



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003897

____ First-tier Tribunal No: PA/50889/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
17th of October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson (Counsel, instructed by Lawmatic Solicitors)

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

Heard at Field House on 19th September 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

1. The Appellant, a citizen of Bangladesh, applied for asylum on the . The application was refused for the reasons given in the Refusal Letter of the 2nd of November 2020. The Appellant's appeal was heard by Judge Howard at

Hatton Cross on the 11th of April 2022 and his appeal dismissed for the reasons given the decision of the 5th of May 2022.

2. There were 2 strands to the Appellant's case before Judge Howard. The first was his protection claim. That was rejected by Judge Howard and there is no challenge to that aspect of the decision. The second concerned the Appellant's health conditions and article 3, relying on the decision in AM (Zimbabwe) [2020] UKSC 17.
3. The Appellant had previously raised his health issues in his appeal before Judge Bowler on the 22nd of May 2018. In the decision of the 4th of June 2018 Judge Bowler found that the Appellant's health conditions did not meet the threshold under article 3 and dismissed the appeal. An application to challenge the decision was not successful.
4. Judge Howard referred to the decision of Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) [2002] UKAIT 702 and that the decision of Judge Bowler was the authoritative statement as to the Appellant's circumstances at that time. Turning to the Appellant's health from paragraph 38 onwards in paragraph 39 Judge Howard referred to Paposhvili v Belgium [2017] Imm AR 867 and AM (Zimbabwe).
5. Judge Howard briefly reviewed the medical evidence in paragraph 40 referring to the most recent documents which were from late 2020 and noted that they indicated that the Appellant's conditions were being adequately treated, his condition had stabilised and the prognosis had improved since 2015. In paragraph 41 Judge Howard found that there was no new evidence available and the circumstances the Appellant would find himself in were set out in the 2018 decision. In paragraph 42 Judge Howard found that the evidence did not satisfy the test in AM (Zimbabwe) and article 3 was not engaged.
6. Appellant sought permission to appeal on the basis that the Judge had not assessed the evidence relating to the Appellant's health conditions in line with the safeguards set out in Paposhvili v Belgium. The Judge, having noted the change in the legal landscape failed to adopt the new approach. The Judge had not considered whether the evidence was capable of demonstrating there were substantial grounds of believing article 3 would be violated. Permission to appeal was granted by the First-tier Tribunal on the 29th of August 2022.
7. At the hearing Mr Richardson referred to the medical evidence and the letters that had been submitted on behalf of the Appellant. On the 27th of April 2015 the Appellant had had a kidney transplant and was no longer on dialysis. He remains under the care of the doctors. It was submitted that the letters relied on are sufficient and capable of establishing that the Appellant meets the threshold. Mr Richardson could not explain why no overall opinion had been provided. In short the Judge had not applied the structure approach required.
8. For the Home Office it was argued that there was no error. In paragraph 39 of the decision the Judge had directed himself properly. The evidence was

old, the Judge looked at the evidence and the test, see paragraph 40, the Appellant's condition had stabilised. He could only consider the evidence and apply the test which is what he did.

9. The questions to be answered in health care case have been set out by the Upper Tribunal in AM (Art 3; health cases) Zimbabwe [2022] UKUT 131 (IAC). The headnote provides 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.*

10. The Judge did not refer to the steps set out by the Upper Tribunal. The medical evidence that was before Judge Bowler is found in the Appellant's bundle. The 2014 and 2015 evidence starts at page 95 of the Appellant's bundle, page 193 of the CE file. The letter at page 193, dated the 8th of May 2014, set out the Appellant's problems then and a list of medication. At that time the Appellant was on dialysis and his condition was described as being clinically stable.

11. The first letter referred to by Mr Richardson was at page 104 of the Appellant's bundle, page 202 in the CE file. Dated the 15th of January 2015 the Appellant was, at that stage still receiving dialysis 3 times a week and his situation had not changed since the letter of the 8th of May 2014. He had a complex combination of renal failure, myeloma, coronary artery disease and increased risk of infection having had a recurrent bout of TB. The letter concluded "There has been no substantial change and he remains somebody who would very clearly be at substantial risk of almost immediate severe illness and death were he to be deported from the UK, and can not be considered fit, on medical grounds, to travel.

His clinical condition is unlikely to change in the foreseeable future, other than potential progression/worsening of his known and established coronary artery disease."

12. The letter of the 15th of January 2015 was the principal evidence relating to the Appellant's medical condition following his kidney transplant. At the time of Judge Bowler's decision it was already 3½ years old. As the Judge noted in paragraph 36 an email of the 10th of May 2018 described the transplant as "perfectly functioning."

13. Judge Bowler reviewed the evidence that had been provided and noted at paragraph 41 that that without qualified follow-up he would be likely to lose his transplant and require dialysis or die. The Judge then addressed the position he would face in Bangladesh. The Judge found that treatment was available in Bangladesh and it had not been shown he would not be able to access it. As noted above the decision was upheld.

14. The evidence before Judge Howard dated from 2019 with the absence of an overall assessment of the Appellant's state of health and started at page 156 in the Appellant's bundle, 254 in the CE bundle. This was a certificate from a Dr Uddin dated the 24th of June 2019 from the Dhaka Medical College Hospital. Having briefly set out the Appellant's treatments and conditions the certificate concluded "Though his cardiac and Hematology (sic) complaint mildly improved but his renal complaint (Previous Renal Transplant in 2015 with end stage renal failure) still now declining with rising/fluctuating Cr since July 2018.

The such kind of complicated combined prolonged and costly treatment of this patient is not possible in Bangladesh.

So in my opinion at this state, the treatment of this complicated serious patient should be continued at London.”

The letter was nearly 3 years old by the time of the hearing before Judge Howard.

15. The remaining medical evidence started in the Appellant's bundle at page 157, CE bundle page 255, a letter from a Cardiologist of the 27th of August 2020. Further letters from 2020 followed, not in date order, dealing with various investigations and appointments including haematology, cardiology and renal.
16. The first renal letter is at page 165, CE bundle page 263, dated the 10th of March 2020. That letter records the Appellant complaining of shortness of breath, he was due to be followed up by the Respiratory Team and the MDT (I assume Multiple Disciplinary Team) reported “stable disease” although a repeat angiogram was considered. The renal letter of the 3rd of November 2020, pages 167/266, reported that the Appellant felt reasonably well in himself with shortness of breath and a pain in his leg. A haematology letter of the 29th of October 2020 at 173/271 referred to back pain.
17. Returning to the questions that had to be addressed, set out in the Upper Tribunal decision in AM (Zimbabwe), the burden was on the Appellant to show that he “is” a seriously ill person. As the Upper Tribunal noted in the second headnote “The first question is relatively straightforward issue and will generally require clear and cogent medical evidence from treating physicians in the UK.”
18. The evidence from 2020 did not address that question and implied that the transplant undertaken in 2015 was not causing the Appellant problems. Judge Howard was right to observe that the decision of Judge Bowler was the authoritative guide to the position in 2018. The evidence before Judge Howard did not show that the Appellant, complicated as his health issues may be, was seriously ill at that time.
19. The reference to Devaseelan was correct but of limited value. The test to be applied had changed and the decision did not explicitly reflect that. The reliance by Mr Richardson on the medical evidence from 2015 was a tacit acceptance that the medical evidence from 2020 was insufficient to answer the questions posed in AM (Zimbabwe).
20. While the decision of Judge Howard may have been more explicit in his approach to the questions that arise in healthcare cases such as this his observation that the evidence did not show that the Appellant met the threshold was justified. If there was an error in the decision it was not material as the evidence available was insufficient to discharge the burden of proof.
21. That also applies to the second question relating to the position the Appellant would face on return to Bangladesh. In order to have been able to answer that question the Appellant would need to show what his medical needs were and evidence that addressed specifically the availability and

accessibility of it in Bangladesh and the effect on him in its absence at the date of the hearing. None of the evidence did this.

22. The submission that the evidence from 2015 was sufficient to discharge the burden of proof fails to address the significant passage of time and the absence of evidence dealing with the Appellants current state of health and prognosis. In 2015 he may well have been too unwell to travel but that was 7 years before the case was heard by Judge Howard. In the interim the appeal had been dismissed by Judge Bowler and not successfully challenged. The Appellant was being monitored, which was not surprising, but the letters following appointments did not show the concerns of 2015 still persisted.

Notice of Decision

23. The decision of Judge Howard did not contain an error of law and the decision stands as the disposal of the Appellant's appeal.

Judge Parkes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10th October 2023