IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002560 & UI-2022-002565
First-tier Tribunal No: RP/00089/2016 & PA/12889/2016

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 December 2023

Before
UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And
JS (UGANDA)
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms Mitchell of Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on 16 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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

DECISION AND REASONS

Anonymity

1. Neither representative requested that the anonymity order be set aside. We observe that this appeal concerns international protection matters, there are unchallenged findings that the appellant was forced to be a child soldier and later tortured, and that under the circumstances it is not appropriate at this stage for the appellant publicly to be identified and there is a potential that there may be an onward appeal so we conclude that the appellant's rights presently outweigh

the important principle of open justice. The order made in the First-tier Tribunal is continued and is detailed above.

Introduction

2. For ease of reference we continue to refer to the appellant as such, as he was before the First-tier Tribunal.

3. By a decision promulgated on 5 April 2022, First-tier Tribunal Judges Froom and O'Keeffe ("the Panel"), allowed the appellant's appeal on Article 3, ECHR grounds. The respondent now appeals that decision with permission to appeal of Upper Tribunal Judge Pickup.

The factual background

4. The appellant is a national of Uganda born on 1 May 1989. The appellant entered the United Kingdom (UK) on 26 May 2006, having been granted leave to enter for family reunion on 10 May 2006. The appellant's mother had been granted asylum and indefinite leave to remain in the UK on 11 April 2006.

5. The appellant's full immigration history and background is set out in the First-tier Tribunal decision dated 5 April 2022 and is summarised below.

6. The appellant's mother was granted asylum and indefinite leave to remain on the basis that she was suspected of belonging to a rebel group; that two men in army uniform entered her house on the 30th of April 2004; that she was beaten and raped; that she saw her son being stabbed and beaten and that she saw her eldest son (the appellant) being tidied up and carried out of the house and put in a pickup truck. The respondent accepted that the appellant's mother had been tortured and raped because she was suspected of belonging to a rebel group.

7. The appellant claims that his mother had been enlisted into the Ugandan army where she met Elly Kigozi who became her boyfriend. Elly Kigozi was a member of a rebel group. The appellant had not known at the time that his mother had anti-government views or that the Ugandan authorities suspected she was part of the same group as Kigozi, who remained anti government in exile. The appellant only learnt this after he came to the UK. The appellant described the same incident described by his mother that occurred in 2004. He was the only member of his family taken. He heard gunshots and believed the soldiers had killed his family. The appellant recollects being detained for 6 months in Makindye army barracks where he was questioned, interrogated and tortured for being a child soldier. He was then taken to a different army camp and recruited into the Ugandan army. He eventually escaped. The appellant came to the UK on 10 May 2006 with leave to enter.

8. In November 2013, the appellant was convicted and sentenced to 5 years imprisonment for attempted rape.

9. On 17 April 2015, the respondent notified the appellant he was liable for deportation. On 4 September 2015, the appellant was informed of the intention to cease his refugee status. On 7 December 2015, the appellant's refugee status was ceased.

10. On 5 February 2016, a decision was made to refuse the appellant's human rights claim, and on the same day, he became the subject of a signed deportation order (1st refusal).

11. On 2 June 2016, the appellant made further protection and human rights representations.

12. On 8th July 2016, the appellant appealed against the 1st refusal.

13. On 12 September 2016, a decision was made to refuse the appellants further representations of 2 June 2016 (2nd refusal).

14. The appellant appealed the 2nd refusal on 22 September 2016.

15. The appellant's appeals in respect of the 1st and 2nd refusals were linked and came before First-tier Tribunal Judge Sullivan who in a decision promulgated on 22 May 2017, dismissed the appeals. In summary, First-tier Tribunal Judge Sullivan found that:

    (i) On arrival in the UK on 26 May 2006, the appellant was granted leave to enter as a refugee. He was recognised as a refugee because of his mother's history, her status as a refugee and his relationship to her.
    (ii) He was not recognised as a refugee because of any claimed risk directed personally at him.
    (iii) The conditions for cessation of refugee status under paragraph 339A(v) were established due to a change in circumstances in Uganda since his mother was recognised as a refugee and since he was granted entry clearance as her family member.
    (iv) He continues to constitute a danger to the community for the purposes of s72 Nationality Immigration and Asylum Act 2002.
    (v) The appellant would not be treated as a deserter from the Ugandan army if returned to Uganda and would not be of interest to the authorities on that account
    (vi) The appellant is not bisexual or gay.
    (vii) The appellant suffers from severe PTSD, severe depression and poses a suicide risk but his condition is not so serious as to engage Articles. The appellant does not have any significant level of contact either with his daughter or a former partner. He does not have family life with his mother and siblings such as engage article 8.
    (viii) The appellant is married to a British Citizen of Zimbabwean origin and they have a (British Citizen) child. They have family life such as engages Article 8. It is in the child's best interest to remain with her mother in the UK; The appellant's removal from the UK will not have a significant impact upon her because he has never lived with her and she does not rely upon him for day to day care.
    (ix) There are no significant obstacles to his reintegration into Uganda.

16. The appellant appealed to the Upper Tribunal and on 5 July 2018, Upper Tribunal Judge Coker set aside Judge Sullivan's decision and allowed his appeal on the basis that because his mother continued to be recognised as a refugee, the First-tier Tribunal could not reach a decision that the appellant's status as a refugee has been curtailed or revoked and so the appellant's refugee status could not be

ceased under Article 1C(5). The appellant's appeal succeeded on protection grounds as a refugee who has the protection of Article 32.

17. The respondent appealed to the Court of Appeal. On 10 October 2019, in a reported decision, JS (Uganda) [2019] EWCA Civ 1670, the Court of Appeal allowed the respondent's appeal holding that the Refugee Convention did not protect the appellant from expulsion. The Court of Appeal's reasoning in summary was that, although the appellant had been recognised as a refugee on the basis of his mother's status as a refugee, due to a change in circumstances in Uganda his mother can no longer be said to have a well founded fear of persecution in Uganda and so the respondent was entitled under Article 1C(5) (or para 339A(v) of the Immigration Rules) to treat the appellant's refugee status as having ceased. The Court of Appeal found the Upper Tribunal had given inadequate reasons for concluding the appellant's Article 3 claim relating to the risk of him committing suicide or self harm could not succeed and remitted the appellant's Article 3 claim to the First-tier Tribunal for a re-consideration.

18. On 11 February 2020, the appellant submitted further representations raising a new matter in relation to his third child's health condition as part of his Article 8 appeal. The respondent in a supplementary decision dated 19 March 2020 refused the appellant's claim. The respondent stated that this supplementary decision was to be read in conjunction with the 1st refusal.

19. In the First-tier Tribunal decision dated 5 April 2022, the Panel found the appellant had been abducted, tortured and forcibly recruited as a child soldier in Uganda and that these traumatic experiences were directly connected with his serious mental ill-health. The Panel considered that a return of the appellant to the country where the traumatic experiences had occurred would result in a real risk of suffering which on an application of the principles in AM (Zimbabwe) [2020] UKSC 17, [2021] AC 633 would breach Article 3 and allowed the appellant's appeal.

The First-tier Tribunal Decision

20. The Panel having considered the evidence concluded at [82] of their decision that "the overall picture was one of an appellant with an enduring and serious mental illness which has not been stabilised and which is deteriorating." He required ongoing medication and other treatment which in its absence would cause his mental state to worsen with an increased risk of suicidal behaviour. At [88] the Panel found that there was a real risk of a serious deterioration in the appellant's mental health leading to a real risk of suicide if removed to Uganda. At [93] the Panel was satisfied that the appellant had raised a prima facie case of potential infringement of Article 3 and there was a real risk of the absence of appropriate treatment and at [79] the Panel accepted the evidence that he would have no alternative but to live in a slum. Further, at [94] the Panel found that the appellant's rape of a vulnerable female and 5 years' imprisonment would expose him on return to a real risk of being subjected to ill-treatment infringing Article 3. In consequence, the appeal was allowed on Article 3 grounds only. Article 8 was not considered.

Permission to appeal

21. The respondent relied on three grounds of appeal which can be summarised as follows:

22. Ground 1: This ground is multilayered but in essence the ground asserts that the Panel having had regard to the medical evidence [72-84] failed to have regard to the substantive test set out in AM (Zimbabwe). In particular the Panel having found on the basis of the MedCOI response relied on by the respondent that some treatment is available in Uganda for people with mental health issues, failed to have regard to the test requiring that the serious, rapid and irreversible decline in health leading to intense suffering and/or the significant reduction in life expectancy must be as a result of either:

    i. the absence of appropriate treatment in the receiving country, or
    ii. the lack of access to such treatment.

23. This ground asserts that the Panel had regard to Dr Cameron's view that the appellant would be unable to access the medical care available in Uganda and would have no alternative but to live in a slum [79], despite there being no evidence of the qualifications of Dr Cameron and the other authors of the medical evidence to comment on the availability and accessibility of healthcare or indeed general conditions in Uganda. The grounds assert that the Panel accepted the view of the experts relied on by the appellant over the objective evidence contained in the MedCOI response notwithstanding there being no evidence of these experts in particular, Drs Cameron, Black. Hartree or Professor Abou Saleh having direct knowledge or experience of Uganda.

24. Ground 2: The respondent submits that the procedural obligations set out in AM (Zimbabwe) required to establish whether the substantive test has been met requires the claimant to produce evidence to establish a breach of Article 3 on medical grounds by producing evidence of all of:
    i. their medical condition,
    ii. their current treatment for the medical condition,
    iii. the likely suitability of any alternate treatment for their condition,
    iv. the effect that an inability to obtain effective treatment would have on their health.

25. The respondent asserts that the Panel erred in allowing the appeal on Article 3 grounds when there was no evidence:
    i. as to the likely suitability of any alternative treatment which may be available to the appellant in Uganda, and
    ii. that the medical experts have considered the possibility that alternative treatment may also be available in Uganda.

26. Ground 3: This ground asserts that the Panel erred in failing to give adequate reasons for finding that the support available to the appellant in the UK from family and CN would not be available to the appellant in Uganda, to allow him to access improved healthcare and living conditions.

27. The respondent's application for permission was refused by First-tier Tribunal Judge Dixon but was granted on all grounds by UTJ Pickup on 6 September 2022.

Rule 24 Response and Rule 15(2A) Request

28. On 17 November 2022, the appellant filed a Rule 24 response which essentially submits that the Panel's decision should be upheld as the Panel was right to allow the appeal for the reasons it gave.

29. The Rule 24 Response was accompanied by a request under Rule 15(2A) to admit in evidence a statement from the appellant's solicitor concerning relevant aspects of the hearing before the Panel, in particular relating to the presenting officer's decision not to challenge the expertise of any of the expert witnesses relied upon by the appellant.

30. There was no objection from Mr Parvar on behalf of the respondent to the admission of the further evidence. We refer to the test which we have to apply in determining such an application. Rule 15(2A) requires a party to indicate the nature of the further evidence and why it was not produced before. The Tribunal when deciding whether to admit that evidence must consider inter alia whether there has been "unreasonable delay" in producing that evidence. In this case the statement from the appellant's solicitor was made in response to the respondent's application for permission to appeal and so did not exist prior to this. We consider the evidence to be relevant to the issues before us and as there was no objection from the respondent and we perceive no prejudiced to the respondent, we admitted it in evidence.

Upper Tribunal hearing

31. The hearing was attended by representatives for both parties as above. Both representatives made submissions and our conclusions below reflect those arguments and submissions where necessary.

32. We had before us an Upper Tribunal bundle of 1197 pdf pages [UTB] produced by the appellant containing inter alia the core documents in the appeal, including the appellant's bundle before the First-tier Tribunal and the respondent's bundle. There was in addition a Rule 24 Response and a Skeleton Argument (ASA) on behalf of the appellant. We are grateful to Ms Mitchell for her ASA. Mr Parvar, for reasons that are not clear to us, had not had the chance to view the ASA. Ms Mitchell provided Mr Parvar with a copy of the ASA and kindly summarised the points made in the ASA. Mr Parvar was given time to read and consider the ASA. Upon Mr Parvar's confirmation that he was ready to proceed with the hearing we commenced the hearing.

33. Preliminary issue: Ms Mitchell addressed us on additional grounds for upholding the Panel's overall decision that deportation would breach the appellant's convention rights. Ms Mitchell put forward two key alternative submissions relied on by the appellant.

34. The first, the facts relied upon by the appellant met not only the high threshold in AM (Zimbabwe) but also the "less exacting test" in Soering v UK (1989)11EHRR 439, of whether "substantial grounds have been shown for believing that the person concerned… faces a real risk of being subjected to treatment contrary to Article 3": [91]. Ms Mitchell submitted that the Panel's unchallenged finding is that the appellant's mental illness is a "direct result" of his ill-treatment by the Ugandan authorities: [88]. The Panel also recognised that as in "… Y, the appellant has PTSD as a direct result of the treatment he received at the hands of the authorities in his home country. The genuine subjective fear that the appellant holds, does create a risk of suicide if he is forced to return to Uganda":

[89]. Ms Mitchell submitted that in these circumstances, the rationale for imposing a heightened Article 3 threshold is inappropriate and satisfaction of the Soering test suffices. Ms Mitchell submitted that on the Panel's unchallenged findings and the evidence before it, the test in Soering was plainly met and this provides an alternative basis for upholding the Panel's decision on Article 3.

35. The second submission was that even if the Article 3 threshold was not met, his appeal fell to be allowed under Article 8 by reference to s 117C(6) of the Nationality, Immigration and Asylum Act 2002 [UTB/90-96] on the basis that there were "very compelling circumstances, over and above" those described in Exceptions 1 and 2. The appellant relied on a combination of his lengthy lawful residence and strong ties to the UK, including a parental relationship with three British Citizen daughters which could not realistically be continued from Uganda with the appellant's serious mental ill-health and the unusually harrowing effects of being returned to the country responsible for the abduction and torture at the heart of his condition.

36. Ms Mitchell acknowledged that the Panel having allowed the appeal on Article 3 was not required to consider these alternative submissions.

37. Having heard Ms Mitchell's alternative submissions, our view is that, since the right of appeal to the Upper Tribunal is 'on any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision' (section 11(1) of the Tribunals, Courts and Enforcement Act 2007), the scope of this appeal to the Upper Tribunal is determined by the decision of the First-tier Tribunal and the grant of permission. It is to those submissions we now turn, having reserved our decision.

Error of Law Decision

38. The issues in the appeal before us can be succinctly reformulated as follows:

i. A reasons based challenge to the Panel's findings that the appellant met the test in AM (Zimbabwe),
ii. A misdirection in law by failing to consider the likely suitability of any alternative treatment which may be available to the appellant in Uganda,
iii. A challenge to the adequacy of reasons for findings regarding the absence of support in Uganda.

39. Mr Parvar for the respondent relied on the grounds seeking permission and expanded upon them. In relation to the first ground, Mr Parvar acknowledged that the Panel refers to the correct test but submitted that the Panel fell into error in the multilayered findings required to meet the test. Mr Parvar submitted that the Panel had simply adopted the conclusions set out in Dr Cameron's report without assessing the evidence and making findings of their own. Mr Parvar, whilst appreciating that the qualifications and expertise of the experts was not challenged before the First-tier Tribunal, submitted that it was nevertheless incumbent on the Panel to satisfy itself of the experts' qualifications and expertise, particularly in relation to the availability and accessibility of healthcare and the general conditions in Uganda.

40. In respect of the second ground, Mr Parvar submitted that the Panel, having found on the basis of the MedCOI report that there is some treatment available in Uganda for people with mental health conditions, gave insufficient reason for

accepting Dr Cameron's findings and for concluding that the appellant would be unable to access the treatment and thus finding that the Article 3 threshold was met.

41. Ms Mitchell amplified the points made in her ASA. In relation to the first ground, she submitted that the Panel having set out the applicable legal framework at the outset and cited the relevant legal authorities and considered the evidence in detail [72]-[92] before reaching its conclusion by express reference to the relevant threshold at [93].

42. On the issue of the qualifications of the various experts, Ms Mitchell relied on the witness statement of the appellant's solicitor Sangeetha Vairavamoorthy who was present at the First-tier Tribunal hearing and submitted that to the best of her knowledge and recollection the respondent at the appeal hearing did not challenge the qualifications of any of the appellant's experts to give any aspect of their evidence. In relation to Dr Cameron, Ms Mitchell submitted the Panel in its decision expressly noted her qualifications and previous experience as set out in her first report and there was no suggestion by the respondent that the Panel should not place reliance on Dr Cameron's expertise.

43. Furthermore, Ms Mitchell submitted that the MedCOI was almost four years out of date at the time of the hearing before the First-tier Tribunal and the respondent relied only on a short extract from the MedCOI which in summary states with a high level of generality that mental health treatment exists in Uganda. Ms Mitchell submitted that the Panel reached its conclusions on the availability and accessibility of treatment on the basis of all the evidence taken in the round and provided detailed reasons for doing so, [73]-[93].

44. In relation to the third ground Ms Mitchell submitted that the Panel explained the evidence showed the appellant's primary support came from his mother and his cousin CN, [86]. The appellant's mother is deceased and as CN's support is largely in kind, the Panel rightly concluded it could not be continued. Furthermore, Ms Mitchell submitted that the Panel accepted the appellant had no connections in Uganda and even if such connections could be identified the Panel found that it was unlikely that they would be willing to give significant support given the appellant had been away from Uganda for almost 16 years [85],[2].

45. Since this appeal challenges findings of fact reached by a first instance tribunal, we set out in brief some of the principles applicable to appellate courts or tribunals in reviewing findings of fact reached at first instance. In Fage UK Limited v Chobani UK Limited [2014] EWCA Civ 5 at para. 114 Lewison LJ summarised some of the principles of the appropriate approach of appellate courts and tribunals to findings of fact in the following way:

> "(i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
>
> (ii) The trial is not a dress rehearsal. It is the first and last night of the show.
>
> […]
>
> (iv) In making his decisions the trial judge will have regard to the whole sea of evidence presented to him, whereas an appellate court will only be island hopping".

46. We also refer to the Court of Appeal case of English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605 in which Lord Phillips MR at [118] summarised many of the principles relevant to challenging reasons of a trial judge based on their claimed inadequacy and said that:

> "An unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the Judge has reached an adverse decision".

47. These principles are also summarised in the Appendix to TC (PS compliance - "issues-based" reasoning) Zimbabwe [2023] UKUT 164 (IAC).

48. The Upper Tribunal in AM (Art 3; health cases) Zimbabwe [2022] UKUT 131 (IAC) having considered the relevant legal authorities set out in the headnote the applicable test in Article 3 mental health grounds cases as follows:

> "1. In Article 3 health cases two questions in relation to the initial threshold test emerge from the recent authorities of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 and Savran v Denmark (application no. 57467/15):
> (1) Has the person (P) discharged the burden of establishing that he or she is "a seriously ill person"?
> (2) Has P adduced evidence 'capable of demonstrating' that 'substantial grounds have been shown for believing' that as 'a seriously ill person', he or she 'would face a real risk':
> [i] 'on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment,
> [ii] of being exposed
> [a] to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or
> [b] to a significant reduction in life expectancy'?
>
> 2. The first question is relatively straightforward issue and will generally require clear and cogent medical evidence from treating physicians in the UK.
>
> 3. The second question is multi-layered. In relation to (2)[ii][a] above, it is insufficient for P to merely establish that his or her condition will worsen upon removal or that there would be serious and detrimental effects. What is required is "intense suffering". The nature and extent of the evidence that is necessary will depend on the particular facts of the case. Generally speaking, whilst medical experts based in the UK may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful.

> 4. It is only after the threshold test has been met and thus Article 3 is applicable, that the returning state's obligations summarised at [130] of Savran become of relevance - see [135] of Savran."

49. At the outset we make a preliminary observation that there is no challenge by the respondent to the Panel's findings that the appellant was forcibly abducted and later tortured and raped by the Ugandan military. These findings provide part of the context to the Panel's findings on the appellant's mental health and his return to Uganda.

50. We address the first and second grounds together.

51. It is not disputed that the Panel set out the applicable test at the outset. We find the Panel cited the relevant legal authorities including Paposhvili v Belgium [2016] ECHR 1113, AM (Zimbabwe), Savran v Denmark 2019 ECHR 57467/15, and MY (Suicide risk after Paposhvili) [2021] UKUT 00232 (IAC), and identified the relevant threshold (a real risk of a serious, rapid and irreversible decline resulting in intense suffering) [70]-[71].

52. It is significant to note that at the time of the Panel's decision the guidance given by the Upper Tribunal in AM (Art 3; health cases) Zimbabwe would not have been before the Panel. The Upper Tribunal decision in AM was promulgated on 22 March 2022 which was after the hearing before the Panel but shortly before Panel decision was promulgated on 5 April 2022. Therefore, although the representatives would not have referred the Panel to the guidance given by the Upper Tribunal in AM, the Panel would have been aware of guidance when drafting their decision and its analysis is consistent with it.

53. We find the Panel carefully considered all the relevant evidence in detail in particular the medical evidence from Dr Hartree, Dr Wood, Dr Black, Professor Abou- Saleh, Dr Cameron and the extract from the MedCOI [72]-[92] and reached appropriate findings on the evidence by an unambiguous reference to the relevant threshold [93].

54. We accept the account given in the witness statement of the appellant's solicitor who was present at the hearing before the Panel that the respondent did not challenge the qualifications of Dr Cameron, Professor Abou- Saleh and Dr Black; instead to the contrary, the presenting officer sought to rely on Dr Cameron's report in support of the respondent's case as to the availability and accessibility of mental healthcare in Uganda. We also accept that the respondent did not produce the full MedCOI but instead relied on an extract as set out in the Panel's decision, [91]. It is difficult to see how the Panel can be criticised for not preferring the unevidenced MedCOI extract from 20 April 2018 to the more up to date reports of Dr Cameron dated 16 October 2020 and the addendum report dated 30 January 2022. We find the Panel was entitled to give weight to and place reliance on the reports of Dr Cameron for the reasons it gave. The respondent has proffered no basis to conclude otherwise, still less a basis to demonstrate that the Panel reached findings of fact that no reasonable judges could have reached. We reject the submission that there was no evidence of Dr Cameron's qualifications and expertise, these are clearly detailed at the end of her first report and were noted in the Panel's decision at [29]. It is in any event procedurally unfair and too late to seek to challenge the qualifications and expertise of the experts at the Upper Tribunal when this was not an issue before the First-tier Tribunal.

55. Thus we find that the Panel having identified the correct test applied it in a manner open to it on the evidence. The accessibility of treatment was central to this assessment and a finding on which turned on the appellant's ability to support himself or the support available to him. This brings us to the next part of the analysis which relates to the third ground before us, which is a reasons challenge.

56. The question according to the third ground is whether it was open to the Panel to reach the findings that support available to the appellant in the UK from his family and his cousin CN "… would not be forthcoming and available to the appellant in Uganda, allowing him to access improved healthcare and living conditions".

57. The Panel heard oral evidence from CN, her evidence was that she provided some minimal financial assistance to the appellant, but it was mainly in kind (paragraph 8 and 13 of her witness statement). The appellant's witness statement was to the same effect and his mother who was his primary source of support is deceased. This was a highly significant aspect of the Panel's Article 3 assessment because at the heart of that analysis as stated above the appellant's ability to access appropriate treatment was critical. The Panel had detailed up to date country evidence available to it which it applied by reference to the appellant's own circumstances, including the impact of its unchallenged findings concerning his dreadful past experiences, and it was against that background that the Panel addressed the appellant's in-country support and, in turn, his ability to access medication.

58. The main passages of the Panel's decision are at [85]-[86]. We are mindful of the guidance given by Carnwath LJ in Mukarkar v Secretary of State for the Home Department [2006] EWCA Civ 1045, at [40] as confirmed in MM (Lebanon) v Secretary of State for the Home Department [2017] UKSC [2017] WLR 1260 at [107], "that different tribunals, without illegality or irrationality, may reach different conclusions on the same case and the mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law." We also remind ourselves of the guidance in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 [2008] 1 AC 678, at [30], that First Tier Tribunal is a specialist fact-finding tribunal, and the Upper Tribunal should not rush to find an error of law in its decisions simply because it might have reached a different conclusion on the facts or expressed themselves differently, as the appeal is available only on a point of law. The Supreme Court in Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 at [62] and [63] reiterated the point stating as follows:

> " It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> 63. In Thomas itself, Lord Thankerton, with whose reasoning Lord Macmillan, Lord Simonds and Lord du Parcq agreed, said that in the absence of a misdirection of himself by the trial judge, an appellate court which was disposed to come to a different conclusion on the evidence should not do so "unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be

sufficient to explain or justify the trial judge's conclusion": 1947 SC (HL) 45, 54; [1947] AC 484, 487-488

59. We acknowledge that not all judges would necessarily have reached the same findings as the Panel, however that is not the test. We finds find on the clear and concise reasons given by the Panel a reader would readily discern why the Panel found the appellant was unlikely to have access to any meaningful support in Uganda from family or indeed from his cousin CN.

60. We also note Ms Mitchell in her ASA points out that the Panel identified other barriers to the appellant accessing the level of support, treatment and care required to avoid a real risk of Article 3 harm such as :

i. The limited and impoverished public health care system and the lack of affordable staffed private medical facility [80]-[81] and [92].
ii. The impact of the appellant's likely living conditions on his ability to access treatment [79] and [92].
iii. The likely deterioration in the appellant's mental health [73],[76]-[77], [84] and [87]-[90].

61. We find the Panel therefore reached findings of fact that it was entitled to reach on the materials before it, pursuant to a correct self-direction and correct application of the law.

62. We dismiss the respondent's appeal. Properly understood, the grounds of appeal are disagreement which do not disclose an error of law. The Panel decision of the First-tier Tribunal stands. We conclude that there are no errors of law in the decision of the Panel such that it is appropriate to set the decision aside. Therefore, the respondent's appeal against the Panel's decision fails.

63. Finally, given our conclusion in this appeal it is not necessary to deal expressly with Ms Mitchell's alternative bases to uphold the decision.

Notice of Decision

64. The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the First-tier Tribunal's decision should be set aside.

N Haria

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 December 2023