IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005413

First-tier Tribunal No: HU/04332/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23rd April 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

REGGIE OLIVER
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Bates, a Senior Home Office Presenting Officer.
For the Respondent: Ms Faryl instructed by Duncan Lewis & Co Solicitors.

Heard at Manchester Civil Justice Centre on 8 April 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Brannan ('the Judge'), promulgated on 13 October 2023, in which the Judge allowed the appellant's appeal against the refusal of his application for leave to remain on human rights grounds, relied upon as an exception to the order for his deportation from the United Kingdom.
2. Mr Oliver is a citizen of Guinea who was born in 1969. He claims he came to United Kingdom in 1995 illegally although there is no record of his entry.
3. Mr Oliver's offending history shows on 17 September 2004 he attempted to rob a shop using an imitation firearm, that between 22 April 2006 and 17 June 2006 he committed further robberies, and on 25 October 2006 was convicted of robbery and having an imitation firearm with intent to commit an indictable offence, for which he was sentenced on 14 September 2007 to 6 years imprisonment.
4. On 8 February 2007 Mr Oliver was convicted of occasioning actual bodily harm for which he was sentenced to 6 months imprisonment.

5. On 15 April 2013 a deportation order was made against Mr Oliver which he appealed to the First-tier Tribunal. In a decision dated 29 October 2014 First-tier Tribunal Judge Moore found that Mr Oliver had shown deportation will breach his rights under Article 3 ECHR, having concluded that Mr Oliver suffered from schizophrenia, needed a high level of support, required inpatient treatment and that there was no reasonable likelihood of him receiving the treatment he required if returned to Guinea. It was also found there was no effective mechanism in place in Guinea to reduce the risk of suicide or other self-harm.
6. As a result of his appeal being allowed Mr Oliver was granted leave to remain on 26 January 2016 valid to 26 January 2018.
7. On 21 December 2016 Mr Oliver was convicted of attempted robbery, wounding/inflicting grievous bodily harm for which he was sentenced to 6 years imprisonment.
8. On 21 November 2019 the Secretary of State made a deportation order, setting out in a decision letter of 22 November 2019 why it was not accepted that his deportation would breach his rights under Articles 3 or 8 ECHR. It is the appeal against that decision which came before the Judge.
9. The Judge records at [13] the issues Tribunal was being asked to decide upon in the appeal which were agreed as follows:

    (a) Has the Appellant rebutted the presumption that he is a danger to the community under section 72 of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act")?
    (b) If so, is the Appellant a refugee? It was agreed that this question does not need to be addressed if the Appellant is excluded from protection.
    (c) Would removal of the Appellant to Guinea breach his rights under Article 3 of the ECHR, which requires consideration of:
        (i) Has the Appellant discharged the burden of establishing that he is "a seriously ill person"?
        (ii) Has the Appellant adduced evidence "capable of demonstrating" that "substantial grounds have been shown for believing" that as "a seriously ill person", he "would face a real risk":
        (1) "on account of the absence of appropriate treatment in the Guinea or the lack of access to such treatment,
        (2) 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"?
        (iii) If so, has the Respondent met her obligation in 187-91 of the Paposhvili judgment summarised in 130 of Savran.
    (d) Are there very compelling circumstances within the meaning of section 117C of the 2002 Act rendering the deportation of the Appellant disproportionate under Article 8 of the ECHR?

10. Having considered the procedural history, documentary and oral evidence, and taking the findings of Judge Morre as the starting point, the Judge finds at [95] that Mr Oliver had adduced evidence capable of demonstrating that substantial grounds had been shown for believing that he will face a real risk on account of an absence of appropriate medical treatment that he would suffer a serious decline in his state of health, resulting in intense suffering. It was found he had not shown this would be rapid or irreversible to the relevant standard and therefore did not make out a primer facie case on the first limb of the AM (Zimbabwe) test.
11. In relation to the question of a reduction in life expectancy, the Judge finds at [99] a real risk of Mr Oliver not surviving , either at his own hand or due to the hopelessness of his situation and propensity for self-harm due to relapse, or

simply dying of exposure and starvation because of his situation. At [100] the Judge finds there is a real risk of death within a year of removal.

12. The Judge therefore finds that Mr Oliver has made out a primer facie case that he faces a significant reduction in life expectancy due to removal [101].
13. An issue arose before the Judge in relation to whether suitable medication was available to treat Mr Oliver's conditions in Ghana. The Judge notes at [103] that the Secretary of State's case is that appropriate alternative medicines are available in Guinea that Mr Oliver would have access to. The Judge noted the Secretary of State did not claim there is any arrangement for the administration of treatment in the community, equivalent to the manner in which Mr Oliver currently receives his depot injections in the UK.
14. At [104 – 106] the Judge writes:

> 104. The Appellant has made out his prima facie case including why the proposed alternative depot preparation is not an appropriate treatment. The burden is therefore on the Respondent is to verify on a case-by-case basis whether the care generally available in Guinea is sufficient and appropriate in practice for the treatment of the Appellant's paranoid schizophrenia so as to prevent him being exposed to treatment contrary to Article 3. She has simply not done so. In her original decision letter she said that alternative medications are available: Bromperidol Decanoate Depot Injection (Psychiatry: antipsychotics; depot injections), Quetiapine (Psychiatry: antipsychotics; modern atypical), Risperidone (Psychiatry: antipsychotics; modern atypical) and Biperidene (Psychiatry: for side effects of antipsychotics/anti Parkinsonism). Despite the comments of Judge Pitt, in her supplementary letter she has not explained why these are in fact suitable.
> 105. The Respondent has come nowhere close to dispelling the doubts about the suitability of its proposed alternative medication.
> 106. She has also come nowhere close to showing that the trialling and monitoring for six months while on the alternative depot medication could or would happen. In fact her own position is that she was not able to find information about community, social care or support services. She has therefore not given any explanation for how the Appellant would be able to access depot injections on a weekly basis in order to take Bromperidol Decanoate.

15. On this basis the Judge allowed the appeal pursuant to Article 3 ECHR.
16. In relation to Article 8 ECHR, the Judge considers this aspect between [108 – 115] noting the claim related entirely to Mr Oliver's private life. Having weighed up the competing claims to Judge concludes in the final paragraph the Appellant's circumstances are not very compelling at all in Article 8 terms, clearly indicating that the appeal on this basis is rejected.
17. The Secretary of State sought permission to appeal asserting the Judge failed to give adequate reasons for findings on a material matter in relation to Article 3 assessment, claiming the Judge had "*failed to submit evidence that the alternative treatment available is inappropriate inaccessible, beyond an inconclusive view at [59] from Dr Hurn. It is submitted that this is insufficient to demonstrate that the alternative treatment available is not appropriate".* The Secretary of State also asserts, Ground 2, the Judge made a material error of law in relation to the burden of proof which was upon Mr Oliver to demonstrate that treatment would be inappropriate or inaccessible. The Ground asserts the Judge has seemingly reversed the burden of proof from Mr Oliver to the Secretary of State in respect of whether he has any family members in Guinea who could support him, in light of which the finding that Mr Oliver's life expectancy would be significantly reduced such as to breach Article 3 is vitiated by error. It also submitted this materially impact the finding Mr Oliver will become destitute.

18. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Pickup on 24 January 2024.
19. There is no Rule 24 response.

Discussion and analysis

20. The correct test in relation to an Article 3 medical cases is that confirmed by the Supreme Court in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17, which approved the test set out in Paposhvili v. Belgium (Application No. 41738/10) (13 December 2016) [2017] Imm. A.R. 867, which is as follows:

    'Real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy'.

21. ''Significant', in the context of the new criterion identified by the Court in Paposhvili means 'substantial'. Were a reduction in life expectancy to be less than substantial, it would not attain the minimum level of severity which art.3 required - see AM (Zimbabwe) v. Secretary of State for the Home Department [2020] UKSC 17; [2020] 2 W.L.R. 1152.
22. 'No obligations on the United Kingdom authorities to make enquiries of the country to which a person is to be returned to obtain any assurances in respect of treatment on the return of that person. The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of article 3 to the standard and threshold which apply. If the appellant provides evidence which is capable of proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant's evidence or dispelling doubts arising from that evidence' AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 397 (IAC) (15 November 2019).
23. It is unarguable that the elements of AM (Zimbabwe) test were considered by the Judge. For example:

    a. Absence of appropriate treatment in receiving country – [56] –[62].
    b. Or lack of access to such treatment – see above.
    c. Exposed to serious, rapid and irreversible decline – serious [67], rapid [68 – 74], irreversible [75].
    d. Resulting in intense suffering – [63] – [66] and [80- 91].
    e. Or to serious reduction in life expectancy – [97-101]

24. The Secretary of States rebuttal evidence is considered at [102-107].
25. It is important to read the decision as a whole. The Judge clearly considered the medical and other evidence with the required degree of anxious scrutiny.
26. Mr Bates focused on Ground 2, asserting the Judge had reversed the burden of proof from the Appellant to the Secretary of State in relation to the question of whether the Appellant had any family members in Guinea who could support him and therefore the finding that his life expectancy would be significant reduced is flawed. The argument being put forward is that the medical expert had, when commenting upon the medication that is available within Guinea, talked about the need for any new medication to be monitored to establish

whether it was suitable for the Appellant's needs. Mr Bates stated that if there was family in Guinea, they could undertake such monitoring.

27. I find one difficulty with that submission is that the monitoring of the effectiveness or otherwise of the medication available in Guinea would have to be undertaken by qualified medical practitioners. I accept that members of the family would be able to detect any deterioration in the Appellant's medical state and report that to the doctors, but there is a clear finding that if medication compatible with the Appellant and his needs was not available, he would suffer a reversible decline. Also, that the facilities required to properly monitor or even apply depot medication, as this has been in the UK, are not available in Guinea, or been shown to be suitable.
28. It is also important to note the specific findings made by the Judge which is that he is not able or in a position to make any findings that the Appellant has family in Guinea. This is not a finding that the Appellant does or does not have family. This is because that was the finding the Judge felt able to make on the evidence. This meant that the Judge was not able to accept the Secretary of State's argument that the Appellant had family in Guinea. It is not the Judge reversing the burden of proof but making a finding on the basis of the evidence that was available, and lack of, supported by adequate reasons. The Secretary of State's assertion the Appellant has family in Guinea was dealt with by the Judge at [38].
29. The Court of Appeal have reminded us on numerous occasions that appellate judges must not interfere with decisions of judges below without good reason. Examples of such guidance can be found in Volpi v Volpi [2022] EWCA Civ 462 and Ullah v Secretary State the Home Document [2024] EWCA Civ 201.
30. I find it has not been made out the Judge's findings, following a cumulative assessment of the various factors when taken into account, that returning the Appellant will result in intense suffering sufficient to cross the Article 3 threshold is a finding outside the range of those reasonably open to the Judge on the evidence.
31. Even though the Secretary of State does not agree with that conclusion, especially in a deportation appeal, it has not been shown, despite Mr Bates's best efforts, to be a rationally objectionable one on any of the pleaded grounds of challenge.

Notice of Decision

32. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 April 2024