highly probable … the appellant would seek to manipulate the process and frustrate his deportation by planning and planting new evidence" ([72] and [73]).

39. These findings led to the conclusion, at [80] that the appellant:-

> "has not established to the low standard applicable that he has been the subject of genuine threats or media reports of those threat[s], and using the standard of proof [leading counsel for the appellant] urges on us we are left in no doubt that the video and reports were produced by the appellant in an attempt once again to frustrate his removal from the United Kingdom."

40. At [108] of its decision, the First-tier Tribunal found, in the light of its conclusions regarding the threat video, that there was no reliable evidence that either ISIS or Al-

Shabaab "or indeed any other terrorist organisation" was aware of the appellant or his criminal conviction; and there was no reliable evidence that any terrorist organisation had signalled an intention to harm him as a result of that conviction. The First-tier Tribunal concluded that evidence to the contrary effect, given by the appellant's country expert, Ms Harper, was contrary to the country guidance and to findings made by previous Tribunals assessing the appellant's case and the case of another sexual offender: [115].

41. At [117], assessing the evidence in the round, the First-tier Tribunal was satisfied that the appellant had failed to establish "even to the lower standard" that he was at risk of being killed or otherwise seriously harmed by ISIS or Al-Shabaab on account of his conviction for rape, the publicity surrounding his case, the perception of him having seriously violated IS or Al-Shabaab's interpretation of Sharia and/or transgressing Islamic religious and social norms.

42. Addressing item (b) in the agreed list of issues, the First-tier Tribunal, at [119], followed country guidance, including OA, in holding that there was no evidence that civilians, as opposed to parliamentarians, security officials and those associated with NGOs and international organisations, are intentionally targeted. Ms Harper's suggestion that the appellant would be targeted as a spy was "an extension of the argument that has been twice previously rejected."

43. Again, there is no challenge to these aspects of the First-tier Tribunal's decision. The challenge in this Tribunal concerns what may broadly be described as the First-tier Tribunal's conclusions on the issue of Article 3 risk to the appellant, following his return to Somalia, arising out of the appellant's alleged inability to access support, after the end of the respondent's package of measures to support the appellant's return to Mogadishu.

44. Ground 1 asserts that the First-tier Tribunal erred in law by applying the wrong standard of proof on the issue of whether the appellant would or would not be supported on return to Somalia by his family and relatives outside Somalia, including by way of remittances. The First-tier Tribunal is said to have relied on its finding that the appellant would have such support as a reason for rejecting his claim that he would not have access to accommodation and means of subsistence.

45. Ground 2 asserts that the First-tier Tribunal relied on the production by the appellant of a report said to have been provided by the Deputy Commander of the CID in Mogadishu, as entitling the Tribunal to depart from a First-tier Tribunal Judge's earlier finding of a lack of support in Mogadishu.

46. Ground 3 argues that the First-tier Tribunal misunderstood the country guidance in respect of the comparative significance of immediate family and clan relatives.

47. Ground 4 concerns the appellant's case that, owing to his rape conviction and resulting notoriety, there was a real risk he would be unable to find a person in Mogadishu able and willing to act as a guarantor (or at least, to vouch for him),

leading to a real risk that he would not be able to obtain employment and accommodation.

48. Permission to appeal was refused by the President of the First-tier Tribunal on 25 March 2022. The appellant renewed his application in the Upper Tribunal. On 11 April 2022, the Upper Tribunal granted permission to appeal on grounds 2 and 4 only.

49. The appellant contends that, in the light of the decision in EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 0117 (IAC), he can advance all four grounds of appeal. The respondent disagrees. In the event, the disagreement is of no material significance. On 12 July 2022, we stated that we would, in any event, give permission for grounds 1 and 3 to be argued. We accordingly heard detailed submissions from counsel for the appellant and the Secretary of State in respect of all four grounds. We now address those grounds as follows.

D. THE GROUNDS

Ground 1

50. The appellant's first ground of appeal is one which neither the First-tier Tribunal nor the Upper Tribunal (UT) considered had any arguable merit, when deciding whether to grant permission. Having now heard full submissions from counsel we reach the same conclusion.

51. It is asserted on behalf of the appellant that the First-tier Tribunal erred in law by applying the wrong standard of proof on a material and decisive issue, namely whether he would be supported on return to Somalia by his family and relatives outside Somalia, including by way of remittances. Reference is made to the First-tier Tribunal's finding at [96] in this regard, that "we are equally satisfied that it is more probable than not that the appellant's extensive worldwide family network will support him by way of financial remittances if he were to return to Somalia". It is asserted that, by its reference to being "equally satisfied", the First-tier Tribunal by implication applied the same erroneous standard of proof in the previous paragraph when considering the question of whether he had family in Mogadishu. In his submissions before us, counsel for the appellant referred in addition to other indications in the First-tier Tribunal's decision that the wrong standard of proof was applied, namely at [88] where the First-tier Tribunal found the production of the police report "far more indicative" of the appellant continuing to have influential contacts in Mogadishu and at [93] where the First-tier Tribunal found that the appellant's ability to produce such reports "would strongly indicate" that the network extends within Somalia and to Mogadishu.

52. We find no merit in the suggestion that this panel of experienced judges, including the President of the First-tier Tribunal, having properly and correctly directed itself on the burden and standard of proof, as it did at [51], then went on to misunderstand the standard of proof and misapply it. We reject counsel for the appellant's suggestion that Lord Justice Sedley's comments at [28] of NH (India)

[2007] EWCA Civ 1330 eroded the principles set out by the Court of Appeal and the House of Lords in AH (Sudan) & Ors [2007] UKHL 49 when considering the expertise of this Tribunal and we have regard to the subsequent and more recent endorsements of those principles. We note that Lord Stephens, at [70] of SC (Jamaica) v Secretary of State for the Home Department [2022] UKSC 15, said that "The approach to an appeal from the F-tT on a point of law should be informed by para 30 of Lady Hale's judgment in AH (Sudan) v Home Secretary [2008] AC 678 . Lady Hale stated that the F-tT "is an expert tribunal charged with administering a complex area of law in challenging circumstances" and that Lord Justice Dingemans at [20] of AM [2022] EWCA Civ 780, said that:

> "In this respect it is important, when approaching this task, to bear in mind that: the UTIAC is an expert tribunal; this was a very experienced tribunal and the President of UTIAC was one of the judges; and, as was made clear in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49; [2008] 1 AC 678 at paragraph 30, courts should approach appeals from specialist tribunals with an appropriate degree of caution because it is probable that in applying the law in the specialised field the tribunal would have got it right. That said if the tribunals have misdirected themselves in law or are wrong, it is the duty of the appellate court to say so because otherwise appropriate deference would lead to an abdication of judicial duties."

53. Indeed, we need look no further than to the First-tier Tribunal's other detailed findings to be entirely satisfied that they applied the correct, lower standard of proof to their overall findings of fact, as consistent with the guidance given by Sedley LJ in Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11, at [16] to [19], in relation to the process of reasoning. We note his comments in particular at [16]:

> "So it is fallacious to think of probability (or certainty) as a uniform criterion of fact-finding in our courts: it is no more than the final touchstone, appropriate to the nature of the issue, for testing a body of evidence of often diverse cogency." and at [18]: "No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it. What the decision-makers ultimately make of the material is a matter for their own conscientious judgment, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the Convention issues. Finally, and importantly, the Convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issues; they are not themselves conclusions."

54. We take account of the First-tier Tribunal's specific reference to the lower standard of proof, at [80], in relation to the video evidence and media reports relied upon by the appellant, and the conclusion at [100] that its findings about the production of the fake threat video and the appellant's extensive support network were mutually supportive. We also note the reference to "real risk" in the headings under "The disputed issues" from [108]. In so far as counsel for the appellant focussed on the language used at [96], submitting that the First-tier Tribunal operated a "probabilistic cut-off" (using Sedley LJ's words) and thereby excluded the real possibility of the appellant having no family in Somalia or having no support from

outside Somalia, it is evident from the overall findings that that was not the case. The First-tier Tribunal found at [93] that it was "inconceivable" that the appellant's family network did not extend to Mogadishu and, at [95], that "there is now a considerable body of reliable evidence which establishes that….he has a large and extensive family network which spreads across the globe and extends within Mogadishu". The First-tier Tribunal also made detailed and unequivocally adverse findings, at [97] to [100], on the appellant's claim to have no family network to support him on return to Somalia, concluding at [98] that "Overall, we find that the appellant's strong and extensive family network…has demonstrated itself to be willing and able to support the appellant financially and that it is likely to do so in the future" and at [130] that: "longer term this issue is largely answered by our factual findings including that on return to Somalia the appellant will be able to rely on the continued support of his extensive family and wider connections both in Somalia and across the world…The evidence clearly demonstrates and we are satisfied that this support remains available to him..". There is plainly no scope within those findings for any suggestion that the First-tier Tribunal excluded a real likelihood or possibility of the appellant having no family support.

55. Accordingly, we are entirely satisfied that the First-tier Tribunal not only properly directed itself on the correct burden and standard of proof, but then went on to apply that correct burden and standard throughout its cogently reasoned findings and in its final conclusions. We reject the assertion that the language of [96] or elsewhere suggests otherwise and we find that ground 1 is not made out.

Ground 2

56. Ground 2 was a ground upon which permission was granted in the UT's decision of 11 April 2022. As counsel for the Secretary of State submitted, this is essentially a reasons challenge.

57. The ground relates to a letter submitted by the appellant to the respondent, in person, via immigration enforcement escorts, on 22 October 2019, which was accompanied by a short, handwritten note from himself stating that he would be persecuted, enslaved and killed if he returned to Somalia. The letter, which appears at page 97 of the appeal bundle before the First-tier Tribunal, is said to be from the Deputy Commander of CID in Mogadishu. It was not translated and the copy in the bundle was almost entirely illegible. In his handwritten note at page 96 of the bundle, the appellant claimed that it was a report from the police in Mogadishu confirming that the man who had enslaved him when he was in Mogadishu was a member of Al-Shabab who forced vulnerable people to join Al-Shabab and work for them as slaves. The police letter was considered by the respondent – specifically, the Operational Support and Certification Unit (OSCU) - in a letter of 22 October 2019, at page 290 of the appeal bundle, and was accorded no weight, being regarded as no more than part of a late-stage attempt by the appellant to frustrate his removal which was due to have taken place that day. The police letter was not relied upon by the appellant at the hearing before the First-tier Tribunal, in accordance with the settlement agreement before the Court of Appeal, referred to at

[29] of the First-tier Tribunal's decision. It was, however, brought into evidence by the respondent when cross-examining the appellant in relation to the prospect of him having support available to him in Somalia.

58. The First-tier Tribunal's findings on that piece of evidence have given rise to this second ground of appeal, which asserts that its conclusion, that the document showed that the appellant had family support in Mogadishu, was inadequately reasoned. That assertion is based partly upon the suggestion that the First-tier Tribunal's findings indicated that it accepted that the document genuinely emanated from the Deputy Commander of the CID, in which case no proper findings were then made on the risk the appellant faced from his Al-Shabab trafficker, or alternatively that the First-tier Tribunal did not believe that the document emanated from the Deputy Commander of the CID, in which case it was unreasonable of them to find that it was evidence of the appellant having connections in Somalia. On a proper reading of the decision, it is plain from the First-tier Tribunal's findings and conclusions that it did not find the document to be reliable. We refer in that regard to the First-tier Tribunal's finding at [88], where an analogy is drawn between the document and the false Facebook video: "Like the production of the threat video a year later, the timing of the production of the police document…suggests that it was a document produced for the sole purpose of supporting the appellant's fight against deportation." At [89] the First-tier Tribunal likened the report to another police report produced at an earlier stage which had not been accepted as credible, and at [130] the First-tier Tribunal again compared it to the fake video: "It has not prevented him from being able to acquire police reports from Mogadishu when needed or, based on our finding, from being able to arrange for a false video to be created and reports planted in the media." Therefore, aside from the fact that the appellant had not sought, since the settlement before the Court of Appeal, to challenge the respondent's decision not to give any meaningful consideration to the document and to suggest that it was authentic and reliable, it is abundantly clear from its findings that the First-tier Tribunal did not accept it to be a genuine and reliable document. In so far as reliance is placed by counsel for the appellant upon the First-tier Tribunal's observation at [135], that the appellant had a network of support available to him in Mogadishu which had "already shown itself able to obtain reports from high ranking police officers on two occasions", we agree with counsel for the Secretary of State that the insertion of words such as "purportedly", or "which appear to come from" after "reports", had to be inferred, as at [84] where the document was described as "apparently" issued by the Deputy Commander and at [89] where the First-tier Tribunal referred to a letter "ostensibly" from a Commander of the Somali police force. It would have been helpful if such wording had been used by the First-tier Tribunal throughout, but in any event the very most that can be drawn from the First-tier Tribunal's observation at [135] and elsewhere is that the appellant had contacts in Mogadishu, whether within the relevant police administration or otherwise, who were able to produce inauthentic reports at his request. If any further clarity is needed, we refer to the refusal of permission to appeal by the President of the FTT on 25 March 2022, whereby it was made clear that the reliance

upon the document as evidence of the appellant having connections in Somalia was not an indication that the First-tier Tribunal found the document to be genuine, but simply that he had the means by which to procure inauthentic police reports.

59. We reject the suggestion that there was anything irrational or unreasonable in the First-tier Tribunal concluding that the ability to obtain a document bearing the apparent hallmarks of a genuine, albeit inauthentic, Mogadishu police report, whether from within the police administration or elsewhere, indicated the presence of connections in Mogadishu.

60. In any event, it is relevant to note that the appellant's ability to obtain the police report was only one amongst various cogent reasons given by the First-tier Tribunal for concluding that the appellant had connections in Somalia who could provide him with support. At [82] and [83], [86] and [87], [90] to [95] and [97] to [99] the First-tier Tribunal provided a detailed account of the inconsistencies in the appellant's evidence about the extent and nature of his contacts in Somalia, both internally and when considered against the country background information, leading to the conclusion that he had a "strong and extensive family network" which was willing and able to support him. For all of those reasons the First-tier Tribunal was fully and properly entitled to reach the conclusions that it did. The grounds fail to demonstrate any errors in the First-tier Tribunal's findings and conclusions or in the reasoning leading to those findings and conclusions. Ground 2 is therefore also not made out.

Grounds 3 and 4

61. We turn now to grounds 3 and 4. They overlap to an extent, since they each challenge the tribunal's findings concerning the ability of the appellant to establish himself in Mogadishu in light of the country guidance given in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) and OA (Somalia) concerning the prospective assistance from clan or family members.

Grounds 3 and 4: submissions

62. Developing ground 3, counsel for the appellant contends that the First-tier Tribunal misunderstood and misapplied the country guidance concerning a returnee's prospective network and connections in Mogadishu. At [81] the First-tier Tribunal said that the appellant's oral evidence and the country guidance demonstrated "the danger of rigidly distinguishing between family and other clan contacts when assessing connections in Somalia", in light of the dynamics of the clan in Somalia, and the Somali cultural obligation towards one's "kinsmen". It identified the "critical question" as being:

> "…what connection the appellant has with his kinsmen in Somalia rather than specifically his immediate family or blood relatives."

63. Counsel for the appellant submits that the "critical question" was, in fact, whether the appellant has any immediate family in Mogadishu who would be willing and

able to support him, and that by formulating the question in those terms, the First-tier Tribunal fell into error. Both MOJ and OA held that minority clans have little to offer, and so would be unable to assist this appellant: see OA at [248], and MOJ at [343], [407(f)].

64. Pursuant to ground 4, counsel for the appellant submits that the First-tier Tribunal failed to consider or give reasons demonstrating that it had considered his case that, owing to his rape conviction and resulting notoriety, he would be unable to secure a guarantor, or at least someone to vouch for him. That being so, the tribunal failed to address whether there was a real risk that he would not be able to obtain employment and accommodation, and so would be destitute upon the expiry of the Secretary of State's support. Counsel for the appellant submitted that these particular submissions were advanced orally before the First-tier Tribunal. While the First-tier Tribunal stated at [48] that it had heard certain submissions on behalf of the appellant and Secretary of State, it made no reference to these particular oral submissions. The omission was not one of form over substance, counsel submitted; an analysis of the tribunal's operative reasoning demonstrates that it mischaracterised this submission and failed properly to deal with it in any event.

65. Counsel for the appellant relies on the approach adopted at [133] of the First-tier Tribunal's decision, which distilled the guarantor issue down to the following underlying question:

> "The issue argued before us centred on whether the appellant would need a guarantor in Mogadishu in order to take advantage of the opportunities for work and accommodation and so support himself once the arrangements made by the United Kingdom government have been terminated."

66. That was a mischaracterisation of the appellant's case, submitted counsel for the appellant. The issue was not only whether the appellant would *need* a guarantor but, crucially, whether he would be able to *obtain* one, in light of his offending and notoriety. Counsel for the appellant emphasised the danger posed by the appellant, particularly to women, as demonstrated by the significance of the crime, and the length of the sentence. The Secretary of State's case before the First-tier Tribunal focussed on the significant risk of harm posed by the appellant: see [2] of counsel for the Secretary of State's skeleton argument dated 3 November 2021 ("he presents a significant risk of harm and the public interest is strongly in favour of his deportation…"). The risk posed by the appellant is now notorious, in light of the extensive media reporting that accompanied not only his earlier offending, but also his attempts to resist deportation. That reputation would accompany the appellant to Somalia, thereby fatally undermining his ability to secure a suitable guarantor, or person to vouch for him. By failing expressly to address that facet of the appellant's submissions, the First-tier Tribunal erred, submitted counsel for the appellant.

67. For the Secretary of State, it was submitted that the tribunal's decision fully reflected the submissions advanced by counsel for the appellant, even if not mentioning him by name, and in doing so accurately applied the relevant country guidance.

The applicable country guidance: MOJ and OA

68. Paragraph 343 of MOJ provides (with emphasis added to reflect the extract relied upon by counsel for the appellant):

> "343. We understand that to mean that while **there was no guarantee that help would be available from clan members outside the close family network of a returnee**, at least there is more likelihood of such a request being accommodated than if made to those unconnected by the bond of clan membership. That is, perhaps, wholly unsurprising. However, it should be noted that in the UNHCR January 2014 report the view was expressed that a returnee might be rather more confident of receiving help from his clan, if not a minority clan member:
>
>> 'Persons belonging to minority clans… remain at particular disadvantage in Mogadishu… There remains a low sense of Somali social and ethical obligation to assist individuals from weak lineages and social groups. This stands in stark contrast to the powerful and non-negotiable obligation Somalis have to assist members of their own lineage.'"

69. At [356(a)] of OA, this tribunal held that the country guidance given at [407] of MOJ remains applicable. Paragraph 407(f) to (h) of MOJ provides:

> "f. A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.
>
> g. The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assistance with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.
>
> h. If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:
>
> (i) circumstances in Mogadishu before departure;
> (ii) length of absence from Mogadishu;
> (iii) family or clan associations to call upon in Mogadishu;
> (iv) access to financial resources;
> (v) prospects of securing a livelihood, whether that be employment or self employment;
> (vi) availability of remittances from abroad;
> (vii) means of support during the time spent in the United Kingdom;
> (viii) why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return."

70. At [248], OA held (with emphasis added to reflect the extract relied upon by counsel for the appellant):

> "**We accept that the findings in MOJ that some 'minority clans may have little to offer' (*MOJ*, [407(f)]) could be said to apply to the Reer Hamar**, but as we noted above, in a city where network and connections can be as important as practical provision (especially for a returnee who enjoys initial support from the Secretary of State's Facilitated Returns Scheme, and the prospect of remittances from the diaspora), being a member of a clan such as the Reer Hamar has the potential to place an individual returnee in a relatively advantageous position upon their return when compared to other, less senior minority clans, or at least go some way to mitigating the otherwise harsh conditions they would encounter. The Reer Hamar will be better placed to exploit network links than some other minority clans in Mogadishu; they will be more familiar with the city through the concentrated residential focus of the clan, and are less likely to be residing in IDP camps. They have made some gains in placing their clan on the trajectory to resumed influence and significance."

71. The formal country guidance given in OA may be found at [356]. In the interests of brevity, we only quote sub-paragraphs (b) to (h):

> "b. We give the following additional country guidance which goes to the assessment of all the circumstances of a returnee's case, as required by *MOJ* at paragraph 407(h).
>
> c. The Reer Hamar are a senior minority clan whose ancient heritage in Mogadishu has placed it in a comparatively advantageous position compared to other minority clans. Strategic marriage alliances into dominant clans has strengthened the overall standing and influence of the Reer Hamar. There are no reports of the Reer Hamar living in IDP camps and it would be unusual for a member of the clan to do so.
>
> d. Somali culture is such that family and social links are, in general, retained between the diaspora and those living in Somalia. Somali family networks are very extensive and the social ties between different branches of the family are very tight. A returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact.
>
> e. In-country assistance from a returnee's clan or network is not necessarily contingent upon the returnee having personally made remittances as a member of the diaspora. Relevant factors include whether a member of the returnee's household made remittances, and the returnee's ability to have sent remittances before their return.
>
> f. A guarantor is not required for hotel rooms. Basic but adequate hotel accommodation is available for a nightly fee of around 25USD. The Secretary of State's Facilitated Returns Scheme will be sufficient to fund a returnee's initial reception in Mogadishu for up to several weeks, while the returnee establishes or

reconnects with their network or finds a guarantor. Taxis are available to take returnees from the airport to their hotel.

g. The economic boom continues with the consequence that casual and day labour positions are available. A guarantor may be required to vouch for some employed positions, although a guarantor is not likely to be required for self-employed positions, given the number of recent arrivals who have secured or crafted roles in the informal economy.

h. A guarantor may be required to vouch for prospective tenants in the city. In the accommodation context, the term 'guarantor' is broad, and encompasses vouching for the individual concerned, rather than assuming legal obligations as part of a formal land transaction. Adequate rooms are available to rent in the region of 40USD to 150USD per month in conditions that would not, without more, amount to a breach of Article 3 ECHR."

Ground 3: discussion

72. Ground 3 was not considered to have any arguable merit by the decision granting permission to appeal in respect of grounds 2 and 4. Having heard full argument, we reach the same conclusion.

73. Ground 3 is based on a misunderstanding of the country guidance. We reject counsel for the appellant's submissions that the "critical question is whether a returnee has immediate family in Mogadishu, able and willing to support him". It is right to say, as MOJ held at [407(f)], that a person returning to Mogadishu after a period of absence will look to his or her immediate – or "nuclear" – family. But even pursuant to MOJ, where a person does not have a nuclear family or close relatives, return may be possible pursuant to "a careful assessment of all the circumstances". It is in respect of that broader assessment that the country guidance in *OA* is engaged. So much is clear from [356(b)] of OA, which provides additional country guidance that, by definition, is only engaged where a person *does not* have immediate or nuclear family to return to.

74. That being so, the "critical question" identified by the First-tier Tribunal at [81] was entirely consistent with the country guidance given by OA. The panel identified that the use of the term "kinsmen" in OA encapsulated the Somali cultural obligation owed by members of a clan to each other. The original quote is from Professor Menkhaus, the author of a number of background materials referred to in OA. See [238] of OA, quoting a report he authored:

> "An important aspect of Somali society's resilience is the powerful, non-negotiable obligation to help one's kinsmen in times of need."

75. The First-tier Tribunal rightly focussed on the broader diaspora and clan links enjoyed by the appellant, and consequently his ability to establish connections with his clan, or extended family, in Mogadishu. Put another way, it identified the significance of the appellant's *kinsmen*. Contrary to the submissions advanced by counsel for the appellant, the question of whether a returnee has immediate or

nuclear family in Mogadishu is only the first in a series of questions to be addressed. The focus of the country guidance in MOJ and OA is the position that obtains when a returnee, such as this appellant, *does not have* an immediate family in Mogadishu to return to.

76. Counsel for the appellant's reliance on [248] of OA is similarly misplaced. It relies on taking part of a single sentence out of context. The paragraph must be read in full. Paragraph 248 states that since the Reer Hamar are a minority clan, the general preserved findings in *MOJ* may, in principle, be applicable to a Reer Hamar returnee. However, there are distinguishing features of the Reer Hamar which may set its members apart from other minority clans. That includes the concentrated residential focus of the clan, the clan's familiarity with the city (the name translates as '*People of Mogadishu*'), and the minimal likelihood of its members residing in IDP camps. The clan has made gains in placing itself on a trajectory to resumed influence and significance.

77. What that means in practice, as the Upper Tribunal went on to hold at [249], is that:

> "…the assistance likely to be available to a Reer Hamar returnee will depend very much upon the individual links and network of the individual concerned, and the links they have, or through connections, could cultivate. It will be for an individual returnee to demonstrate why they will be unable to enjoy clan or network-based protection or assistance upon their return."

78. Ground 3 both ignores the remaining context provided by the rest of [248] and the necessity for there to be a broader, case-specific assessment, pursuant to [249], of precisely the sort conducted by the First-tier Tribunal. Ground 3 is without merit.

Ground 4: discussion

79. By way of a preliminary observation under ground 4, we note that counsel for the appellant did not place any great emphasis before us on the First-tier Tribunal's alleged failure expressly to refer to the submissions on this issue having been advanced by him personally, rather than by leading counsel. He was right not to do so. The question for our consideration is whether, in substance, the First-tier Tribunal considered the submissions it heard, not whether it went to the lengths of recording which member of the appellant's three-strong team of experienced counsel made a particular submission at a certain point in the proceedings.

80. We recall that the structure of the First-tier Tribunal's decision was to reach general findings of fact at [52] to [106], before addressing the five disputed issues identified by the parties at [108] to [149]. Having made general findings of fact addressing the 'threat' video at [52] to [80], the appellant's prospective support and links in Somalia at [81] to [100], and his qualifications and work experience at [101] to [106], it went on to say at [107]:

> "Having made these findings of fact we must now apply those facts, the law and the country guidance to resolve the disputed issues as identified by the parties."

81. The issues now encapsulated by Ground 4 were primarily addressed by the First-tier Tribunal under issues (d) (risk of being shunned) and (e) (risk of destitution).

82. The extract from [133] relied upon by counsel for the appellant features under the discussion of disputed issue (e), in particular in relation to the appellant's prospective support and accommodation upon the expiry of the Secretary of State's support. The discission was against the background of the First-tier Tribunal's findings that the appellant's ability to procure a threat video (in Somali) and obtain a purported police report (again, in Somali) would have required the assistance of his broader network of family and clan contacts among the diaspora and in Mogadishu: [95]. Those links would lead to the provision of remittances upon his return: [96]. The appellant had manifested unexplained wealth in the past, and the First-tier Tribunal rejected his "vastly differing accounts" which sought to explain away the assistance he must have received from family members to those ends: [97]. His family had proffered substantial financial support in bail applications made to the First-tier Tribunal on different occasions: [98]. The significance of those findings in the context of this ground of appeal lies in the fact that the support enjoyed by the appellant from his family and among the diaspora was undeterred in the light of his conviction for rape, his nine year sentence of imprisonment, and his ensuing notoriety.

83. Against the background of those findings, the First-tier Tribunal reached specific findings concerning the disputed issues. Under disputed issue (d), to the extent it concerned the appellant's longer term prospects, the First-tier Tribunal found at [130] that:

> "this issue is largely answered by our factual findings including that on return to Somalia the appellant will be able to rely on the support of his extensive family and wider connections both in Somalia and across the world to provide him [with] the means of subsistence."

84. The First-tier Tribunal continued, also at [130]:

> "The evidence clearly demonstrates and we are satisfied that this support remains available to him notwithstanding the appellant's conviction for rape and the publicity which surrounds his case."

85. At [131] the panel then quoted <u>OA</u>'s rejection of the evidence of Mary Harper, a country expert who appeared in <u>OA</u> and before the First-tier Tribunal in this appellant's case, that a criminal record or drugs problem in the United Kingdom places a returnee at an enhanced degree of risk or societal or clan-based rejection. That lead to its conclusion on issue (d), at [132]:

> "In summary, the evidence simply does not support he suggestion that the appellant would be shunned or ostracised as a result of his conviction and the publicity that it has attracted. We find that the suggestion that the appellant would be ostracised and sunned in Mogadishu to be inconsistent with both the general country guidance and also the evidence about the appellant's specific circumstances."

86. It was against that background at [133] that the tribunal addressed issue (e), and posed the question which lies at the heart of ground 4's reasons-based challenge.

87. The gravamen of counsel for the appellant's submission is that the First-tier Tribunal conflated the appellant's need for a guarantor with his ability to obtain one, and consequently failed to give sufficient reasons to explain why it had concluded that issue against the appellant. In our judgment, pursuant to OA the question of whether a guarantor is required must be addressed before the secondary question of whether, once it is established that a guarantor is required, a returnee will be able to find one. That being so, it was both entirely appropriate and consistent with the country guidance for the First-tier Tribunal to frame the question at [133] as it did, bearing in mind the findings of fact it had already reached concerning the appellant's prospective in-country support.

88. At [134], the First-tier Tribunal addressed the import of OA in relation to whether a "formal guarantor" would be required to secure accommodation, as opposed to a local person who could vouch for him. It quoted OA at [276], which states, where relevant:

> "… the term guarantor also refers to a person who is able to make informal connections and introductions to pave the way for a returnee finding accommodation and work… and not simply to an individual willing to assume a more formal role."

89. The First-tier Tribunal said that it was "far from clear" that a formal guarantor would be a pre-requisite to the appellant being able to make arrangements in Mogadishu for his support and accommodation. It then added that, even if a guarantor were essential, there were two reasons why the appellant would not be destitute upon the Secretary of State's initial support expiring. First, the Secretary of State had agreed to fund the appellant's support for three months, including through accommodation at a well-regarded hotel, and medical treatment. That would enable the appellant to build links with potential guarantors in the city, and he would enjoy much longer than would usually be the case. The second reason given by the First-tier Tribunal merits quotation in full:

> "Secondly, we have found that the appellant does have a strong network of support available to him in Mogadishu, a network which has already shown itself able to obtain reports from high ranking police officers on two occasions."

90. Those findings are dispositive of this ground of appeal against the appellant. Far from not considering counsel for the appellant's submissions concerning the appellant's claimed ostracization, the First-tier Tribunal expressly addressed the prospective support available to the appellant in light of his conviction and notoriety, considering all relevant evidence. It gave clear and cogent reasons for rejecting those submissions, enabling the parties to know and understand the reasons for the tribunal's overall decision.

91. It is well established that inferences as to the insufficiency of reasons will not readily be drawn. Judicial restraint should be exercised when the reasons a tribunal gives for its decision are being examined: see Jones v First Tier Tribunal & Anor (Rev 1) [2013] UKSC 19, [2013] 2 AC 48 per Lord Hope at [25]. As Males LJ put it in Simetra Global Assets Limited v Ikon Finance Ltd & Others [2019] EWCA Civ 1413 at [46]:

> "… it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered."

The decision of the First-tier Tribunal in these proceedings exceeded the bar set by Males LJ by a considerable margin: on the basis of the submissions before us, the First-tier Tribunal dealt with every material point, took evident care, and demonstrated that the evidence as a whole had been properly considered. It gave sufficient reasons for doing so. This ground is without merit.

E.DECISION

92. The First-tier Tribunal's decision does not contain any error of law. The appellant's appeal is accordingly dismissed.

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Mr Justice Lane

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber

21 December 2022