



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001859

First-tier Tribunal No: HU/06924/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1 September 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AC

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr A Eaton, Counsel instructed by Duncan Lewis Solicitors

Heard at Field House on 15 December 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent, also called “the claimant” is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the claimant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against the Secretary of State’s decision refusing leave to remain on human rights grounds. The claimant is subject to deportation and the decision to deport him prompted the application for leave on human rights grounds.

2. Like the First-tier Tribunal, I make an anonymity order because the case turns on consideration of matters relating to the claimant's mental health and I consider the public interest in preserving his personal dignity to be far greater than the legitimate public interest in the actual identity of the claimant. There are well understood means for interested parties to apply for the anonymity order to be discharged.
3. I begin by considering carefully the First-tier Tribunal's Decision and Reasons.
4. This identifies the claimant as a national of Angola born in 1982 who entered the United Kingdom at the age of 10 in 1993, where he joined his father and mother. He was given indefinite leave on 1 October 1999. He has lived in the United Kingdom for about 30 years.
5. The appellant has committed numerous criminal offences. Between 12 August 1999 and 1 August 2018 he was convicted of 50 offences including common assault, having a bladed article in a public place, criminal damage, threatening behaviour, assault occasioning actual bodily harm and assaulting a police officer in the execution of his duty.
6. On 1 August 2018 the claimant was sentenced to 127 weeks' imprisonment at the Crown Court sitting in Isleworth for four matters including a racially aggravated assault occasioning actual bodily harm, burglary, theft from a shop and affray.
7. The Secretary of State served a deportation order and in response the claimant's mental health worker, Mr Alec Morten, informed the Secretary of State that the claimant had been diagnosed as suffering from schizophrenia some years ago and had been admitted to hospital on a number of occasions.
8. Importantly, it is said (paragraph 4 of the Decision and Reasons):

"He was treated for schizophrenia with a depot injection of Flupenthixol 50 mg every four weeks and he was taking Procyline 5 mg for side effects. He also took Methadone."
9. I understand that "depot" medication releases slowly into the body over an extended period and that Flupenthixol is a sedative.
10. The Secretary of State decided that the claimant was a "persistent offender" and therefore the public interest required his deportation unless one of the statutory provisos is identified. The claimant does not have a life partner and children. He had been lawfully resident in the United Kingdom for most of his life but the Secretary of State did not accept that he was socially and culturally integrated or that there would be very significant problems in integration into Angola. According to the Secretary of State, he was said to have lived in Angola for eleven years (I think it actually a little less than that; the claimant left Angola when he was aged 10 years) and he was brought up in an Angolan household. It was not accepted he was a stranger in his country of origin to such an extent that it would be unduly harsh to expect him to reintegrate.
11. The Secretary of State considered there to be a strong public interest in deporting the claimant and the claimant had no family life with his adult relatives.
12. The Secretary of State did not consider the claimant's schizophrenia to justify the claimant being allowed to remain in the United Kingdom on article 3 grounds.
13. The First-tier Tribunal Judge noted that the claimant appealed on "article 3 and article 8 grounds". At the end of his Decision and Reasons he allowed the appeal on both grounds.

14. The Judge summarised the claimant's case. Removing him would be contrary to his "article 3 rights" because it would lead to a relapse in his health. He would not be able to get treatment and there was a real risk of suicide. Removing him would be contrary to his "article 8 rights" because it would be a disproportionate interference with his physical and moral integrity and there were "compelling reasons" to find removal disproportionate.
15. At the hearing before the First-tier Tribunal Mr Eaton (who also appeared before me) accepted that his strongest points appeared to be in the "article 3 grounds" but he was arguing a free standing "article 8 case".
16. The Judge considered a medical report from a psychiatrist, Dr Nuwan Galappathie, who assessed the claimant as "extremely vulnerable". He relied on an extensive package of community support and well as frequent injections. The claimant suffered from a depressive disorder and, without medication, was at risk of self-harm and suicide. He has a cognitive impairment and his IQ was assessed at 68. I understand that the Intelligence Quotient is measured off a normal distribution curve centring around 100.
17. It was Dr Galappathie's opinion that without medication removing the claimant would lead to psychotic relapse and "sudden and sever deterioration" in his mental state.
18. There was evidence from a country expert, Dr Virginie Tallio, that it was "very unlikely" that the currently used medication would be available in Angola and that the supply of medication is erratic.
19. It was the claimant's case that his circumstances met the high test required by **AM (Zimbabwe) v SSHD [2020] UKSC 17** before an application for leave can succeed on article 3 grounds.
20. The Secretary of State disagreed. It was her contention that the claimant would be able to receive support from his family in Angola. He could access private health care. He has two siblings in Angola that he could support him.
21. The Judge was told that the claimant was awaiting sentence for another offence of robbery.
22. The Judge outlined the evidence that was before him, noting particularly an independent social worker report from Christine Brown as well as the report from Dr Galappathie and Dr Tallio.
23. Extraordinarily, although someone identified as "C" was expected to give evidence and attended the hearing the witness had left the building before giving evidence and could not be contacted.
24. The claimant did give evidence. The Judge was conspicuously careful to allow for his vulnerability.
25. The Judge gave appropriate self-direction on the law and made findings of fact.
26. Unremarkably, he concluded that the claimant "has for many years led a chaotic lifestyle which has involved drug and alcohol dependency and he has been sentenced to imprisonment and detained under the Mental Health Act 1983 as well as by the Immigration Service."
27. The Judge reviewed Dr Galappathie's evidence. The Judge accepted Dr Galappathie's expertise and noted that he found that the claimant suffered from paranoid schizophrenia and that he presented as very vulnerable. He received a great deal of support and particularly benefitted from having stable accommodation at a well-known care home. In outline, although the claimant was poorly, his

condition was being managed. The Judge was particularly impressed by paragraph 97 of Dr Galappathie's evidence and set it out in his Decision and Reasons at paragraph 27. I set it out too. Dr Galappathie said:

"97. ... In my opinion if he had a change in antipsychotic medication, it is likely that his mental state will deteriorate leading to increasing underlying psychotic symptoms, paranoia, irritability and subsequent aggression and violence. If his antipsychotic medication was changed or he did not have antipsychotic medication available there is a high risk that he will suffer from a further destabilisation in mental states with a high risk that he may develop an acute psychotic relapse with the development of marked psychotic symptoms in the form of paranoia, paranoid delusional beliefs, thought disorder and auditory hallucinations as well as a high risk of aggression and violence."

28. Dr Galappathie confirmed that there was risk of the claimant killing himself and that would become a "high risk" if he did not have access to treatment and particularly his depot antipsychotic medication.

29. The Judge's further findings at paragraph 27 are, I find, particularly significant. He said:

Asked about the effect of removing the appellant to Angola, he said this was likely to have a significant adverse impact on his mental health. He was likely to suffer from a psychotic relapse given the stress that would be placed on him. Without his current medication, the support of a community mental health team and stable accommodation there was a risk he would suffer from an acute deterioration in his mental state with a high risk of aggression and violence. He would also present a high risk of self-harm and suicide. He would be vulnerable to harm and exploitation. He lacks the required emotional resilience to establish a life in Angola and was unlikely to be able to secure accommodation and employment without family and state support. If he relapsed he would be unlikely to have sufficient cognitive function and insight to seek out appropriate help and support.

30. The Judge noted the Secretary of State's submission that the claimant's condition was stable and that it would be unduly speculative to reach conclusions about how he would behave in the event of his removal. The Judge observed that there was no evidence to counter Dr Galappathie's opinions and no reason not to accept them in full.

31. The Judge then considered the availability of medical treatment and family support in Angola.

32. In addition to reports prepared for the hearing the Judge considered general background evidence.

33. He considered with particular care the report of Dr Virginie Tallio. It was her opinion that people suffering from mental illness are stigmatised in Angola and that having a strong family network is essential to securing accommodation and to obtaining a job. It was "extremely difficult" to obtain mental health treatment.

34. The Judge was concerned at the antiquity of some of Dr Tallio's sources and a tendency to drift from her area of expertise into speculation about the claimant's personal circumstances in the event of his return. However there was other evidence to support her views and the Judge accepted the "thrust" of her evidence, namely that resources are scarce and accessing public sector health care would be particularly difficult for treatment for mental ill health. The Judge

further accepted that the claimant need supported, particularly (not exclusively) financial support to access the health care that he needs.

35. The Judge accepted that the claimant has not held down a job for many years.

36. I cannot improve on the Judge's summary at paragraph 38 of his Decision and Reasons where he said:

"I accept the appellant came to the United Kingdom at the age of 10 and that it is highly unlikely that he has preserved friendships from his schooldays in Angola given his long struggles with mental health and his chaotic lifestyle. I accept he has not returned to Angola since he arrived nearly 29 years ago. Family relationships are by their very nature more durable and are more than capable to lasting despite lengthy separation. I accept he may not be as fluent in Portuguese as he was when he was a child but, noting what he told Dr Galappathie about being able to speak three languages, I find he has minimised his familiarity with Portuguese for the purposes of the appeal."

37. The Judge then considered how the claimant might be supported in Angola. Paragraph 39 of the Decision and Reasons is particularly apt and I set it out below. The Judge said:

"However, the key issue is whether the appellant has family members willing and able to receive him and to support him as he adapts to life in Angola. More significantly, the issue focuses on whether he would be assisted to access treatment of a comparable standard in order to prevent a deterioration in his health. Of course, if he has no-one in Angola, as has been suggested, then he would self-evidently be lost and hopeless with potentially very severe consequences for his wellbeing."

38. Essentially the claimant said that he has seven sisters and one brother. He is in touch with two of them but has not spoken to the others for 30 years. The appellant does not know them and they do not have the funds or space to accommodate him.

39. The Judge noted that this was an easy claim to make but there was no contrary evidence and no reason to disbelieve it. It was not inherently unbelievable in the case of residents of a country that is poor and still recovering from internal conflict. Dr Tallio's updated report stated that 75% of the population earn less than £1,000 a year.

40. The Judge then considered the evidence concerning the resources in the United Kingdom available to assist the claimant in the event of his removal and concluded that it was unlikely that any of the claimant's family would be able to give him the support that he needed for accommodation and medical treatment.

41. The Judge's conclusions at paragraph 44 are far reaching and clear. He said:

"In summary, I find that the precise medication which the appellant requires to maintain his current stability is unavailable to him in Angola. He has been tried on alternatives but they have not effectively maintained his stability. Even his current optimal treatment regime, comprising depot injections, monitoring by a psychiatrist, support from care workers and stable accommodation, does not prevent him relapsing into outbursts of violence, drug abuse and reoffending. I accept that the appellant would not have meaningful family or state support in Angola. His family both in Angola and the United Kingdom are unable to provide it and there is no welfare state in Angola. The consequences of removal would be an inevitable and rapid

relapse. The appellant would be isolated, lost and hopeless. He would have no legal means of supporting himself. He is unable to look after himself and he lacks the resilience required to adapt. He has a low IQ and would be extremely vulnerable.”

42. The Judge then explained his understanding of the necessary test in “article 3 health cases”. He referred particularly to AM (Zimbabwe) ERTT
43. The Judge noted the Secretary of State’s submission supported, it was said, by **Bensaid v UK (44559/98) [2001] ECHR 82** that the findings necessary to allow the appeal were too speculative and that the evidence of supporting the urged findings should be subject to rigorous scrutiny.
44. At paragraph 50 the Decision and Reasons the Judge said:

“I have concluded that, after applying rigorous scrutiny to the evidence in this appeal, that the appellant succeeds in demonstrating that his is an exceptional case and that there are substantial grounds for believing there is a real risk he would face inhuman treatment so as to breach article 3 if he were deported to Angola. That is because, to adopt the language of **Paposhvili**, the loss of his current treatment and support would lead to a serious, rapid and irreversible decline in his state of health resulting in intense suffering.”
45. The Judge went on to explain that he did not regard this as a “suicide risk case”. Whilst respecting Dr Galappathie’s expertise there was no history of attempted suicide. However he was satisfied that there was a real risk that the claimant would face destitution and stigmatisation and, in simple terms, that he really could not cope.
46. At paragraph 53 of his Decision and Reasons the Judge criticised the Secretary of State for not dispelling the concerns raised by the prima facie case. His point was that, knowing the concerns raised, the Secretary of State on review made no attempt to provide the requisite assurances.
47. The Judge allowed the appeal on article 3 grounds and turned his attention to article 8. He clearly and expressly appreciated the public interest in removing someone such as the claimant but found that was outweighed by the suffering awaiting the claimant in the event of his return. On the Judge’s findings it was indeed suffering of a high order.
48. The Judge allowed the appeal on article 8 grounds. Notwithstanding the Judge carrying out a balancing exercise and finding on the claimant’s favour it is difficult to imagine circumstances where an appeal that was allowed on article 3 grounds could be dismissed on article 8 grounds.
49. Of course it is the Secretary of State’s case that appeal should not have been allowed on article 8 grounds or at all.
50. I apologise for the time that I have taken to prepare this decision. Given the persistent and serious nature of the claimant’s offending I wanted to make sure that I had given proper consideration to the Secretary of State’s case but I should not have taken the time that I did.
51. Permission to appeal was granted by an Upper Tribunal Judge. Although permission was given on all grounds, the reason for giving permission turned mainly on paragraph 28 of the Decision and Reasons. There the First-tier Tribunal Judge said:

“There is no evidence to counter Dr Galappathie’s opinions and no reason not to accept them in full. It would have been helpful to have had an

updated report given the passage of time, particularly as Dr Galappathie appears to have underestimated the risk of the appellant reoffending. However, there is no reason to believe the appellant's condition has changed in the past year during which time he has returned to prison."

52. Permission was granted because the Judge of the First-tier Tribunal said:

"(at para 28 of his decision) that it would have been helpful to have had an updated medical report given the passage of time since the report of Dr Galappathie following his examination of the appellant on 7 February 2021. In view of the judge's reasoning at para 28, in particular in the final sentence of para 28, it is arguable that the judge may have erred by failing to appreciate that the fact that the burden of proof was upon the appellant to establish his Article 3 claim meant that it was also for him to establish his medical condition as at the date of the hearing. The final sentence of para 28 suggests that the judge may have also erred by assuming and thus speculating (in the absence of evidence) that the opinion of Dr Galappathie (including his opinion as to the impact of the appellant's removal from the United Kingdom on his health) would remain the same."

53. I remind myself that the First -tier Tribunal heard the appeal on 4 March 2022.

54. Before me Mr Tufan relied on the terms of the grant and on the Secretary of State's grounds.

55. I respectfully adopt the summary of those grounds set out in Mr Eaton's Rule 24 Notice. They are:

"10.1. The Fttj erred in reaching the conclusions he did regarding the Appellant's mental health, based on the evidence submitted in the appeal.

10.2. The Fttj erred in relying on the evidence of availability of mental health medication and treatment provided by Dr Virginie Tallio.

10.3. The Fttj erred in stating that medical treatment in Angola was not of 'a comparable standard' to the UK.

10.4. The Fttj erred in failing to give 'adequate reasons' for finding that the Appellant was unlikely to receive family support in Angola. The Fttj applied the wrong standard of proof in reaching this conclusion."

56. Mr Tufan did not address me at length. In outline he said that Judge had recognised that the medical evidence was dated and had failed to consider that the claimant, at least after his most recent court appearance, was a prisoner and not a patient. His point was that he was legally competent and that tended to undermine his claim to be unable to cope in Angola.

57. In his reply to the claimant's submissions Mr Tufan suggested that the findings that the family in the United Kingdom could not help were reasoned inadequately but I do not agree. Clear and lawful reasons were given.

58. He submitted that the decision should be set aside and the appeal reheard, with recent medical evidence if the claimant was permitted to adduce it.

59. I have reflected on the terms of the grant. The medical evidence was hardly old. The Judge, anxious to do his best and no doubt acutely aware of the tension between the public interest in the claimant's removal and the inhuman fate said to await him in Angola, observed that contemporary medical evidence was desirable. The conditions complained of are long established and are not the kind of condition from which patients typically make a sudden or clear recovery. The claimant was diagnosed as schizophrenic about 15 years before the

hearing. The Judge noted that there was no reason to think that the claimant's condition had improved. The Judge also noted that there was no suggestion that the Secretary of State had tried to obtain medical evidence. She is under no obligation to do that but it is often seen as a sensible step if another party's medical evidence is not accepted and the Secretary of State did not take it. Further, as the Judge noted, the Secretary of State had not engaged in the process of investigating how the claimant might cope in the event of his return. She may have been obliged to do that but it would have been a useful way of undermining the claimant's evidence, if it is not reliable, and the Secretary of State did not take it.

60. The First-tier Tribunal Judge is very experienced. He directed himself correctly on the burden and standard of proof and I find the contention that he departed from it to be wholly unsustainable. He did, in places, point out how the Secretary of State could have been more helpful but that is not at all the same as requiring the Secretary of State to prove anything.
61. The law relating to the circumstances where it is inhuman to remove a person from the United Kingdom and/or to return him to another country might be thought complex but there is no suggestion that the Judge misdirected himself. Indeed it is apparent from my summary above that the Judge was being conspicuously careful. There is only a fault if the Judge's findings are perverse, or at least so inadequately explained that they cannot be understood.
62. Contrary to the contention of the Secretary of State, I find that the Judge gave full, clear and lawful reasons for finding, at least the low "real risk" that the claimant could not access adequate treatment in Angola and that include a similarly sustainable finding that there would not be adequate, or any, support from the United Kingdom.
63. The Judge would probably have erred if he decided that case on the basis that the claimant would not get in Angola the treatment that he was receiving in the United Kingdom or even treatment of comparable quality but that is not what the judge did. Rather the Judge found that the claimant would not have the wherewithal to access such treatment in Angola and he explained that decision fully and lawfully.
64. In short, I find that the First-tier Tribunal Judge directed himself correctly and made clear conclusions in accordance with those directions that were explained considerably more carefully than would have been necessary to defeat the contention that they were inadequate.
65. No error of law is made out and I dismiss this appeal.

Notice of Decision

66. The Secretary of State's appeal is dismissed. The decision of the First-tier Tribunal to allow the claimant's appeal stands.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 September 2023