



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10770/2017 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34
On 20 July 2020**

**Decision & Reasons Promulgated
On 31 July 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AO

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to directions issued by the Upper Tribunal on 6 May 2020.

2. The appellant is a national of Somalia born on 31 October 1974. He arrived in the United Kingdom in July 2000 and was granted indefinite leave to remain as a refugee on 21 September 2001. Following his conviction for rape and indecent exposure, and a ten year sentence of imprisonment, the respondent made a decision to cease the appellant's refugee status and signed a deportation order against him on 18 March 2013. The appellant made a request to revoke the deportation order and, following the refusal of that request, the setting and withdrawal of removal directions and various judicial review applications, further representations were made on human rights grounds, in particular in relation to his mental health, which were then considered by the respondent as a fresh human rights claim. That claim was

then refused by the respondent on 9 September 2017 and the appellant appealed against that decision.

3. The appellant's appeal was heard by First-tier Tribunal Judge Roots on 20 January 2020 and was dismissed in a decision promulgated on 17 February 2020, on Article 3 and 8 grounds.

4. Permission to appeal to the Upper Tribunal was sought by the appellant and was granted on 26 March 2020.

5. In light of the need to take precautions against the spread of Covid-19, the appellant's case was reviewed by the Upper Tribunal. In a Note and Directions sent out on 6 May 2020, Upper Tribunal Judge Smith indicated that she had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

6. Written submissions have been received from both parties.

7. The appellant's submissions, made on 18 May 2020, assert that the judge's decision ought to be set aside on the grounds of material errors of law in the assessment of Article 3 risk in relation to the appellant's mental health and access to treatment in Somaliland. It is requested that the matter be remitted to the First-tier Tribunal for a fresh determination or, in the event that that is not agreed, that there be a resumed hearing in the Upper Tribunal.

8. The respondent, in her submissions, did not oppose the application for permission and accepted that the First-tier Tribunal had erred in law in its consideration of the availability of medication in Somaliland and the consequential Article 3 risk on return. The respondent also agreed with the appellant's submission, that the matter should be remitted to the First-tier Tribunal for a *de novo* hearing, given that new findings would have to be made, in the context of the new framework under AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17.

9. In light of the fact that the appellant's grounds of appeal are not challenged by the respondent, and for the reasons given by both parties, I find there to be material errors of law in the judge's decision and I set it aside in its entirety. The appropriate course, as both parties agree, is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge.

DECISION

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Roots.

Signed: S Kebede

Upper Tribunal Judge Kebede
2020

Dated: 20 July