



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

Appeal Number: PA/11702/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 March 2019**

**Decision & Reasons  
Promulgated  
On 7 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**F C  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Blair, instructed by Duncan Lewis Solicitors  
For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant's case is that he is at risk on return to Sierra Leone primarily on account of his mental ill-health and the difficulties that would arise for him on return to Sierra Leone.
2. The appellant was born in 1976, entering (he says) the United Kingdom on 17 January 2002. An application for leave to remain with relatives here was made on 22 August 2002 was rejected and a second application on the same basis was refused on 28 March 2006 with a right of appeal. The appeal against that decision was dismissed.

3. A further application on human rights basis was refused and certified in 2016 and after that, on 4 October 2016 the appellant claimed asylum. That application was refused on 8 September 2017. Further submissions followed and finally, asylum was refused on 19 September 2018. An appeal against that decision was lodged and it is against that decision which this appeal lies.
4. The appeal against that decision was heard by First-tier Tribunal Judge Sweet at Hatton Cross on 21 November 2018. For the reasons set out in the decision of 29 November 2018 he allowed that appeal on the basis that the appellant would have difficulty in obtaining suitable mental health treatment on return, is likely to suffer mistreatment. The judge concluded that, given the lack of treatment available in Sierra Leone this appellant would not be able to access a hospital based psychiatric care in Sierra Leone, that he would suffer societal stigma and harm due to his mental illness and his return would be in breach of Article 3 and 8 of the Human Rights Convention.
5. The Secretary of State sought permission to appeal against that decision on the grounds that the judge had erred:
  - (i) In concluding that the appellant had met the threshold outlined in **AM (Zimbabwe) v SSHD [2018] EWCA Civ 64** where it had only very modestly modified the threshold from that established in **N v SSHD [2005] UKHL 31**; and
  - (ii) having applied the incorrect threshold had erred in allowing the appeal on both Articles 3 and 8 grounds.
6. As the judge records at paragraph [22] the medical experts agree that the appellant is suffering from a psychotic disorder and he needs to have in-patient treatment with anti-psychotic medication and assessment under the Mental Health Act. The appellant does not recognise his condition and he has not undergone any medical treatment.
7. The judge then directed himself in line with **AM (Zimbabwe) [2018] EWCA Civ 64** and then went on to consider the objective evidence in respect of medical services in Sierra Leone noting that there was very limited cover for mental health illness. He also took into account the country expert report of Dr Abramowitz of 24 October 2018 confirming that the appellant would not be able to access hospital based psychiatric care and that he was likely to experience societal stigma and harm if repatriated to Sierra Leone due to his mental illness.
8. The judge took into account that the appellant has not sought specialist medical treatment and that he had been convicted on two occasions. He also noted on the other hand that there was considerable evidence, both medical and country experts, that the appellant would have difficulty in obtaining suitable mental health treatment in Sierra Leone on return and is likely to suffer mistreatment as a result.
9. The judge then said:-

“However I am persuaded that the appellant’s medical condition and recommended medical treatment, and the lack of such treatment in Sierra Leone on return, leads me to the conclusion that the appellant should indeed succeed under Articles 3 and 8 ECHR in respect of his human rights claim.”

10. In a detailed Rule 24 response from the respondent’s solicitors defending the decision with regard to the self-direction on **Paposhvili** as amplified by Miss Blair’s skeleton argument which emphasises the extent to which the judge relied upon the report from Dr Ali and Dr Abramowitz setting out that there would be real societal stigma about mental health and outlining the risks that the appellant would face on return to Sierra Leone.
11. Given the particular factual matrix of this case, which is that the appellant suffers from a serious mental ill-health disorder, and the unchallenged evidence of the societal difficulties that he would face on return as a result of his mental ill-health, there is in my view a material error in this case. First, the judge appears not to have directed himself properly to the test in AM and had dealt specifically with the issues which would need to be addressed as to the imminence and the fact of lack of treatment. As Miss Holmes submitted this is a case in which somebody is not in fact at present receiving treatment. That is something that the judge should have addressed.
12. While it would have been possible for the judge to allow the appeal on the basis of the background evidence as set out by Miss Blair in her skeleton argument, the judge did not set out sufficiently the steps necessary to explain why, on the basis of the evidence which he accepted, there would be a breach of Article 3 in the sense that there was no analysis of the difficulties on return, what ill-treatment he would face, and from whom. There was no analysis of whether he would be able to access state protection or if not, why not. There is, I regret to say, no proper reasoning set out in the decision as to how the judge arrived at an Article 3 decision. Equally, in failing properly to set out the relevant steps and tests that would need to be undertaken, the judge has failed properly to actually address Article 8 for the same reasons and I conclude that for these reasons the decision did involve the making of an error of law.
13. Having announced at the hearing that the decision of the First-tier Tribunal involved the making of an error of law and that it would be necessary to remake this decision I now do so on the basis of the submissions made.
14. In reaching my decision on asylum and article 3 grounds, I apply the lower standard of proof applicable. I have also, even if they are not expressly referred to, taken into account the documents and evidence present to me.
15. There is no challenge to the findings of Judge Sweet who found that the appellant had spent the last sixteen years in the United Kingdom and whose claim for asylum was based on a number of factors, firstly his fear on return that he will be victimised as he is the son of Bob Marley; that the Sierra Leone government would want to recruit him because Bob Marley

was his father and that he is thus at risk on return because of the political situation. It was conceded that a claim on that basis could not succeed as that arose from the appellant's delusions. I do not accept that the concession made was that an asylum claim could not succeed if based on other factors.

16. The judge relied on two medical reports from Dr Syed Zia Ali, a consultant psychiatrist instructed by the appellant's solicitors, and Dr Wilson dated 27 July 2018 that the appellant is suffering from a psychotic disorder, needs to have inpatient treatment with anti-psychotic medication and to be assessed pursuant to the Mental Health Act. It is recorded also that the appellant does not recognise his condition, has not undergone any medical treatment in respect of his diagnosis and relies on support of family and friends in the United Kingdom. The most recent report of 16 November 2018 confirmed that he requires medication and treatment in a psychiatric hospital and psychological services to help him to rehabilitate him once his delusional disorder had been treated.
17. The respondent's case, set out in the refusal letter is that the appellant would receive adequate treatment for his ill-health in Sierra Leone having concluded [62] that Dr Ali had not said what methods, tests or questioning was used to reach the findings that the appellant suffers from an elaborate set of delusional psychosis, although noting [63] that a psychiatric advisor to the Home Office who had reviewed Dr Ali's report also viewed that the mental health should be monitored, commenting on the delusional disorder in general terms only. It was observed at [67] that he would not change his behaviours if returned to Sierra Leone as he himself did not believe that he had a mental health issue.
18. I bear in mind in assessing this case that the appellant needs to show to the lower standard applicable in asylum and humanitarian protection cases, that he has a well-founded fear of persecution (or serious harm) on return to Sierra Leone. The starting point in analysing this case are the medical reports provided by Dr Ali and Dr Wilson. The first report was prepared by Dr Ali who examined the appellant on 26 May 2018. The doctor is a consultant psychologist and is approved under Section 12(2) of the Mental Health Act 1983. The appellant's solicitors had asked for a report to be undertaken as they believed he was suffering from delusional disorder given the contents of his asylum claim, namely that he is the son of Bob Marley; that he is in a relationship with Rita Ora and fears the Freemasons. Under the heading "Mental State Examination" the doctor wrote the following:-

"12.2 He had an entire set of elaborate delusional beliefs, focusing around his exalted birth; that he was the son of Bob Marley and that he had been conceived when Bob Marley was in Sierra Leone and that Bob Marley was the cause of the war in Sierra Leone. He had beliefs that as a consequence he was targeted by the Sierra Leonean people and that his life had been miserable as a result of this.

12.3 He also believes that Bob Marley left a lot of properties and he has exposed the president of Sierra Leone and Sierra Leone's President's official residence is also Bob Marley's property. That if he were to return he will be having to claim this back, and this would put him in jeopardy and put his life at risk if he were to return to Sierra Leone and he seriously believes this with all conviction. He clearly has an elaborate delusional belief system which focuses around Bob Marley, Rita Ora, the Freemasons and his risks of returning to Sierra Leone."

19. The doctor noted that the appellant does not believe he has a mental illness [12.4] and [12.5(c)] he clearly has a psychotic disorder which requires treatment in an environment which focuses primarily on mental health treatment rather than being in a confined environment like IRC. A 24 hour monitoring of mental health was recommended ideally in the psychiatric hospital not in a detention centre.

20. Dr Wilson was commissioned by the Home Office to review Dr Ali's report. What the doctor stated:

Based on the information submitted, the applicant appears to be acutely psychotic although his symptoms appear somewhat chronic. It is not clear that he has received any treatment for his condition which would typically compromise anti-psychotic medication. At this point it is difficult to advise that the applicant would be fit to fly given the nature of his ongoing psychotic disorder.

21. In general terms delusions disorder can respond poorly to anti-psychotic medication although without a trial of appropriate treatment, it is difficult to establish whether his prognosis will improve. Ideally this would amount to an in-patient setting, probably under the Mental Health Act. At this stage, I do not think he is suitable for dispersal given the fact he is mentally unwell with active psychotic symptoms. My view is that he needs appropriate inpatient treatment with anti-psychotic medication to be assessed under the Mental Health Act given his symptoms.

22. In a further report following an interview on 3 November 2018, Dr Ali said this, in the report dated 16 November 2018.

"Current Presentation

11.1 Since I last saw the appellant there is no change in his presentation and he continues to exhibit his delusional belief. He is now spending more time on various forums and social media and playing music and broadcasting his music on social media. He now has the conviction that there is chatter on social media about him being Bob Marley's son. He is able to pick up the coded message and various references to him on social media."

23. Further on in the report at [11.4] it is recorded that he very seriously believes he is the son of Bob Marley and that this had been kept from him.

24. At section 12, commenting on the appellant's mental state, the doctor recorded at [12.4] that he was oriented according to the time and place of

person but was absolutely lacking in the belief that he has a mental illness [12.5] and does not at [12.6] have capacity with regards to his treatment to his illness and is not able to make an informed decision regarding illness and treatment.

25. In response to specific questions the doctor concluded that there had been no significant improvement or deterioration since the last assessment and that he was able to instruct representatives and to give evidence to the Tribunal.
26. Turning to the prognosis if he received no treatment or care, Dr Ali opines that the delusions have resulted in him being excluded from various relationships and contacts and that there has been a significant decline in his overall functioning where he has focused mainly around his delusional beliefs. It is also opined that there will be a worsening of these delusions to the extent that he will eventually become incapacitated and no will to function in society.
27. Asked specifically about the removal from the UK to Sierra Leone Dr Ali said this:

“The appellant’s entire delusional belief is focused around being Bob Marley’s son and his exalted birth, his relationship with the ex-president and the fact that his properties in Sierra Leone are currently being occupied, of willing faction in Sierra Leone. Therefore as such someone who has an ongoing active psychosis to be removed to a country such as Sierra Leone, is tantamount to being punished. Sierra Leone has a very poor healthcare infrastructure and even poor or no mental facilities. If he is going to Sierra Leone because he believes his life was at risk, therefore his conviction is such that he cannot fathom the idea of returning to such a place where he is likely to be put to death, the fear alone could result in his mental health state completely collapsing.”
28. Ms Holmes made no submissions that I should not accept this account of the appellant’s mental ill-health and I am satisfied that Dr Ali was in a position to give an accurate diagnosis of the appellant’s condition. I accept that the appellant suffers from delusions of a psychotic nature and I accept also, importantly, that he has no insight into his illness or that he does in fact need treatment. First, the issue is not whether there would be treatment available for him. Whilst it is clear that he does need treatment he appears to lack the capacity to make a decision about this, certainly under the law of England and Wales.
29. There is no suggestion that the appellant would act violently on return to Sierra Leone but I concluded there is a real risk of him not being able to conduct proper relationships with people, given the evidence of this from Dr Ali, nor is it likely that he would be able to conceal his delusional beliefs from those interacting with him. I bear in mind that on return he would have no family to protect him and that he would be facing a difficult adjustment to life in Sierra Leone having left the country which has been through a significant number of upheavals since 2002.

30. It is in assessing what is likely to happen to the appellant on return to Sierra Leone the starting point must be that he is unlikely to seek treatment as he is unaware that he is suffering from any mental ill-health. It is evident from Dr Abramowitz's report that Sierra Leone has little capacity for addressing the needs of individuals with major mental illnesses such as delusional or schizotypic disorders [16(a)] and that [17] in the one psychiatric hospital providing 24-hour care patients are shackled by their hands or feet without proper clothing or beds. The alternative is the "City of Rest" which is a rundown building that houses 40 patients crammed into small rooms and patients are chained by the ankle when they first arrive and that although things appear to be getting better there is little evidence of this. There is little or no community based treatment.
31. This information is well supported by citations to sources and is evidence on one which I can rely. I conclude I can also rely on the evidence set out at section 19 of the report that Sierra Leoneans with major mental illnesses are subject to extreme exposure to abuse, neglect and violations which may include forced physical containment and may include false labour. It is also of note that the appellant has no social support network to ensure his safe return and reintegration and without that he is likely to experience community ostracism and rejection. It is stated also that "Sierra Leoneans, like many West Africans with severe mental illnesses, are socially ostracised. Their routine is subjected to public taunts shaming, teasing, laughter, ridicule and non-verbal harassment like having vegetables or trash thrown at them by children and youths. With formal healthcare options essentially non-existent for the majority of people who experience mental illness, local socio-cultural attitudes towards mental illness are particularly important. Mental illness in Sierra Leone (and across the West Africa region) is strongly stigmatised and based on spiritual and religious beliefs. Despite twenty plus years of efforts to combat such stigma, cultural mores and harm individuals with mental illness remain pervasively regionally and globally.
32. Of particular note is the observation that behaviour and speech associated symptoms of delusional disorders continue to be stigmatised. That, in the appellant's situation, is relevant.
33. In the circumstances I conclude that there is significant merit in the observation that the appellant would have difficulty in obtaining housing and would be at risk of being stigmatised, punished and so-on.
34. Further, Dr Abramowitz is of the opinion that the appellant would not be assisted by the Sierra Leone government [21] giving his lack of resources and that the negative stigmatising attitudes towards individuals with mental illness are so widespread it is likely that individual governments share such views and it is unlikely that the government of Sierra Leone would seek to open conflict with those who take a contrary view such as traditional healers. I conclude that this is evidence on which I can rely.

35. Given the lack of kin or other forms of support in Sierra Leone I conclude that the appellant would be at risk on return of significant ill-treatment by the general population flowing from how his mental ill-health manifests itself. There is a real risk that this will lead to him becoming incapacitated and unable to function, exacerbated by ill-treatment he would face and the inability to the active ill-treatment he is likely to face as a result of his delusions manifesting themselves. I find that the appellant is at real risk of ill-treatment from society in Sierra Leone as to amount to persecution and/or serious harm or engage Article 3.
36. I conclude also that the appellant would not receive any assistance from the State in protecting him from any abuse from the general population. He faces being put compulsorily into a mental health hospital where he would be at risk of treatment which is on the basis of what the evidence set out above degrading and inhuman. I conclude also that there is a real risk that the Sierra Leone State would be unable or unwilling to assist the appellant given the societal attitudes towards those who are mentally ill in any event. Further, this appellant is unlikely to be able to obtain assistance given that he himself fears the State and has no insight whatsoever into his illness. He has no idea that he is in need of help. For this combination of reasons, I conclude that there would be no sufficiency of protection for the appellant in Sierra Leone. In addition I am satisfied that the risk to the appellant would exist wherever he were in Sierra Leone as is clear from the medical reports before me.
37. Accordingly, I conclude that the appellant has a well-founded fear of persecution in Sierra Leone on account of how he would as a person suffering from mental ill-health, be treated. I am satisfied that those who have significant, and in this case apparently chronic, mental disorders are treated as different from the rest of society in Sierra Leone and are seen as a particular social group. Accordingly, I allow the appeal on Refugee Convention and Human Rights Convention grounds. In the circumstances, it is unnecessary for me to address any issues regarding Article 8.

### **Notice of Decision**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside;
- (2) I remake the decision by allowing the appeal on asylum grounds and on human rights grounds on the basis that the appellant is at risk of ill-treatment of sufficient severity to engage Article 3.

### **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 their 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

Date 18 April 2019

A handwritten signature in black ink, appearing to read 'James Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul