**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000555

First-tier Tribunal No: PA/01064/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 20 December 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**DW**
**(ANONYMITY DIRECTION MADE)**

Respondent

**REPRESENTATION**

For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Ms J Norman, instructed by Kalsi Solicitors

**Heard at Field House on 2 October 2024**

**DECISION AND REASONS**

**As the underlying claim to this appeal concerns a claim for international protection, 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.**

## INTRODUCTION

1. Although the appellant in the appeal before the Upper Tribunal is the Secretary of State for the Home Department, for ease of reference I continue to refer to the parties as they were before the First-tier Tribunal. Hereafter I refer to DW as the appellant and the Secretary of State as the respondent.

2. The appellant is a national of St Kitts & Nevis. He arrived in the UK on 25 March 2022 from St Kitts & Nevis using his own passport. In April 2022 he travelled to Belgium. He was denied entry to Belgium, and he was returned to the UK. He was refused leave to enter as a visitor and on 26 April 2022 he claimed asylum. On 12 October 2022, the appellant received a positive 'reasonable grounds' decision from the Single Competent Authority ("SCA") following a referral to the National Referral Mechanism ("NRM") made on 30 September 2022. The appellant's asylum claim was refused by the respondent on 14 November 2022.

3. Following the respondent's decision to refuse the international protection claim, on 19 December 2022 the appellant was informed that the SCA had concluded that based on the evidence received it has been decided that there are Conclusive Grounds to accept the appellant is a victim of modern slavery. At about the same time, the appellant was notified separately that he does not qualify for discretionary leave to remain. The respondent noted there was no evidence that the appellant is helping the police with their enquiries, or that the appellant has been diagnosed with any medical conditions albeit he is prescribed anti-depressants and is receiving support from the mental health team within the Immigration Removal Centre.

4. The appellant's appeal against the respondent's decision to refuse his claim for international protection was allowed by First-tier Tribunal Judge Lingham ("the judge") for reasons set out in a decision promulgated on 22 December 2023.

## THE GROUNDS OF APPEAL TO THE UPPER TRIBUNAL

5. The respondent claims the decision of the judge is vitiated by material errors of law. In summary, the respondent advances two grounds of appeal:

    i) The judge failed to give any or any adequate reasons for the decision that there is no sufficiency or protection for the appellant and/or that the appellant cannot internally relocate.

        a. As to sufficiency of protection, the judge failed to give adequate reasons for the conclusion that the appellant would be at risk of harm from the police and or 'warring criminal gangs.'

        b. As to internal relocation, the respondent claims the judge proceeds on a mistake of fact. The judge noted the appellant's sister had moved to Nevis and said that internal

relocation has to be within the borders of a particular country and not extend to a neighboring country. The judge treated Nevis as a neighboring country whereas St Kitts and Nevis is an island country consisting of the two islands of St Kitts and Nevis. Furthermore, the judge said, at [52]; "that the respondent cannot discharge her obligation even if the appellant were to enjoyment movement between nations that are readily reachable". The burden of establishing that internal relocation would be unduly harsh rests on the appellant, not the respondent.

ii) In addressing the appellant's Article 3 claim, the judge relied upon a medico-legal report prepared by Dr Elizabeth Clarke but failed to have regard to the guidance set out in *HA (expert evidence, mental health)* [2022] UKUT 00111 or make any reference to the appellant's GP records. Furthermore:

a. The judge referred, at [61], to the evidence of Dr Clarke that the appellant suffers from severe depression that is trauma related but *"cannot determine if it's to PTSD level"*. However, at paragraph [64] the judge said it is reasonable to find that the appellant's conditions of PTSD and Depression are the result of previous trauma. There was no expert diagnosis of PTSD.

b. The judge failed to consider whether treatment for the appellant's mental health will be available to him in St Kitts and Nevis.

c. The judge failed to apply the test set out in *AM (Zimbabwe) v SSHD* [2020] UKSC 17, by reference to the high threshold that applies. The judge simply said, at [61], that "there is arguable evidence" that there is a risk of further deterioration of the appellant's mental health from the envisaged risks to his personal safety.

6. Permission to appeal was granted by First-tier Tribunal Judge Lester on 13 February 2024. Judge Lester said:

> "2. The grounds set out that the judge erred in the following: (1) failing to give reasons or any adequate reasons for findings on a material matter – assessment of internal relocation and sufficiency of protection on return. (2) failing to give reasons or any adequate reasons for findings on a material matter / making a material misdirection of law – findings on Article 3 (Medical).
>
> 3. The grounds set out an arguable error of law and permission is granted."

## THE HEARING OF THE APPEAL BEFORE ME

7. On behalf of the respondent, Mr Wain submits the judge failed to consider whether the appellant can internally relocate to Nevis which is a geographically separate island but not a separate country. As the respondent had noted in paragraph [122] of the respondent's decision:

> "St Kitts and Nevis has a population of about 54 000 people, it is made up of two islands with the main population being in Basseterre. The external information found in a Freedom House, Freedom in the World 2018 - St. Kitts and Nevis, 5 October 2018, report available at: https://www.refworld.org/docid/5bcdce1cc.html [accessed 1 August 2022] states: Individuals on St Kitts and Nevis generally enjoy freedom of movement and are free to change their place of residence, employment, and education"

8. In addition, the respondent had provided background material and the appellant's expert, Dr Oppong, states: "The joint-state of St Kitts and Nevis is one of the smallest geographically independent countries in the world…" At paragraph [52] of the decision the judge clearly proceeds upon a mistake of fact because the judge treats Nevis as a neighboring country. Mr Wain submits that it is also clear from paragraph [52] of the decision that the judge proceeds upon the premise that the respondent cannot discharge the obligation to establish that the appellant can internally relocate, when in fact the burden rests upon the appellant.

9. Furthermore, at paragraph [53] of the decision, when considering whether there is a sufficiency of protection available to the appellant, and whether he can internally relocate the judge states "..There is arguable contention that the appellant would not be safe in Nevis especially as Dr Oppong's opinion is that activities between the gangs are increasing…". Mr Wain submits the judge failed to engage with the background material relied upon and the question is not whether "there is arguable contention," but whether the appellant had discharged the burden, applying the correct test. The question of internal relocation had not been addressed by Mr Oppong and it is entirely unclear why the judge preferred the submissions made by counsel for the appellant when the judge fails to engage with the material relied upon by the respondent. There was limited engagement with the appellant's subjective fear and an undue focus on the negative perceptions people have. At paragraph [55] it is entirely unclear whether the judge had in mind the correct test when considering whether there is sufficiency of protection and whether internal relocation is open to the appellant.

10. As for the second ground of appeal, Mr Wain submits the judge failed to make any findings relevant to the Article 3 claim and gives no reasons for allowing the appeal on Article 3 grounds. He submits the judge erroneously refers to the appellant having PTSD when the judge had previously recorded that no formal diagnosis of PTSD had been made. The judge refers at paragraph [61] to there being "arguable evidence" that the appellant is at risk of further deterioration to his mental health, but that is not the test.

11. In reply, Ms Norman submits there is no challenge to the findings made by the judge as to what has happened in the past. She submits that when the determination is read as a whole, the judge found the appellant cannot relocate to St Kitts and Nevis. At paragraph [53], the judge noted that when the appellant had last relocated to St Martiin, he was implicated in a murder. The judge said relocation to any of the locations is not open to the appellant and that the appellant's evidence shows that 'relocation' within his home area' would not address the appellant's safety concerns. Ms Norman submits the judge found at [74] that the appellant would be at risk of being re-inducted by the same or some other operating criminal gangs in St Kitts. She submits the judge considered the expert evidence of Dr Oppong, all of which was properly directed to the risk upon return to St Kitts and Nevis. It was in that context that the judge concluded the appellant would be at risk upon return to his home area and that he could not internally relocate. The evidence of the expert was, Ms Norman submits, uploaded by the appellant in good time and as the Tribunal said in *HA (expert evidence: mental health) Sri Lanka* [2022] UKUT 00111 (IAC), the respondent would be expected to decide whether the expert report is agreed. The respondent did not challenge the report in the review. The judge was therefore entitled to place due weight on the opinions of the expert. Ms Norman submits the language used by the judge in paragraph [52] of the decision is unfortunate, but that must be considered in the context of the decision read as a whole.

12. Ms Norman submits the appellant's account that was accepted by the judge was that he returned to St Kitts during the Covid Pandemic, and he was closely guarded. The judge accepted the evidence that the appellant was previously a victim of exploitation and was targeted by the police. At paragraph [50], the judge said that there is arguable evidence that the appellant, owing to his past criminal gang related activities/background, can show risk of harm from the police and warring criminal gangs active in his local area including his previous gang for failing to appear before their leader. She submits the use of the phrase "arguable evidence" is unfortunate, but in a lengthy decision, the judge gives reasons for the conclusions reached. She submits the respondent simply disagrees with a decision that was open to the judge.

13. As far as the Article 3 claim is concerned, Ms Norman submits the judge did not allow the appeal on Article 3 medical grounds, but on the grounds that the appellant will be at real risk of serious harm on return. In the appellant's consolidated skeleton argument dated 2 October 2023, at paragraph [21], the appellant's claim was put on the basis of the factual matrix of the appellant's claim, including the likelihood that his mental health will deteriorate, and his subjective fears of retaliation from the Tek Life gang. It was said that he is unlikely to be able to access or benefit from appropriate treatment and there are very compelling circumstances such as to render his deportation a disproportionate interference with his Art. 8 rights. The appellant had submitted his removal would be in breach of his Article 2 and 3 rights and it was in that context that the judge

allowed the appeal on Article 3 grounds because of the risk of serious harm that the appellant would be exposed to.

## DECISION

14. I accept the respondent has made out both grounds of appeal and that the decision of the judge must be set aside. In reaching my decision, I have been mindful of the guidance provided by Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues," disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

15. I have not found it altogether easy to read and understand the decision of the judge. True it is that it is a lengthy decision, but it lacks the building blocks of a carefully reasoned decision that would enable the reader to identify the key findings made by the judge and how those findings have been applied to the legal framework against which the decision is made. It would have been helpful if the judge had made clear findings as to the factual matrix of the appellant's claim, considered whether the appellant can return to his home area and if not, whether it would be unduly harsh for the appellant to internally relocate. In doing so, the judge should have carefully considered whether sufficient protection is available to the appellant either in his home area or elsewhere.

16. In any event, at paragraph [52] of the decision the judge clearly proceeds upon a mistake of fact when it is said:

> "The submission that as the appellant's sister has been able to relocate to Nevis without harm, 1 *(sic)* take account the appellant's explanation that gangs ordinarily do not target females. I agree with Ms Wass that internal relocation has to be within the borders of a particular country and not extend to a neighboring country even if one is able to cross over seamlessly. Such proposal propounded on behalf of the respondent cannot stand as reasonable or viable relocation in asylum law. I accept that the respondent cannot discharge her obligation even if the appellant were to enjoyment movement between nations that are readily reachable."

17. There are as Mr Wain submits, two difficulties with that paragraph. First, the judge treats Nevis as a neighboring country. Second, the judge appears to proceed on the basis that the burden rests upon the respondent to establish that internal relocation is open to the appellant. As Mr Wain submits, in *MB (Internal relocation – burden of proof) Albania* [2019] UKUT 00392 (IAC), the Upper Tribunal confirmed that the burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh.

18. Even reading the decision as a whole, it is difficult to determine the findings made by the judge and any adequate engagement by the judge as to the background material relied upon by the respondent regarding the protection available to the appellant in his home area of St Kitts. The judge appears to acknowledge that the appellant returned to St Kitts following his deportation from France in 2021. The judge appears to have been satisfied that on return, the appellant was initially in quarantine owing to the Covid pandemic. The judge appears to accept the appellant's evidence that he was under police supervision at that time, and so remained safe from attack from either his own or warring criminal groups. The judge said the appellant's account was consistent with what is said in the report of Dr Oppong. The judge referred to the submissions made by the parties and at paragraph [50], the judge said:

> "Based on the above <u>there is arguable evidence</u> that the appellant owing to his past criminal gang related activities/background can show risk of harm from the police, warring criminal gang active in his local area including as submitted interest from his previous gang for failing to appear before their leader." *(my emphasis)*

19. The judge uses the phrase *"there is arguable evidence"* at several material passages of the decision. The fact that there may be evidence, or even arguable evidence to support a proposition tells a reader nothing. The role of the judge is to make findings based on the evidence before the Tribunal. The judge cannot sit on the fence. Either the judge accepts or rejects the account.

20. The judge's apparent acceptance on the one hand of the appellant having been in quarantine and under police supervision on return to St Kitts in 2021 and the subsequent acceptance, at [53], that the appellant's previous experiences with the authorities is such that the authorities are unable to protect the appellant against those with an interest in him, especially as the police also have an interest in him, is difficult to reconcile and required explanation. In addition, it is by no means clear what test the judge was applying and in light of the other errors I cannot be satisfied that the judge was applying the correct test.

21. I reject the submission made by Ms Norman that the judge did not allow the Article 3 claim on medical grounds. Despite her best attempts to try and persuade me otherwise, it is clear that the judge did consider the Article 3 claim as a claim on medical grounds. Paragraph [56] start with the heading "Art 3 ECHR Medical grounds". The judge then refers to the

leading authority of the Supreme Court on the subject: *AM (Zimbabwe) v SSHD* [2020] UKSC 17. The judge referred to the medico-legal report of Dr Clark. Whilst the judge accepted the opinion of Dr Clark that the five different injuries the appellant has are 'consistent with' the appellant's descriptions of ill treatment, the judge did not consider any other possible explanations for the injuries in light of the background, and as Mr Wain submits, there is no real engagement with the high test that is applicable.

22. At paragraph [61], the judge states that in summary, there is *"arguable evidence"* that the appellant is at risk of further deterioration of his mental health from the envisaged risks to his personal safety. The judge states the appellant would clearly need access to medical facilities in order to improve his wellbeing and that presently, he relies on medical facilities available in detention. There is no consideration of the medical facilities that may be available to the appellant on return. Furthermore, I accept, as Mr Wain submits, the judge found at paragraph [64] that the appellant suffers from PTSD and Depression as a result of his previous trauma, when in fact there has never been a diagnosis that the appellant has PTSD.

23. The judge's consideration of the Article 3 claim is wholly lacking and it is difficult, even reading the decision as a whole, as Ms Norman submits I should, to be satisfied that the judge had in mind the correct test, the high threshold that applies and gave adequate reasons for allowing the appeal on Article 3 grounds.

24. It follows that I am satisfied that the decision must be set aside.

## DISPOSAL

25. I turn to the question of whether it is appropriate to retain the remaking of the appellant's appeal in this Tribunal as opposed to remitting the matter to the First-tier Tribunal. I am conscious of the Court of Appeal's decision in *AEB v SSHD* [2022] EWCA Civ 1512, Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

26. I have carefully considered the decision of the FtT and in light of the nature of the errors of law and the lack of clarity regarding the findings made, in my judgment the appropriate course is for the appeal to be remitted to the FtT for hearing afresh with no findings preserved.

## NOTICE OF DECISION

27. The decision of First-tier Tribunal Judge Lingham promulgated on 22 December 2023 is set aside.

28. The appeal is remitted to the FtT for hearing afresh with no findings preserved.

29. The parties will be notified of a hearing date in due course.

**V. Mandalia**
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**29 November 2024**