Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/19792/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 October 2017	**On 1 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

AMA
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Amino, Solicitor, Martyns & Rose Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

1. The First-tier Tribunal made an anonymity order. I have not been invited to rescind that order. The order remains appropriate.

Introduction

2. This is an appeal against the decision of Judge of the First-tier Tribunal Manyarara (hereafter "the FtTJ"), promulgated on 10 April 2017, dismissing the appellant's appeal against the respondent's decision of 13 May 2015 to refuse leave to remain outside of the Immigration Rules on human rights grounds.

Factual Background

3. The appellant is a national of Nigeria, born on [ ] 1969. She claims to have entered the United Kingdom in 2000 with the assistance of an agent. Following two unsuccessful applications to regularise her immigration status, on 13 February 2015, she sought leave to remain outside of the Immigration Rules. She claimed to suffer from mental health problems and complained that her removal would infringe Article 3 & 8 of the ECHR.

4. The appellant has received a diagnosis of Post-Traumatic Stress Disorder (PTSD), severe depression and generalised anxiety disorder on account of her past experiences in Nigeria. The medico-legal evidence she relied on to support her claim emanating from reports from the following three sources:

   (a) Dr Amir Bashir, Consultant Psychiatrist (report dated 5 May 2012);

   (b) Mr Graham Rogers, Consultant Psychologist (report dated 4 January 2015); and

   (c) Ms Leah Martini, Social Worker (letters dated 8 May 2015 and 24 May 2016).

5. In refusing the application the respondent concluded that there were no very significant obstacles to the appellant's integration in Nigeria. The respondent considered the appellant's mental health problems could be appropriately managed in Nigeria and after considering evidence relating to the availability of mental health treatment in her home country and the availability of financial support, she was of the view that the appellant's removal from the United Kingdom would not infringe her human rights contrary to Article 3 and 8 of the ECHR.

The Decision of the FtTJ

6. The appellant was present at the hearing but did not provide any written testimony and was not called to give evidence. Before the FtTJ were two witness statements from the appellant's unmarried partner and her half-sister; both gave oral evidence at the hearing. The FtTJ summarised the evidence from the witnesses, which included assertions that they provided the appellant with emotional and financial support and that she would have no support or family in Nigeria which would worsen her illness. The appellant's half-sister and partner both claimed that the support they provided could not be replicated in Nigeria.

7. The FtTJ made a number of detailed findings, extending from [28] to [124], based on the evidence before her, including the medico-legal evidence as

set out above. The following findings are, for the purposes of this decision, particularly relevant. The FtTJ found that no reliance could be placed on the evidence of the witnesses as representing a truthful account of the appellant's circumstances in Nigeria and the United Kingdom; both gave inconsistent and misleading evidence [28] to [45]. The extent of the inconsistencies led the FtTJ to doubt the relationship between the appellant and her half-sister and between the appellant and her partner. Having rejected their evidence, the FtTJ turned to consider the medical evidence. She directed herself appropriately at [47] to [66] by reference to the judgements in *N. v the United Kingdom* (App no. 26565/05) and *D. v the United Kingdom* (2 May 1997) in addition to several other recent authorities. The FtTJ then turned to consider the appellant's claim that she was *"critically ill"* and thus met the high threshold required in cases concerning a breach of Article 3 on medical grounds. The FtTJ noted that the report prepared by Dr Bashir was dated 5 May 2012. Dr Bashir referred to the appellant's symptoms of depression, anxiety and PTSD and noted the absence of suicidal ideation. At [71] to [72] the FtTJ said this:

> "Having considered the report in its entirety, I find that Dr Bashir does not address the questions put to him by the appellant's legal representatives. In relation to the prognosis if the appellant is returned to Nigeria and the availability of any medical treatment there, Dr Bashir simply states the following, at paragraph 13.9 of his report:
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> > "Although medications may be available in various parts of Nigeria I am not sure if there is expertise to treat complex mental illness like hers."
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> > "I am not aware of the availability of evidence based treatment of her psychiatric problem in Nigeria. It's however not the availability of the medications but the probability of her receiving treatment."
> >
> > [My emphasis]
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> I find that these statements by Dr Bashir is not conclusive evidence of a lack of treatment in Nigeria. Dr Bashir does not refer to any lines of enquiries he has taken in reaching his conclusion that there is no expertise to treat complex mental illnesses like the appellant's. He does not refer to experience of either working in Nigeria, or having contacts in the mental health services there. There is no reference to the sources he considered and his clear expression of uncertainty does not answer the questions as to prognosis on return, or availability of treatment. I find that Dr Bashir's report does not assist in resolving the issue concerning the prognosis on return. Dr Bashir's report is however now almost five years old. There are no further reports or opinions from consultant psychiatrists involved in the appellant's care."

8. The FtTJ then turned her attention to the report of Mr Rogers and the evidence of Leah Martini and stated thus at [74] to [77]:

> "The only other consultant's report is that from Graham Rogers, Consultant Psychologist. Graham Rogers refers to diagnoses of PTSD, severe depression, generalised anxiety disorder and psychosis. His report does not refer to the prognosis on return to Nigeria, or the availability of treatment there. Graham Rogers refers to the lack of

> "free" health care in Nigeria, the institutional stigma and the lack of training. The sources he refers to are however considerably out of date.
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> Mr Rogers further refers to the appellant as having a cognitive impairment. This is not however a matter that was included by Dr Bashir in his report. Dr Bashir refers to having been able to obtain an account from the appellant. There is no reliable evidence to suggest that the appellant lacks mental capacity. Graham Rogers has reached the majority of his findings on the outdate report prepared by Dr Bashir. There is no reference to any lines of enquiry in respect of the situation should the appellant be returned to Nigeria.
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> The only other evidence is from Leah Martini, Social Worker. There is no suggestion that her long-standing mental health problems have deteriorated since she made an application in 2012. While there is refence to medication and therapy, there is no indication of any treatment that is only available in the United Kingdom.
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> The medical evidence is considerably outdated and there is no suggestion that the appellant's mental health condition is deteriorating. The appellant has long-standing mental health issues and she was already suffering from mental health problems when she arrived in the United Kingdom."

9. Having regard to all of this, the FtTJ rejected the submission that the *"appellant is close to death."* The FtTJ observed that the appellant's representatives had not served any evidence in relation to the availability of treatment in Nigeria and had not responded to the issues raised by the respondent in the refusal. On the other hand, the respondent could refer to background information on the availability of treatment for mental health conditions and made specific reference to a hospital in Nigeria that catered for persons with such problems [79]. While the FtTJ was prepared to accept that the appellant had mental health problems she found that there was insufficient evidence to support a finding that the Article 3 threshold had been reached [80].

10. The FtTJ proceeded to consider whether the appellant qualified for leave on private life grounds under paragraph 276ADE1(vi) of the Immigration Rules and having satisfied herself that she did not, proceeded to consider whether there were compelling circumstances to warrant a grant of leave outside of the Immigration Rules by reference to the step-by-step approach enunciated in *Razgar [2004] UKHL 27.*

11. The FtTJ found that *"whatever the biological relationship may be"* between the appellant and her claimed half-sister, the ties that existed between them were no more than the normal emotional ties [104]. She considered that the evidence did not support a conclusion that the appellant and her claimed partner were in a genuine and subsisting relationship [105]. While there is no express finding that the appellant had established a private life in the United Kingdom it is clear that the FtTJ did not accept that the appellant's removal would amount to an interference with her private life.

The FtTJ revisited the medical evidence and further examined the evidence from Leah Martini and stated thus:

> "108. The letter from Leah Martini (Social Worker) shows that the appellant was seen by a Consultant Psychiatrist on 28 April 2015. She then had a general mental health assessment with a social worker on 8 May 2015. The working diagnosis was one of depression and PTSD. The Care Plan was to increase the appellant's medication, refer her to psychotherapy and long-term care, and a crisis plan. The nature of the long-term care is unspecified and there is no suggestion that the appellant has been hospitalised as a result of her mental health problems. She is not living in supported housing and there is a lack of clarity in relation to the nature and extent of the contact that she has with the witnesses who attended.
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> 109. The social worker states that travel to Nigeria would be detrimental to the appellant's mental health and safety as a result of the historical trauma. The social worker is not however registered under the Mental Health Act to provide a psychiatric opinion of this nature.
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> 110. A further letter from Leah Martini, dated 24 May 2016, shows that the appellant has been involved with the Mood, Anxiety and Personality Team Community Mental Health Services, Lambeth, since March 2015. There is however no evidence about the extent of her involvement with the community mental health team and there is no further information about which psychiatrist the appellant saw in April 2015, as Dr Bashir's report is dated 2012. The social worker does not elaborate on the reasons why the appellant's health and safety would be at risk in Nigeria. The refusal decision took issue with the absence of any evidence from an NHS consultant.
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> 111. The appellant's representatives have not responded to the refusal decision in respect of the availability of treatment for mental health conditions in Nigeria. I find that whilst the appellant is suffering from mental health problems, the appellant is in receipt of medication which serves the purpose of controlling the symptoms. There has been a complete failure to provide any helpful or reliable information from independent sources about the situation in Nigeria, where the appellant has lived for the majority of her life. Dr Bashir's report shows that the appellant does not lack mental capacity in relation to her life and the appellant expressed a desire to live and do something with her life. Graham Rogers and Leah Martini have departed from the conclusions reached by Dr Bashir in circumstances where Dr Bashir is a psychiatrist who was giving his views on matters within his expertise. It is difficult to reconcile the cognitive impairment identified by Graham Rogers when a consultant psychiatrist has not suggested that the appellant lacks mental capacity."

12. The FtTJ indicated that she took into account, when assessing proportionality, the factors set out in sections 117B of the 2002 Act and concluded, having indicated that she considered all the evidence, that there were no very compelling circumstances sufficient to outweigh the public interest that would require a grant of leave outside of the Immigration Rules. The appeal was dismissed.

The criticism of the FtTJ's decision and discussion

The grounds

13. The grounds of appeal are essentially two-fold. It is firstly contended that the FtTJ erred in law by rejecting the evidence of the witnesses and failed to determine whether the appellant received personal support from her half-sister and partner. Second, it is contended that the FtTJ's assessment of the expert evidence was erroneous. Permission to appeal was refused by the First-tier Tribunal in respect of the first ground but granted in respect of the second the particulars of which are pleaded at paragraphs [2] to [6] of the grounds.

Submissions

14. In amplifying the grounds Mr Amino remained faithful to the limitations of the grant of permission to appeal and addressed the second ground. His brief oral submissions can be summarised as follows. Mr Amino complained that the FtTJ's assessment of the medical evidence was inadequate. He referred to paragraph [74] and [75] of the FtTJ's decision and to paragraph 3 and 4 of Mr Rogers report. He submitted that the FtTJ was wrong to assert that he had not given a prognosis. Mr Amino further criticised the approach of the FtTJ in preferring the evidence of Dr Bashir to that of Mr Rogers at [75] and [111].

15. Mr Walker briefly submitted that the FtTJ's decision was not tainted by irrationality. The FtTJ considered all the evidence and reached a decision that was open to her on the evidence.

The Law

16. The Strasbourg court in *Bensaid v UK [2001] 33 EHRR 205* at paragraph 47 stated as follows:

> "'Private life' is a broad term not susceptible to exhaustive definition. The court has already held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. ... Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life."

17. Paragraph 61 in *Pretty v UK [2002] 35 EHRR 1* states:

> "As the court has had previous occasion to remark, the concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere

protected by Article 8. Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world. Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees."

18. At 65 the court stated:

> "The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the court considers that it is under Article 8 that notions of the quality of life take on significance."

The core value protected by Article 8 is the quality of life, not its continuance.

19. A failure under Article 3 health grounds does not necessarily entail failure under Article 8. I consider what the Court of Appeal stated in *GS (India) & Ors v The Secretary of State for the Home Department [2015] EWCA Civ 40*:

> "86. If the Article 3 claim fails (as I would hold it does here), Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm. That approach was, as it seems to me, applied by Moses LJ (with whom McFarlane LJ and the Master of the Rolls agreed) in MM (Zimbabwe) [2012] EWCA Civ 279 at paragraph 23:
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> > 'The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighed in the balance, with other factors which by themselves engage Article 8. Suppose, in this case, the Appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding would not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the Appellant is to be deported.'
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> 87. With great respect this seems to me to be entirely right. It means that a specific case has to be made under Article 8. It is to be noted that MM (Zimbabwe) also shows that the rigour of the D exception for the purpose of Article 3 in such cases as these applies with no less force when the claim is put under Article 8:

> ‘17. The essential principle is that the ECHR does not impose any obligation on the contracting states to provide those liable to deportation with medical treatment lacking in their ‘home countries’. This principle applies even where the consequence will be that the deportee’s life will be significantly shortened (see Lord Nicholls in N v Home Secretary [2005] 2 AC 296, 304 [15] and N v UK [2008] 47 EHRR 885 (paragraph 44)).
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> 18. Although that principle was expressed in those cases in relation to Article 3, it is a principle which must apply to Article 8. It makes no sense to refuse to recognise a ‘medical care’ obligation in relation to Article 3, but to acknowledge it in relation to Article 8.’”

20. The court in *Kamara [2016] EWCA Civ 813* considered very significant obstacles albeit in the context of deportation and stated;

> “14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family.”

Conclusions

21. The FtTJ did not err. She considered all the evidence and attached appropriate weight to it. It is clear from a proper reading of the decision that the FtTJ considered the appellant’s mental health in the context of Article 3 and 8. She was not assisted by the failure of the appellant’s representatives to set out a detailed rebuttal to the refusal letter and a comprehensive and sequential account of treatment and medical opinion to date. The criticisms made of the FtTJ’s evaluation of the evidence must be judged bearing this in mind and in the context of her overall findings and conclusions.

22. The FtTJ’s credibility findings are unassailable. The evidence of the witnesses was *“completely lacking in credibility”* [28] and the FtTJ noted many contradictions in the evidence. Such was the deficiencies in the evidence of the witnesses that the FtTJ had sufficient cause to doubt the relationships were as claimed [28] and [44]. The FtTJ gave several reasons for doubting the claim that no family members remained in Nigeria and further noted that the evidence did not accord with the suggestion that

the appellant was incapable of independent living and noted that she was suffering from mental health problems prior to her arrival in the United Kingdom [41].

23. The FtTJ noted Dr Bashir's diagnosis of depression, anxiety and PTSD, but also noted his failure to address the questions put to him by the appellant's representatives in relation to prognosis if returned, availability of treatment and suicide risk. The FtTJ stated that she was not assisted by this failure and further noted that Dr Bashir's report was almost five years old [72] and that no updated report had been obtained [73]. The FtTJ noted that while Mr Rogers referred to a diagnosis of PTSD, severe depression, generalised anxiety disorder and psychosis, his report did not refer to the prognosis on return to Nigeria or the availability of treatment there and noted that the sources he referred to in respect of healthcare, institutional stigma and lack of training were considerably out of date [74]. The FtTJ also noted that there was no suggestion the appellant's mental health had deteriorated since she made an application in 2012 [76] and [77].

24. The FtTJ rejected the submission that the appellant was close to death and noted that Dr Bashir did not opine that there was a risk of suicide [78]. The FtTJ accepted the appellant was suffering from mental health problems, but the dearth of evidence led her to conclude that the Article 3 threshold was not met [80].

25. The FtTJ noted the appellant's long-standing mental health issues did not inhibit her ability to live an independent life in Nigeria [89] and there was no evidence to support a finding that she would suffer destitution on return to Nigeria where she had cultural and social attachments [90]. The FtTJ further observed that the nature of any long-term care was unspecified, the appellant had not been hospitalised on mental health grounds and she was not living in supported housing. The FtTJ noted the opinion of Ms Martini that travel to Nigeria would be detrimental to the appellant's mental health, but noted a lack of detail supportive of that conclusion and concluded she was not qualified to provide a psychiatric opinion [109] and [110].

26. Mr Amino maintains that the FtTJ's evaluation of the evidence is materially flawed. Specifically, the FtTJ is criticised for stating at [74] that Mr Rogers did not answer the question of prognosis on return or the availability of treatment in Nigeria when at paragraph 3 and 4 of his report he had dealt with these issues. Mr Amino submitted that this error significantly influenced the FtTJ's decision. I reject that submission. The FtTJ was ceased inter alia with the task of assessing the evidence of the extent to which the appellant's mental health would deteriorate in the event of a return to Nigeria. Mr Rogers opinion that the appellant *"will remain learning disabled for life"* and that her *"depression will deteriorate as will the voices and their impact. Between an increase in depression, plus voices telling her to kill herself, one can see the future"* are incoherent and lack cogency and is not a prognosis within the context of the issues the

FtTJ was attempting to assess on the limited evidence made available to her. Further, at paragraph 4 Mr Rogers does not specifically deal with the availability of treatment that this appellant requires and the FtTJ rightly noted that the sources quoted were considerably out of date.

27. Second, Mr Amino submitted that the FtTJ was in error in dismissing Mr Roger's assessment (in 2015) that the appellant had a cognitive impairment (mild learning disability) when Dr Bashir had not identified such an impairment (in 2012). While there is some justification in this criticism as I see no reason why Mr Roger's given his expertise and experience would be unable to conduct a neuropsychological assessment in order to assess the appellant's brain functioning, I consider that the error is not material. The FtTJ considered the report of Mr Rogers and identified other deficiencies in that report which did not assist her in determining the appellant's fate on return to Nigeria. The FtTJ noted that the sources quoted, of which there were few, were out of date. On any reading of the medical evidence, the reports of Dr Bashir and Mr Rogers (both out of date by the date of hearing before the FtTJ) did not establish a prima facia case on medical grounds and, in my view, the deficiencies in the reports identified by the FtTJ and her adverse credibility findings meant that this appeal was bound to fail.

28. There was no evidence the appellant was suicidal or that there had been any previous attempt(s) by the appellant to take her life. The evidence of her prognosis on return to Nigeria or the availability of treatment there was fundamentally lacking in detail and was considerably out of date [74]. The evidence did not reach the threshold required in Article 3 cases as noted by the FtTJ and she properly rejected the submission that the appellant is *"close to death".* There is no cogent challenge to the FtTJ's findings that there would be no infringement of Article 3 in the event of a return to Nigeria. There was no persuasive evidence before the FtTJ that the evidence met that threshold and her findings in respect thereof are unassailable.

29. Similarly, the FtTJ was entitled to conclude that there were no very significant obstacles to integration for the reasons that she gave and there is no specific challenge to these findings either. The FtTJ did not end the assessment of Article 8 having determined the appeal under the Immigration Rules. She properly considered whether there were compelling circumstances to allow the appeal outside of the Immigration Rules. The Appellant's claim rested on private life. The FtTJ considered all material matters, including the medical evidence. She had already made findings about the evidence of the witnesses, the medical evidence and the appellant's mental health and properly factored these into the assessment of proportionality. She was entitled to conclude, particularly having proper regard to section 117B of the 2002 Act that the decision was proportionate. The FtTJ's assessment of Article 8 is lawful and sustainable.

30. Overall, I consider that the FtTJ's decision was ultimately one rationally open to her for the reasons given. While there has been an attempt to cherry pick certain conclusions of the FtTJ, in my judgement, I consider that the FtTJ's conclusions are sustainable on the evidence that was before her.

31. In the circumstances I find that the FtTJ did not materially err in law and I formally dismiss the appeal.

Notice of Decision

The First-tier Tribunal did not materially err in law. The decision of the First-tier Tribunal shall stand. The appellant's appeal is dismissed.

Signed

Deputy Upper Tribunal Judge Bagral Date: 27 January 2018

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

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

Signed

Deputy Upper Tribunal Judge Bagral Date: 27 January 2018