IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005098
First-tier Tribunal Nos:
PA/53849/2021
IA/10958/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 September 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

EJ
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms Seehra, Counsel instructed by Barnes, Harrild and Dyer Solicitors
For the Respondent: Mr Clarke, Senior Presenting Officer

Heard at Field House on 16 January 2024

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Beg ("the judge") heard on 6 November 2023 dismissing his appeal against a decision of the Secretary of State dated 20 July 2021 refusing his protection and human rights claim.

2. The appellant is a citizen of Nigeria who claims to have entered the United Kingdom in July 2004. He has a complex immigration history of repeated failed applications. An appeal against the decision to refuse his asylum claim was dismissed on 26 January 2011. A later appeal following the refusal of further submissions was dismissed on 29 May 2018. The appellant most recently lodged further submissions on 19 August 2020 on the basis that he will be at risk of the terrorist organisation MEND. He also asserts that it will be a breach of Article 3 and 8 ECHR to return him to Nigeria on the basis of his ill health.

3. The respondent considers that the appellant's asylum claim was prviously found to be lacking in credibility by two immigration judges and that the new evidence does not substantiate the claim. The appellant has PTSD, depression and suicidal ideation. The appellant can seek appropriate treatment in Nigeria for his health conditions. The appellant's partner is not British and is not settled in the UK and there would not be very significant obstacles to the appellant's integration to Nigeria.

The Decision of the First-tier Tribunal

4. The appellant was not fit to give evidence and the appeal proceeded on that basis. The judge took the principles of Devaseelan as her starting point and set out in detail authorities on the approach to be taken by the Tribunal in respect of expert medical evidence. The judge found that there was no reason to depart from the previous negative credibility findings in respect of the appellant's risk from MEND or militias in the Delta region. The previous findings were that the appellant's account of his family being murdered, his home being burnt down and being tortured were not credible. The judge set out the authorities on Article 3 ECHR health cases. The judge did not accept the medical evidence that the appellant's health had deteriorated since the last appeal. The judge concluded that even if the appellant has PTSD and depressive disorder, that mental health treatment is available in Nigeria. The judge rejected the appellant's wife's evidence that the appellant has no family members in Nigeria. The judge did not find her to be a credible witness. The judge found that family support is available in Nigeria and dismissed the appeal on all grounds.

The Grounds of Appeal

Ground 1

5. Irrational treatment of medical evidence

The appellant had extensive input from City and Hackney Mental Health services from 2013. It was the opinion of Aisha Salim, Senior Practitioner and Mental Health Social Worker that if the appellant did not have access to proper treatment in Nigeria, his mental health would decline rapidly and that there would be a risk of suicide because the appellant had previously made suicide attempts. The judge did not make any findings on this evidence. The judge also gave little weight to the evidence of the appellant's treating consultant psychiatrist (Dr Benjamin Attwood) who provided three reports/letters to the Tribunal, dated 24 January 2023, 19 July 2023 and 2 November 2023. The judge's reasoning was irrational, given that Dr Attwood is the appellant's treating NHS consultant and for reasons expanded upon in the grounds. The evaluation of the medical evidence was material to the Article 3 and 8 ECHR assessments.

Ground 2

6. Irrational treatment of Country Expert evidence

The judge's finding that the appellant would be able to receive appropriate treatment in Nigeria was unsupported by the evidence before the judge. There was extensive evidence of the lack of available treatment in Nigeria for mental health problems. The judge failed to holistically evaluate all of the evidence in the round focusing on the respondent's COI reports and failed to carry out a balanced and lawful assessment.

Ground 3

7. Irrational findings on evidence given by the appellant's wife

The appellant's wife provided a detailed witness statement. Her evidence was not challenged by the respondent. The judge has not given rational reasons for finding that the appellant's wife is not credible.

The Rule 24 Response

8. Mr Clarke confirmed that there was no Rule 24 response but indicated that the appeal is opposed.

Documentation

9. I checked that both parties had sight of the relevant documentation. This included the grounds of appeal, the grant of permission, the decision of the judge, the original respondent's bundle and appellant's bundles, as well as the skeleton argument and a note prepared by counsel to assist the judge.

Ground 1

10. From [42] to [54] the judge dealt with the medical evidence in order to decide whether she could depart from the previous findings of the Tribunal that it would not be a breach of Article 3 ECHR to remove the appellant from the UK or that he would not be at risk of harm for a Convention reason. The previous Tribunal found that there was no risk of suicide if the appellant were removed, and that treatment was available in Nigeria. The judge dealt with Ms Salim's report at [46] and [47]. The judge dealt with Dr Attwood's report at [48] to [52] and gave that report little weight.

11. At [62] the judge stated:

> "I find that the determinations Judge Thorne and Judge Froom stand, even taking into account Mr Agwa's report and the medical evidence before me. The determinations set out in considerable detail the inconsistencies and implausibility's of the appellant's account".

12. There was a significant amount of evidence before the judge in relation to the appellant's mental health which post-dated the previous appeal in 2018. This included three reports/letters to the Tribunal, dated 24 January 2023, 19 July 2023 and 2 November 2023 by the appellant's consultant psychiatrist Dr Benjamin Attwood, a report from Dr Aina, a locum psychiatrist and a report from Ms A Salim, a senior practitioner/mental health social worker as well as GP notes. The appellant also provided his up-to-date GP records.

13. The medical evidence confirmed that the appellant had specialised therapy in 2018, 29 sessions of CAT between 2019 and 2020, 34 sessions of EMDR between 2020 and 2021 and that he had daily and persistent symptoms. The appellant has been diagnosed by the NHS with PTSD and relapsing and remitting depression and has attempted self-harm and suicide in the past. He takes medication including quetiapine, mirtazapine and prazosin and he requires ongoing psychological help. The medical evidence painted a consistent picture of the appellant having long-term and chronic health problems including blackouts and dissociative episodes and having input from mental health services over a

number of years. The most recent report from the consultant psychiatrist Dr Attwood dated 2 November 2023 confirms that his mental health deteriorated in 2023, particularly as a result of his uncertain immigration status and forthcoming court proceedings. At least two of the medical professionals working with the appellant including Dr Attwood and Ms Salim were of the view that if the appellant were removed to Nigeria, he would become actively suicidal. This evidence was not before the previous Tribunal.

14. Importantly, the respondent did not challenge any of this medical evidence.

Treatment of Ms Salim's evidence

15. The judge referred to the report from Aisha Salim at [46] which stated that the appellant's EMDR treatment had reduced the intensity and frequency of his suicidal ideation and that his psychotherapist has suggested that he would benefit from further focused therapy.

16. The judge then went on to comment that Ms Salim is not in a position to comment on the credibility of the appellant's asylum claim nor what support network he has in Nigeria.

17. I am in agreement with Ms Seehra that the judge's treatment of Dr Aina's evidence at [46] was selective. Dr Aina also stated;

> "[EJ] would also inevitably become actively suicidal again without the support of mental health community and crisis services in place. He would not be able to access such specialist services with ease, or arguably at all, in Nigeria, and thus be subject to further mental distress, marginalisation and discrimination. He has an extensive history of attempting suicide and research shows that those who have had previous suicide attempts are at higher risk of ending their life by suicide. I hope this information is sufficient for you to consider the detrimental impact on [EJ's] mental state was he no longer to receive mental health services. The support he continues to receive is instrumental to managing his safety and promoting stabilisation through encouragement, reassurance and supporting him to develop a positive mind-set."

18. The judge does not engage with this evidence and does not make findings on what the effect would be on the appellant if he were not to receive any or any adequate medical treatment in the light of this evidence. Without this finding, it is not possible to evaluate the extent to what extent the appellant's mental health would deteriorate on return with or without treatment. It was clearly accepted by the respondent and is apparent from the entirety of the medical evidence that the appellant has serious and long-standing mental health problems. I am satisfied that it was an error on the part of the judge not to make findings on the risk of suicide in conjunction with Dr Attwood's evidence that I set out below.

Treatment of Dr Attwood's evidence

19. At [48] judge then turned to the evidence of Dr Attwood which also postdated the pervious hearing. Dr Attwood is the appellant's treating consultant psychiatrist and as such he had access to the appellant's extensive medical records. He saw the appellant on 18 January 2023, and later in the year on 13 October 2023. (He also refers to reviewing the patient on other occasions). In January 2023 he comments on the appellant's previous attempts at suicide, the impact his poor mental health has on his daily life and concludes that without

treatment his risk of suicide would increase significantly. His conclusion in his report dated November 2023 was that the appellant's mental health had declined in the intervening period.

20. The judge gave little weight to the evidence from Dr Attwood. The inference from this was that she did not accept that his mental health had deteriorated to the extent that she could depart from the findings from the previous Tribunal on risk of suicide.

21. Her reasons were:

a) the report dated January 2023 "does not refer to any detailed assessment nor the methods that Dr Atwood used for that assessment"[49]

b) Dr Attwood "provides very little detail as to why he considers that the appellant would not be fit to fly. He makes no reference to whether the appellant would be fit to fly if accompanied and taking his medication".[50]

c) In respect of the updated report from Dr Attwood, dated 2 November 2023, "he does not give the length of time that he assessed the appellant. Most of the information provided to him came from the appellant's wife".[52]

d) "Dr Attwood relied upon his previous diagnoses. No clear opinion was given for why he believes that the appellant's mental health has deteriorated since he was last seen. In January 2023, the appellant was well enough to give instructions to his Solicitors to prepare a detailed witness statement on his behalf. Dr Attwood did not enquire with the appellant's wife whether the appellant is taking his medication. Nor did he explore how the appellant communicates with his wife, other family members or those within his church community. Furthermore, Dr Attwood did not consider whether the appellant was exaggerating or faking his presentation. I attached less weight to Dr Attwood's reports".[54]

22. Although the question of weight is in general for the judge, I am satisfied that the judge's approach to Dr Attwood's evidence was erroneous.

23. Dr Attwood is part of the NHS medical team treating the appellant. As a consultant psychiatrist he manifestly had the professional experience to assess the appellant. Dr Attwood is plainly competent to give an opinion on the current state of his own patient. He met the patient on 2 separate occasions, carried out further reviews and had access to his extensive medical notes. This is recorded both in the letter dated 24 January 2023 in which he refers to a review of the electronic records (the appellant's mental health problems have been ongoing since 2006) and a "clinical assessment", and, in the letter dated 2 November 2023 where he refers to "compiling his report from a review of electronic records and following a clinical assessment of the patient". Those records are said to be extensive. The later reviews would have taken into account the examination by Dr Olusola Aina on 12 August 2022.

24. On 2 November 2023 he then sets out the mental state examination as follows.

> "On mental state examination he presented as unwell: Appropriately attired a little unkempt. Rapport not really formed - 'Dr Attwood - good man, Dr Ajay - good man', eye contact poor, made fleetingly. Sat reciting psalm 91 to himself and when seen alone became agitated and was hitting himself in a stabbing manner and thrusting his hips saying 'rape, rape'. Did not appear able to engage in the consultation in a

> meaningful way and appeared frightened throughout. Speech normal RRVT but brief, only really reciting the psalms and saying he was scared. Thoughts about being killed. Thoughts were focused on his trauma and the belief he would be killed preoccupied him. Mood subjectively scared and objectively low with reactive affect. Nil thoughts to harm self or others. Insight not apparent today.

25. This is manifestly a detailed assessment based on his own clinical observations.

26. The evidence that Dr Attwood was providing was the evidence of a treating clinician with access to the appellant's extensive electronic notes. This is more akin to a consideration of GP evidence than of a medical expert who is not treating the appellant and has been instructed independently to prepare a report on the appellant. This is a slightly different category of evidence as it is obtained in a different context albeit at the request of the solicitor. This is analogous to headnote (4) of HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC) where it is said;

> "Notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal"

27. Dr Attwood had access to a broader picture of the appellant and can be taken to have assessed him professionally. The judge's complaint that he did not carry out a detailed assessment or refer to his method of assessment is erroneous because he did refer to his method of assessment and manifestly carried out a detailed assessment particularly in November 2023. These reasons are unsustainable.

28. Similarly in the capacity of treating consultant psychiatrist he is not required to explain how long he spent examining the appellant. He manifestly referred to looking through the appellant' clinical notes and to a "clinical assessment". I take judicial note that it is not general practice for consultants to state as a matter of course how long examinations last. As previously stated, a report by a treating consultant is a slightly different beast to an independent expert report. I am also satisfied that this reason for according this evidence little weight is also flawed.

29. The judge's comment that the doctor did not give reasons for finding that the appellant was fit to fly is also flawed. Dr Atwood clearly stated "Mr EJ may not be fit to fly from a psychiatric perspective. His mental illness impairs his ability to go outside alone and I would be concerned that he would become unstable if he were to fly. This would require further assessment if he were required to fly. (My emphasis)

30. Dr Attwood has not said that the appellant is not fit to fly. He has stated that he might not be fit to fly. He also provided his reasoning in that the appellant cannot go out alone which is consistent with evidence from other health professionals he has interacted with over the years who have reported that he does not go out without his wife and can have dissociative episodes when he "blacks out".

31. The doctor has clearly explained in the letter of 2 November 2023 why he believes the appellant's health has deteriorated. This is manifestly based on his observations of the appellant who he records as presenting as unwell which was

different to when he saw him earlier in the year . He also states that the impending court hearing has been the cause of this reduction in function. This is consistent with previous GP notes which record that the appellant becomes distressed as a result of his immigration status and is consistent with his remitting and relapsing depression.

32. At [54] the judge has taken into account immaterial factors. How the appellant communicates with his wife or others was not a material matter for Dr Attwood. Similarly whether the appellant was well enough to provide a statement to his solicitors in January 2023 is not material to an assessment in in November 2023.

33. It would not be appropriate for treating NHS consultants or treating health care professionals to state in every letter, whether they have considered that a patient is dissembling or fabricating symptoms. The consultant had previously seen the appellant a year earlier. He manifestly had access to the appellant's medical records. This appellant has a long history of chronic mental health problems. The doctor is qualified to make observations and diagnosis of a patent based on his expertise. I have set out his observations above. I am in agreement that it was irrational for the judge to have given less weight to this evidence because Dr Attwood did not comment on whether the appellant's symptoms were genuine. Further, it was not submitted by the respondent at the hearing that the appellant had fabricated his symptoms. Indeed, the respondent's representative raised concerns over whether the appellant had capacity indicting that he his presentation at the hearing was poor which was consistent with the conclusions of Dr Attwood.

34. The judge's finding that Dr Attwood's opinion carried little weight carried the inference (although this is not explicitly stated) that the appellant was feigning his symptoms and that his mental health had not deteriorated since the previous hearing. This finding is unstainable for the reasons given above.

35. This error together with the error in failing to make findings on Ms Salim's evidence infects the judge's finding that she is unable to depart from the overall findings of the previous judge, because if the appellant's health had deteriorated, this was a relevant factor to take into account in the Article 3 ECHR assessment in terms of the risk of suicide (with or without the ability to obtain treatment), the extent to which his health would deteriorate in the absence of treatment as well as the Article 8 ECHR proportionality assessment. The materiality of these errors is affected by whether the judge's findings on the availability of treatment are sustainable.

Ground 2

36. At [79], the Judge states;

> '..even if I find that the appellant suffers from PTSD and recurrent depressive disorder, mental health treatment is available in Nigeria'.

37. At [87], the Judge finds that the appellant '..would be able to receive appropriate medical treatment in Nigeria..'.

38. These findings are premised on [69], [70] and [71] which refer to the Country Information Report and Human Rights Watch Report.

39. There were two country reports before the Judge: Dr Inge Amundsen's dated 19 January 2020 (respondent's bundle pages 47-66) and that of Mr Prince Agwu dated 26 January 2023 (appellant's bundle pages. 123-162). Both expert reports addressed the availability of mental health services in Nigeria. Further, as well as the respondent's relevant Nigeria CPIN report, the appellant's bundle contained several articles regarding the provision of mental health care in Nigeria (see pages 337-382). The skeleton argument dealt with this evidence and made extensive references to the relevant sections of the CPIN and expert reports in respect of the lack of adequate provision of appropriate care for the appellant given his symptoms at the date of hearing.

40. Although it is clear from the background evidence that some mental health treatment is available in Nigeria, it is also clear that it is very difficult to access treatment because of the scarcity of resources, the stigma attached to poor mental health, and this needed to be addressed in the context of the specific treatment required by the appellant including medication and therapy including EMDR therapy and in the context of his limited function.

41. I am satisfied that there is no assessment of these reports by the Judge. The judge appears to have referred only to sections of the CPIN which set out the care that is available in Nigeria which in themselves recognise that there is chronic shortage of mental health provision and that most provision is private and expensive. There was a lack of balanced consideration of all the material. It is not tolerably clear from the decision why the judge found that the treatment required by the appellant would be available to him even if he had family support in Nigeria because there is a lack of findings on what treatment he would require, how expensive it is and what his living situation would be in Nigeria.

42. By the date of the hearing the appellant was said to be poorly functioning and requiring support with his day to day living needs despite being on medication. It is not clear from this why the judge concluded at [82] that the appellant would be able to work and would not face any stigma.

43. I am satisfied that grounds 1 and 2 are made out, that there are errors in the judge's approach and that these errors are material to the outcome of the appeal. It cannot be said that another Tribunal would inevitably have come to the same conclusion and indeed there are factual findings that need to be made. I therefore set the decision aside in its entirety with no findings preserved.

43. On this basis I do not go on to consider Ground 3.

Disposal

44. Both representatives indicated that the appeal should be remitted to the First-tier Tribunal for rehearing. The original decision was made by the respondent almost three years ago in 2021 and the appeal hearing took place six months ago. The appellant and the sponsor may want to give further evidence in relation to their family circumstances in Nigeria. There need to be extensive factual findings in respect of the appellant's current medical condition. On this basis, notwithstanding that the normal course is to retain the appeal at the Upper Tribunal, I am satisfied that in this appeal the appropriate course of action is to remit the appeal to the First-tier Tribunal for a de novo hearing.

Notice of Decision

1. The making of the decision of the First-tier Tribunal involved the making of an error of law.

2. The appeal is set aside in its entirety with no findings preserved.

3. The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Beg.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 May 2024