



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/04808/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2018**

**Decision & Reasons
Promulgated
On 3 December 2018**

Before

**THE HONOURABLE MR JUSTICE SWIFT
UPPER TRIBUNAL JUDGE GLEESON**

Between

ISMAN AIDID AHMED

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alex Burrett, Counsel instructed by Duncan Lewis solicitors

For the Respondent: Mr Tom Wilding, a Senior Home Office Presenting Officer

**DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF THE TRIBUNAL PROCEDURE
(UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 7 February 2018 to refuse to revoke a decision to deport him to Somalia, of which he is a citizen, and to refuse him leave to remain on human rights grounds. The appellant's home area is Somaliland.

2. Permission to appeal was granted to both the appellant and the respondent.
3. At the hearing today, it was common ground that the First-tier Tribunal did materially err in law, inter alia by conflating the test for 'foreign criminal' at section 117D(c)(ii) with that at section 117D(c)(iii), leading to a finding that the appellant was not a persistent offender. Mr Burrett accepted that if those provisions are disjunctive and no seriousness test applies when assessing whether a person is a persistent offender, then on the appellant's criminal history, he is a persistent offender.
4. The parties agree that this is a case where the decision of the First-tier Tribunal must be set aside, and that no written reasons are required. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) are required, the decision being made with the consent of the parties and the parties having given their consent to the Upper Tribunal not giving written reasons.
5. We therefore set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved. The appeal will now proceed to the stage in which the First-tier Tribunal will remake afresh the decision to allow or dismiss the appeal on the basis described in the grants of permission.

Signed: [Judith A J C Gleeson](#)
November 2018
Upper Tribunal Judge Gleeson

Date: 28