IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000149
First-tier Tribunal No: HU/57624/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 April 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

EO (NIGERIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Adewoye, Solicitor, Prime Solicitors Ltd
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 25 March 2024

Order Regarding Anonymity

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.

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of Judge of the First-tier Tribunal Clarke ('the Judge') refusing his appeal on human rights (article 8 ECHR) grounds. The decision was sent to the parties on 13 January 2024.

2. I indicated at the conclusion of the oral hearing that grounds 1, 2 and 4 were to be dismissed, having not called upon Ms Nolan to address these grounds. I took time to consider ground 3 as advanced. For the reasons detailed below, this ground is also dismissed.

Anonymity

3. The Judge issued an anonymity order in this matter and gave her reasons at [3] to [5] of her decision. Neither party requested that the anonymity direction be set aside. I confirm the anonymity order and detail it above.

Relevant Facts

4. The appellant is a national of Nigeria and presently aged 49. He entered the United Kingdom with entry clearance as a visitor on 25 April 2007. His leave expired on 6 June 2007, and he overstayed.

5. He was encountered working illegally on 1 April 2010 and served with a notice as to his liability to be removed. He served two separate applications upon the respondent seeking an EEA residence card; refused respectively on 7 July 2010 and 22 October 2012. He applied for leave to remain outside of the Immigration Rules on 11 October 2018. This application was refused and certified as clearly unfounded by the respondent on 25 February 2019. An application under the Windrush Scheme was refused by the respondent on 5 May 2020.

6. On 2 August 2021 the appellant applied for leave to remain on human rights grounds relying upon article 8 private life. He asserted that he was suffering from stress, anxiety and depression. Additionally, he stated that he had suicidal thoughts. The respondent refused the application by a decision dated 17 October 2022. The appellant's health concerns were considered by the respondent under article 3 ECHR. It was considered that adequate medical treatment was available in Nigeria. Noting the test identified by the Supreme Court in *AM (Zimbabwe) v. Secretary of State for the Home Department* [2020] UKSC 17, [2021] AC 633 and observing that the appellant had not provided evidence capable of demonstrating substantial grounds for believing that he would be exposed to a real risk of treatment contrary to article 3, the respondent did not accept that the appellant's removal from the United Kingdom would breach protected article 3 rights.

7. The appellant filed grounds of appeal with the First-tier Tribunal on 22 October 2022, asserting that the respondent's decision was unlawful under section 6 of the Human Rights Act 1998.

8. The appellant filed an appeal bundle with the First-tier Tribunal on 26 January 2023, running to 29 pages. By means of his witness statement, dated 25 January 2023, the appellant referenced his health concerns, detailing that his mood "is still very low", he had "developed suicidal thoughts" and he was taking unnamed antidepressant medication. There is no mention of his previously having attempted suicide. He provided a letter from a senior CBT therapist dated 30 November 2022 referencing his attendance at a telephone screening interview where he referenced low mood. Also provided was a counsellor's letter dated 17 January 2023, following an assessment, which records the appellant referring to suffering from stress and low mood.

9. The appellant's skeleton argument (ASA) was filed by his then solicitors Rashid & Rashid on 27 February 2023. The ASA is considered below.

10. Over the course of the following months various documents were filed on behalf of the appellant, including photographs of a prescribed box of fourteen Mirtazapine 30 mgs tablets, to be taken once a day. Mirtazapine is an antidepressant.

11. Rashid & Rashid were intervened in by the Solicitors Regulation Authority on 31 July 2023 and the appellant transferred his case to Prime Solicitors.

12. On 1 December 2023, the appellant filed a supplementary bundle running to 84 pages, including a country expert report from Dr Akin Iwilade, Lecturer in African Studies, University of Edinburgh, dated 29 November 2023. Additionally, there was a letter from a senior psychological wellbeing practitioner, dated 2 October 2023, detailing the appellant reporting his struggles with anxiety and depression, along with low mood and difficulties in sleeping. Following the completion of questionnaires the appellant was assessed to be moderately depressed.

13. A psychiatric report from Dr Azmathulla Khan Hameed, Consultant Psychiatrist, dated 7 September 2022, was filed with the First-tier Tribunal prior to the hearing.

First-tier Tribunal Decision

14. The appeal came before the Judge sitting at Taylor House on 4 December 2023. The appellant was represented by Mr Adewoye, as he is before this Tribunal, and the respondent by Mr Reynolds, Counsel. The appellant gave evidence as did two of his cousins and a friend.

15. The Judge notes at [5] of her decision that Mr Adewoye sought to rely upon article 3. She records:

> '5. In the skeleton the issues for me to determine were identified as Paragraph 276 ADE (1)(vi) of the Rules and Article 8, and the Review agrees and at the start of the hearing the representatives

> agreed these issues. It is for this reason that I prevented Mr Adewayo from embarking on an Article 3 discrete health issue ground and confirmed that the standard of proof is the balance of probabilities. I also ruled that the Appellant would not be removed if at a moment in time he was not fit to fly but that does not of itself have an impact on my decision.'

16. The appellant was found not to be a credible witness. The Judge was critical of Dr Hameed for taking all that the appellant said at face value and not assessing the facts that were presented to him. She also noted that Dr Hameed had not considered whether the appellant was exaggerating or feigning. Ultimately, she placed limited weight upon the psychiatric report.

17. The Judge further found that she did not accept the evidence of the witnesses that they would cease supporting the appellant financially upon his return to Nigeria. She noted that they had been looking after him financially in this country for over ten years, paying his rent. It was observed that they travel to Nigeria. The Judge found that they would continue to support the appellant financially to aid his initial integration. The Judge concluded that the appellant had worked in the United Kingdom for a decade and would be able to work on his return to Nigeria. She was therefore satisfied that he would be able to secure employment, maintain himself and accommodate himself.

18. The Judge found as to the appellant securing appropriate health care on return to Nigeria:

> '16. The Appellant is using counselling and talking therapies but I can see that this is used by telephone and computer CBT can be undertaken. The objective evidence is found in the CPIN Nigeria: Medical Treatment and health care December 2021 confirms that the medication is available in Nigeria. In the case of this Appellant, the family/friend network in the UK ensured the Appellant sought medical assistance with his mental health and this is ongoing, and therefore, I find that it is more likely than not that this would continue upon the return of the Appellant to his country. I have read about a strong societal belief that mental illness is caused by evil spirits or supernatural forces and how many Nigerians suffering from mental health illness seek treatment from traditional or faith-based healers rather than mental health professionals. However, given the Appellant is returning from the UK and has a cousin who is a mental health nurse, I find it more likely than not that the Appellant would seek and obtain modern treatment. What the Appellant needs is also talking therapy and that can include from family and friends and can continue with the telephone to the UK network and I find there exists the relevant facilities for him to access in his country, and the UK network will ensure that he does access treatment as required by him.'

19. As to the report of Dr Iwilade the Judge concluded that it was undermined by the fact that he proceeded on the basis that the appellant had no family network in Nigeria and no one to support him economically and emotionally upon his return to his home country.

20. The Judge refused the appellant's appeal on article 8 grounds both under and outside the Immigration Rules.

Grounds of Appeal

21. The appellant advances four grounds of appeal.

(i) The Judge erred in refusing to entertain arguments on article 3 medical care.

(ii) The Judge erred in failing to make findings on the importance of the appellant's dependency upon his cousins and friend in the United Kingdom.

(iii) The Judge gave inadequate reasons for her conclusions and findings.

(iv) The Judge failed to give lawful reasons for placing less weight on the psychiatric report.

22. Judge of the First-tier Tribunal Boyes granted the appellant permission to appeal by a decision dated 13 January 2024, reasoning that there was "some dispute" as to why the Judge refused to entertain the article 3 appeal. Judge Boyes observed, "I do not have access to the arguments mounted at the time or what the Judge said, and the matter is dealt with very succinctly in the judgment ... I will grant permission on this issue and the remainder of the issues raised for the sake of completeness". I address the lack of clarity on this issue in the grounds of appeal below.

23. The respondent filed a Rule 24 response dated 23 January 2024, which primarily addressed ground 1:

> '3. The grounds do not establish on what basis the application to rely on Article 3 was made at the hearing on 04/12/23. This was a 'reform' appeal conducted via the HMCTS CCD platform. As set out on the platform directions of the Tribunal dated 09/12/22 required the A to build his case and upload an ASA that included/addressed:
>
> - *a concise summary of the appellant's case*
> - *a schedule of issues*
> - *why those issues should be resolved in the appellant's favour, by reference to the evidence you have (or plan to have) and any legal authorities you rely upon*

4. Further directions were issued on 08/02/23 for an ASA to identify evidence or principles of law that will enable the basis of challenge to be understood.

5. As highlighted by the FTTJ at [5] the issues identified in the ASA as lodged 27/02/23 (and subsequently addressed in the Respondents review) were those confined to very significant obstacles and Article 8. At no point prior to the hearing that took place nearly 10 months later did the A seek to raise Article 3 as a ground of appeal or point in issue. Nor was an application made to do so.

6. In any case, as set out in the FTTJ decision, the Tribunal considered the medical evidence and country evidence making clear findings of fact. Given those findings that [16-17] the medical services required are available and accessible, it is difficult to see how any application of the stringent test under Article 3 would have succeeded as per AM Zimbabwe.'

Decision

Preliminary observation

24. I have concluded that if greater clarity had been provided by Prime Solicitors when drafting the ground one of the grounds of appeal, permission to appeal would not have been granted in this matter. Judge Boyes understood that there was a dispute as to why the Judge had refused to consider the article 3 appeal. I have no doubt that Judge Boyes's observation was founded upon the introductory paragraph to the first (unnumbered) paragraph of the appellant's grounds of appeal:

> 'The IJ (sic) erred in law when she refused to entertain arguments on Article [3] medical case. Though not specifically mentioned in the Skeleton Argument it has always been part of the A's case from inception.'

25. As is clear from the ASA, article 3 was not pursued at this stage of proceedings. The appellant relied upon article 8 alone in respect of his health. It can be said that the contrary assertion adopted in the grounds of appeal is misleading. It is of concern that Mr Adewoye appeared at the hearing before this Tribunal not to understand that the contention as to it always being the appellant's case that his removal would breach protected article 3 rights was not supported by the ASA. As discussed below, Mr Adewoye eventually accepted, after some time in his submissions, that he had given inadequate consideration to relevant paragraphs of the ASA, which is a concern in light of the ground of appeal advanced. Mr Adewoye properly acknowledged that care was to be taken in drafting so as not to mislead a tribunal.

26. It is also of concern that Mr Adewoye confirmed at the hearing that he was unaware of the decision in *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 (IAC), [2023] Imm AR 1416, despite it having been

reported in the summer of 2023. Practitioners in the field of asylum and immigration law can properly be expected by this Tribunal to keep up to date with reported decisions. Mr Adewoyo was given time to read the decision in *Lata* before the hearing commenced.

Materiality

27. The appeal before both this Tribunal and the First-tier tribunal was advanced by the appellant's legal representatives, Prime Solicitors, without adequate consideration of guidance provided in three reported decisions of the Upper Tribunal: *AM (Art 3; health cases) Zimbabwe* [2022] UKUT 00131 (IAC), [2022] Imm AR 1021; *HA (expert evidence; mental health) Sri Lanka* [2022] UKUT 00111 (IAC), 2022] Imm AR 809; and *Lata.*

28. When considering materiality below, I observe failings of various evidence relied upon by the appellant.

29. The psychological report prepared by Dr Hameed, dated 7 September 2022, post-dates the Presidential panel decision of *HA*, which was reported on 21 April 2022. The headnote to *HA* details, *inter alia*:

> (3) It is trite that a psychiatrist possesses expertise that a general practitioner may not have. A psychiatrist may well be in a position to diagnose a variety of mental illnesses, including PTSD, following face-to-face consultation with the individual concerned. In the case of human rights and protection appeals, however, it would be naïve to discount the possibility that an individual facing removal from the United Kingdom might wish to fabricate or exaggerate symptoms of mental illness, in order to defeat the respondent's attempts at removal. A meeting between a psychiatrist, who is to be an expert witness, and the individual who is appealing an adverse decision of the respondent in the immigration field will necessarily be directly concerned with the individual's attempt to remain in the United Kingdom on human rights grounds.
>
> (4) 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.
>
> (5) Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be

satisfied by a report which merely attempts to brush aside the GP records.

(6) In all cases in which expert evidence is adduced, the Tribunal should be scrupulous in ensuring that the expert has not merely recited their obligations, at the beginning or end of their report, but has actually complied with them in substance. Where there has been significant non-compliance, the Tribunal should say so in terms, in its decision. Furthermore, those giving expert evidence should be aware that the Tribunal is likely to pursue the matter with the relevant regulatory body, in the absence of a satisfactory explanation for the failure.

30. It may be considered best practice for a copy of *HA* to be provided to a psychiatrist instructed to prepare a report in proceedings in asylum and immigration matters.

31. No GP notes are identified as having been placed before Dr Hameed at the time of the consultation on 6 September 2022 (mistakenly identified as September 2021 in the report). However, there is documentary evidence in the appellant's bundle before the First-tier Tribunal confirming that he was a patient at a GP surgery in London at this time.

32. Additionally, whilst Dr Hameed records the appellant as reporting difficulty sleeping, variable mood, irritability, poor concentration, lapses in memory, tiredness along with loss of appetite, anxious, nervous, apprehensive and having attempted suicide on two occasions, with fleeting suicidal thoughts, various other health practitioners record the appellant identifying differing ailments at around the same time. In a letter to the appellant sent in November 2022 a senior CBT therapist records the appellant referencing low mood and worry consequent to his present circumstances. In a letter to the appellant's GP in January 2023, a counsellor records the appellant referencing stress and low mood. Neither the senior CBT therapist nor the counsellor record the appellant reference two suicide attempts, fleeting suicide ideation, or several of the other concerns noted by Dr Hameed, despite meeting him weeks later. I observe that in his witness statement of January 2023, signed approximately four months after his consultation with Dr Hameed, the appellant does not reference having made two suicide attempts, and he identifies his mental health concerns as depression, anxiety and stress. He references his mood as being very low and that he has 'developed' suicidal thoughts, though no further detail is given as to the latter concern.

33. Mr Adewoye accepted at the hearing that Dr Hameed's report was undermined by the failure to consider GP records. Such failure significantly undermines the weight that can properly be placed upon the report and adversely impacts several of the challenges advanced before this Tribunal. Proper consideration should have been given by Prime Solicitors to the guidance in *HA* before relying upon Dr Hameed's report before this Tribunal, the Presidential decision having been reported long before grounds of appeal were filed in this matter.

34. Turning to the 'country expert' report of Dr Iwalade, I observe the section of his report concerned with 'qualifications and relevant experience'. He is a social scientist, with a doctorate in International Development from the University of Oxford and two MScs. His research addresses areas of politics and society in Africa, including cultural anthropologies of violence, regional security in West Africa, and the exploration of human rights, social services and everyday life in Africa more generally.

35. The instructions provided to Dr Iwalade are concisely detailed at page 2 of his report:

    a. We wish to instruct you to prepare a country expert report on the difficulties our client will face in Nigeria as a person with mental health issues.

    b. And a person who has been in the UK for 17 years plus and does not have ties in Nigeria and no family network.

    c. Is there a risk of destitution? Will he be able to access employment and government support. In light of his vulnerable mental health condition.

36. The Upper Tribunal observed in its decision of *AM (Zimbabwe)* as to considering whether a person would face an article 3 risk on return to their country of nationality arising from the absence of medical treatment that, generally speaking, whilst medical experts based in the United Kingdom may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful. Such approach can properly be applied to report concerning overseas medical treatment and article 8.

37. I am unable to identify from Dr Iwalade's qualifications and relevant experience that he has expertise as to the availability of and access to medical treatment in Nigeria. If he does, this is not set out clearly. I am mindful that a person may be an expert in matters – and Dr Iwalade has expertise in several areas such as security conditions in countries such as Ethiopia - but this does not make them an expert on all issues that they address. I observe the guidance of the Supreme Court in *Kennedy v Cordia (Services) Ltd* [2016] UKSC 6, [2016] 1 WLR 597, at [38] - [61], in particular whether a witness has the necessary knowledge and experience to aid a tribunal. For my part, on the information provided, I do not presently consider Dr Iwalade expert on the issue of the availability of, and access to medical treatment in Nigeria. He may be able to provide clarity

as to expertise on this issue at a future date, but necessary information is not provided in his report of 29 November 2023.

38. Further, as Mr Adewoye accepted before this Tribunal, Dr Iwalade does not address the provision of medical care in the city to which the appellant will return, or in his wider home area. Indeed, no mention is made at all to where in Nigeria the appellant will be returning to. Opinion is provided in general terms in respect of Nigeria as a whole, and not an on the ground assessment of medical treatment in the area where the appellant will return to reside.

39. In any event, the report has difficulties for several other reasons. It is reliant upon Dr Hameed's report as the nature of the appellant's mental health concerns. Further, the Judge found as a fact that the appellant could secure support from United Kingdom-based friends upon return to Nigeria and had skills to secure employment. In assessing materiality below, little weight can properly be given to this report.

Ground 1

40. The Upper Tribunal confirmed in *Lata* that upon the parties engaging in filing and serving a focused ASA and review, a judge sitting in the First-tier Tribunal can properly expect clarity as to the remaining issues between the parties by the date of the substantive hearing. It remains open for a party to raise a matter at the commencement of a hearing when a judge requests clarification as to outstanding issues, though a 'new' matter requires the agreement of the respondent to proceed, and the First-tier Tribunal will be mindful of its case management powers under rule 4 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

41. Ultimately it may or may not have been the appellant's intention to rely upon article 3 when making his original application for leave to remain, though the application is clearly couched in terms as an article 8 private life application for leave to remain. What is clear is that the ASA filed by Rashid & Rashid in January 2023 does not expressly rely upon article 3. The case as advanced on behalf of the appellant relied upon article 8 within the Rules - paragraph 276ADE(1)(vi) - and article 8 outside of the Rules in respect of a medical case. The ASA addressed a balancing test under section 117B of the Nationality, Immigration and Asylum Act 2002.

42. Relevant to this appeal are paragraphs 31 to 33 of the ASA:

> '31. Furthermore, as far as the physical integrity is concerned, the scope of Article 8 overlaps with the ambit of Article 3 ECHR. As pointed out above, the Court distinguishes the fields of application of these 2 provisions according to the gravity of the interference. While it considers article 3 *lex specialis* if grave interferences with a person's well-being are in question, the right to private life

comes into play when the interference does not reach the threshold required to qualify it as torture or inhuman treatment.

32. We rely on our submissions above and submit that it will be a breach of the Appellant's rights under Article 8 if he is refused and required to leave the UK hence depriving him of adequate treatment and/or medication.

33. We therefore submit that it will be a breach of the Appellant's rights under Article 8 of the ECHR.'

43. Rashid & Rashid considered article 3 on behalf of the appellant and I conclude that a decision was made not pursue a challenge on this ground, preferring to advance the medical case under article 8. It is implicit upon a fair reading of paragraphs 31 to 33 that the legal representatives did not consider a meritorious argument could be advanced on article 3 grounds. I have no doubt that this was a professional judgment made on the basis that the medical evidence then in existence came nowhere close to establishing the high threshold required by article 3. The approach adopted in the ASA unfortunately also fails to engage with the guidance provided by the Court of Appeal in *GS (India) v. Secretary of State for the Home Department* [2015] EWCA Civ 40, [2015] 1 W.L.R. 3312, at [85] to [86]. Where an appellant resists removal to another state on health grounds, failure under article 3 does not necessarily entail failure under article 8. However, if the article 3 claim fails, article 8 cannot prosper without some separate or additional factual element which brings the case within the article 8 paradigm—the capacity to form and enjoy relationships —or a state of affairs having some affinity with the paradigm. This requirement is not addressed in the ASA.

44. The respondent filed a response addressing the ASA and it is abundantly clear that the respondent understood the case as advanced to be solely based upon article 8.

45. Prime Solicitors were instructed in August 2023, after Rashid & Rashid were intervened in by the Law Society. The firm had four months to file an addendum ASA and provide both the respondent and the First-tier Tribunal with knowledge that there was an intention to rely upon article 3. That step was not taken. It appears that article 3 was raised for the first time on the morning of the hearing. As to his intentions on the morning of the hearing Mr Adewoye was vague and contradictory before this Tribunal. He initially informed this Tribunal "it was obvious on the papers that article 3 issues arose and would be raised on the morning of the hearing". He then confirmed that he did not mean this, rather it was the intention to rely upon documents that were placed before the First-tier Tribunal which clearly identified article 3 issues. Mr Adewoye's attention was directed to Rashid & Rashid not expressly relying upon article 3 in the ASA. He accepted that he had not adequately read paragraphs 31 to 33 of the ASA and had not at any point until his submissions before this Tribunal understood that article 3 had not been relied upon in the ASA. This is a concern. The ASA could be no clearer by its use of sub-titles and in its

paragraphs that reliance was solely placed upon article 8 under and outside of the Immigration Rules.

46. Mr Adewoye made two submissions. The first was that the respondent was aware as to article 3 being relied upon because it was addressed in the refusal letter, and the appellant relied upon medical evidence. His second point was that the Judge should have adopted a *Robinson* obvious approach to article 3 once he had raised it before on the morning of the hearing.

47. Ultimately, I am not required to consider either submission. Mr Adewoye accepted before me that Dr Hameed's report was inadequate as relevant GP notes were not considered. Additionally, in respect of suicide ideation and other asserted health symptoms, the appellant has given contradictory information to other health professionals. The evidence before the Judge, and before this Tribunal, comes nowhere close to meeting the relevant article 3 threshold identified by the Supreme Court in *AM (Zimbabwe)* and the Grand Chamber of the European Court of Human Rights in *Savran v Denmark* (application no. 57467/15) [2022] Imm AR 485.

48. The first submission enjoys no merit because the respondent properly relied upon the case advanced in the ASA when he filed and served his review and so understood that article 3 was not being relied upon. The second ground tilts at the wrong windmill. Whilst a party can raise an issue at the beginning of the hearing, and this is confirmed by *Lata* at [33], this will usually require the undertaking of case management by a judge, with attendant consideration of an adjournment and potential wasted costs. In this matter, however, as addressed above, the appellant through his previous legal representatives had acknowledged that he could not meet the article 3 threshold, and the evidence subsequently filed could not reasonably be considered to advance his case because of the significant flaws identified above. This ground is dismissed.

Ground 2

49. Mr Adewoye accepted that this ground was not drafted with the required clarity.

50. This is not a case where it was asserted by the appellant that there was something more than normal emotional ties with family members in the United Kingdom: *Kugathas v. Secretary of State for the Home Department* [2003] EWCA Civ 31, [2003] INLR 170.

51. Ground 2 initially contends that the Judge failed to make findings as to the importance of the appellant's dependency on his cousins and a friend in the United Kingdom. The Judge did make findings on this issue, at [12], [14] to [17], and concluded that the cousins and friend would continue to support him upon his return to Nigeria. There is no merit to this element of ground 2.

52. Additionally, the ground as drafted states:

> 'The Psychiatrist in his report as quoted at [10] of the determination that the mental health of [the appellant] is likely to deteriorate significantly when he is separated from his family and social networks in the UK leading to isolation and risks. The judge sought to criticise the report by not evaluating the support that will continue in Nigeria from the family members in the UK. The irrationality in the finding is that the psychiatrist is not a country expert so would naturally be unable to comment on the appropriate social and living environment, or medical treatment available to him in Nigeria or the medical intervention the family would be able to arrange for him.'

53. In his oral submission, Mr Adewoye identified the challenge as being directed to [11] of the Judge's decision, though I consider it helpful to observe [10] as well:

> '10. The Appellant told the expert he has attempted suicide on a couple of occasions due to the fear of deportation and ongoing illness but this was not current on the evidence of the expert and the Appellant in his witness statement. The expert considered the mental health of the Appellant is likely to deteriorate significantly when he is separated from his family and social networks in the UK leading to isolation and risks but the expert has not considered continue support by this very network upon the return of the Appellant to his country.
>
> 11. The report is somewhat out of date and no update was provided. The Appellant said in evidence that last month his mother contacted him by telephone. Whilst this is not a credibility issue regarding the date of the report, what it has shown is that there is now contact between the Appellant and his mother who lives in Nigeria. The witnesses could not assist further and the cousins are related on the father's side.'

54. Mr Adewoye was unable to explain how the challenge as advanced could be an appropriate criticism of [11] of the decision and he retreated from his initial contention that the Judge erroneously required Dr Hameed to be a country expert. As to the Judge concluding that the psychiatric report 'is somewhat out of date', this is a reasonable conclusion where the report was some fifteen months old at the date of hearing, and there was attendant healthcare evidence suggestive of the appellant not being accurate as to his symptoms. The Judge was reasonably entitled to conclude that Dr Hameed's opinion as to mental health deterioration on separation from family and a friend present in this country was not borne out on the particular facts as found. These is no merit to this challenge and this ground is properly to be dismissed.

Ground 3

55. Unfortunately, by means of its drafting ground 3 is comprised of ten separate challenges. It is difficult to understand how this approach meets the requirements by the appellant's representatives to co-operate with the Tribunal. In any event Mr Adewoye acknowledged that he only wished to rely upon subparagraphs (vi), (vii), (viii), (ix) and (x).

56. Paragraphs (vi) and (vii) are concerned with treatment in Nigeria; (viii) repeats the appellant's case as to separation from family and friends in the United Kingdom; (ix) a failure to consider the length of the appellant's residence in the United Kingdom; and (x) obstacles as to establishing a private life in Nigeria.

57. Ultimately, these paragraphs do not identify a material error of law. To an extent they simply re-state the appellant's case and no more. The primary difficulty for the appellant is that reliance is placed upon a country expert report and a psychiatric report that are inherently flawed as explained above.

58. As to the challenge advanced at (ix), the Judge expressly considered the appellant's length of residence (all bar six months of which has been unlawful) at [21] of her decision and gave cogent and lawful reasons as to why it would not be unjustifiably harsh for him to return to Nigeria. (x) simply restates the appellant's case which was rejected by the Judge who gave cogent and lawful reasons as to why no such obstacles exist. In the circumstances this ground is dismissed.

Ground 4

59. This ground is advanced in straightforward terms by the grounds of appeal, namely that the Judge gave inadequate reasons for placing less weight on the psychiatric report. As Mr Adewoye accepted at the hearing, the psychiatric report is undermined by the failure to consider relevant GP records.

60. In any event the Judge gave cogent and lawful reasons for concluding that the psychiatric report could properly enjoy only limited weight. Her criticism of Dr Hameed for taking information provided by the appellant at face value was reasonable in circumstances where she was aware from her consideration of attendant documents that the appellant had not raised suicidal ideation with other health practitioners either before or after the psychiatric consultation. If that information had been known to the psychiatrist, he can be expected to have considered whether the appellant was exaggerating or feigning his circumstances. I dismiss ground 4.

Notice of Decision

61. The decision of the First-tier Tribunal sent to the parties on 13 January 2024 is not subject to material error of law. The appellant's appeal is dismissed.

62. The anonymity direction issued by the First-tier Tribunal is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 April 2024