IAC-AH--V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02651/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 5 March 2020	**On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

KL
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Metzer, counsel instructed by Fadiga & Co Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Peter-John S White, promulgated on 3 September 2019. Permission to appeal was granted by First-tier Tribunal Judge O'Brien on 23 December 2019.

Anonymity

2. No direction has been made previously and no such application was made on the appellant's behalf. Nonetheless, the appellant is vulnerable owing to his mental health diagnosis this is a matter regarding which he is entitled to privacy.

Background

3. On 21 August 2018, the appellant applied to remain in the UK on private life grounds, citing his mental health condition, namely paranoid schizophrenia. Prior to this, the appellant entered the United Kingdom unlawfully in 2004 and remained here without leave. During that time, he has acquired a criminal conviction and showed little regard for immigration law.

4. By way of a letter dated 7 December 2016, the Secretary of State refused the appellant's human rights claim. It was accepted that the appellant met the suitability requirements in the Rules but not that he met the requirements of paragraph 276ADE(1)(vi) of the Rules nor that there were any exceptional circumstances. Consideration was given to Article 3 on medical grounds, however the respondent noted that the appellant's medication was available in Algeria and did not accept that his mental health would rapidly deteriorate or that he was at risk of an early death on return. It was thought that his circumstances would be no less favourable in Algeria than in the UK.

The decision of the First-tier Tribunal

5. The First-tier Tribunal decided that the appellant could not meet the high test imposed in Article 3 cases, that he could not meet the requirements of Appendix FM and that there were no compelling circumstances which rendered the decision under appeal disproportionate.

The grounds of appeal

6. The grounds were threefold. Firstly, that the judge failed have regard to a relevant consideration that being that the appellant's family were ignorant of his mental health condition; secondly, the judge erred in his Article 3 and 8 assessments by finding that the appellant's family would assist him in the event of a disruption in his supply of medication and thirdly, that the judge erred in his Article 8 assessment in failing to have regard to the evidence of significant problems in the supply of the appellant's medication in Algeria.

7. Permission to appeal was granted on the basis sought.

8. The respondent's Rule 24 response, received on 14 January 2020, submitted that the findings were open to the judge. It was noted that the appellant had not told his relatives in Algeria of his condition and that he

therefore did not know if they would assist him with his medication or treatment.

The hearing

9. Mr Metzer made the following points. Against the background evidence relating to interruptions in the supply of the medication the appellant would need, the judge erred in speculating that the appellant's family would assist him. The background evidence also showed that schizophrenia carries a heavy social stigma, mental illness often goes unreported and patients may be shunned by family.

10. Mr Metzer emphasised that the appellant had said in paragraph 4 of his witness statement, that his family did not know about his mental illness and that he did not want them to find out. The finding that his family would be likely to assist him was speculative. The most recent evidence of an interruption to medical supplies was November 2017, according to the country expert. The only evidence relied upon by the respondent was a report stating that drugs are available. That report did not address the accessibility of treatment. Mr Metzer relied on the Strasbourg decision of *Savran v Denmark* (Application no 57467/15) which was decided after the decision of the First-tier Tribunal. While he did not provide a copy, he contended that that it was a similar case, because that claimant, who succeeded, was prescribed daily psychotic medication, was not capable of living alone, had no family to support him and pharmaceutical failure in Turkey was an issue.

11. Mr Metzer further argued that the judge did not have regard to a relevant consideration which was that the appellant wished to keep his medical diagnosis private. It was submitted before the First-tier Tribunal that this was a feature of the appellant's private life. The judge's finding that the appellant's family would be likely to assist went against the appellant's wish to keep the matter private. The judge erred in not considering whether to give this matter any weight and made no mention of it at all. This was an exceptional feature of the appellant's case which may require more than little weight to be attached to it. Mr Metzer contended that it was not a common feature that removal could lead to revealing medical history. This issue was not a trump card, but a relevant consideration.

12. Lastly, he argued that no weight had been given to the likely problems in relation to medication interruption when the judge was considering very significant obstacles to integration in Algeria. The appellant's symptoms were likely to recur and lead to active psychosis. The judge had merely said that the appellant would go back on his medication in due course.

13. Ms Everett asked me to find that there was no material error of law. The evidence relied on by the respondent was adequate to come to finding that medication was available and that was enough to show there was no violation of Article 3. Notwithstanding the judgment in *Savran*, there was a tension with *Bensaid.* Furthermore, *Savran* could be distinguished because

no family support was available to that claimant. In any event the judge was aware of the high threshold and his findings were adequate and without error. As for the alleged error, in the judge speculating as to family support, the appellant had not provided evidence that his family would reject him or fail to assist him. As for the private life argument which it was alleged the judge had not dealt with, the appellant had a right not to disclose his medical diagnosis, however there was no clear legal principle here. While it was the appellant's wish to not tell his family of his diagnosis, the evidence did not bear out that on balance all his large family would reject him. Lastly, mental illness is recognised and treated in Algeria, even if the judge had not dealt with that, it ws immaterial.

14. At the end of the hearing, I announced that the First-tier Tribunal made no material error of law and that the decision was upheld. I provide my reasons below.

Decision on error of law

15. I will address the grounds in the order and manner in which they are set out in the grounds of appeal. Dealing firstly with the alleged failure of the judge to consider that the appellant's removal would amount to an interference in the appellant's private life because his family would be likely to find out about his diagnosis, which he does wish to share with them.

16. The skeleton argument which was before the previous judge put it in the following terms at [40], "*the Appellant's removal, which would be likely to lead to the discovery by his family of his diagnosis, would constitute a serious interference in his private life under Article 8.*"

17. It is the case that the judge does not mention this argument in carrying out the Article 8 balancing exercise. Nonetheless, I do not find this to amount to an error, let alone a material one. Neither the skeleton arguments, the grounds of appeal nor the submissions before me establish how it is that the appellant's medical history would come to the attention of the appellant's family in circumstances where the appellant's clear evidence was that he had not told his family of his diagnosis and that he "*does not want to tell them*." The appellant confirmed that he is in regular contact with his parents and 9 siblings who were ignorant of the time he spent homeless and the long period of time when he was being treated on a psychiatric ward. There was no evidence called as to how the appellant's diagnosis would become known to his family given his steadfastness in refusing to tell them. Furthermore, the medical evidence indicated that the appellant was unlikely to seek help when his mental state was in decline. Thus, on his own evidence, the appellant would not seek the assistance of his family even if unwell. A judge is not required, in giving his reasons, to deal with every argument presented by an advocate in support of his case, applying *R and Others v SSHD* [2005] EWCA civ 982. In this case the argument was undeveloped and unsupported by evidence and it is unsurprising that the judge declined to accord weight to this matter.

18. It is contended that the judge made a positive finding that the appellant's family would assist him in the event of a disruption to the supply of his medication. This is an inaccurate reading of the decision. What the judge said, at [16] was this; "*it seems to me wholly speculative to suggest that no-one in his large, immediate family in Algeria would be able or willing to help him in such circumstances*." Also, at [18] the judge said, "*I am not persuaded that I can properly infer that (the appellant's family) will be of no help to him, given the maintenance of close and regular contact which he describes*." Thus, it is readily apparent, that the judge did not engage in speculation as to the likely reaction of the appellant's family, rather he rejected the account that the appellant put forward, that his family would be either unable or unwilling to assist him. At this point, it is worth mentioning that the claimant in *Savras* did not have the benefit of immediate family members who could be approached for support. It has also been suggested that the judge did not take into consideration the expert country evidence regarding the stigma attached to schizophrenia in Algeria. The judge considers this issue at [11], however he rightly found that this did not amount to evidence that the appellant's family would shun him were he to confide in them. There was no evidence to support that contention. Accordingly, there is no error here.

19. Lastly, it is contended that the judge failed to have "proper regard" to the evidence of the significant problems in the supply of the psychotropic medication the appellant needs, in reaching his finding that there would not be very significant obstacles to his reintegration. There was no such failure. This issue is addressed in the judge's findings and reasons, at [8], [10] and [16]. At [16], the judge rightly notes that the medicine the appellant requires is available, that there was no clear evidence that the immediate result of his removal would be that he would be unable to obtain his medication owing to shortages and that any such shortage may be the result of subsequent interruption. Nonetheless, the judge specifically addressed the likely consequences for the appellant should his medication be unavailable at some time in the future and accepts that he is likely to "*suffer a significant decline*."

20. The judge further accepts that if the appellant's mental health deteriorated, he would lose insight into his condition and the ability to seek the help he needed. However, the judge does not accept that this would lead to intense suffering or that any decline would be irreversible in the event of the resumption of the supply of medication. He provides sustainable reasons for those conclusions. The judge arrived at findings he was entitled to reach on the evidence before him.

21. The grounds identify no material error of law in the decision of the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

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: 6 March 2020

Upper Tribunal Judge Kamara