Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00124/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 December 2017	**On 2 March 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M A (SOMALIA)
[ANONYMITY ORDER MADE]

Respondent

Representation:
For the appellant: Mr David Clarke, a Senior Home Office Presenting Officer
For the respondent: Mr Andrew Eaton, Counsel instructed by Wilson Solicitors LLP

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the

original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission against the decision of the Upper Tribunal that there was no material error of law in the decision of the First-tier Tribunal to allow the claimant's appeal against the Secretary of State's decision to deport him from the United Kingdom to Somalia, of which he is a citizen.

2. At the beginning of the hearing, Mr Eaton confirmed that the claimant's challenge to the Secretary of State's decision was limited to human rights grounds and that he did not seek to rely on Article 3 ECHR. HIs appeal under the Refugee Convention and in humanitarian protection had been dismissed in the First-tier Tribunal and the claimant had not sought to challenge that dismissal.

3. The Tribunal was seised only of arguments under Article 8 ECHR in these proceedings.

Vulnerable witness assessment

4. The claimant gave evidence at the Upper Tribunal hearing. I have had regard to the guidance given by the Court of Appeal in *M (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123 and I remind myself that failure to apply the Senior President's Child, Vulnerable Adult and Sensitive Witnesses Guidance of 30 October 2008 and the joint Presidential Guidance Note No 2 of 2010 when dealing with a vulnerable witness is an error of law.

5. It is not in dispute that this claimant, who has mental health issues, should be treated as a vulnerable adult. Having regard to the direction of the Court of Appeal that the claimant's position be re-examined afresh, I was satisfied that it was necessary to hear oral evidence from him to enable the fair hearing of the case.

6. I explored with Mr Eaton whether the claimant's welfare would be prejudiced by his giving evidence, and/or what adjustments would be required to enable him to give evidence. Mr Eaton said that the claimant was ready to give evidence and that it was not considered that his welfare would be affected. Dr Rachel Dodd, the claimant's general medical practitioner, had stated in her written evidence her professional opinion that the claimant would need regular breaks and extra care when explaining complex matters.

7. It was agreed that the claimant would be asked clear simple questions and given breaks when requested. The claimant said that he had taken his medication and was not experiencing any intrusive thoughts. His evidence proceeded without difficulty and no submissions or objections were raised, by the claimant or on his behalf, about the manner in which his evidence was taken.

Background

8. The claimant's stated date of birth is 4 March 1982. He came to the United Kingdom from Somalia to join his mother in February 1993, as one of 7 siblings admitted on a family reunion visa. His father later rejoined the family in June 1995. On 19 January 2000, the whole family were granted indefinite leave to remain in the United Kingdom. The applicant's mother and father and 4 of his siblings were subsequently naturalised as British citizens in 2003/2004. The applicant's case is that all his family and close relatives are now in the United Kingdom.

9. On 25 July 2007, the claimant was convicted of one count of rape of a female age 16 years or over and one count of attempted rape. The evidence was that the claimant attacked a woman while she was sleeping, raping her in two different ways while holding a knife to her throat and threatening to kill her. The woman was vulnerable and pregnant at the time of the rape. The claimant pleaded not guilty, but was convicted, and sentenced to a period of 10 years' imprisonment. He did not appeal either the sentence or the conviction, but did not acknowledge responsibility for his actions until 2011, when he made his asylum claim.

10. The applicant claimed asylum on 27 July 2011, on the basis that he was at risk on return, from the family of his victim, a Somali woman, from the civil war generally, and as a Westernised person he was at risk of kidnapping. The claimant declared no medical conditions when his application for asylum was considered, except that he had a disability, dyslexia. He considered that in Somalia, he would be forced to resume the practice of Islam, which he had not done since coming to the United Kingdom, and that, because he had body tattoos (he has 'Allah' tattooed on his body in two places), he would be at risk of physical violence as tattoos are *haram* (forbidden) under Islamic law.

11. On 6 December 2011, the claimant was released on licence, and on immigration bail, to the address of his paternal uncle in London. He was fitted with an electronic tag and lived with his uncle and his aunt by marriage at that address until the tag was removed in 2013.

12. On 31 July 2012, while still on licence and living at his uncle's home, the applicant was convicted of possession of a small amount of cannabis, then a Class B controlled drug, and fined £600.

13. On 25 December 2012, the claimant's brother jumped to his death from the 9th floor of the next building to that in which he was living. The claimant was with him; he tried to catch his brother, but was unable to stop him falling. The claimant felt responsible for his brother's death. The claimant was hospitalised for a few days and began hearing voices, mainly his brother talking to him and telling him to join him in death, or making various demands of him. After his brother's death, the claimant attempted to jump from the same site on three occasions. There followed a period of mental ill health.

14. The claimant's asylum claim was rejected, and his appeal dismissed by the First-tier Tribunal in its May 2013 decision. There is no challenge to that dismissal, or to the dismissal of his humanitarian protection or Article 3 ECHR claims.

15. In 2013, after the First-tier Tribunal hearing, and when his electronic tagging ended, the claimant left his uncle's home and went to live with a maternal aunt in London, who lived in the building from which his brother had jumped to his death. That building was next door to his uncle's home.

16. In late 2014, the claimant went to the 9th floor, to the balcony from which his brother had jumped, and telephoned his aunt. She came and persuaded him not to jump. The claimant then spent 2 months in hospital, dealing with his mental health issues.

17. In August 2015, the claimant was diagnosed in London with follicular lymphoma while in detention. Arrangements were made for treatment and he was released to what is described as 'section 4 accommodation' in Bristol. The Bristol accommodation was provided under section 4 of the Immigration and Asylum Act 1999, which permits NASS to provide 'hard case support' outside London, where a claim for asylum has been determined and the individual is no longer an asylum seeker within the meaning of Part VI of the Act. Section 4 support claimants must also show that they have had interim support from NASS or a local authority under Schedule 9 of the Act, and that they are destitute and have no other avenues of support available.

18. In addition, NASS criteria require claimants to demonstrate that they are unable to leave the United Kingdom due to a physical impediment to travel such as illness or late pregnancy; or because there is no safe route for return; or they are complying with an attempt to obtain a travel document; there are exceptional or compassionate circumstances; or they have applied for judicial review. In this case, the claimant had recently been diagnosed with cancer and required chemotherapy.

19. The claimant had chemotherapy treatment in Bristol under the supervision of Dr Lisa Lowry, a consultant haematologist. His treatment ended in 2016 and he is in full remission. The claimant still lives in Bristol, where he has a second cousin who supported him emotionally, and with food, during his chemotherapy, and with whom he eats out, once or twice a week, now that he is well. The claimant attends several Somali cafés in Bristol, to watch football and interact with other asylum seekers there. His mental health has improved, but he fears that his physical or mental health might deteriorate if he were returned to Somaliland.

Procedural history

20. In her decision letter on 8 January 2013, the Secretary of State considered that section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended) was applicable and the applicant was a foreign criminal convicted of a serious crime who would constituted a danger to the community. Her decision was certified under section 72(9)(b) of the 2002 Act, on the basis that the automatic deportation provisions of the UK Borders Act 2007 applied, and the certificate must be

considered first by the First-tier Tribunal. The Secretary of State did not consider that returning the claimant to Somaliland would unlawfully breach his private and family life rights under Article 8 ECHR, nor that there were any exceptional circumstances for which leave to remain should be given outside the Rules.

21. The applicant appealed to the First-tier Tribunal. He did so out of time, but because of his health problems early in 2013, time was extended to allow the appeal to proceed. In its decision on 31 May 2013, the First-tier Tribunal noted that the claimant had spent 20 years in the United Kingdom. The evidence of the witnesses was treated as fully credible by the Tribunal. The Tribunal accepted that both of the claimant's parents and three of his five siblings were British citizens; that the claimant was an integral and well-loved member of his close and extended family and friendship network; and that his deportation would have a negative impact on the lives of other family members, particularly in view of the tragic recent death of the claimant's brother.

22. The First-tier Tribunal found that the claimant had very little, if any, social, cultural, or family ties, either to Somalia or Somaliland; that he had only a few words of the Somali language, not enough to hold a conversation or make himself understood; that he knew very little of the Somali clan system or his place in it; and that he was not a practising Muslim, knew very little about his religion, and had 'Allah' tattooed in Arabic on his arm and chest, which would attract adverse attention in an Islamic country as tattoos are *haram* in Islamic law.

23. The First-tier Tribunal considered the fact that the claimant had committed only one, albeit very serious offence in the 20 years he spent in the United Kingdom.

24. The Tribunal noted that the claimant had not pleaded guilty at the trial or during his sentence and had not shown remorse for several years after his conviction. The First-tier Tribunal found that the claimant had been reluctant to disclose his guilt externally because of the sensibilities of his community but had done so when he was detained and at risk of deportation. Since his release in 2012, the claimant had accepted his guilt and had been focusing on victim empathy work.

25. Little weight was given by the First-tier Tribunal to the fact that the claimant had been fined for an offence of possession of cannabis committed while he was on release on licence: he had since completed a drug awareness course and had tested negative for any further use. The First-tier Tribunal also did not attach much weight to a very small number of minor infringements of prison rules while he was in custody. The Tribunal considered the qualifications the claimant had obtained in prison and found that he would be in a better position to obtain skilled employment in the future.

26. The First-tier Tribunal noted that the claimant was living with an uncle and family and no longer mixing with the friends with whom he associated before going to prison. He spent much of the time that the curfew allowed, caring for his maternal great aunt who suffered from numerous ailments, had frequent falls and very

impaired mobility. The Tribunal recognised that it must take a considerable amount of dedication to care for his great aunt on a daily basis. The claimant's probation officer assessed him as posing a medium risk of harm with a low to medium risk of reoffending.

27. A psychiatric report noted that he had expressed regret and remorse about the offence and the psychiatrist considered that the claimant now presented a low risk of committing further serious violent or sexual offences. He had not breached the terms of his immigration bail which included an electronic tag and curfew requirement.

28. The First-tier Tribunal gave weight to the evidence of Dr Markus Hoehne of the Max Planck Institute for Social Anthropology, that Somali teenagers and young people who had been sent back to Somaliland from abroad were pejoratively referred to as '*dhaqan celis*' (return to culture), mocked and very severely harassed for western and non-Somali behaviour. If the claimant did not live up to Islamic norms and rules, which predominated in Somalia, a risk of physical attack could not be excluded.

29. The First-tier Tribunal considered the medical evidence of Dr Harriet Hunt-Grubbe, a Forensic Psychiatrist. Her opinion was that the claimant had a moderate depressive disorder, partly caused by anxiety about his prospective deportation, and partly by witnessing his brother commit suicide. Having been found by his brother's dead body, the applicant had been admitted immediately to Chelsea and Westminster hospital, then transferred to Charing Cross Mental Health Unit for treatment for depression, and Dr Hunt-Grubbe's opinion was that if removed, the claimant himself might become a suicide risk, deprived of the support of his extended family.

30. Dr Evans at the Claybrook Outpatient Clinic in West London considered that the applicant had PTSD, and an adjustment disorder. In March 2013, he considered that the applicant should take antidepressants for a further 6 months.

31. Dr Hoehne had explained that there was very limited access to antidepressant medication and/or other psychological support in Somaliland due to economic circumstances there and the paucity of medical staff.

32. The First-tier Tribunal dismissed the appeal against the decision within the Rules, but allowed it under Article 8 ECHR.

Upper Tribunal decision

33. On 3 October 2013, the Upper Tribunal upheld that decision, noting that the First-tier Tribunal had identified two competing compelling points: on the one hand, the seriousness of the offence, bringing with it a statutory presumption in favour of deportation; and on the other hand, the amount of time the claimant had spent in the United Kingdom, together with the finding that he was unlikely to be in this kind of trouble again. Upper Tribunal Judge Perkins concluded that:

> "50. This may well be the kind of case where the balancing exercise could have been determined differently and lawfully by a differently constituted Tribunal. However, although I have reflected carefully on the grounds and Mr Walker's

> submissions, I am quite unpersuaded that the [First-tier Tribunal] misdirected itself in any material way or reached a decision that was not open to it for the reasons that it has given."

34. The Secretary of State appealed to the Court of Appeal.

Court of Appeal judgment

35. The Court of Appeal considered this appeal in a judgment reported as *Secretary of State for the Home Department v MA (Somalia)* [2015] EWCA Civ 48. The single judgment of the Court of Appeal was handed down by Lord Justice Richards, with whom Lord Justice Ryder and Sir Colin Rimer agreed. Richards LJ accepted at [6]-[7] that paragraph 398 as it stood in 2013 was inapplicable to the claimant but noted the 2014 changes which made it relevant to the assessment of the claimant's deportation now.

36. The Court held that there was a material error of law both in the First-tier Tribunal decision and in the decision of the Upper Tribunal upholding it. The Court considered that the First-tier Tribunal had given inadequate weight to the seriousness of the claimant's conviction, which attracted a 10-year sentence; and to the fact that he was an adult at the date when it was committed. The principal criticism in the Court of Appeal judgment was that both the First-tier Tribunal and Upper Tribunal failed to consider the appeal within the framework of the new Rules, or to ask whether there were 'very compelling reasons to outweigh the public interest in deportation'. At [26], the judgment says this:

> "26. In summary, the tribunal's failure to look at the case through the lens of paragraph 398 as interpreted in *MF (Nigeria)* led it to adopt an insufficiently rigorous approach towards the Article 8 assessment. It did not apply the substance of the test required to be applied under paragraph 398. The decision it reached cannot be said to have been the only decision open to a rational tribunal on the evidence before it. It follows that the tribunal's error in considering the case outside the Immigration Rules was a *material* error of law. …
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> 37. It follows, in my judgment, that the Secretary of State's appeal succeeds and that the UT's decision to uphold the FTT's determination must be set aside. Miss Grange realistically accepts that in those circumstances, having regard to the passage of time since the matter was considered by the FTT in May 2013, and to the fact that the case now falls for fresh assessment by reference to paragraph 398 of the Immigration Rules as further modified in 2014, the appropriate course is for us to remit it to the UT for reconsideration."

37. The Court ordered that the appeal should be allowed and remitted to the Upper Tribunal for reconsideration, with reference to paragraph 398 of the Immigration Rules as amended in 2014. There is no reference in the judgment to section 117 of the 2002 Act.

38. Permission to appeal to the Supreme Court was refused both by the Court of Appeal and the Supreme Court itself. On 22 March 2017, the Supreme Court refused permission to appeal 'because the application does not raise an issue of general

importance' and ordered that the matter be re-determined by the Upper Tribunal in the light of all the up- to-date guidance.

39. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

40. The appeal was listed for substantive rehearing in the Upper Tribunal, on the basis that 'absent any challenge to the findings of fact made by the First-tier Tribunal, that these are preserved'; that new evidence or material, including witness statements for further oral evidence if so advised, should be served and accompanied by a rule 15A statement; and that it would be a matter for the Upper Tribunal to decide whether any new material or evidence should be admitted.

41. The Upper Tribunal has received into evidence 141 pages of documents from the claimant, including updated witness statements from the claimant himself, from his paternal uncle and his aunt by marriage, from his maternal aunt, and from his great aunt, who lives with his maternal aunt and is sometimes, confusingly, referred to as 'Nan' or his grandmother. All except the great aunt gave evidence at the hearing: I have taken her evidence into account, Mr Clarke indicating that it was undisputed. The witness evidence is set out in Appendix A and will be referred to, where relevant, in this decision.

42. I was provided at the hearing with a copy of the claimant's family tree, showing that in the United Kingdom, he has his mother and father, two sisters and two brothers, his maternal aunt, a great aunt, his paternal uncle and from his uncle's wife. All of them are British citizens. The family tree gives details of the claimant's four deceased sisters, who were Somali citizens and who died there, and of the claimant's brother, a British citizen who died in London on 25 December 2012 of multiple injuries, following a suicidal leap from the 9th floor balcony of a high building. Strikingly, there is no new witness evidence from the claimant's mother or father, nor from the second cousin who looked after him in Bristol while he was undergoing chemotherapy.

43. The medical and country evidence is summarised at Appendix B below. The claimant continues to rely on Dr Hoehne's country evidence and produces an updated report dated 5 December 2014, postdating the First-tier Tribunal decision, but now over 3 years out of date.

44. In addition, the claimant produced the following medical and nursing evidence:

- **3 March 2013.** A letter to the claimant from Mr Christian Howes, a Community Psychiatric Nurse with the West London Mental Health NHS Trust (The Claybrook Centre);
- **30 March 2016.** A letter to The Maytrees Practice from Nurse Tanyaradzwa Tande, senior registered/mental health nurse at Heathrow IRC;
- **6 April 2016.** A letter from Mr Ashley Russell, a recovery practitioner;

- **1 September 2017.** A letter from Dr Lisa Lowry, consultant haematologist;
- **4 September 2017**. A letter from Dr Rachel Dodd, at The Maytrees Practice, Bristol;
- **11 September 2017.** An up-to-date psychiatric report from Dr Chiedu Obuaya MBBS BSc MRCPsych MBA;
- **December 2012 to August 2017:** Copies of the claimant's medical records.

45. Mr Howes' evidence is not new evidence. It would have been before the First-tier Tribunal and it records the claimant's state of health in April 2013, four months after the claimant's mental health problems began with his brother's suicide on 25 December 2012. I place no additional weight on this evidence. Nor have I considered the early medical records because they pre-date the First-tier Tribunal decision.

46. I have, however, considered the medical records kept by The Maytrees Practice in Bristol, which reflect the claimant's current circumstances since his move to Bristol, and which support Dr Dodd's relatively brief medical report.

47. That was the updated evidence before the Tribunal.

Submissions

48. In oral submissions for the Secretary of State, Mr Clarke relied on the judgment of the Court of Appeal in *MA (Somalia),* noting that the claimant would have been about 25 years old at the date of the offence. This was a case where there was an incredibly high public interest in removal, following a particularly terrible index crime and two further offences. Heavy weight should be given to the public interest and the claimant should be returned to Somalia.

49. Although section 117C was not mentioned in the Court of Appeal's judgment, Mr Clarke noted that the explanatory note to the 2014 act said that section 117C should be read consistently with paragraphs 338-339A of the amended Immigration Rules. The claimant was a person subject to automatic deportation on the basis of his offending history. Mr Eaton had confirmed that the claimant did not rely on Article 3 ECHR but only on Article 8 ECHR. The claimant was a foreign criminal and applying section 117C(6), it was necessary to show very compelling circumstances, over and above those sent out in section 117C(4) and 117C(5). Section 117C(5) was inapplicable to this claimant.

50. The criminality in this case was very serious. The claimant had raped a vulnerable pregnant woman in 2007 but had not accepted responsibility until 2011. He had been convicted of possession of cannabis on 21 July 2012 and of battery while on bail on 16 February 2015. It did not appear that the MAPPA reports were before the First-tier Tribunal or the Upper Tribunal.

51. The Secretary of State accepted the claimant's history and the findings of fact and credibility of the First-tier Tribunal, with a number of exceptions. In particular, she:

(i) disputed the finding of the First-tier Tribunal that there were very significant obstacles to the claimant's reintegration in Somalia;

(ii) disputed the finding of the First-tier Tribunal that exceptional circumstances had been shown over and above those provided for at section 117C(4) as Exception 1;

(iii) challenged the finding that the claimant spoke only a few words of the Somali language and could not hold a conversation or make himself understood in that language; and

(iv) challenged the finding that the claimant had family life in the United Kingdom with any of his immediate or extended family members. The Secretary of State contended that no evidence had been produced which was sufficient to establish any *Kugathas* dependency amounting to family life. She relied upon *Y v Secretary of State for the Home Department* in this respect.

52. The Secretary of State accepted that the claimant was socially integrated into the United Kingdom and that, given the length of time he had spent in the UK since his arrival in 1993, he would have established a private life here (see *GS (India) & Ors v The Secretary of State for the Home Department* [2015] EWCA Civ 40).

53. However, Article 8 was a qualified right. The Secretary of State relied on the decision of the Upper Tribunal in *Chege* (section 117D – Article 8 – approach) Kenya [2015] UKUT 00165 (IAC) at [29], and in the judicial headnote, as to the approach to be taken in Article 8 cases. Rehabilitation was not a great factor in the assessment of very compelling circumstances (see *Danso v Secretary of State for the Home Department* [2015] EWCA Civ 596).

54. The Tribunal should be slow to find that there were very significant obstacles to the claimant's reintegration in Somalia. His private life in the United Kingdom was limited to attending Somali cafés and going to the library to read thrillers. The claimant had tried to find work in the United Kingdom but without success, and his stated position was that he was prepared to do anything now. He had acquired skills in prison in English literacy, painting and decorating, and business management. The claimant had made no enquiries about accommodation or employment in Somaliland. The burden was upon him to show an absence of opportunity.

55. As regards his Somali language ability, Mr Clarke observed that the claimant communicated with his mother in Somali, and contended that the claimant had not established that his Somali was so poor that it would be a very significant obstacle to return.

56. The claimant appeared to have very little contact with his family, although some members had continued to support him after he emerged from prison. It was notable that many immediate family members had not attended the hearing, including his parents, brothers and sisters. No satisfactory explanation for that absence had been advanced. Mr Clarke asked me to find that some at least of the

claimant's family members would be able to help him financially after his return, if they wished.

57. The claimant had raised two medical issues, his mental health and his lymphoma, which was in remission. Dr Obuaya's psychiatric report was not favourable to the claimant: it indicated that the claimant's mental health problems, although severe at the time, were an adjustment disorder which would self-limit, normally after 5 years. Mr Clarke observed that 5 years had now passed since the index event, and the claimant's mental health breakdown, which occurred in December 2012. The claimant was still taking medication, but Dr Obuaya considered that he did not need it. There was no evidence that the claimant had made use of supportive psychotherapy.

58. As regards the claimant's cancer treatment for lymphoma, the Secretary of State accepted the expert evidence that no cancer treatment was available presently in Somaliland or Somalia, but the claimant was not receiving treatment at present and his oncologist did not expect his cancer to recur for many years. It was not possible to predict what treatment would be available in Somaliland or Somalia, when and if the cancer returned. The Secretary of State would rely on *Akhalu* (health claim: ECHR Article 8) Nigeria [2013] UKUT 400 (IAC) and in particular on the second paragraph of the judicial headnote.

59. In submissions for the claimant, Mr Eaton reminded me that the claimant had lived in the United Kingdom for most of his life and that his social and cultural integration was undisputed. He had no known family in Somaliland and Mr Eaton asked me to find that the claimant had demonstrated that there were very significant obstacles to his reintegration on return, and/or compelling circumstances over and above the section 117C(4) Exception, such that removal would be unlawful.

60. The claimant had good English and had not needed an interpreter at his interview. He had tattoos which were likely to cause him severe verbal harassment on return, and even the risk of physical attack. The claimant was a '*dhaqan celis*' (return to culture) person, a group which suffered harassment and discrimination in Somalia.

61. Mr Eaton submitted that both the First-tier Tribunal and Upper Tribunal had failed properly to consider the guidance of the Grand Chamber of the European Court of Human Rights in *Maslov v. Austria* - 1638/03 [2008] ECHR 546, as set out at [71]-[75] of its judgment, which were applicable not just to the expulsion of children, but also to young adults who had not yet founded a family of their own. The claimant had always been lawfully in the United Kingdom.

62. The claimant also relied on *R on the application of Akpinar v Upper Tribunal (Immigration and Asylum Chamber)* [2014] EWCA Civ 937 in which the Court of Appeal reviewed the application of *Maslov* in United Kingdom jurisprudence and that of the European Court. In this case, the claimant had very little previous contact with Somalia or Somaliland, did not really speak the national language, and would

return to a level of harassment as a Westernised *dhaqan celis*. The economic consequences of these factors were likely to be severe.

63. Mr Eaton accepted that the claimant had committed battery in prison, been fined and pleaded guilty. He noted the contents of the general medical practitioner's letter and of the psychiatric report, but contended that neither report was based on detailed knowledge of the claimant and his circumstances. Mr Eaton argued that the claimant's mental health would be exacerbated by return to Somaliland, especially as he had a real possibility of a lymphoma relapse once there. The evidence of Dr Hoehne was that his medication was hard to get and expensive, and that chemotherapy was hard to obtain in East Africa. People were too poor to commit to supporting extended family members in the claimant's circumstances; the claimant had a limited family support network and no real prospect of receiving money from them when in Somaliland. In this case, despite the gravity of the offences which the claimant had committed, Mr Eaton contended that the claimant had shown very compelling circumstances for which he should not be returned.

64. I reserved my decision, which I now give.

Discussion

65. The accepted facts were that the applicant was a member of the Isaaq majority clan, with no risk of persecution due to his clan membership; that he had no family or extended family in Somalia; that he was Westernised and might be subject to harassment; and that there were many young people returned to Somalia who did not speak Somali. At the date of the Secretary of State's decision to deport him on 8 January 2013, the claimant had been in the United Kingdom since 8 February 1993, but had been in prison for 5 years of that time. The claimant's date of birth was 4 March 1982 so at the date of decision on 8 January 2013, he was 31 years old. He was not a 'young adult' in the *Maslov* sense.

66. I turn to the family circumstances. The claimant's parents travel in and out of the United Kingdom. They do not appear to be in contact with him or supportive of this appeal and were not in the United Kingdom when he was released from prison. His paternal uncle stepped in, for the period when the claimant needed an address, but he also has handed the claimant on to other family members, and it is notable that as soon as the tag was removed, and very soon after the First-tier Tribunal, the claimant left his uncle's house to live with his maternal aunt, and then in section 4 accommodation in Bristol. His second cousin took on the role of family support during the claimant's cancer treatment, but now does much less with and for him.

67. The claimant's aunt is fond of him, but the suggestion that the claimant is at the heart of a large supportive family network is not borne out in the evidence before me. I note that one of the claimant's sisters, his maternal aunt, and his great aunt ('Nan') remain supportive on the telephone, but that there have not been many visits since he moved to Bristol. Telephone support could continue when he is returned to Somalia.

68. In 2012, the Immigration Rules were amended to introduce rules 398, 399 and 399A. On 8 October 2013, the Court of Appeal held in *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192, [2014] 1 WLR 544 that paragraphs 398-399A of the Immigration Rules (as amended) constituted a complete code for the application of Article 8 ECHR in deportation cases and there was no Article 8 hinterland in which the Secretary of State was required to exercise a residual discretion deciding whether to grant leave to remain outside the Rules. So far as relevant to this appeal, the amended Rules are as follows:

> **"Deportation and Article 8**
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> 398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, … the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors.
>
> 399. [inapplicable] …
>
> 399A. This paragraph applies where paragraph 398(b) or (c) applies if –
>
> (a) the person has lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK; or
>
> (b) the person is aged under 25 years, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."

69. The claimant in this application cannot, therefore, show 20 years continuous residence under paragraph 399A, because his residence was interrupted by a period of imprisonment. Paragraph 399A(b) also does not apply as he was over 25 years old at the date of decision. The amended rules 398 and 399A therefore do not avail him.

70. The Upper Tribunal must also now have regard to section 117C of the 2002 Act, inserted into that statute by section 19 of the Immigration Act 2014:

> **"117C Article 8: additional considerations in cases involving foreign criminals**
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. …
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported. …

> (6) 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."

71. When considering this appeal, I have regard to the serious nature of the claimant's offence. He committed offences of rape and attempted rape on a pregnant, vulnerable woman from the Somali community, using a knife to threaten her. He forced her to go through the stress of a trial and did not accept responsibility for his actions for 4 years. While in prison, the claimant committed a further offence of violence, and while on licence, a drugs offence. These are very serious matters and I remind myself that under section 117C(1) of the 2002 Act, the deportation of foreign criminals such as this claimant is in the public interest, and that under section 117C(2), the more serious the offence, the greater is the public interest in deportation of the criminal. The exceptions in section 117C(4) and (5) are narrow, even for those whose sentences are shorter than 4 years; for sentences over 4 years, 'very exceptional circumstances' over and above the Exceptions must be shown.

72. In the present case, it is accepted that the claimant has been lawfully resident in the United Kingdom for most of his life and that he is socially and culturally integrated here. The claimant must show, not just that there are very significant obstacles to his integration into the country to which it is proposed that he be deported, but that there is something more: he must show that in addition, there are very compelling circumstances, over and above the very significant obstacles to integration, such that his removal is not lawful.

73. I do not consider that there are significant obstacles to returning this claimant to Somalia. The claimant says that he speaks very little Somali. However, this is an issue on which I consider it proper to remake the finding of the First-tier Tribunal. I note that the claimant lived in Somalia until he was 11 years old. I accept that he has good English, but I consider it more likely than not that his inability to sustain a conversation in Somali has been exaggerated. The claimant's mother did not attend the hearing or provide any new evidence: the evidence before me is that she speaks only a few words of English, and mainly Somali. The claimant lived with her until his crime occurred. His maternal aunt gave her evidence in Somali, and her witness statement was translated to her in Somali. The claimant goes to Somali cafés several times a week and has grown up in the extended Somali community and family network which his evidence sets out. I think it much more likely than not that the claimant has a working knowledge of Somali, and that his family members, whose evidence in general I accept, have tried to help him by understating his ability to speak the language.

74. The other point which is advanced is that the applicant is a *dhaqan celis*, a return to culture person. The claimant does not assert that any ill-treatment he will receive as a *dhaqan celis* would engage the Refugee Convention, humanitarian protection, or Article 3 ECHR, although he may suffer harassment and/or discrimination. On the claimant's account, *dhaqan celis* are people who have returned to Somalia after a long

time in the United Kingdom. There is no evidence before me to indicate what the linguistic skills of members of that group may be, but it is more likely than not that many of them speak the language of their country of refuge, as well as Somali, in which case there may well be a group of English-speaking people in Somaliland with whom the claimant could interact.

75. The claimant's cancer is in remission. Questions of the available treatment thereof in Somalia do not arise, and on the evidence of his specialist, may not do so 'for many years'. As regards the claimant's mental health, whilst it is clear that he had a serious breakdown, the evidence as to what treatment he now needs is conflicting. Dr Obuaya did not consider that the claimant would require any medication or treatment from psychiatric services on return.

76. Dr Dodd, the claimant's general medical practitioner, took a different view. Her evidence is based on having known the claimant for 18 months, when she wrote the report. Dr Dodd's report is dated 4 September 2017. I have regard to the medical history disclosed in the claimant's notes: Dr Dodd met him for the first time on 17 March 2016, when the claimant told her that he had leave to remain but 'had to serve sentence for actual bodily harm'. That rather understated his criminal history.

77. Dr Dodd's focus was on managing the treatment of the claimant's cancer, which began in April 2016, and on stopping him smoking and trying to improve his general health. As regards mental health treatment, Dr Dodd's notes show that the claimant was referred for mental health treatment but that on 1 April 2016, he told her that he often did not take one of the drugs prescribed, Aripiprazole, because his brother's hallucinatory voice disapproved of his taking it, as it stopped the voices. On 20 April 2016, the claimant told Dr Rebecca van Marle that he was feeling better, with no auditory hallucinations or suicidal thoughts.

78. The claimant missed his community mental health team meeting on 18 April 2016 but Dr van Marle did not consider it necessary for him to book a future appointment, since he was regarded as stable. The claimant asked for more medication on 5 occasions up to October 2016, following which there was an abortive medication review on 2 November 2016, which the claimant did not attend.

79. When seen on 10 November 2016, the claimant was still out of contact with the mental health team, sleeping satisfactorily and with no suicidal thoughts. He had lost his telephone. On 15 December 2016, the claimant was feeling steady mentally, with no current suicidal plans. On 29 December 2016, Bristol Mental Health Team wrote to The Maytrees Practice, saying that if the claimant did not contact them, he would be discharged after 2 weeks. The following day, they told the claimant the same thing. On 25 January 2017, the claimant was discharged by the community mental health team.

80. On 5 May 2017, the claimant was seen for a medication review. He seemed well, was taking his medication regularly, and was having frequent contact with family members. On 16 May 2017, the claimant missed his next appointment with the

surgery. On 10 August 2017, he was seen by Dr Dodd, who noted that he was anxious about removal but still had no suicidal thoughts. Dr Dodd thought that the claimant had 'reasonable health grounds to stay in the United Kingdom'.

81. That evidence is summarised in Dr Dodd's brief letter, in September 2017, in which she said he was now compliant with his medication (Mirtazapine, an antidepressant, and Aripiprazole, an anti-psychotic drug) and would probably need to remain on it long term. He was still not under the care of the community mental health team: Dr Dodd considered it likely that both the claimant's physical and mental health would be at risk if he were forced to return.

82. Given the conflict in the medical evidence, I have to decide which account I prefer. I remind myself that the evidence of the consultant psychiatrist, Dr Obuaya, was provided by the claimant himself, as was the evidence of Dr Dodd. I prefer the evidence of the consultant psychiatrist, Dr Obuaya, who considered that the claimant had experienced an acute episode of Adjustment Disorder at the end of 2012, which was likely to resolve over about 5 years. The Maytree Practice medical notes support this assessment: the auditory hallucinations have not troubled the claimant for a long time now, and he sleeps well, appears well, and has no suicidal thoughts.

83. I have had regard to the country evidence of Dr Markus Hoehne, giving it such weight as I can, although it was prepared over 3 years ago and the witness was not tendered for cross-examination. Dr Hoehne considered that there might be some available medication of the type that the claimant took, although not all his sources agreed that it was available. I have regard to the conclusion of Dr Obuaya that, although he continues to take it, the claimant probably does not need his medication now.

84. I note that the claimant was able to tell Dr Hoehne that he was a member of the Isaaq majority clan. Dr Hoehne considered that the claimant would probably find patrilineal relatives if he looked for them.

85. I am not satisfied on the evidence before me either that there are significant obstacles to the claimant's reintegration in Somalia, or that the risk to the claimant on return to Somalia is so serious as to amount to exceptional circumstances over and above Exception 1 for which he cannot be removed.

DECISION

86. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of an error on a point of law.
I set aside the previous decision. I remake the decision by dismissing the appeal.

Date: 19 February 2018 Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

APPENDIX A

Witness evidence before the Upper Tribunal

Claimant's evidence

1. The claimant prepared an updated witness statement dated 29 November 2017. In that statement, he said that in April 2013, his life was very difficult; and he referred to his brother's suicide. The claimant had been hospitalised for a few days at the beginning of 2013 and was on medication: he had never had mental health problems before that sad event occurred. He had been very relieved when his appeal was allowed after the May and October 2013 hearings. He had found the long legal process since then to be very stressful, as he was constantly worried about the future.

2. The claimant went on living with his uncle, aunt and their children in west London, although it was very crowded, until February 2015. It was also very near where his brother had killed himself, a constant reminder to the claimant. After some time, not understanding mental health difficulties, he had stopped taking his medication, because he thought he could cope, but then his mental health deteriorated again. He started to have auditory hallucinations of his late brother's voice, which sometimes did not say nice things. In 2013 and 2014, the claimant made 3 suicide attempts, trying to repeat what his brother had done.

3. The last attempt seems to have been in October 2014, when the claimant went to the 9th floor balcony on the building where his brother had committed suicide. He called his cousin and spoke to her: she was worried and came to get him, then took him to accident and emergency. The applicant was admitted to the Hammersmith and Fulham Mental Health Unit, where he spent about two months. The doctors there gave him medicine and told him that they were worried he might hurt himself. When he was ready to be released, the claimant reluctantly returned to live with his uncle. He took his medication, and the auditory hallucinations stopped, but he did not want to leave the house and see the building from which his brother had died. He mostly stayed indoors.

4. The claimant went to see his probation officer after a couple of months (so, about December 2014). It went well: afterwards, the claimant sat in a park to smoke a cigarette. Two police officers approached him, and he was arrested because during his illness he had not been reporting to the police station. He was detained for 4 days, without his medication, and eventually taken to Harmondsworth IRC. He was without his medication there for a further 3 days, and the voices came back. The claimant got into a fight. He pleaded not guilty but was convicted of assault by beating and fined £1025. The claimant regretted the fight and thought he had learned from it. He was detained for a further 13 months after that and was on suicide watch most of that time, with the staff keeping a close eye on him and making notes about everything he did.

5. In August 2015, the claimant noticed a lump in his neck. It was identified as cancer and in March 2016, he was released to section 4 accommodation in Bristol, and received chemotherapy treatment. In his witness statement, the claimant said that it had been very difficult for him during the treatment. He went every 3 weeks, from April to September 2016. He could not do anything: he was sick a lot and very tired. After his treatment, the claimant would go back to his section 4 address. It was lonely, as he had little support. Fortunately, the claimant's second cousin lived in Bristol and knew a local Somali restaurant. He said that if the

claimant ever needed food from there, he would collect and pay for it. Sometimes, after the chemotherapy, the claimant's second cousin would pick him up and take him home.

6. His family were in London and they were not wealthy: one brother and another cousin had been down to see him but otherwise, he had not had support from his London family.

7. The claimant had responded well to treatment. The cancer had gone, but the claimant continued to be monitored every 2 months, although his chemotherapy treatment had ended. He would need to be monitored for another 2 years, until 2020.

8. The claimant said that he felt remorse for his crime. He objected to being returned to Somaliland as he barely speaks the language, all his family are here, and he needs to be under medical supervision, both for his cancer, and for his mental health, in case the voices should return.

9. The claimant gave oral evidence, on the basis identified above. In answer to supplementary questions from Mr Eaton, the applicant said that he was still living in Bristol, but came to London to see his family, his psychiatrist, and his oncologist, about every two or three months. He was taking one dose each of Mirtazapine and Aripiprazole, morning and evening, for his depression. He was given a monthly prescription. In June or July 2017, his sister, brother and another cousin had come down to London to see him.

10. He had last seen his cancer specialist in September/October 2017 and had seen his psychiatrist and his family during the same visit to London. He said his cancer, which presented as a lump in his neck, was a lymphoma. Chemotherapy had ended in October 2016. The cancer would need observation for a further three years, until the end of 2020.

11. When he was having treatment for the cancer, his second cousin had come to pick him up. He saw him every day during the treatment. Since he had recovered, he still saw his cousin three times a week.

12. In cross-examination, the claimant explained why his mother had not come to the hearing, although she lived in London. She had just had a leg operation and had been unable to provide a witness statement because she was in hospital. His mother had returned to Somaliland in 2005 to try to locate relatives and family there but had not returned since then. The claimant's mother mainly spoke Somali, with just a few words of English, so when he communicated with her, it was mainly in Somali, with a few words of English. It was not true that he had given his screening interview in Somali. The interviewer brought a Somali interpreter with him.

13. The claimant's father had not provided an updated statement, nor did he attend the hearing. He had done so last time, but the claimant had not seen his father lately. Neither parent was working.

14. His second cousin, who had supported the claimant during his cancer treatment, gave him food but not money when he visited the claimant, three times a week. During the treatment, his second cousin's wife cooked, and they brought him home cooked food, but now they tended to go out for a meal. His second cousin worked as a taxi driver. They had spoken about whether if the claimant were returned to Somaliland, his second cousin could send him money there, but it was not practical. As a taxi driver, and with his own family to support, his second cousin was not making enough money to spare any. There was no statement from the second

cousin: the claimant said there could have been, but his solicitor did not mention the possibility.

15. In Bristol, the claimant's main contact was with his second cousin. He also went regularly to the Malcolm X Café for asylum seekers, once or twice a week, where he would socialise and get to know people. He had met people from Somaliland, Africa, Iraq and Syria. He would see these when he went to the Malcolm X Café, or other Somali cafés in Bristol. He probably went to one or other of these cafés 3 times a week, and he would see the same people, who had been here for a long time. Some of them were born in the United Kingdom. He could watch a football game in the cafés or go to the library and borrow books to read, usually thrillers.

16. The claimant was unemployed. He had passed some GCSEs at school. While in prison, he took courses on coping strategies and how to deal with suicidal thoughts. Between 2006 and 2011, while he was in prison, the claimant passed levels 1 and 2 in City and Guilds painting and decorating, BTEC business enterprise, English Literature and Numeracy. He had been unable to get any jobs because until these proceedings were complete, he could not apply for any photographic identification such as a British driving licence, passport or travel document, and without that, he could not get work. He had three or four short-term jobs in London, and if allowed to work, he would do anything, just to get a job. The applicant accepted that he could use the business skills he had learned in his BTEC, or his painting and decorating qualification, or do cleaning, as he had in prison.

17. If he went back to Somaliland, it would be more difficult for the claimant to use these skills because of the language difficulty and because the people would be different. He expected that while it would be hard at the beginning, he would probably get used to living in Somaliland, but his Somali language would never be as perfect as that of someone who was born there. He had looked at the possibilities of living in Somaliland a lot and investigated healthcare options. He had not looked at work, or accommodation, as he did not know where to start.

18. Mr Clarke asked about the medication situation. The evidence of the claimant's psychiatrist was that when he returned, he would not need his depression medication any more. The claimant had spoken to his general medical practitioner about whether he could come off the medication. He said he had not read all the psychiatric reports but that his understanding was that if he took his medication with him in time, he would be all right.

19. He had asked his parents and the family members who gave evidence whether they would visit him if he was in Somaliland. Most of them said that they probably would not do so, because of the cost of travel. It would take their travelling money, which they needed for other journeys.

Claimant's paternal uncle

20. The claimant's uncle is a British citizen. In his witness statement of 29 November 2017, he said that he was the claimant's paternal uncle. He lived in London, with his wife and 5 children, and worked as a supermarket cashier at Tesco. He and his wife had known the claimant nearly all his life. The uncle looked on the claimant as a son, and the claimant looked up to him as a father figure.

21. When in their family home, the claimant was respectful, always. He did his chores without being asked, helped to tidy the house, and took the children to and from school and the library. He was a good listener, considerate of people's feelings.

22. The claimant was not the man he had been, 10 years ago. Then, he was spending time with people who were a bad influence on him, getting into trouble, but never having the courage to leave those damaging friendships behind. The claimant's uncle thought that his friends had taken advantage of the claimant's wish to please them: in the past 10 years, the claimant had grown up and was no longer in contact with those bad friends.

23. The claimant had done a terrible thing and was ashamed. He had told his uncle's children, his cousins, many times of his mistakes. He told his uncle of his dreams, to help young people avoid the mistakes he made, to spend more time doing reading or doing sport, rather than hanging around the street all evening, with too much time on their hands.

24. If returned to Somalia, the claimant's uncle did not know how he would cope. Without mental health support or check-ups for his cancer, he might commit suicide, or the cancer might return, and he might die of that. His uncle was very scared for him: he thought it would be a death sentence.

25. In oral evidence, which he gave through a Somali interpreter, the claimant's uncle adopted his witness statement and was tendered for cross-examination.

26. In cross-examination, the uncle said that the claimant was his sister's son. He did not know why the claimant's mother had not come to the hearing, but he thought it was because of the condition of her legs. The claimant had stayed with his uncle and his family after leaving prison, for about 2 years, and during that time the uncle had provided financial support. He was not supporting the claimant in Bristol: another family member had taken on that responsibility, the second cousin who lived there.

27. The claimant's uncle and his wife were not wealthy: the uncle worked in Tesco, and his wife worked as a carer. They earned £2200 a month between them and had 5 children, aged between 18 and 9 years old. He had to look after his family, and their joint income was only just enough for the current family. They had large expenses and could not save any money. Their house was rented. If the claimant went to Somaliland, his uncle would not be prepared to send money to support him: he thought the claimant's life would be over.

Claimant's aunt by marriage

28. The claimant's aunt by marriage adopted her witness statement of 29 November 2017. The statement had been translated to her by a Somali interpreter. She confirmed the family relationships, and her work as a part time carer. They had the claimant live with them when he was released from prison in late 2011. The claimant needed somewhere to live and 'his mother's house was overcrowded, and she is away a lot'. She was slightly apprehensive, not knowing how prison would have changed the claimant. In fact, prison had changed him; he went in an uncaring boy but came out a man.

29. The claimant was quiet. He spoke less, but listened more, and was mild mannered. He helped around the house with cleaning and was never in any trouble while he lived with them. However, the claimant was frustrated by the strictness of his reporting conditions. He was not allowed to do much. He would help around the house, and go to the house of his aunt, where he helped. He went for walks, but apart from that, he spent his time at home.

30. The death of the claimant's brother on 25 December 2012 affected him badly, because he was there when it happened. The doctors were so worried that the claimant was taken to hospital and stayed there for a few nights. He returned to live with his uncle and the family, with

medication. He was a bit better at first, but then began to deteriorate over the next year or so: his aunt by marriage was not sure that he took his medication as he should.

31. The claimant became less friendly and more isolated. He lost his appetite and would not eat at all for some periods. He would stay awake all night and walk around the house. Sometimes he did not sleep for days. He was losing weight and getting weaker. Visits to the doctor or the hospital would help for a time, but then he would deteriorate again.

32. In October 2014, almost 2 years after his illness began, the claimant spent two months in hospital. He improved there and put on weight. He returned to live with his uncle and the family at the end of 2014 and was in better shape: the medication seemed to be working, but then the claimant was detained. His aunt by marriage could not visit him, because of her children, but she spoke to the claimant on the telephone and she could tell that his health was not good. Once his cancer was diagnosed, the claimant's voice was badly affected, and he could barely speak to her.

33. Following cancer diagnosis, the claimant was released to Bristol. His aunt by marriage thought that he might be better there, away from the sight of the building where his brother killed himself, but she also thought that he was lonely there. When she spoke to him, she could tell he missed home. They had regular telephone contact, and the claimant had visited London and his uncle's family a few times.

34. The witness considered that the claimant was a friendly, helpful, good listener, who was vulnerable and in need of medical and emotional support. She said that his spoken Somali was limited, and he had nobody in Somalia. She thought that he would die if he were returned there.

35. There were no supplementary questions. In cross-examination by Mr Clarke, the witness confirmed that while the claimant stayed at her family home in 2011, they supported him financially as well as emotionally. He ate whatever they cooked for the children, but they did not give him money, except sometimes £5 or £10 for bus fare. The claimant was able to borrow clothes from his cousins. The claimant did not go out and socialise: he had been in prison for over 5 years, his former friends had dispersed and he was electronically tagged. She did not think he had many friends.

36. The family members in London at present were the claimant's maternal great aunt, his sister and perhaps his parents. She was not sure whether the claimant's parents were in the country at present, as the claimant did not have a good relationship with them and his uncle, and his aunt by marriage, had no contact with the parents.

37. Before the death of the claimant's late brother, that brother had helped the claimant financially because he was at University and working for the first time.

38. Another sister, who had been a neighbour, gave the claimant small sums regularly when he lived with the uncle and aunt, because she was working then, but now she was a full-time mother and would not be able to afford to help. The sister was supported financially as their mother's carer, because of the mother's disability. She also got child benefit. She was not working any more, though she had in the past bee employed. The sister's husband came and went from the United Kingdom: the aunt was not sure if he was in the United Kingdom now, or whether he was contributing financially to the support of his wife and family here. The sister had provided a witness statement and the Tribunal could ask her what her husband did.

39. If the claimant were returned to Somaliland, the witness would not be prepared to assist him financially because she was a low-income earner with 5 children to look after, and her husband also had a low income. She did not think it would be a practical possibility for all the relatives to provide financial assistance to the claimant on return to Somaliland. She could not answer for the claimant's parents, but only say what she had been able to give him herself.

40. In re-examination, the claimant's aunt by marriage told Mr Eaton that she and her husband were not on good terms with the claimant's family. The relationship was through her husband and the families did not contact each other. His parents had not been in the United Kingdom when the claimant was released from prison: his mother had been having leg surgery in France. She could not remember whether the claimant's father had accompanied his wife to France during the surgery, or whether he was somewhere else at the time.

41. The claimant's uncle and his family had agreed to take the claimant in, as he needed a fixed address to be released. Her husband had approached the witness, saying that this was his nephew, his prison term had come to an end, but he had no parents in the country, and that her husband was the closest family available and the claimant should live with them. The witness said that she agreed. When the claimant was no longer tagged, he left them and went to live with and care for his great aunt. That continued until his brother's death, when the claimant was hospitalised.

42. There were no further questions for this witness.

Claimant's maternal aunt

43. The claimant's maternal aunt provided a witness statement dated 29 November 2017, which she adopted as her primary evidence in chief. She said that there had been big changes in the claimant's life: he had dealt with severe mental health issues, been detained, been diagnosed with cancer, and moved to Bristol. He had not been the same since his brother's suicide. Everyone was grieving, but the effect of the brother's death had been worst in the claimant: he sometimes said he felt that the death was his fault and that he could have saved his brother.

44. The claimant's aunt confirmed the claimant's history of mental health problems after his brother died. She said that in late 2014, she had received a telephone call from the claimant, which was not unusual as they spoke often. However, on this occasion, he was rambling and making no sense. She could tell that there was something wrong with the claimant, so she asked where he was, so that she could check he was all right. He was on the 9th floor of the building where she lived, at the same place as the claimant's brother had been when he jumped.

45. The claimant's aunt rushed up and persuaded the claimant to step away from the balcony railings. He was 'disconnected somehow, like he was not all there'. He agreed to come with her but was still not making any sense when he spoke. As the evening went on, he came back to himself a little but was still not normal. She thought he would have jumped, if she had not been there. The aunt took the claimant to hospital, where he did well. She was proud of him for agreeing to go, given the stigma about mental health in the Somali community, especially for young men.

46. The witness then gave details of the claimant's cancer treatment. She had supported him since his release by speaking to him on the telephone every couple of days. The claimant had good days and bad, worse when he was stressed. He was not well, psychologically or mentally. He had memory issues now and whenever he had a doctor's or lawyer's

appointment, he would ring his aunt afterwards, in case he forgot what was said. His aunt thought his medication affected the claimant's memory. She tried to reassure him, when they spoke, that the family was not worrying about him and everything would be fine. Her family missed him: her mother (the claimant's great aunt) always wanted to know how he was.

47. The claimant's aunt had been under severe stress in 2017: she had a baby in June and was in intensive care for two weeks, the baby being kept in hospital for even longer. The claimant had visited her during that time. She wished they could see each other more, but it was not possible at present. She, like the other witnesses, thought that returning the claimant to Somalia would be a death sentence, if his cancer returned, or if he could not get his medication.

48. In her oral evidence, and in answer to supplementary questions, the aunt confirmed that she was a full-time carer for her mother, the claimant's great aunt, who was 77 and had a lot of health problems. The aunt's husband was living in Manchester and looking after his own mother. He also was unemployed. He provided no financial support for her or the children. She did not think he had very much.

49. The aunt lived in a council property. She had last worked in 2014, as a receptionist, but was now married (an Islamic marriage only) with a complicated marital situation. She and her husband did not live together, and she had an issue with her brother, because she had to look after her mother, but her husband did not want him to be there. The Council provided two carers for her mother, four times a day, and the aunt received carer's allowance. She explained that looking after her mother, the claimant's great aunt, was a cultural duty.

50. The witness said that the claimant's mother lived in a top floor flat with no lift and had a bad knee. She was abroad when the claimant was released from prison, so he went to live with his uncle, because he needed an address. Most of the family were carers or cashiers, just about managing economically, so there was no spare cash with which to support the claimant if he was in Somalia.

51. In cross-examination, Mr Clarke asked how long the witness had lived apart from her husband. She replied that they had never actually lived together. She had two children, a child who was now nearly 3, and the baby born in 2017.

52. The aunt said that she had last worked in January 2014. When she was working, she had been able to give the claimant some money while he was in prison, and for a time after he was released, but now she was struggling to cope financially herself. Her mother had been ill since 2001 and in 2013 her health problems had become very serious. The aunt could not do full time work and look after her mother.

53. The claimant did come to visit now and again, and the aunt said that she might give him some money for a bus pass occasionally but could not do it regularly because she needed to look after her own children. The aunt did not socialise very well, because she had two small children.

54. The claimant's aunt said that they did not talk about his family when they met or spoke. His mother was unwell, and two of his brothers were relatively young.

55. In answer to a question from me, the claimant's aunt said that she did not know why his father had not come to the hearing, as she only saw that side of the family occasionally. She was 'very much not sociable' at the moment.

56. There was no re-examination.

Other evidence

57. A witness statement dated 30 November 2017 from the claimant's great aunt (also called Nan by the family) was undisputed by the Secretary of State. The witness did not give evidence. The great aunt said that she had known the claimant from a young age, helping to bring him up and looking upon him as a son. She said he had nobody in Somalia and had serious health problems. His Somali language was very limited, and she doubted whether he would survive if returned to Somalia.

58. When the claimant lived in London, he used to look after his great aunt a lot. In fact, while his aunt worked, he was his great aunt's full-time carer, although her health was already deteriorating then. She did not see him often, now that he lived in Bristol, but when she did, the claimant took his great aunt out in her wheelchair and looked after her. They speak frequently on the telephone.

59. The claimant's great aunt considered that the claimant had learned his lesson and should be given a second chance; that he was older and wiser; and that weight should be given to his cancer and his mental health issues. She asked that he be allowed to remain in the United Kingdom.

APPENDIX B

Medical and country evidence before the Upper Tribunal

Medical evidence

30 March 2016: Nurse Tanyaradzwa Tande, senior registered/mental health nurse at Heathrow IRC

1. On 30 March 2016, Nurse Tande emailed The Maytrees Practice with concerns about the claimant's mental health following his release from detention. Nurse Tande was concerned that the claimant's suicidal thoughts were increasing. While in detention, the claimant had been managed on a suicide/self-harm care plan but in the community, he was having auditory hallucinations again and having difficulty in complying with his medication, particularly the Aripiprazole, to which his deceased brother's internal voice objected.

2. Nurse Tande said that the claimant felt isolated in Bristol, as his family were in London and he was on a curfew. He could not travel to see them, and they could not afford the expense of the journey to Bristol. He had not seen them since his release (the date is not given, but in context, probably the release under section 4 in 2014).

Maytrees Practice Medical Notes

3. The claimant's medical notes show that when Dr Dodd met the claimant on 17 March 2016, he told her that he had been detained near Heathrow until the previous week. He had leave to remain 'but had to serve sentence for actual bodily harm'. He had been diagnosed with lymphoma by Hillingdon Hospital and was due to begin chemotherapy soon. He had a cousin in Bristol but the rest of his family were in London.

4. On 1 April 2016, the claimant was referred to the Community Mental Health Team as urgent because of a perceived suicide risk. He was awaiting his oncology/haematology appointment and was anxious. He was taking his Mirtazapine regularly, but often skipped the dose of Aripiprazole because he felt lonely and he liked the auditory hallucination of his deceased brother speaking to him, even though often his brother's voice told the claimant to join him in heaven. The claimant had telephoned the crisis number the previous night.

5. On 8 April 2016, the claimant had started his chemotherapy treatment for the follicular lymphoma and was feeling more positive. He was now only signing on once a week at the police station. He was due to attend a community mental health team meeting on 18 April 2016 and was taking his medication more regularly. On 20 April 2016, while Dr Dodd was on holiday, the claimant was seen by Dr Rebecca van Marle, who noted that he was feeling better, with no auditory hallucinations and no suicidal thoughts. No future appointments were booked as he was regarded as stable and the claimant knew he could see the doctors if he needed to. The claimant contacted the doctor for more medication on 15 June 2016, 20 July 2016, 14 September 2016 and 12 October 2016. On 2 November 2016 there was an abortive medication review.

6. On 10 November 2016, Dr Dodd saw the claimant again. She noted that he had been out of contact with the mental health team, because he lost his telephone. He was still quite isolated

in Bristol, spending most of the day indoors. He had no suicidal thoughts and was sleeping satisfactorily.

7. On 24 November 2016, the claimant said he was trying to give up smoking and was given a voucher for nicotine replacement therapy. He received another voucher on 8 December 2016.

8. On 26 December 2016, the claimant saw Dr Liz Clark and had raised HDL and LDL cholesterol readings. On 15 December 2016, he saw Dr Dodd and was diagnosed with hyperlipidaemia. He said that he was eating badly. He did not know whether there was any family history of hyperlipidaemia. He was feeling steady mentally, had given up on being able to return to London, and had no current suicidal plans. He would be seeing local family on two days in the following week, and was in frequent contact (presumably by telephone) with his sister in London. She had visited him in Bristol. The claimant said he did not receive his invitation to the last mental health clinic, and that letters often went missing.

9. On 29 December 2016, Bristol Mental Health wrote to the surgery to say that he had not contacted them and would be discharged if he did not do so within 2 weeks. On 30 December 2016, they wrote to the claimant, to say that if he did not contact them, they would discharge him.

10. The claimant contacted his doctors about smoking cessation on 9 January 2017. On 11 January 2017, he asked for a repeat prescription. On 24 January 2017, he was referred to the lipid clinic.

11. The claimant was discharged by the community health service on 25 January 2017 for lack of contact. On 30 January 2017, he failed to attend a stop smoking clinic.

12. On 26 April 2017, the claimant asked for more of his medications from the surgery. He had run out, and another prescription was issued. On 5 May 2017, the claimant was seen for a medication review. He was recorded as appearing to be well, awaiting further Home Office outcomes, and having frequent contact with family members, both in person and by telephone. He was content not to be on the mental health team for now, as he could be referred again if needed. He was taking his medication regularly, recognising that this was better for him. His medication was changed to 'repeat' basis rather than having to be prescribed each month by the doctor.

13. The claimant would be seen again at the end of August 2017 for a medication review. On 16 May 2017, the claimant missed an appointment at the surgery, with no reason given. On 27 July 2017, the claimant contacted the surgery about a letter, and on 1 August 2017, Wilsons requested a medical report. On 10 August 2017, Dr Dodd saw the claimant, who had a deportation hearing coming up and had been sleeping poorly in consequence. He had no suicidal thoughts at that time, but was anxious about removal. He was given a few Zopiclone tablets, to be used sparingly. The doctor noted that 'I would have thought he has reasonable health grounds to stay in the United Kingdom'.

6 May 2016: Ashley Russell, recovery practitioner with the Bristol Mental Health Central and East Assessment and Recovery Team

14. Ashley Russell wrote to the claimant to record the outcome of a mental health assessment on 5 May 2016. The dates are hard to follow, particularly as the general medical practitioner's referral was on 1 April 2016. I think it likely that the date of the letter should be 6 May 2016, but nothing turns on that. The claimant was said to have been released from detention about 8

weeks ago and to be in bail accommodation in Bristol: the claimant had been moved from London and was not allowed to visit London, as part of his bail conditions. The claimant had been an in-patient in hospital in 2013 and 2014, both times for about 8 weeks.

15. His cousin in Bristol was not in contact with the claimant. The claimant's sister had visited him once in Bristol. The claimant had no detectable thought disorder or disturbance of perception, save that he heard his brother's voice. The claimant knew nobody in Bristol. He was being treated for follicular lymphoma with chemotherapy, which had affected his appetite and weight. The claimant's mood was 'down and lonely', but he had never had any talking therapy to assist him with his brother's death and the effect it had on the claimant.

16. The Recovery Team would allocate a case worker to get to know the claimant and fully to assess his mental health needs and auditory hallucinations, including seeing whether there were steps which could be taken to help address his social isolation. The letter was copied to Dr Dodd, the claimant's general medical practitioner.

1 September 2017: Dr Lisa Lowry, Consultant Haematologist, University Hospital Bristol

17. Dr Lisa Lowry stated that the claimant had a low grade non-Hodgkin lymphoma but with suspicion, both clinically and histologically, of a transformation to a more aggressive high-grade type. The claimant had received 6 cycles of intensive chemotherapy, which produced a very good response. He was in clinical remission, but unlikely to have been 'cured'. Prolonged periods of remission were typical for low-grade lymphoma, which would usually progress at some point, but respond to further lines of chemotherapy. The expected survival period was 15 years.

18. The current position was summarised as follows:

> "He is not currently receiving any specific therapy but is attending clinic every so often for observation and monitoring of signs and symptoms. It is likely that at some point in the future he would experience progressive lymph node enlargement and require further therapy. It is very difficult to know when that might be, and I am hopeful that it might be quite a few years in the future. … As I said, the future is bright for further lines of therapy. However, I would have concerns about him being able to access adequate medical care should he return to Somalia. It is likely that if he were denied further follow-up and future treatment for his lymphoma, that his life expectancy would be shortened."

Dr Rachel Dodd, claimant's general medical practitioner

19. Dr Rachel Dodd first met the claimant on 17 March 2016 and oversaw his mental health and oncology referrals, seeing the claimant frequently for those purposes. Dr Dodd is not an oncology specialist. Dr Dodd said that she was not qualified to comment on the risk of lymphoma relapse, nor on the outcome should the claimant be unable to access treatment. She recommended that such questions be directed to his oncology specialist, Dr Lisa Lowry, at Bristol Hospital Oncology Centre.

20. Concerning the claimant's mental health, Dr Dodd was aware of a diagnosis of paranoid schizophrenia in his prison notes in March 2015, and of a history of auditory hallucinations and suicide attempts. The voices the claimant heard were his late brother, asking the claimant to join him. The claimant had reportedly tried to take his own life 3 times before Dr Dodd met him in March 2016, one of which resulted in an admission to the Claybrook Unit.

21. The claimant was taking 45 mg of Mirtazapine (an antidepressant) and 15 mg of Aripiprazole (an anti-psychotic) each day. His compliance with his medication was good. Avon and Wiltshire Mental Health Services had discharged him in January 2017, with an open door for further referral if needed. Dr Dodd expected that the claimant would need long-term medication.

22. In relation to the hearing, Dr Dodd considered that the claimant would need regular breaks and extra care when explaining complex matters. Her understanding was that the claimant had lived in the United Kingdom since he was 8 years old, mostly in London, and that he had a network of family support here which would not be replicated in Somalia. She considered it 'very likely that both his physical and mental health would be at risk if he were forced to return'.

11 September 2017: Dr Chiedu Obuaya, Consultant Psychiatrist

23. Dr Chiedu Obuaya MBBS BSc MRCPsych MBA prepared his report on 11 September 2017, after seeing the claimant at his solicitors' offices on 4 September 2017. He read the Joint Presidential Guidance note and stated that the claimant was fit to give evidence. It was not his opinion that any specific provisions or support needed to be provided before the claimant could do so.

24. Dr Obuaya acknowledged that he had no expertise on the conditions the claimant would face in Somalia. His conclusions on the risk on return are plainly outside his expertise and I place no weight on them, applying the *Icarian Reefer* guidelines, to which the report was prepared.

25. Dr Obuaya considered that the claimant fulfilled the criteria for a short-term Adjustment Disorder as categorised in the WHO ICD-10 classification of diseases. He did not consider that the claimant had a depressive illness, nor that he had any psychotic illness. Adjustment disorders were self-limiting conditions, short-lived by definition and neither severe nor enduring in nature. Most patients had a good prognosis with only 13-17% still having a major mental health disorder, 5 years on. Bereavement counselling or supportive psychotherapy might help. The claimant had no chronic substance misuse problems.

26. The claimant was negatively affected by his poor physical health, long-term unemployment and limited support network. However, he presented a low short-term risk of completed suicide, lacking *active* suicidal ideation. It might increase to moderate to high on hearing that he would definitely return to Somalia, but on return, the risk would not definitely be high as there was no history of suicidal behaviour in Somalia. Regular monitoring could minimise the risk.

27. The applicant remained a moderate to high risk of re-offending, given the serious nature of his conviction, and his having received a fine for cannabis possession in the last two years before the preparation of this report. If the claimant was unable to secure regular income or maintain stable housing, there was a risk that he would turn to criminal means to support himself. For the moment, his housing was reasonably stable, but NASS support gave him a limited source of income. His family members might support him to live a pro-social life in future: his risk of repeat sexual or drug offences was low.

28. Turning to the mental health consequences of removing the claimant to Somalia, Dr Obuaya considered that return there would be stressful and might exacerbate the claimant's accessing

mental health services there if he required them or make it more difficult for him to engage in the tasks necessary to establish a new life, such as finding work and accommodation.

29. Dr Obuaya's opinion was that

> "74. From a purely *psychiatric* viewpoint, given the diagnosis of an adjustment disorder, a return to Somalia need not necessarily impact adversely on [the claimant's] mental health or his capacity to remain safe. He would not, in my clinical opinion, require any medication or treatment from psychiatric services there if returned there."

30. That was the updated medical evidence.

5 December 2014: Country report of Dr Hoehne

31. The country expert report of Dr Hoehne is significantly out of date. At [9], Dr Hoehne sets out UNHCR findings that there is some formal mental health care in Somalia, including three mental health departments in Hargeisa, Boroma and Burao, and two dedicated mental health hospitals in Berbera and Gebilay. The Berbera hospital had been transformed from a prison to a mental health hospital with the assistance of NGOs. Families were required to sign a non-abandonment contract to ensure that they would pay for and provide resources to the patient throughout their treatment. There were mental health facilities in Bosaso General Hospital in Puntland, and an outpatient only facility at the Galkayo General Hospital, as well as mental health services in Mogadishu. There were also at least 11 private centres in Somaliland, four in Puntland and two in Mogadishu, although conditions were poor in those hospitals.

32. Mental health training was being introduced across Somalia and Somaliland, supported online before and after through a partnership with King's College London. Since 2008, Hargeisa and Amoud University Medical Schools included formal mental health training in their courses. A short mental health course was included in the undergraduate medical and nursing school curricula in Somaliland, and international experts regularly organised trainings and online support, as well as sporadic mental health courses organised by the World Health Organisation and the Italian non-governmental organisation, GRT.

33. Evidence of the availability of Mirtazapine and Aripiprazole in Somalia was confusing. Dr Hoehne's contacts suggested that availability was limited and expensive, if the medications were available at all, and mainly in bigger pharmacies in Hargeisa, Somaliland's capital. A monthly dose, on prescription, cost about $25.

34. Cancer was not treatable in Somaliland or Somalia: chemotherapy simply was not available. Basic knowledge of the disease was very limited.

35. The claimant was a member of an Isaaq clan and would be very likely to find some patrilineal relatives if he searched for them. He would get some short-term family assistance from them, but then probably have to fend for himself. His broken Somali and lack of cultural knowledge would also be unhelpful. The unemployment rate was very high and even low-paid jobs needed family connections. There was no mental health system in Somaliland. If he became ill again, the claimant would most probably become totally destitute.

36. Family members would be unwilling to support him for long periods, because of the complexity of the claimant's health problems. If his lymphoma returned, he would die from that illness.

37. The report has not been updated for over three years and Dr Hoehne was not available at the hearing to assist the Tribunal in assessing the weight to be given to his evidence.