



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

Appeal Number: AA/03923/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 28 June 2016**

**Decision &
Promulgated
On 5 July 2016**

Reasons

Before

**UPPER TRIBUNAL JUDGE KING TD
DEPUTY UPPER TRIBUNAL JUDGE PICKUP**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR B O A
(ANONYMITY DIRECTION MADE)**

Respondent/ Claimant

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Mr S Salam, Solicitor, of Salam & Co Solicitors

DECISION AND REASONS

1. The claimant is a national of Nigeria, born on [] 1956. He left Nigeria in 1995 for Germany and arrived illegally in the United Kingdom in 2005. He made an application under Article 8 of the ECHR in July 2010 which was

refused. On 4 January 2013 he sought asylum and other protection. That claim was refused in a decision dated 27 February 2015.

2. The claimant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Phull on 15 February 2016. The claimant claimed asylum and/or humanitarian protection in accordance with paragraph 339C of the Immigration Rules. Further it was his contention that his removal from the United Kingdom would be in breach of Articles 3 and 8 of the ECHR. At the hearing the claimant gave no evidence but relied upon a report from a consultant psychiatrist, Dr Ganapathy, dated 13 July 2015.
3. In terms of his asylum claim, it was his case that he would be at risk from his family in Nigeria on account of his change of religion from Muslim to Christianity. It was also his claim that he would be perceived as being homosexual and would suffer accordingly. The Judge, for reasons set out in the determination, did not find that his account was plausible or that he was at any risk upon return because of those matters.
4. The claim for humanitarian protection was based essentially upon his mental health and the risks associated with his return to Nigeria on that account, in particular the absence of any medication and treatment for his mental condition and the violence and intolerance shown by the general population to those individuals who were perceived as having mental problems. The Judge upheld those concerns.
5. The claimant met [R] his wife in December 2010 and married on [] 2015. She is a British citizen and has family living in the United Kingdom. The Judge found significant obstacles to family life being enjoyed in Nigeria and allowed the appeal under Article 8 of the ECHR.
6. The respondent has sought to appeal against that decision on a number of grounds and hence the matter has come before us to determine whether those grounds have substance or not as disclosing a material error of law.
7. The first challenge that is made to the assessment of Article 3 is that the Judge has failed to look holistically at all the background material as presented to determine whether or not treatment is available to the claimant. As has been indicated, reliance was placed essentially upon the psychiatric report prepared by Dr Ganapathy of 13 July 2015 as appears at pages 194 to 217 of the hearing bundle. The claimant has a diagnosis of schizoaffective disorder which currently is controlled by medication. In addition the claimant receives psycho-social support from his care coordinator. The anti-psychotic drugs which he requires to manage his condition are quetiapine and haloperidol.
8. In the Secretary of State's decision of 27 February 2015 detailed consideration is given to Article 3 particularly at paragraphs 68 to 71 of that decision. The report of the World Health Organisation 2011 Mental

Health Atlas for Nigeria noted that there was an officially approved mental health policy which existed with a mental health plan, a dedicated mental health legislation. The nature of the mental health care delivery was set out particularly by reference to the primary care, although there seemed to be a lack of referral procedures from primary care to secondary or tertiary.

9. The decision went on to deal with the 2012 Journal of Public Health in Africa Report which spoke of the limited availability of mental health services in Nigeria. It spoke of psychiatric care being largely provided at the few large mental hospitals in the big cities, in particular eight federally funded psychiatric hospitals and six state funded mental hospitals. There was a facility in Lagos. Information from medical advisors in the country indicated that mental health drugs were available and those included quetiapine and haloperidol.
10. The Judge, in considering the availability of drugs at paragraph 36 of the decision, made reference to the US State Department Report of 2014 and the COI report of 2014, which reports are said to have stated that mental health care facilities were almost non-existent. Unfortunately those two reports do not seem to feature in the court bundle and no reference is made by the Judge to the evidence cited by the Secretary of State, otherwise than a passing reference to the reports as quoted in paragraph 33 of the determination.
11. Dr Ganapathy in his report, at pages 214 to 215, cites the WHO report Mental Health System in Nigeria published in 2006, which report speaks of the fact that although a list of essential medicines exist they are not always available. Many admissions to the community based in-patient psychiatric units are involuntary, 33% of the population have free access to essential psycho-tropic medicines, but the traditional and spiritual healers deliver the bulk of mental health services in Nigeria. Mental health services are largely absent save in some EU funding projects.
12. It seems to us that it was incumbent upon the Judge, before making a finding that no drugs were available to the claimant, to have conducted a balanced consideration of all the evidence that was presented. We find that that was not done.
13. Even were there to be an absence of drugs, what is perhaps of greater concern to us is that there was no proper analysis of Article 3 by reference to the established case law which sets the burden at a very high level indeed. See **GS and EO (Article 3 - health cases) India [2012] UKUT 00397 (IAC)** which was a decision of the Upper Tribunal in which an extensive consideration was given to the approach to be taken to mental health and to Article 3, taking into account of course the jurisprudence in relation to **D v United Kingdom [1997] 24 EHRR 423 (ECtHR)** and **N v United Kingdom [2008] 4 EHRR 39 (ECtHR)**. Indeed the fact that life expectancy is dramatically shortened by the withdrawal of medical

treatment is in itself incapable of amounting to a highly exceptional case which engages the Article 3 duty.

14. There have been more recent cases and indeed one was cited by Upper Tribunal Judge Grubb in his decision of 16 May 2016, namely the decision **M'bodj v Etat Belge [2015] 1 WLR 1539**.
15. Even going back further, the decision in **Bensaid** was a decision in which schizophrenia as an illness was very much in evidence and that again was a decision which did not result in the finding of Article 3.
16. We find it is a significant omission on the part of the Judge and an error of law not to have considered this matter with a proper analysis of the jurisprudence.
17. In relation to Article 8, once again the case of **GS and EO** made it very clear that Article 8 was not to be used to circumvent the proper considerations relating to Article 3.
18. We are also concerned with what are potentially contradictory findings of fact by the Judge. On the one hand the Judge accepts that the claimant has no ties or contacts with anyone in Nigeria, notwithstanding that the basis of the asylum claim was that he did. Indeed in the submissions made on his behalf by solicitors in a letter of 30 January 2015 reference is made to the fact that his father had been married thirteen times and had 37 children. "This means our client has a very large family in Nigeria and they live all over Nigeria". Of course this is a very relevant consideration to the issue of support and seems largely to have been ignored by the Judge. At paragraph 38 the Judge relies heavily in the findings upon the absence of family support. It may be that that factually is inaccurate.
19. Mr Saleem invites us to find that, notwithstanding the shortcomings in relation to Article 8 or Article 3 based on the mental condition of the claimant, that there were clear findings by the Judge that the claimant satisfied the Appendix FM ten year partner route, given the finding that the claimant satisfies Appendix FM EX.1 as a partner. For our part we do not find that the Judge's conclusions are clear but rather the contrary, given particularly that succeeding under Appendix FM was not a ground upon which the appeal is in fact allowed. Further we note the comment at paragraph 45 of the determination "the claimant however does not meet all the eligibility requirements as a partner and therefore I turn to consider paragraph EX1". That of course requires that there are insurmountable obstacles to family life with a partner continuing outside the United Kingdom.
20. The difficulty with that assessment is, as we so find, that it is tainted by an inaccurate approach to the background material as to medication and family support. The situation is not helped by the evidence of the claimant's wife herself that she would not find work in Nigeria at the same

salary but has not looked for such work. It is said that the claimant's parents were deceased and she did not know of any other family in Nigeria. That of course begs the question of the many potential relatives. It also perhaps does not assist that no enquiry as to whether she would be able to work has been made let alone established. The absence of work was something again which the Judge held very much in the findings.

Notice of Decision

21. In general, therefore, we find there to be merit in the grounds as submitted by the Appellant to this appeal, such as to conclude that the errors of law are material to the outcome of a proper deliberation and decision in this matter. In those circumstances the determination is set aside.
22. Given the substantial factual findings that will need to be made in this case and the substantial background material that will need to be considered we deem it appropriate to remit the matter back to the First-tier Tribunal for a de novo determination by another First-tier Tribunal Judge, in accordance with the Senior President's Practice Statement at paragraph 7.2.
23. Any directions that are appropriate will of course be the responsibility of the First-tier Tribunal when seized of the matter.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed

Date: 5th July 2016

Upper Tribunal Judge King TD

FEE AWARD

We make no fee award as the outcome of the appeal remains to be decided.