Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07892/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 March 2020	**On 28 April 2020**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

BC
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Z Harper, Counsel, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Mulholland (the judge) who, in a decision promulgated on 16 December 2019, dismissed the appellant's asylum, humanitarian protection and human rights appeal against the respondent's decision of 15 July 2016 refusing his protection and human rights claim and his claim for humanitarian protection.

Background

2. The appellant is a national of Zambia, born in 1983. I summarise his protection claim. His mother died when he was young and his father died in 2003 intestate without but with some assets, including a house and a car. The appellant, being an only child, inherited this property. His paternal aunt and uncle tried to lay a claim to the assets. The appellant secretly sold the car, but his paternal family found out and bribed the police to detain and ill-treat the appellant in an attempt to obtain information about the proceeds of the sale and the transaction. The appellant received scars on his chest as a result of this ill-treatment. After being released the appellant became aware that his paternal family had promised the police that they would receive 10% of the sale value of the car as a bribe.

3. In 2004 the appellant found a buyer for the house and agreed a sale but kept the transaction a secret. The buyer paid a deposit and the appellant continued to live in the house. After he received the full price for the sale the appellant used some of the money to obtain a visa and plane tickets to the UK. He did not leave Zambia until 2006.

4. The appellant entered the UK on 27 November 2006 pursuant to a visit entry clearance granted to enable him to attend a football tournament. He overstayed. He went to live with G, another aunt. The appellant received indirect threats passed on by his father's family to G. He was encountered by immigration officers at his place of work on 15 March 2013. He produced a passport with a counterfeit vignette. The appellant claimed asylum on 25 March 2013. Although he was initially placed in the Detained Fast Track process he was released from detention after a Rule 35 report was issued in which a medical practitioner indicated concerns that the appellant may have been tortured.

5. In an effort to resolve the issue with his family the appellant's aunt G went to Zambia but passed away there in 2014. The appellant believed that his father's family wish to seek revenge on him. Further or in the alternative, the appellant maintained that he would be unable to obtain support or treatment for his mental health problems (PTSD and depression) and that he would be excluded from mainstream society and shunned and ostracised as a result of societal attitudes to poor mental health. He additionally claimed that his return would expose him to a high risk of suicide. He further claimed that he would be rendered destitute because his mental health difficulties would incapacitate him from work, and he would not have the financial resources to access medical services.

6. The respondent rejected the appellant's claim to have been in a dispute with his paternal family and rejected his claim to have been arrested and ill-treated by the Zambian police. The respondent considered that the appellant would, in any event, be able to receive a sufficiency of protection from the Zambian

authorities, and that he could avail himself of the internal relocation alternative. The respondent was not satisfied that the appellant's removal would expose him to a real risk of Article 3 ill-treatment based on his medical condition.

7. The appellant exercised his right of appeal under s.82 of the Nationality, Immigration and Asylum Act 2002. His appeal was first heard by the First-tier Tribunal on 29 September 2017 and 12 March 2018. His appeal was dismissed in a decision promulgated on 17 March 2018. This was set aside by the Upper Tribunal on 14 February 2019. A fresh hearing was heard by the judge on 23 October 2019.

The decision of the First-tier Tribunal

8. The judge was provided with a bundle of documents prepared by the respondent which included the screening and substantive asylum interview records, a manuscript witness statement from the appellant dated 29 February 2016, and the Reasons for Refusal Letter. The judge was served with a number of documents by the appellant's representatives including, inter alia, a detailed skeleton argument, the appellant's witness statement dated 18 October 2019, statements from RM and JC (both family friends), a country expert report authored by Luiza Leite de Queiroz dated 18 October 2019, an Independent Social Worker (ISW) report authored by Jane Bartlett dated 15 October 2019, a Medico-Legal Report authored by Dr Sahota (a Consultant Forensic Psychiatrist) dated 14 October 2019, an independent psychiatric report authored by Dr Agarwal dated 3 March 2016 and an addendum psychiatric report by the same doctor dated 12 December 2017, and a joint report by the Mental Health Uses Network and Mental Disability Advocacy Centre (both NGOs) entitled "Human rights and mental health in Zambia".

9. The judge heard oral evidence from the appellant, RM and JC and, in light of the medical evidence, treated the appellant as a vulnerable witness. In her decision the judge made specific reference to the Joint Presidential Guidance Note No 2 of 2010 and the decision in **AM (Afghanistan) v SSHD** [2017] EWCA Civ 1123.

10. The judge identified the relevant legislative framework and the relevant documents before her and summarised the appellant's claim. The judge summarised the evidence relating to Zambia, including the expert country report, and found that the country evidence supported the appellant's account of arbitrary arrest, detention and mistreatment by the Zambian authorities, and that his account was, in this respect, plausible. The judge was not however satisfied that the evidence supported the appellant's assertion that there was a systematic failure of state protection in Zambia.

11. From [46] to [59] the judge considered the medical evidence. The judge summarised the report from Dr Agrawal. At [49] the judge said it was clear that

Dr Agrawal did not observe any of the appellant's claimed symptoms and relied upon the history given by the appellant. At [15] the judge was satisfied that Dr Agrawal reached his conclusion that the appellant had PTSD on account of the appellant's stated history. The judge stated,

> Dr Agrawal's opinion that the Appellant lacks insight is difficult to reconcile with the Appellant's account of suffering from mental illness. He may have lacked knowledge that the symptoms he suffered could be because of PTSD but he was clearly aware of his symptoms which he was able to describe. This demonstrates that he has insight.

12. The judge noted that Dr Agrawal prepared an addendum report on 12 December 2017 but did not meet the appellant in preparation of the report. Instead Dr Agrawal had a copy of the report by a community development worker, a letter by a Consultant Psychiatrist and CBT therapist and a copy of the GP records. The judge summarised the content of those documents noting, inter alia, that the appellant had presented at A&E, that he had been under the care of the mental health team and would be at increased risk of committing suicide if returned to Zambia.

13. Having satisfied herself that Dr Sahota was suitably qualified, the judge noted Dr Sahota's medical opinion that the most likely cause of the appellant's PTSD was the trauma he recounted as having experienced and Zambia, "as there is no other plausible explanation" [53]. Dr Sahota considered that the appellant's symptoms were characteristic of PTSD, and these were summarised by the judge. At [54] the judge stated,

> However Dr Sahota was asked to consider the most likely cause of his mental health conditions. He was not asked to consider other possible causes, for example that he has been living here illegally since 2006, the death of his late aunt to whom he was very close and blames himself for, and with whom he was living at the time; that he has had to leave his country of origin: that he was found working unlawfully in the United Kingdom and detained here with a view to removal or any other possibilities. He finds that the symptoms of PTSD are consistent with his account of being subjected to abuse and torture in Zambia and that the Appellant's account of the timing of the onset of his symptoms is consistent with his history of PTSD.

14. At [55] the judge notes that Dr Sahota carried out a physical examination and concluded that two scars on the appellant's chest were highly suggestive of a traumatic injury which, in accordance with the Istanbul Protocol, was consistent with the appellant's account of being a victim of trauma.

15. At [57] the judge stated,

> having considered the medical and other reports I am prepared to accept that the Appellant's symptoms of PTSD are consistent with his account of being subjected to abuse and torture in Zambia and that the Appellant's account of the timing of

> the onset of his symptoms is consistent with his history of PTSD. I am satisfied that the 2 scars on the anterior chest wall are highly suggestive of a traumatic injury and, in accordance with the estimable protocol, are consistent with the Appellant's account of being a victim of trauma.

16. And at [58] the judge stated,

> I remind myself that being consistent does not exclude other possible causes for the scarring or PTSD and it is unfortunate that Dr Sahota failed to consider the possibility of other causes. This weakens the conclusions.

17. After indicating that she would bear in mind the medical evidence indicating that the appellant had memory issues [59] and his mental health state [61], the judge engaged in a detailed credibility assessment. The judge identified several significant inconsistencies in the appellant's account. In his asylum interview the appellant claimed he had been arrested after selling his father's car, but in his statement and in his assessment with Dr Agrawal he claimed he had been arrested and ill-treated after selling his father's home ([62], [64]). There were inconsistencies in the appellant's evidence relating to the sale of his father's property [66] and the subject of the deposit that occasioned his arrest [77]. The appellant gave inconsistent evidence in respect of his work in the UK [70], and where he resided following his release from detention [78].

18. The judge additionally found various aspects of the appellant's account to lack plausibility. The judge did not find it credible that, if his father's family were intending to harm him, they allowed the appellant to remain in his father's home and did not take any further action concerning the car when they had ample opportunity to do so [67], or that the family would continue to allow the appellant to live in his father's home and not make any attempt to grab the land before 2006 [80] & [81]. The judge did not find it plausible that the appellant failed to ask other people for advice in the years that he overstayed [69], and the judge did not find plausible the appellant's claim that he had no idea the vignette in his passport was counterfeit in light of the appellant's description of the circumstances in which he obtained the vignette [71]. The judge did not find it credible that the appellant was prepared to wait more than 2 years for the sale of his father's property if his life was in danger [72]. Nor was it credible that the appellant would play a public football game in July 2005 if, as he claimed, he was keeping a low profile [73].

19. The judge additionally drew an adverse inference from the appellant's failure to regularise his immigration status until after his arrest in March 2013 when he was encountered working illegally and with a counterfeit vignette in his passport [68]. The judge additionally drew an adverse inference from the absence of any supporting evidence of his claimed relationship with a woman AN and his vague account of their relationship [75], and the absence of any supporting evidence of threats made to the appellant by his father's family [82], [85].

20. At [86] the judge stated,

> I am satisfied that the medical and other reports add some weight to his claim to have suffered past trauma but they do not constitute independent corroboration of his account or properly consider alternative explanations for the diagnosis made. Whilst a medical report may or may not give an opinion on the Appellant's physical or psychological conditions being consistent with his account, they cannot be considered in isolation and cannot normally be regarded as providing clear and independent cooperation as to how his mental health conditions and injuries were brought about.

21. At [87] the judge stated,

> Having considered all of the evidence, individually and together, and bearing in mind the Appellant suffers from PTSD and mental illness that could affect memory, I am not satisfied that the Appellant is credible and has suffered as claimed.

22. The judge found there were too many inconsistencies in the appellant account that went to the core of his claim and, considered alongside the delay in claiming asylum, his unlawful employment and use of a counterfeit vignette and other credibility and plausibility issues, the appellant had not discharged the burden of proof, even to the lower standard [87]. The judge rejected the appellant's account of events that caused him to leave Zambia. The judge found that the appellant had extended family and friends in Zambia to whom he could turn to. The judge was satisfied that the appellant had PTSD and other mental health issues but was not satisfied that this was caused in the manner advanced by the appellant. The judge was not therefore satisfied that the appellant held a well-founded fear of persecution in Zambia.

23. In the alternative, the judge said it that there will was sufficiency of protection available to the appellant in Zambia [90], and that the internal relocation alternative was, in any event, open to him [91], [92].

24. The judge then considered whether the appellant's removal would breach Article 3 in light of his medical condition and the medical evidence. The judge referred to the authorities of **N v SSHD** [2006] UKHL 31, **MV (Sri Lanka) v SSHD [**2018] EWCA Civ 2482, **GS (India) v SSHD** [2015] EWCA Civ 40, **AM (Zimbabwe) v SSHD** [2018] EWCA Civ 64 (which considered **Paposhvili** [2017] Imm AR 867) and **J v SSHD** [2005] EWCA Civ 629 (giving guidance on suicide risk cases). At [104] the judge indicated that she had considered all the medical and other evidence from the appellant in his witnesses but was not satisfied there would be a serious and rapid decline in his health resulting in intensive suffering to the Article 3 standard. The judge accepted that the appellant would have increased distress at being removed but, as the judge had not accepted the

core of the appellant's claim to have been tortured or to be in fear of his ankle, she was not satisfied that a return to Zambia would increase his risk of suicide.

25. The judge was not satisfied that the appellant would be rendered destitute if removed to Zambia and gave reasons in support of this conclusion [105]. The judge then considered Article 8 both within and outside the Immigration Rules. At [114] the judge was not satisfied there were very significant obstacles to the appellant's integration in Zambia given that he had extended family members to whom he could turn for support and given that he was born and raised and educated in that country. The judge noted that the appellant was resourceful and that, even with his health problems, he would be able to work as he had done so in the UK. The judge then found, even taking into account the appellant's health issues, that his removal would not constitute a disproportionate interference with Article 8. The judge found that the appellant's physical and moral integrity would be maintained and promoted by being with his extended family or friends in Zambia who would be able to look after him and ensure he had access to medical treatment [123]. Balancing the factors contained in s.117B of the Nationality, Immigration and Asylum Act 2002 the judge included that there was no breach of Article 3 or Article 8 ECHR and the appeal was dismissed on grounds.

The challenge to the judge's decision

26. The 1st ground contends that the judge failed to properly consider the expert medical evidence in her assessment of the appellant's credibility, or the corroborated value of the medical evidence in the credibility assessment. The grounds refer to the judge's finding, at [57], that Dr Sahota failed to consider the possibility of other causes of the appellant's symptoms. This finding could not be sustained as the judge accepted that the doctor's assessment was made in accordance with the Istanbul Protocol which requires that a clinician consider alternative causes and the possibility of a false allegation. Dr Sahota had, in any event, concluded, after a full consideration of the appellant's history and the documentary evidence medical records, that "… the most likely cause of the PTSD is the trauma he experienced in Zambia as above, as there is no other plausible explanation for his symptoms." Dr Sahota therefore did consider whether there were alternative explanations for the appellant's symptoms but concluded that there was no other plausible explanation. The suggestion that the appellant's PTSD may have been caused by his experiences of unlawful residence, bereavement, immigration detention or leaving his country of origin would, according to the 1st ground, amount to an impermissible clinical diagnosis (**SP (Risk-Suicide-PTSD-IFA-Medical Facilities) Kosovo CG** [2003] UKIAT 00017 and **R v SSHD, ex parte Kharia** [1998] INLR 731) , especially given that PTSD is a condition that arises as a response to a stressful event or situation of an exceptionally threatening or catastrophic nature. The 1st ground further contends that the judge erred in law in determining that Dr Agrawal relied upon the history given by the appellant without critically assessing the

appellant's account. The judge also erred in reaching her finding that Dr Agrawal's observations did not support his conclusions as she assessed the consistency of the doctor's conclusions on the appellant's insight into his medical condition with reference to her own definition of insight in preference to the clinical explanation provided by Dr Agrawal in support of his conclusion. Although the judge accepted that the appellant's PTSD and mental illness could affect his memory, the judge erred in law when considering the inconsistencies in the appellant's account by failing to appreciate that, as a symptom of the appellant's condition, the effect of trauma and encoding of memory and the reconstruction of events could not be simply overcome by conscious effort.

27. The 2nd ground contends that the judge erred in her consideration of the availability of state protection and internal relocation. The judge failed to consider the effect of the appellant's accepted mental health condition in assessing the availability of internal relocation and state protection, and she failed to consider elements of the expert country report identifying an absence of procedures in the relevant legislation for members of the public to report and obtain redress from police abuses, and a fear of retaliation by claimants in light of police abuses of power.

28. The 3rd ground contends that the judge failed to consider or make findings on the objective country evidence of the treatment of mental illness in Zambia and the risks to the appellant arising from his condition. There was no consideration or findings made in respect of the background evidence relating to those suffering from mental illness, including the expert country report and the other background evidence provided, particularly the joint report by the Mental Health Uses Network and Mental Disability Advocacy Centre (both NGOs) entitled "Human rights and mental health in Zambia". It was argued on behalf of the appellant that he faced a real risk of Article 3 ill-treatment from the consequences of his condition rather than simply the lack of treatment, in light of the societal treatment of persons with mental illnesses, and that this also qualified him for humanitarian protection. This whole argument was however overlooked by the judge. The judge's conclusion that the appellant would not be rendered destitute also overlooked the evidence of stigma and discrimination against people with mental disorders. Nor was it reasonable to maintain that the appellant's experience of working in the UK with a mental health condition would provide strong support for his ability to find work in Zambia in light of the different country context for people with mental disorders. The judge's failure to consider the societal treatment of those with mental health issues also undermined the sustainability of her finding regarding very significant obstacles to integration.

29. The 4th ground contends that the judge erred in her approach to the assessment of the risk of suicide and return. There was said to be no reasons why the threshold in respect of the severity of harm that the appellant would suffer if removed was not met on the evidence, and the judge failed to provide any

reasons for departing from the consistent conclusions of the independent psychiatric experts and the appellant's treating clinician that his condition would deteriorate significantly and escalate the risk of suicide. Dr Agrawal identified the 'very high' likelihood of deterioration in the appellant's condition with the urge to commit suicide 'so overwhelming that the risk of suicide will be imminent' if removal took place, despite the protective factor of the appellant's Christian beliefs. The judge failed to consider the findings in **Y & Z (Sri Lanka) v SSHD** [2009] EWCA Civ 362 that a genuine fear established by an appellant, even without objective foundation, may be such as to create a risk of suicide in breach of Article 3, and to the medical evidence that it was the appellant's perception of imminent danger to his life that would exacerbate his PTSD symptoms and affect his judgemental capacity giving rise to the risk to himself. Nor did the judge consider the expert country report when assessing whether there were protective mechanisms in Zambia to mitigate the risk of suicide.

30. Ms Harper adopted and expanded upon her for grounds in her oral submissions. She additionally submitted that Dr Sahota was aware of the appellant's full history and found no other plausible explanation for the symptoms. The doctor was asked an open question about the most likely cause of the appellant's mental health, although it was accepted there was no specific reference to the death of the appellant's aunt. The fact that the appellant had mental health issues exposed him to a risk of ill-treatment and this was not adequately considered by the judge. The judge failed to adequately grapple with the country context of the appellant's diagnosis of PTSD. The appellant was mentally unwell and perceived that he would be targeted by his paternal father's family, and this was not properly considered in the context of the suicide risk.

Discussion

31. In respect of the 1st ground, it is apparent from the decision that the judge considered the medical evidence in detail. She accepted that both Dr Agrawal and Dr Sahota were suitably qualified and expert in their field, and that the appellant was suffering from moderate PTSD. The instructions to Dr Sahota were to "… comment on the likely causes of [the appellant's] mental health conditions". Dr Sahota was not directly asked to consider alternative causes of the appellant's mental health condition and did not expressly do so. Within the terms of his instructions, Dr Sahota's opinion was that the most likely cause of the appellant's PTSD was the trauma he recounted as having experienced in Zambia "as there is no other plausible explanation." The only direct explanation offered to Dr Sahota was that advanced by the appellant in his asylum claim. The judge nevertheless considered Dr Sahota's opinion at [53], and at [54] the judge noted the terms of the instructions to Dr Sahota and accurately observed that he had not been asked to consider other possible causes. The judge's reference to the Istanbul Protocol at [57] was made with specific reference to the

scarring on the appellant's body, and Dr Sahota's assessment of the appellant's mental state did not make any direct reference to the Istanbul Protocol. The judge did not explicitly state that she accepted that the assessment of the appellant's mental health symptoms by Dr Sahota was in accordance with the Istanbul Protocol. But even if this was not the case, the judge was legitimately entitled to identify events, such as the death of the appellant's aunt in respect of whom he was very close, his detention in the UK and the difficulties of living illegally for many years, that may have been capable of causing the appellant's PTSD and which were not specifically considered by either medical expert. This is not a case of the judge making a clinical diagnosis or reaching a clinical view contrary to that reached by a medical expert (see, in comparison, **SP (Risk-Suicide-PTSD-IFA-Medical Facilities) Kosovo CG** [2003] UKIAT 00017 and **R v SSHD, ex parte Kharia** [1998] INLR 731). The judge was not making clinical judgements when observing that the medical experts had not considered other possible causes relating to traumatic or stressful events in the appellant's life that may have accounted for his PTSD. Nor was the judge disagreeing with the clinical judgments. The judge could not speculate as to what other event(s) may have caused the PTSD, nor did she engage in any such speculation. She was however lawfully entitled to note that the Dr Sahota did not consider other possible causes for the diagnosis, and that when finding that the appellant's account of his traumatic symptoms was consistent with his account of events in Zambia, Dr Sahota did not expressly consider whether other events may have caused the traumatic symptoms.

32. The 1st ground content that, as PTSD is a condition which specifically arises as a response to a stressful event or situation of 'an exceptionally threatening or catastrophic nature', the judge was not reasonably entitled to find that the appellant's condition might have been caused by other factors. The judge did not however find that the PTSD had been caused by the death of the appellant's aunt or his period in detention or his experience of unlawful residence in the UK, only that these stressful events had not been specifically considered. The judge found that the PTSD was caused by an event or events other than that advanced by the appellant, even taking into account the fact that the appellant's claim was plausible when set against the background country evidence and the medical reports. The judge was not obliged to identify a specific alternative event that gave rise to the appellant's PTSD; to do so would be to engage in unwarranted speculation. Nor, reading the decision as a whole, is there merit in the submission that the judge failed to adequately consider the appellant's mental health and memory problems when assessing his credibility. It is noteworthy that many of the judge's adverse credibility findings were either not dependent on the appellant's memory problems or were unrelated to the diagnosis of PTSD (see, for example, [65], [67], [69], [71], [72], [73], [75], [80], [82] and [83]). The judge, in any event, demonstrably took into account the appellant's vulnerability and his PTSD when assessing his credibility (see [86] and [87]).

33. The 1st ground further contends that the judge erred in law by approaching Dr Agrawal's evidence on the basis that the doctor had accepted the appellant's account uncritically. There is however nothing in the judge's decision to suggest that she did approach Dr Agrawal's report on this basis. The judge was unarguably correct in observing that Dr Agrawal relied upon the history given by the appellant when reaching his medical diagnosis. As was pointed out in **JL (medical reports-credibility) China** [2013] UKUT 00145 (IAC), "*The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]).* The judge nevertheless did attach weight to the medical reports and explicitly found that the appellant's symptoms of PTSD were consistent with his account of being subjected to abuse and torture in Zambia ([57] & [86]). The judge was entitled at [86] to find that, whilst the medical reports did attach some weight to the appellant's asylum claim, they could not be considered in isolation. To the extent that the grounds contend that the judge failed to consider the medical evidence as independent corroboration of the appellant's account, this is not made out. The judge did attach weight to the medical reports and therefore treated them as corroborating the appellant's account, even if he was ultimately unpersuaded that the appellant gave a truthful account. The judge found that Dr Agrawal's opinion relating to the appellant lacking insight into his mental illness was difficult to reconcile with the appellant's account of suffering from mental illness. The issue relating to the meaning of 'insight' at [50] did not however play a material role in the judge's assessment of the reports from Dr Agrawal or the weight she attached to those reports. Having considered the judge's assessment of the medical evidence holistically, I am not persuaded that the challenges to the decision contained in the 1st ground are made out.

34. In light of my findings in respect of the 1st ground, I need only deal with the 2nd ground briefly. The judge gave a number of cogent reasons for concluding that the appellant was an incredible witness and accorded appropriate weight to the medical evidence and the appellant's vulnerability in so doing. The judge made clear findings of fact at [87] rejecting the appellant's claim that he sold his father's home, his claim to have been detained and ill-treated by the Zambian police and his claim to fear his paternal uncle. The judge found the appellant had extended family and friends in Zambia to whom he could turn and that he had no issue with his paternal family. The appellant therefore had no well-founded fear of persecution in his home area. Any error in the judge's assessment of the availability of a sufficiency of protection or the availability of internal relocation was therefore immaterial.

35. The 4th ground challenges the judge's approach to the evidence relating to the appellant's risk of suicide. The judge considered the authority of **J** but did not mention **Y & Z (Sri Lanka)**. The test for establishing a breach of Article 3 in the context of a suicide risk is a high one. In **J** the Court of Appeal held, at [25]

25. In our judgment, there is no doubt that in foreign cases the relevant test is, as Lord Bingham said in Ullah, whether there are strong grounds for believing that the person, if returned, faces a real risk of torture, inhuman or degrading treatment or punishment. Mr Middleton submits that a different test is required in cases where the article 3 breach relied on is a risk of suicide or other self-harm. But this submission is at odds with the Strasbourg jurisprudence: see, for example, para [40] in Bensaid and the suicide cases to which we refer at para 30 below. Mr Middleton makes two complaints about the real risk test. First, he says that it leaves out of account the need for a causal link between the act of removal and the ill-treatment relied on. Secondly, the test is too vague to be of any practical utility. But as we explain at para 27 below, a causal link is inherent in the real risk test. As regards the second complaint, it is possible to see what it entails from the way in which the test has been applied by the ECtHR in different circumstances. It should be stated at the outset that the phrase "real risk" imposes a more stringent test than merely that the risk must be more than "not fanciful". The cases show that it is possible to amplify the test at least to the following extent.

26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see Ullah paras [38-39].

27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in Soering at para [91], the court said:

"In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment."(emphasis added).

See also para [108] of Vilvarajah where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka…"

28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of D and para [40] of Bensaid.

29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of Bensaid).

> 30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.
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> 31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights.

36. Those tests were developed in **Y & Anor (Sri Lanka) v Secretary of State for the Home Department** [2009] EWCA Civ 362 in this way:

> 15. There is no necessary tension between the two things. The corollary of the final sentence of §30 of J is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.
> 16. One can accordingly add to the fifth principle in J that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return.

37. On the basis of the judge's factual findings the appellant had no genuine fear of being tortured in Zambia. He fabricated his account of being targeted by his paternal family and of being detained by the police. The medical reports detailing the appellant's risk of suicide and the deterioration in his mental health if removed to Zambia were premised on the appellant having a genuinely held belief that he would be targeted by his paternal father's family and the Zambian police. At [104] the judge stated,

> I accept that the Appellant will have increased distress at being removed however as I have not accepted the core of his claim to have been tortured or to be in fear of his uncle, I am not satisfied that a return to Zambia would increase his risk of suicide to the level required to engage Article 3.

38. As the judge did not accept the appellant held a genuine fear of being targeted on return to Zambia, the judge's assessment of the risk of suicide was legally adequate. The 4th ground does not disclose a material error on a point of law in light of the judge's other factual findings.

39. I am however persuaded that the judge erred on a point of law in respect of ground 3. The judge accepted the appellant was suffering from PTSD. The skeleton argument prepared for the First-tier Tribunal included submissions that the appellant would be ill-treated on his return to Zambia because of his

mental health issues as a result, inter alia, of societal stigmatisation and/or destitution. The grounds of appeal identify evidence contained in the appellant's bundle of documents suggesting that there was discrimination and pervasive stigma experienced by people with mental health issues in Zambia (particularly in the joint report by the Mental Health Uses Network and Mental Disability Advocacy Centre (both NGOs) entitled "Human rights and mental health in Zambia" and the country expert report). The judge failed to engage with these arguments and failed to make any relevant findings of fact. The treatment the appellant may face as a person with mental health issues formed an independent basis for the appellant's Article 3/Article 8 claim, irrespective of whether his account of his fear of his paternal family was true or not. In the absence of any assessment of the conditions the appellant may face in Zambia on account of his mental health issues, it cannot be said, at least at this stage, that the appeal would inevitably have been dismissed. I am therefore satisfied that this error is material.

Remaking the decision

40. At the close of the 'error of law' hearing Ms Harper submitted that, if I find an error of law in respect of ground 3, I should adjourn for further submissions to be made. I asked Ms Harper what further submissions could be made that were not already covered in both the skeleton argument before the First-tier Tribunal and the grounds. She was unable to identify the basis of any further submissions other than those already covered in her skeleton argument prepared for the First-tier Tribunal and the grounds of appeal. I note that the appellant's legal representatives did not seek to admit any further evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In these circumstances, and in light of the relatively narrow issue left to be determined, the detailed skeleton argument and grounds already provided, and the particular sections of the background evidence brought to my attention, I consider that I can fairly proceed to remake the decision without the need for further submissions.

41. The appellant submits that he would suffer ill-treatment through traditional healing practices, psychiatric treatment in hospital and social stigmatisation and/or destitution on account of his moderate PTSD and depression. The appellant relies on a report from the Mental Disability Advocacy Centre (MDAC). The executive summary of this report found that "mental health care in Zambia is governed by an outdated legal framework", that "psychiatric services are chronically under-sourced, overly-centralised and dominated by pharmacology", and that "people with mental health needs are subject to pervasive stigma, often resulting in physical abuse in their homes and communities." The report notes that "formal psychiatric services are inaccessible to the vast majority of people", and that "families have minimal support from their communities, given the intense stigma of people labelled as mad." Reference was made to many people being chained in their own homes

or in their communities. Men had reportedly been bullied, teased, harassed and even stoned by people in their community. The head of the Traditional Healers' Association told monitors that almost half of the association's members were "cheats masquerading as healers." Traditional healers may commit criminal assaults under the guise of treating mental health issues. According to the report "mental health services are nearly non-existent at the primary health care level. Instead, mental health services are highly centralised, available only in 8 hospitals across Zambia, a country with a landmass larger than France." According to a 2005 Mental Health Policy there were 560 psychiatric beds in the country which has a population of 13 million. Many of the mental health wards were overcrowded. Under the heading 'the home and community' the report noted that families were typically the primary carers for people with mental health issues, and that people with mental health issues may be tied up chained by family members during a mental health crisis. The report does not describe what a 'mental health crisis' might be or identify the type of mental health illnesses that would cause primary carers or hospitals to chain or tie up an individual. The report referred to attacks on those with mental health issues, although the frequency of such attacks was unknown. A 2008 WHO indicated that people with mental disabilities experience some of the harshest conditions of living that exist in any society and were subject to neglect in harsh institutional environments and deprived of basic healthcare, victimised by physical abuse and exposed to cruel, inhuman and degrading treatment. Funding allocated to mental health services was said to be "excruciatingly low."

42. The report paints a distressing picture for those suffering from mental health problems. It is however general in nature. It does not distinguish between different types of mental health conditions, and it does not identify or describe how serious a mental health condition would need to be for someone to be admitted to one of the mental health hospitals. Significantly, the report does not describe the manifestation of mental health difficulties that are likely to lead to an individual being shunned or stigmatised by society or targeted for violence or discriminated against. The report does not identify the type or seriousness of mental health problem that would cause a person's family to tie them up, or which would cause a traditional healer to become involved. There is nothing in the report specifically relating to the position of somebody suffering from moderate PTSD and depression.

43. The appellant also relies on an IRIN News report dated from September 2007 relating to societal stigma, but this report again is general and does not identify the characteristics or the degree of seriousness of a mental health issue that would give rise to stigmatisation.

44. The appellant additionally relies on the country expert, Ms Queiroz, who refers to the inadequacy of the few existing mental health facilities in Zambia. According to the expert, "deeply rooted prejudices and cultural beliefs surrounding mental illness (or any disabilities at large) constitute an incredible

challenge to the implementation of any policy aimed at improving the quality of those who suffer with those conditions in Zambia." The expert noted the 'out of sight, out of mind' culture that prevented people from discussing the issue, and that societal prejudice was highly associated with traditional tribe values. Reference is made to a UN Special Rapporteur report referring to many persons with disabilities being discriminated against or excluded from community and society as they are considered to be incapable of carrying out daily activities. The expert also cited an academic article published in the African Journal of Psychiatry in 2010 which indicated that mental illness in the general community tended to be understood as 'bewitchment', 'Satanism' or 'evil spirits' and that the individual had been cursed or 'possessed by demons'. The expert stated, "… When noting the omnipresent nature of stigma against mental illness in the Zambian society, researchers pointed out that family members are, quite often, both the source of more prejudice and the recipients of an 'extended guilt', as perceived by the community."

45. As with the MDAC report, Ms Queiroz's report fails to identify or describe the degree of seriousness of mental illness or the manifestations of mental illness that would cause someone to be considered as incapable of carrying out daily activities or to be bewitched or possessed by demons, and therefore stigmatised or discriminated against. The country expert report does not consider whether someone with the appellant's particular mental health difficulties would face a real risk of being ostracised, stigmatised, or otherwise excluded from society.

46. The assessment of whether the appellant would be exposed to a real risk of a breach of Article 3 as a result of societal attitudes to his PTSD and depression, or whether his removal would constitute a disproportionate breach of Article 8 (either as a free standing right or by reference to paragraph 276ADE(1)(vi) of the Immigration Rules) is to be approached in the context of the factual findings made by Judge Mulholland. The judge found that the appellant had fabricated his account of being targeted by his paternal family and that he had not been detained and ill-treated by the police, and that the appellant did not have a genuine fear of his paternal family in Zambia. The judge found that the appellant had extended family and friends in Zambia to whom he could turn for support.

47. According to the most recent psychiatric report the appellant's PTSD is in the moderate range because it is chronic in nature and associated with a degree of impairment (sleep disturbance, avoidance; Dr Sahota's report, 4.1.5). Dr Sahota stated that the appellant avoids situations reminiscent of trauma and continues to experience hyperarousal and emotional disturbance when he is reliving past trauma (4.1.4), and that without treatment the appellant's prognosis was a relapsing remitting disorder in which he would be vulnerable to stress and depression. The appellant is receiving anti-depressant medication and, according to the Reasons for Refusal Letter, there is medical treatment available for PTSD in Lusaka. I note that the MDAC report indicated that the psychiatric

services are dominated by pharmacology, suggesting that anti-depressant medication is available in Zambia. Dr Sahota does not comment on whether the appellant's moderate PTSD would prevent him from being able to undertake employment as he had already done for several years in the UK. Dr Sahota found the appellant was independent in terms of his occupational functioning, although dependent on emotional support from family friends, and that there was no evidence that he was suggestible or suffered from learning difficulties (4.1.31 & 4.1.35). Dr Sahota found that the appellant was able to attend to his basic needs independently in the UK (4.1.47). This suggests that the appellant can function independently in terms of employment, as is clear from his history of working illegally in the UK. This would suggest that, even in the context of Zambia, the appellant would not be considered a someone incapable of carrying out daily activities, and therefore he is less likely to be the subject of stigmatisation or discrimination. It is not apparent from the evidence before me that the manner in which the appellant's mental health issues manifest themselves would create a real risk that he would be stigmatised or discriminated against, or otherwise prevented from obtaining and retaining employment in Zambia. Judge Mulholland found that the appellant would have family and friends to whom he could turn for support in Zambia. The appellant would not therefore be without a network of support.

48. There is little in the evidence before me to suggest that the appellant's mental health condition, even if it deteriorated on his removal to Zambia, would manifest itself in a manner that would cause him to be shunned or stigmatised by society in general. He is not, for example, suffering from any psychotic condition or any learning disability. The most recent psychiatric report indicated that his symptoms primarily manifest themselves by sleep disturbance and avoidance. I note once again that he was able to work independently for a number of years in this country with these symptoms. I am not satisfied, based on the generalised background evidence before me, that the appellant is someone who is at real risk of being stigmatised as a result of his moderate PTSD. I consequently find that he would not face a real risk of a breach of Article 3, or that he would face 'very significant obstacles' to his integration (especially given that he lived in the country until he was 23 years old and would be familiar with the language, the culture and the way of life), or that his removal would otherwise constitute a disproportionate breach of Article 8.

Notice of Decision

The appeal is dismissed on all grounds

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

D. Blum

Signed Date 1 April 2020

Upper Tribunal Judge Blum

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email