



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

Appeal Number: HU/24536/2018 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 29 October 2020**

**Decision & Reasons Promulgated
On 5 November 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[S I]

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr D Ball, instructed by JCWI

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr [I]'s appeal against the Secretary of State's decision to refuse his human rights claim following the making of a deportation order against him. For the purposes of this decision, I

shall hereinafter refer to the Secretary of State as the respondent and Mr [I] as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Nigeria born on 14 January 1974. His date of entry to the UK is not known, but he was issued with a 2 year multi-visit visa on 3 April 2008 and subsequently overstayed. He was arrested on suspicion of illegal entry and served with overstayer papers on 11 February 2014 but failed to report and absconded. He was re-arrested several times and on 30 March 2015 he was convicted of common assault and sentenced to a Hospital Order under section 37 of the Mental Health Act 1983. Further convictions for harassment and common assault on 13 October 2015 and 30 June 2016 resulted in a period of 6 weeks imprisonment and a further Hospital Order under section 37 of the MHA 1983.

4. On 16 August 2018 the appellant was notified of an intention to make a deportation order against him under section 5(1) of the Immigration Act 1971 on the grounds that his deportation was deemed to be conducive to the public good. Written representations were made on the appellant's behalf on 24 October 2018 on Article 3 human rights grounds in relation to his mental health condition and the risk of him becoming psychotic if he was returned to Nigeria. A psychiatric report was enclosed from a Consultant Forensic Psychiatrist at Barnet, Enfield and Haringey Mental Health Trust which had been prepared for the Hospital Managers and which referred to the appellant suffering a late onset psychotic illness which had led to his various offences and recommended that he not be discharged at that time.

5. The respondent made a decision on 23 November 2018 to refuse the appellant's human rights claim, referring to his offence in October 2015 of sexual harassment and assault. The respondent did not consider that the appellant's mental health condition was such that his deportation to Nigeria would meet the high threshold for establishing an Article 3 claim as there was medical treatment available in Nigeria albeit not at the same level as in the UK. The respondent accepted that the appellant was socially and culturally integrated in the UK but did not accept that there were very significant obstacles to his integration in Nigeria. It was noted that the appellant would continue to require considerable support in the community to prevent a relapse in his mental health, but the respondent considered that he had family members in Nigeria who could support him and that his deportation would not breach his Article 8 human rights.

6. The appellant appealed against that decision and his appeal was allowed by First-tier Tribunal Judge Shaerf on 22 April 2020. The appellant gave oral evidence before the judge, as did his social worker who accompanied him and his niece. The judge also had before him several psychiatric reports and a medical legal report for the appellant. The appellant's social worker explained the level of support and close monitoring he would require on discharge from hospital in order to ensure that he continued to take his medication and to ensure that his mental health did not deteriorate and he explained the risk of the appellant relapsing if stressed or failing to take his medication. He

explained the infrequent nature of the family visits made to the appellant, by a brother in Italy and a niece in the UK, and to the appellant's telephone calls to his mother in Nigeria every 2 to 3 weeks. The appellant, in his evidence, explained his previous role as a local councillor in Nigeria and the fact that he used to live in the family compound as a child but lived alone in rented accommodation for about 5 years before coming to the UK. He explained that his family members had gone their separate ways, some were deceased, his mother lived with his eldest brother's daughter and the family compound was rented out. He had not received any support from his family when he came to the UK. The appellant also mentioned a partner in Lagos with whom he had been in a relationship for 7 years and with whom he had spoken recently and intended to marry. He also referred to a third brother who had had mental health problems and turned to drink and had died 8 or 9 years previously.

7. Judge Shaerf was referred to various human rights reports mentioning the chaining of mental health patients in mental health facilities. He was asked by Mr Ball to treat the appellant's evidence about a partner in Nigeria with caution as he had never previously mentioned to anyone about having a partner. The judge noted that the appellant's claim to have a partner was inconsistent with his previous account of his relationship having ended when he moved to the UK and considered the previous account to be the correct one. He concluded from the evidence that the appellant's immediate family was dispersed and that he only remained in touch with his mother and his eldest brother in Nigeria and with his brother in Italy and his niece in the UK. He noted the evidence of the appellant's niece that her father had shunned his brother in Nigeria who had had mental health problems and had subsequently died, and he concluded that that behaviour did not indicate that he would be likely to support the appellant on his return to Nigeria. On the basis of the medical reports and the background evidence about the limited nature of the facilities available in Nigeria for patients with mental health problems and the risk of psychiatric patients being subjected to ill-treatment such as chaining, and given that the appellant's family would be unlikely to come forward to assist him, the judge found that the appellant's deportation to Nigeria would breach his Article 3 rights and that there were very compelling circumstances for the purposes of Article 8.

8. Permission was sought by the respondent to appeal that decision to the Upper Tribunal on the following grounds: that the judge's findings did not go so far as to find that the appellant's deportation to Nigeria would result in inhuman or degrading treatment such as to breach his Article 3 rights; that the judge failed to give adequate reasons for not accepting the appellant's evidence that he had a partner in Lagos and thus that he would have supervision to ensure that he took his medication; that the judge had failed to give adequate reasons for finding that none of the appellant's family members in Nigeria would be prepared to assist him; and that the judge failed to give adequate reasons for finding that the appellant's deportation would be disproportionate and in breach of Article 8.

9. Permission was granted on 20 May 2020 on the basis that, since the judge's decision, the law had been clarified in AM (Zimbabwe) v Secretary of

State for the Home Department [2020] UKSC 17. The matter then came before me to decide if the judge had erred in law.

10. Both parties made submissions. Mr Jarvis accepted that there were inaccuracies in the grounds and that he was only pursuing the third ground in relation to the appellant's evidence about having a partner in Lagos. Mr Jarvis submitted that the judge had failed to give any proper reasons for rejecting the appellant's oral evidence about having a partner, particularly given that the appellant was in remission at that time and that there was no suggestion that he was not fit to give evidence. The judge's finding in that respect was therefore unlawful and, furthermore, it gave rise to a material error of law as it impacted on his findings on Article 3 and 8 since there was evidence of there being someone available in Nigeria to administer his medication and prevent him from relapsing.

11. Mr Ball submitted that that was not material because the judge found that the appellant was at risk of being shackled because of his mental health problems in any event. Further, the judge was entitled to treat with caution the appellant's evidence about having a partner in Nigeria, given that that was something he had never mentioned before to anyone and had taken everyone by surprise during the hearing and that his condition was exacerbated by stress, and also considering his forensic history of sexual advances on women and his fixation on women. Mr Ball referred to various parts of the evidence, including the account given by the appellant to the Consultant Forensic Psychiatrist Dr Low, where the appellant had said that he had no relationships. The judge was simply saying that he did not accord weight to the appellant's evidence about a relationship and he was entitled to do that. Mr Ball submitted that the judge did not err in law in his findings on Article 3 or 8.

12. Mr Jarvis, in response, submitted that the judge's finding of the risk of chaining was based on the appellant relapsing and was therefore linked to his finding about support available in Nigeria from a partner. He otherwise reiterated the points previously made.

Discussion and Findings

13. Mr Jarvis helpfully conceded that the grounds, other than ground 3, were misconceived, since the judge had plainly considered and made reasoned findings on the matters which were asserted that he had failed to consider. The only ground of challenge was therefore ground 3 which related to the evidence of a partner in Lagos.

14. I agree with Mr Jarvis that, contrary to Mr Ball's submission, that matter was a material one since the judge was less likely to have found that the appellant was at risk of being subjected to ill-treatment and chaining if he had found that there was support available to him from a partner in Nigeria who would be able to check that he was taking his medication and thus prevent a relapse in his mental health condition. However, I do not agree with Mr Jarvis that the judge erred in law by making the finding that he did about the appellant's relationship status.

15. As Mr Ball submitted Judge Shaerf, at [45] of his decision, was making a finding as to the weight to be given to the appellant's new evidence at the hearing in the light of the previous evidence. Clearly, weight was a matter for the judge. Further, Judge Shaerf's decision to prefer the appellant's previous evidence was not devoid of any reasoning and neither was it inconsistent with the various reports and other evidence in the appeal bundle, none of which made any reference to any ongoing relationship in Nigeria, despite making references to his circumstances in and ties to Nigeria. Indeed, the report from Dr Low recorded the appellant's account of the relationship he had had in Nigeria having ended when he moved to the UK. That account, recorded at page 32 of the appeal bundle, was taken from a previous psychology report dated 26 September 2017. The same account appeared in the report of the appellant's forensic social worker, Mr Curtis, at page 10 of the appeal bundle. Both reports were prepared shortly before the hearing before Judge Shaerf and it is clear that both Dr Low and Mr Curtis had had a significant amount of involvement with the appellant, the former having previously interviewed him on a fortnightly basis as the clinician in charge of his care since August 2019 and the latter having worked with him since 2016, and both were unaware of any ongoing relationship in Nigeria. Neither did the appellant's own statement for the appeal before the First-tier Tribunal make any reference to a partner in Nigeria. In light of all that evidence which was based upon a continuous assessment of the appellant by professionals working closely with him, and considering the appellant's own prior evidence, it seems to me that Judge Shaerf was perfectly entitled to reject a new and material claim made at the last minute at the hearing when considering the appellant's mental health condition and the stress of giving live evidence at a hearing.

16. Accordingly, there was no failure on the part of the judge to give adequate reasons for rejecting the appellant's evidence of having a partner in Lagos and neither was such a finding unreasonable or inconsistent with the overall circumstances. It was entirely open to the judge, on the evidence before him and for the reasons fully and properly given, to find that the appellant would have no support system in Nigeria and would therefore risk relapsing into a psychotic state and being subjected to chaining in a mental health facility. The judge was fully entitled to conclude that the high threshold for an Article 3 claim had been met and to conclude that the appellant's deportation was not a proportionate response. The judge's decision to allow the appellant's appeal was accordingly one which was open to him on the evidence available, was in accordance with the relevant caselaw, and did not involve any errors of law.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision of the First-tier Tribunal to allow the appellant's appeal therefore stands.

Signed S Kebede

Upper Tribunal Judge Kebede

Date: 30 October 2020