IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005402

First-tier Tribunal No: PA/54292/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of June 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

TM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Karnik, instructed by Duncan Lewis Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 7 June 2024

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision promulgated on 21 March 2024, of the decision of First-tier Tribunal Judge Shakespeare.

2. The appellant is a citizen of Zimbabwe born on 10 October 1977. He arrived in the UK on 5 May 2000 and was granted leave to enter as a visitor, following which he applied for, and was granted, leave to remain as a student until 30 September 2001. On 16 January 2004 he was convicted of assaulting a constable and sentenced to 2 months' imprisonment. On 18 May 2006 he was served with a notice to a person liable to removal. He claimed asylum on 25 May 2008 and was interviewed about his claim

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on 21 July 2008, but no decision was made at that time as he failed to report as required and was recorded as an absconder. On 30 April 2009 the appellant was convicted of assault occasioning actual bodily harm and sentenced to 6 months' imprisonment. On 20 September 2010 he was convicted of attempting to cause grievous bodily harm with intent to do grievous bodily harm, for which he was sentenced on 20 October 2010 to 32 months' imprisonment.

3. On 3 August 2011 a notice of liability to deportation was served on the appellant, to which he responded by making further asylum representations. He was interviewed about his asylum claim again in October 2011. On 6 June 2012 he was served with a Deportation Order and decision to deport and refusal of his asylum claim. His appeal against the deportation decision and asylum refusal was dismissed on 24 October 2012 and he became appeal rights exhausted on 07 December 2012, after being refused permission to appeal.

4. On 15 February 2013 the appellant submitted further representations which were considered as a request to revoke the Deportation Order. On 17 October 2014 a decision to refuse to revoke the Deportation Order was made from which the appellant appealed. His appeal was dismissed on 2 April 2015 and his appeal rights became exhausted again on 21 April 2015.

5. On 9 August 2018 the appellant was sentenced to 12 weeks' imprisonment for a conviction of battery. He was detained under immigration powers on completion of his custodial sentence on 7 October 2018. On 31 October 2018 an interview was conducted with the Zimbabwean authorities and on 22 November 2018 confirmation that an emergency travel document (ETD) had been agreed was received.

6. On 10 January 2019 the appellant lodged a judicial review claim and made further representations. His application for judicial review was refused on 8 May 2019 and was confirmed as concluded on 6 June 2019. His further representations were refused under paragraph 353 of the Immigration Rules on 17 May 2019, with no right of appeal. On 27 June 2019 the appellant was served with removal directions set for 3 July 2019. He lodged a further judicial review claim on 3 July 2019 challenging the removal directions which were stayed when he became disruptive. Further removal directions, issued on 11 August 2019, were deferred when a stay on removal was requested. The stay was refused on the papers but was granted following an oral hearing and further removal directions were cancelled. The appellant's judicial review claim was then allowed on 20 January 2020 and the Upper Tribunal ordered that his further representations should be reconsidered.

7. The appellant's protection and human rights claim was then considered as a fresh claim. The claim was refused, with a right of appeal, on 24 June 2020, giving rise to the current appeal.

8. The appellant's protection claim, as originally made and as maintained throughout his various applications and appeals, was on the grounds that he would be at risk on return to Zimbabwe because of his past refusal, in April 2000, to carry out an assassination order against the defence minister, when he was working as an operative for the Central Intelligence Organisation (CIO), which resulted in his arrest and torture. He had managed to escape with the help of a colleague. Further elements were added to his claim when he was interviewed for the second time, namely that he had been raped in custody in Zimbabwe and that he had compiled evidence against senior CIO members with regard to corruption and his actions had led to the perpetrators being identified.

9. The First-tier Tribunal, when dismissing the appellant's appeal on 24 October 2012, found that he was not entitled to the protection of the Refugee Convention because the presumption in section 72(2) of the Nationality, Immigration and Asylum Act 2002 applied to him as a result of his criminal offending and the risk he continued to pose to the community, and found that he was not at risk on return to Zimbabwe in any event. His claim was found to contain inconsistencies and discrepancies and to be lacking in credibility and it was considered that his deportation would not breach Article 3 or 8 of the ECHR.

10.The appellant's subsequent appeal in the First-tier Tribunal was dismissed on 2 April 2015 on the same basis as previously. By that time the appellant was relying on fresh evidence in the form of arrest warrants which he claimed had been issued against him, a letter said to be from a Zimbabwe MP stating that he was to be prosecuted and a claim that his brother had been arrested in Zimbabwe because he was in communication with him. The Tribunal continued to find that the appellant had not rebutted the presumption in section 72 and that he remained a danger to the community and continued to find his claim lacking in credibility, noting various inconsistencies in his account, in particular in regard to his family in Zimbabwe and the death of his parents and his family in the UK, noting that new aspects of his claim had continued to emerge over time such as the issuing of arrest warrants against him and concluding that the evidence overall was unreliable. The Tribunal had further medical evidence which confirmed that the appellant had been formally diagnosed with PTSD but did not find that that impacted upon the credibility concerns and concluded that the appellant's removal to Zimbabwe would not be in breach of Article 3 or 8.

11.In the further representations made on behalf of the appellant in January 2019 fresh evidence was produced which included several medical and medico-legal reports as well as two rule 35 reports. The appellant's claim was repeated, in relation to his work for the CIO and his arrest and detention in Zimbabwe and it was asserted that the new medical evidence corroborated his account of having been tortured and raped whilst in detention in Zimbabwe before fleeing the country in 2000. Reference was made to scars on the appellant's body as well as psychological problems including PTSD arising from torture. It was asserted that he was at risk on return to Zimbabwe and should be recognised as a refugee and that his removal to Zimbabwe would be in breach of Article 3 owing to a risk of suicide.

12.In the letter of 24 June 2020 refusing the appellant's claim the respondent again certified that the presumption under section 72(2) applied to him as he continued to present a danger to the community. The respondent considered the findings of the First-tier Tribunal in the appellant's two previous appeals and then addressed the new medical evidence, which included two rule 35 reports referring to scars on the appellant's body, a report from Dr Thomas referring to the scarring and to the appellant's psychological issues, and a psychiatric report and addendum report from Professor Katona at the Helen Bamber Foundation. The respondent concluded that the reports did not detract from the adverse findings made by the First-tier Tribunal and maintained the decision that the appellant was not at risk on return to Zimbabwe, that the risk of suicide and self-harm could and would be effectively minimised and that the high threshold for an Article 3 claim had not been met for the purposes of AM (Zimbabwe) [2020] UKSC 17 given the availability of appropriate treatment in Zimbabwe. The respondent did not consider that the appellant met the family and private life exceptions to deportation for the purposes of Article 8 and concluded that there were no very compelling circumstances to outweigh the public interest in his

deportation. The respondent accordingly maintained the decision to deport the appellant and refused to revoke the deportation order previously made against him.

13.The appellant appealed against that decision to the First-tier Tribunal. His appeal came before First-tier Tribunal Judge Shakespeare on 29 September 2023, by which time there was additional medical and expert evidence, namely a country expert report from Dr Hazal Cameron and a psychiatric report from Dr Ranbir Singh, as well as a further psychiatric report from Dr Katona and a letter from Stoke-on-Trent Community Drug and Alcohol Service dated 3 April 2023. The appellant gave oral evidence before the judge. With regard to the section 72 certification, Judge Shakespeare noted the appellant's claim to have changed since his appeal was dismissed in 2015 as he had been in a stable relationship since 2019 and had addressed his alcohol misuse which had been at the root of much of his offending behaviour. The judge found, however, that there was limited evidence before her about the relationship and that she was unable to make a positive finding as to whether it had provided greater stability in the appellant's life. As for the appellant's claim to have addressed his alcohol misuse, the judge found it premature to conclude that he had addressed his alcohol misuse issues to the extent necessary for him to rebut the presumption and she concluded that he had not rebutted the section 72 presumption and was therefore not entitled to the protection of the Refugee Convention.

14.With regard to the Article 3 risk on return to Zimbabwe, the judge did not find the medical evidence to provide a sufficient basis for departing from the strong adverse credibility findings made by the previous tribunals. Neither did she find the appellant's explanation for the inconsistencies in his account which were relied upon by the previous tribunal to provide a sufficient basis for departing from those adverse credibility findings. The judge accordingly found that the appellant's account of his ill-treatment at the hands of the Zimbabwean authorities was not credible and she did not accept that he was at risk on return to Zimbabwe on that basis. As for the medical Article 3 claim, the judge accepted Dr Katona's diagnoses of PTSD, severe depressive disorder and alcohol misuse disorder and accepted that the appellant was a 'seriously ill person' for the purposes of the test in AM (Zimbabwe). However she did not accept that the second limb of the test was met, finding that it was difficult for the appellant to meet the test when he was not in fact currently receiving any treatment or medication in the UK. The judge considered the risk of suicide, in light of Dr Katona's report. She accepted that there was a risk that he would start drinking again if removed to Zimbabwe and that that was likely to exacerbate his psychological conditions and she accepted Dr Katona's view that the appellant was at risk of suicide if returned to Zimbabwe. However she did not accept that the appellant had established that that would mean that on return to Zimbabwe he would face a real risk of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or a very significant reduction in life expectancy and she therefore concluded that the Article 3 threshold was not met. As for Article 8, the judge was not satisfied that the appellant had established a family life in the UK, she did not find that the exceptions to deportation applied to him and she did not accept that there were very compelling circumstances outweighing the public interest in his deportation. The judge accordingly dismissed the appeal, in a decision promulgated on 17 October 2023.

15.The appellant sought permission to appeal against the judge's decision on three grounds. Firstly, that the judge erred in her application of the test in AM (Zimbabwe) since she unduly relied on what treatment the appellant was in fact receiving without having proper regard to the treatment that the medical professionals recommended

he receive; secondly, that the judge gave inadequate reasons for finding that medical treatment would be accessible/ available in Zimbabwe and failed to take into account the country expert evidence; and thirdly, that the judge made an error of fact giving rise to unfairness, by finding there to be nothing in the documentary evidence to corroborate the appellant's attendance at a detoxification programme, when there was such evidence before her, a matter which was material to the question of whether the appellant continued to be a danger to the community.

16. Following a grant of permission, the matter came before me on 4 March 2024. The first two grounds were conceded by the respondent but I found no error of law identified by the third ground. In a decision promulgated on 21 March 2024, I accordingly set aside Judge Shakespeare's decision, as follows:

> " 18. Mr Bates conceded the first two grounds and accepted that there was an error of law in the judge's findings on the prospect of future risk and owing to a failure to have regard to the expert report from Dr Cameron. However he did not accept that the third ground disclosed any error of law. I therefore heard submissions on the third ground as well as on the matter of disposal of the appeal in the event of an error being found on all grounds.
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> 19. The error argued in the third ground arises from the judge's findings at [37], where the judge observed that:
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> > "In oral evidence he said that he had recently completed a one-week residential alcohol detoxification programme and has not drunk alcohol since 29 August 2023. However, there is nothing in the documentary evidence to corroborate his attendance at the alcohol detoxification programme…"
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> 20. In his submissions, Mr Karnik referred me to a letter dated 6 September 2023 from The Edward Myers Centre at Harplands Hospital which confirmed that the appellant was discharged on 29 August 2023 having completed an alcohol detoxification, together with an email dated 14 September 2023 from a recovery worker at Stoke-on-Trent Community Drug and Alcohol Service confirming that the appellant was doing well since the detox and would continue to receive recovery support. He submitted that, in light of that evidence, the judge was wrong to say that there was nothing in the documentary evidence to corroborate the appellant's attendance at the detox programme, and he submitted that that omission was material to the judge's finding on the section 72 certification. Mr Bates, however, whilst accepting that the judge had made a mistake of fact, did not accept that that was material since, he submitted, there was only one conclusion she could have reached on the evidence.
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> 21. I am not persuaded by Mr Karnik's arguments as to the materiality of the judge's error of fact and I am in agreement with the case put by Mr Bates. It seems to me that it cannot sensibly be argued that the appellant's completion of a one week alcohol detoxification programme only four to five weeks before the First-tier Tribunal hearing and an abstinence from alcohol for that period of time could have addressed his alcohol misuse problem, when considering his otherwise lengthy history of alcohol abuse, as described by the judge at [36]. It seems to me that that evidence could have done nothing, or nothing of any significance, to displace the judge's view that "*it would be premature to conclude, largely on the basis of oral evidence that he had not drunk for 4.5 weeks prior to the hearing, that he had addressed his significant alcohol misuse issues to the extent necessary for him to rebut the presumption*".
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> 22. In any event, as Mr Bates submitted, there were other matters aside from alcohol misuse which led the judge to conclude that the appellant continued to pose a danger to the community. There was the judge's concern that there was no OASys

> report and nothing from the probation services to confirm the impact on the risk of re-offending of any work undertaken by the appellant to address his alcohol misuse. In addition, the judge noted that the 2018 offence did not involve alcohol and considered that that suggested that alcohol was not the only factor motivating the appellant's offending behaviour. Those were all matters properly considered by the judge when considering the extent of any rehabilitation and whether the appellant continued to pose a risk to the community. Mr Karnik relied upon the passage of time since the appellant's offending, but that was clearly a matter which the judge took into account.
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> 23. In the circumstances I agree with Mr Bates that the judge's mistake of fact at [37] was not material to her conclusion on section 72 and that she was perfectly entitled to conclude that the section 72 presumption had not been rebutted and that the appellant was not entitled to the protection of the Refugee Convention.
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> 24. Having said that, the judge's decision has to be set aside in relation to her findings on Article 3, as Mr Bates conceded. Given his concession I see no reason to make any further observations on the first and second grounds, and I accept that the judge erred in her approach to the second limb of the test in AM (Zimbabwe) and in her failure to address the expert report from Dr Cameron.
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> 25. Accordingly I set aside Judge Shakespeare's decision to the extent stated, namely in relation to her findings on Article 3 and, in so far as that is relevant, to Article 8. Her findings on the section 72 certification are preserved. In such circumstances it is appropriate that the case be retained in the Upper Tribunal for the decision to be re-made on that basis."

17.The matter was listed for a resumed hearing on 7 June 2024 and came before me for the decision to be re-made in the appeal.

Hearing for the Re-making of the Decision

18.The appellant produced some additional evidence for the hearing, namely a further witness statement from himself and his partner, a letter from Greenfield Community Mental Health about his CBT appointments and a letter from Stoke Recovery Service. These were accompanied by an application to admit the evidence in accordance with Rule 15(2A) of the Procedure Rules, to which there was no objection.

19.At the hearing the relevant issues for the re-making of the decision in the appeal were identified and confirmed. Mr Karnik was under the impression that the decision on Article 3 was to be re-made on all grounds, but Mr McVeety's understanding, as was my own, was that it was only the decision in the Article 3 medical claim that was to be re-made. Although the grounds of appeal, and the submissions made before myself in relation to those grounds at the error of law hearing, asserted a failure to have regard to the country expert report of Dr Cameron, it was clear that that was only in relation to the issue of access to health care in Zimbabwe for the purposes of Article 3. That was apparent from [13] to [16] of the grounds and was reflected in the grant of permission and in my error of law decision of 21 March 2024.

20.In relation to the subject of the medical evidence, Mr McVeety raised the matter of re-visiting the findings on Professor Katona's report which he submitted was essentially based upon an acceptance of the appellant's account and which failed to take proper account of the concerns of Dr Singh who had previously treated the appellant and who had found that he was exaggerating his symptoms. Mr Karnik objected to the matter being expanded to include such a challenge. I decided to permit Mr McVeety to make his submissions on the matter, but advised Mr Karnik that

I would consider those submissions in the context of his own objections and would hear from both parties in that regard.

21.The appeal therefore proceeded on that basis.

22.Mr Karnik asked that the appellant be treated as a vulnerable witness and I agreed to that in light of the medical evidence and ensured that he felt as comfortable as possible for the hearing. Mr McVeety also assured the Tribunal that his cross-examination would be very short.

23.The appellant gave oral evidence before me, adopting his most recent witness statement of 3 June 2024 and explaining that he had had five CBT sessions and had one more to go. When asked by Mr McVeety about advice given to him concerning further treatment after the CBT had ended, the appellant said that he had been told that they were considering sending him to someone who dealt with PTSD victims suffering from trauma, but they had not made a decision about that yet.

24.Both parties made submissions before me.

25.Mr McVeety relied upon the guidance in JL (medical reports-credibility) China [2013] UKUT 145 in relation to the medical reports from Professor Katona, specifically the last sentence of headnote 2 , that "*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*." He relied upon paragraph 3.9 of Professor Katona's psychiatric report of 3 March 2023 whereby Professor Katona referred to Dr Singh having found that there was an element of exaggeration in the appellant's account and submitted that it was significant that the report of Dr Singh had never been produced for the Tribunal. Mr McVeety submitted that Professor Katona had failed to consider all the evidence when making his assessment and that his report was flawed, since he concluded that the appellant was not feigning his symptoms despite the opinion of the consultant who had actually treated him, he found that the appellant's traumatic experiences in Zimbabwe were the primary cause of his PTSD despite three judges having found that account not to be credible, and he found the appellant to be a suicide risk despite other doctors mentioning the improvement in his mental health. Mr McVeety submitted that Professor Katona had strayed into advocacy territory. He submitted further that the medical treatment the appellant was currently receiving was at the lowest level and that there was a remarkable absence of treatment from GPs and psychiatric services for someone said to have complex needs. The appellant's condition did not even approach the threshold for making out an Article 3 claim. There was no evidence that he was a suicide risk or that his condition would significantly deteriorate if he was returned to Zimbabwe.

26.Mr Karnik submitted that it would be unfair of the Tribunal to accept Mr McVeety's submissions impugning the evidence of Professor Katona when such submissions had not been made prior to today and Professor Katona had therefore had no opportunity to respond. The previous Tribunals, when making adverse credibility findings against the appellant, had not had the benefit of the scarring report from Dr Thomas which showed that the appellant had many scars consistent with his account of being tortured. Dr Thomas had considered the appellant's physical health as well as his mental health and had specifically concluded that the appellant was not feigning his symptoms. It could not therefore be said that Professor Katona's report was made in isolation or that it was based simply on the appellant's own account. He had taken account of Dr Singh's view which in any event was a provisional opinion only. Mr Karnik submitted that it was wrong to say that the only treatment the appellant was

receiving was CBT when he was also on medication. All the evidence reinforced Professor's Katona's opinion and, in accordance with that opinion, it should be accepted that the appellant was at risk on return to Zimbabwe. Mr Karnik submitted that Dr Cameron's country report was significant as it made it clear that the appellant would not be able to access medical treatment in Zimbabwe after having been absent for so long. It was clear from her report that the appellant would have neither the capacity nor the ability to access medical treatment and he therefore met the Article 3 threshold. In addition, Article 8 was engaged on the basis of the appellant's private life in the UK. He met the test in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813, given his lengthy absence from Zimbabwe, and it was relevant that it was a long time since his criminal offending.

Discussion

27.As mentioned above, the issue before me is confined to the risk to the appellant on return to Zimbabwe arising from his mental health condition. Judge Shakespeare's findings as to risk on return on grounds other than his mental health condition, which in turn maintained the adverse findings of the two previous Tribunals, have not been challenged or disturbed. Judge Shakespeare's decision, that the appellant's account of ill-treatment at the hands of the Zimbabwean authorities was not credible and that he would not be at risk on return on that or any other such basis, is accordingly maintained.

28.Turning, therefore, to the appellant's medical condition, Judge Shakespeare noted at [55] that it was accepted that the appellant suffered from depression and PTSD, and she made the following findings on the medical evidence, based on Dr Katona's opinion, at [56] and [57]:

> "56. Dr Katona notes in his March 2023 report that the appellant's clinical scores for mental distress, depressive symptoms and trauma related psychological symptoms are slightly lower than when he assessed him in 2016, but they remain high. Dr Katona also considers that if the appellant manages to stay sober his chances of addressing his PTSD and his major depression will improve considerably. He recommends the appellant receive continued support and psychological treatments such EMDR and CBT. These are 'first-line' treatments, with antidepressants being a second line treatment. Dr Katona also considers that if returned to Zimbabwe the appellant would experience a constant sense of fear and threat, worsening his PTSD and depressive symptoms, and his alcohol consumption would likely escalate. He considers his fear of the Zimbabwean authorities would make him unlikely to seek out specialist mental health care and he would be unable to meet his basic needs such as obtaining food and accommodation. He is also concerned about the appellant's risk of suicide, which had increased since he saw him in 2017.
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> 57. Considering the medical evidence, and in particular the reports of Dr Katona, I accept that the appellant suffers from PTSD, major depressive episode and alcohol use, disorder. I therefore consider the appellant has established to the balance of probabilities that he is a 'seriously ill person' for the purposes of Article 3 ECHR."

29.At [62], the judge concluded that:

> "I am prepared to accept that if removed to Zimbabwe there is a risk that the appellant will start drinking again, as noted by Dr Katona, and that this is likely to exacerbate his psychological conditions. I am also prepared to accept that as a result of his psychological conditions the appellant fears return to Zimbabwe, even though that fear cannot be objectively justified given the findings on credibility, and has suicidal thoughts. I therefore accept Dr Katona's view that the appellant is at risk of suicide if returned to Zimbabwe."

30.None of those findings were challenged by the respondent, either by way of a cross-appeal, a rule 24 response or at the error of law hearing. The only challenge to Judge Shakespeare's decision, made by the appellant, was in respect of her consideration of the issue of his need for, and ability to, access health services in Zimbabwe. Accordingly, I have to agree with Mr Karnik that it was not open to Mr McVeety to re-visit those findings by seeking now to challenge Professor Katona's conclusions.

31.In any event, I did not find merit in Mr McVeety's attempt to undermine Professor Katona's report on the bases that he did. The first basis was the preliminary point he raised at the commencement of the hearing, in relation to Professor Katona's reference to Dr Singh's report. The point he made in that respect was that Dr Singh's report had not been produced to the Tribunal and that, in the absence of that report, there had been no opportunity to consider his opinion that the appellant was feigning his symptoms, a matter which undermined Professor's Katona's conclusions. However that is not correct. First-tier Tribunal Judge Shakespeare specifically referred to Dr Singh's report at [31(a)] of her decision. Further, having checked the Tribunal's record of the documents which were before the First-tier Tribunal, it is apparent that the report was submitted separately to the main appeal bundle and was therefore only omitted from the bundle before the Upper Tribunal. The report was, therefore, available to the judge and no doubt it formed part of her findings and conclusions. Certainly, the respondent has never sought to argue the contrary by way of a cross-appeal or a rule 24 response. That is not, therefore, a matter which would be appropriate for me to re-visit and I note, in any event, that Professor Katona, in reaching his conclusions, did so with full knowledge of Dr Singh's views.

32.The second point made Mr McVeety was that Professor Katona's most recent report of 3 March 2023, at [6.1], made it clear that it was based on his view of the appellant's traumatic experiences in Zimbabwe, whereas those experiences had been found by two previous Tribunals not to be credible. However, again, Judge Shakespeare was perfectly aware that that account had not been found to be credible and indeed she maintained those adverse credibility findings herself and proceeded on the basis that the appellant's claimed experiences in Zimbabwe had not occurred. In any event, Professor Katona clearly based his report on numerous previous medical opinions and not simply on the appellant's own account.

33.The question for me to decide, therefore, is whether the appellant, having been found to be a person suffering from PTSD, major depressive episode and alcohol use disorder, to be a 'seriously ill person' for the purposes of Article 3 ECHR, and to be a suicide risk if returned to Zimbabwe, would indeed meet the threshold of making out an Article 3 claim if deported from the UK. I note in addition that Judge Shakespeare accepted that the appellant had a subjective fear of returning to Zimbabwe, even if that fear was not well-founded and that, having accepted the medical evidence before her, she clearly accepted that the appellant had undergone a trauma which had led to his current condition. It seems to me that faced with those findings, which have not been challenged by the respondent, there is little scope to conclude that the appellant cannot make out such a claim in the event that I were to find that there was no support available to him on return to Zimbabwe.

34.Other than by way of a passing reference to the evidence relied upon in the refusal decision, Mr McVeety did not make submissions to the effect that there was an ability by the appellant to access support and treatment in Zimbabwe, but rather he focussed on the level of treatment the appellant required in the UK. That, however, was

accepted as an erroneous approach taken by Judge Shakespeare and indeed, the fact that the appellant is not currently in receipt of psychiatric treatment in the UK, and is currently receiving only a lower level of treatment in the form of CBT, does not detract from his likely needs in Zimbabwe, as identified by Professor Katona. The concern was that the appellant's return to Zimbabwe would result in a deterioration in his mental health condition such that he would be at risk without a level of support. As Professor Katona opined in section 9 of his report, the appellant would experience a constant sense of fear and threat which would worsen his PTSD and depressive symptoms and render him unable to work and secure himself and to secure his basic needs such as food and accommodation. At section 9.5 Professor Katona stated that he remained of the view that the appellant's fear of the Zimbabwean authorities would make him unlikely to seek out the specialist mental health case that he needed.

35. As for the availability of mental health case in Zimbabwe, the expert report of Dr Cameron paints a very bleak view. Whereas the respondent relies upon previous CPIN reports in asserting that the appellant would be able to access health care, Dr Cameron's clearly stated opinion at pages 93 and 94 of her first report was that the country situation had changed significantly since the latest Home Office CPIN report. At page 94 at [7] she stated that the CPIN for 2021 was outdated, and in her second report at [107] she stated that it misrepresented the current state and availability of mental health care and treatment in Zimbabwe. She provided further, and more specific details, at section 17 of her first report and in her more recent report of 19 September 2023 at [103] to [118]. At H of the beginning of her second report, she stated that:

> "My communications with health professionals in Zimbabwe and my own in-country experience leads me to believe that there are no circumstances whereby, upon deportation, the Appellant, who has been absent from Zimbabwe for twenty-two years, will be able to access the mental health treatment and care recommended as necessary by Professor Katona, or any form of social support in Zimbabwe. Dr Mazhandu has confirmed that there are no viable means for returnees to establish a link with mental health services in Zimbabwe on their return due to the current economic and social emergency when they have been absent from the country for extended periods of time."

36. That view is repeated at [118] of the report, following her comment in the previous paragraph, [117], that:

> "It is my opinion that the dire lack of resources versus need in Zimbabwe ensures that there is no real likelihood that the Appellant will be able to access any form of treatment and care for his diagnosed mental illnesses, namely PTSD and Major Depressive Episodes on his return to Zimbabwe, irrespective of whether he has or has not the ability to depend upon the support of family networks on his return to Zimbabwe."

37. In light of that evidence it is clear, and I accept, that the appellant would be unable to access medical treatment or other forms of support on return to Zimbabwe. Accordingly, given the unchallenged findings of Judge Shakespeare, and on the basis of the accepted view of Professor Katona as to the likely significant deterioration in his mental health condition and the possibility of suicide, it seems to me that the Article 3 threshold has been met by the appellant to show that he would face a real risk on return.

38. As such, the appeal is allowed on Article 3 grounds.

DECISION

39.The decision of the First-tier Tribunal having been set aside, the decision is re-made by allowing the appellant's human rights appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 June 2024