IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02053/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 November 2015	**On 4 December 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

M B
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro of Counsel
For the Respondent: Mr S Staunton, HOPO

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 26 December 1978. She came to the United Kingdom around 1981 when she was approximately 3 years old with her mother and sister. She has lived here ever since and has never returned to Ghana. Her mother is now deceased. She has no relationship with her father and she only recently met him when he came to visit the appellant in hospital. The appellant's father now lives in the United States of America.

2. The appellant attended school and college and completed two years of an undergraduate law degree course but she did not complete her university education. She made several unsuccessful attempts to stay in the United Kingdom. On 24 March 2003 she was refused indefinite leave to remain following an application submitted by her mother. She had no right of appeal. On 29 March 2009 Islington Law Centre submitted an application on her behalf for leave to remain on human rights grounds, relying on her very long residence in the United Kingdom and her significant mental health problems.

3. On 14 March 2013 the appellant was served with a notice of liability to deportation. On 6 June 2013 she completed a questionnaire.

4. On 15 October 2014 a deportation order was signed in respect of the appellant. On 25 March 2015, in pursuance of a consent order made in a claim for judicial review, the respondent issued an amended notice of decision replacing an earlier decision letter dated 16 October 2014.

5. The appellant's appeal against the decision to deport her was heard by First-tier Tribunal Judge Nicholls on 2 September 2015 and dismissed by him in a determination promulgated on 9 September 2015. Permission to appeal the judge's decision was granted by First-tier Tribunal Judge Andrew on 9 October 2015.

6. FtTJ Andrew was satisfied that there were arguable errors of law in the decision in that the judge may have failed to consider all the relevant evidence in relation to the treatment the appellant would receive on her return to Ghana as a person suffering from mental health problems. The judge failed to determine the risks there would be to the appellant when informed of the dismissal of her claim and her removal from the United Kingdom and during such removal. The judge may have assimilated the Article 3 test into that of Article 8. There is also an arguable error of law in the judge's approach to **Maslov**, bearing in mind the length of time this appellant has been in the United Kingdom. The judge may have erred in assessing the risk of reoffending by failing to have regard to the social worker's oral evidence when coming to his conclusions.

7. Mr Jorro relied on all the grounds, in particular ground 1 which argued that the judge misdirected himself as to the applicable test arising under Article 3 where the state is responsible for the ill-treatment and in so doing failed to consider all the relevant circumstances. Mr Jorro argued that on this ground alone the appellant's appeal should succeed.

8. Mr Jorro relied on the appellant's circumstances which he said were exceptional. She suffered domestic violence at the hands of her stepfather, T, whom she blamed for destroying her relationship with her own mother and for causing her sister E's behaviour to change, becoming more angry, violent and controlling. The appellant attributed this period to the beginnings of the deterioration in her own mental health which eventually resulted in a diagnosis of paranoid schizophrenia.

9. Following her relationship with T, the appellant said that her mother met and married a man called CW but there was no friendship or warmth within the family. During this time her elder sister had a baby but did not regularly care for the child, leaving it with the appellant's mother who in turn left it with the appellant who was then only 13 or 14 years of age. Because of having to care for her sister's baby, the appellant began to miss days at school. She ran away from home after meeting a man called AK, then in his early 40s. He offered her accommodation and she went to live with him for two or three years. She became pregnant when she was 15 years of age, although she miscarried a couple of months later. She became pregnant again but it was during the pregnancy that she began to smoke crack cocaine with AK. On 15 August 1995 the appellant gave birth to a daughter who died on 11 April 1996 when she was 8 months old.

10. She enrolled at Waltham Forest College to study and recalled studying mathematics, English, history and psychology but she could not give up drugs. During this time she started to suffer from paranoid hallucinations. She and AK split up a year after the daughter died but the appellant said she continued to use the benefits she received to buy drugs from the people she had met while with AK. She became good friends with a man called DD who was a drug user and lived in Stratford.

11. The appellant went on to study at Queen Mary College London University for a new law degree. She continued to use drugs during these studies and became paranoid about people knowing about this. She studied for two and a half years but eventually the drug use became too much and she abandoned the course. During this time she remained in occasional contact with her elder sister, E, but not with her mother. During this time her sister C and her brother W were sent to Ghana by her mother.

12. The appellant has three living children. The eldest is her son J, whose father is DA, a British citizen. During this time she was unable to give up drugs of which DA was aware. His son was born on 15 June 1999 and for about eight or nine months after the birth, was able to live without drugs, although the cravings continued. DA tried to stop her from using drugs but she could not. Eventually DA left when J was about 1 year old taking J with him and went to live with his mother. J has continued to live with his father ever since.

13. The appellant gave birth to two further children, a daughter and a son. As she was taking drugs during the time of both pregnancies and births, both children were taken away by social services and both have subsequently been adopted. At the date of the hearing the appellant did not know the whereabouts of her two children. She also witnessed the death of DD. The judge found the appellant's account of her life and circumstances to be a credible one. The facts have not been challenged by the respondent.

14. The appellant has criminal convictions. She has spent time in prison and in mental facilities as a result of mental health orders. She was last sentenced at Snaresbrook Crown Court on 10 September 2012 to three

and a half years for robbery. Her conviction in 2008 resulted in a hospital order in a medium secure unit, the John Howard Centre, which led to improvements in her mental health and reliance on drugs. She had been conditionally discharged into the community but her condition deteriorated and she absconded from the hostel accommodation. She remained in contact with her social worker who eventually persuaded her to go back to the hostel, following which she was recalled to the John Howard Centre under the terms of the hospital order. It was during this time that she committed her last offence and also this was the last occasion on which she took any drugs.

15. Following her last conviction, the appellant remained at the John Howard Centre where she was detained and received treatment for her schizophrenia and drug addiction. In November 2012 she had improved to a sufficient extent that she was transferred to Holloway Prison in January 2013 to complete her sentence. She was released from Holloway in October 2014 under the terms of a care package. Initially she went to a hostel called Leyton House but that was subsequently burnt down. She is now resident in [**-**] where she has available to her care and assistance 24 hours a day.

16. The judge accepted in light of the medical evidence that the appellant has severe mental health problems and is schizophrenic. She has had hallucinatory experiences and has attempted suicide on more than one occasion. Her condition is controlled in the UK through medication but the clear evidence is that she will relapse if deported.

17. All of the material and reports before the First-tier Tribunal are to the effect that her criminal offending is related to her drug taking although random drug testing shows that she has managed to remain drugs free since 2011.

18. Mr Jorro relied on what the judge held at paragraph 46:

> "… Counsel argued that even if admitted to a psychiatric hospital in Ghana, the appellant would be at grave risk of ill-treatment, as evidenced by the report of Professor Lawrence and the other independent information. Having looked at the evidence and bearing in mind the required standard of proof of a real risk, I conclude that that submission is supported by the evidence and I find that the appellant would be at risk of ill-treatment if she is deported to Ghana".

19. It was submitted that finding relates to the material set out in the objective evidence to the effect that in "prayer camps" (to which people found in the community to be suffering from mental health may be transported by the police), patients are subjected to "chaining; and forced fasting, prayers and incantation; being left out in the open and other ill-treatment. In hospitals, patients may be subjected to: being left in open courtyards all day in inhuman conditions; lack of treatment; overcrowding; electric shock therapy without consent (using restraints) and without anaesthesia and not as a last resort, lack of and denial of food.

Importantly, these conditions may arise as the result of the position of a person being held upon a section. "

20. The submission was that in these circumstances in which the state is responsible or culpable for the harm that will arise, the rationale for the "exceptional circumstances" test in **D** and **N** is not applicable.

21. Mr Jorro argued that the paradigm situation for the appellant if she is removed to Ghana is that she is at real risk of inhuman degrading treatment inflicted on her by people in authority. This is a potential extension to the paradigm in **D**, a deathbed case, where there was no ill-treatment by other people. In **GS (India) v SSHD [2015] EWCA Civ 40** there was no basis to assert that the state was responsible for the harm – the applicants had end stage kidney disease and asserted that their decline amounted to exceptional circumstances because of the speed and certainty with which they would die if returned, in contrast to HIV/AIDS cases. But there was no imposition of culpability asserted in respect of the countries of return. _

22. In **MSS v Belgium and Greece [2011] 53 EHRR 2**, the Greek authorities were responsible for the harm *inter alia* as a result of the fact that asylum seekers who are subject to inhuman and degrading condition in the reception facilities offered, were in that position as the results of the Greek violations of legal duties arising under the EU Directive. In **Sufi and Elmi v UK [2012] 54 EHRR 9**, the court expressly declined to apply the test in **N** ("exceptional circumstances") because the humanitarian crisis in Somalia derived from the indiscriminate methods of warfare conducted by the parties to the conflict resulting in widespread displacement. Accordingly and having regard to these cases the court in **GS (India)** concluded that circumstances in which departure from the Article 3 paradigm (intentional acts constituting torture or inhuman degrading treatment – **GS** at paragraph 39) was justified aside from **D** and **N** were, where (paragraph 62)

> "... the common factor is that there exist very pressing reasons to hold that impugned states responsible for the claim's plight".

23. In **GS** itself there was no basis to assert that the state was responsible for the harm, the applicants had end stage kidney disease and asserted that their decline amounted to "exceptional circumstances" because of the speed and certainty with which they would die if returned in contrast to HIV/AIDS cases. But there was no imposition of harm of culpability asserted in respect of their countries of return. Thus contrary to the finding of the FTT in this case, Laws LJ's analysis helps to mark out the circumstances in this case as distinct from those in the HIV or kidney cases.

24. Consequently it was argued that the judged erred in law in applying the "exceptional circumstances" test at paragraph 50.

25. Mr Staunton in reply relied on paragraph 49 where the judge considered the background information to which he had been referred, including the report of Professor Lawrence. The objective evidence makes it clear that the government of Ghana has been taking steps in recent years to expand the provision of mental health services, to reach more of the population and to put in place mechanisms to tackle the abuses in prayer camps identified by the UN Special Rapporteur and Human Rights Watch. Although the judge found that the reach of those changes is as yet, limited, he found that the evidence shows a willingness on the part of the government of Ghana to take necessary steps. Therefore, he argued that the judge did not err in finding that there is available to the appellant a system of medical help for her mental illness which, whilst it is nowhere near as good as that available in the UK, nevertheless does not amount to the deliberate application of inhuman and degrading treatment. He also found that the judge did not err in law in paragraph 50 when he found that whilst there are substantial concerns about the continuing health of the appellant in Ghana, it has not been shown on the facts in this case that those concerns are of such a serious and exceptional nature that they would constitute a breach of Article 3 as required by the decision in **N**.

26. Following consideration of the submissions, I find myself in agreement with Mr Jorro. The judge found at paragraph 46 that the appellant would be at risk of ill-treatment if she is deported to Ghana. The ill-treatment the appellant would suffer has been highlighted above by the reports from Professor Lawrence, the UN Special Rapporteur and Human Rights Watch which the judge set out at paragraph 45. The report said that treatment used by 97% of the population of Ghana with mental health problems is through prayer camps and other informal, traditional treatment arrangements. The UN Special Rapporteur particularly set out the forms of conduct, which include the chaining up of inmates, forced fasting and treatment by prayers and incantations which continued until the leader of the institution was satisfied that the individual was “healed”. The Special Rapporteur noted that the residents of such institutions could be delivered there by their families or placed by the police if found on the streets acting in a confused and aggressive manner. The conditions in the psychiatric hospitals visited by the Special Rapporteur were still overcrowded, despite reductions in the number of patients and many patients were left in open courts in inhuman conditions. The hospitals were underfunded and did not provide essential medication as the stock had ran out in the first half of the year of visit. The Special Rapporteur described the treatment of patients as “inadequate” and was gravely concerned about the application of electric shock therapy which was administered with the use of restraints, without adequate anaesthesia and not as a last resort. The reports by Human Rights Watch set out the same information, particularly the chaining of residents, and forced seclusion, lack of shelter and denial of food.

27. It was in the light of the objective evidence that the judge found that the appellant would be at risk of ill-treatment if she is deported to Ghana. I find that the ill-treatment would be perpetrated by people in authority.

They would be responsible for the care of the appellant and the ill-treatment that she would suffer if she is removed to Ghana. The judge considered that the government of Ghana was putting in place mechanisms to tackle the abuses in prayer camps identified by the UN Special Rapporteur and Human Rights Watch, but he came to the conclusion that those changes are limited. Indeed, the judge did not refer to what these mechanisms were and whether they have been effective in eradicating the ill-treatment meted out to mentally ill patients by people in authority who have the responsibility of caring for these patients.

28. I find that this is not a case where the appellant has to prove exceptional circumstances. I find that the appellant has established in light of the objective evidence that she would suffer ill-treatment and inhuman and degrading treatment at the hands of people in authority and this is sufficient to allow her appeal under Article 3 of the ECHR.

29. The appellant's appeal is allowed.

Signed Date

Upper Tribunal Judge Eshun