Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/10977/2019 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC **Decision & Reasons Promulgated**

On 9 March 2021 **On 16 March 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SAKN

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

For the appellant: Mr J Greer, instructed by Broudie Jackson Canter

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Senegal with date of birth given as 5.11.78, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 22.9.20 (Judge Dainty), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 29.10.19, to refuse his claim for international protection made on 15.10.18.

2. The grounds first argue that the First-tier Tribunal failed to engage with a country expert report confirming that the specific anti-psychotic medication prescribed to the appellant is not available and that there is widespread stigma and discrimination towards those suffering mental illness. It is argued that the fact that some treatment is available was insufficient reasoning to determine whether the appellant would be able to receive adequate treatment. Mr Greer couched this ground in terms of paragraph 276ADE and very significant obstacles to integration. The second ground alleges inadequate reasoning for concluding that the Article 3 claim was not made out on the basis of the stress of removal, when the expert's view was that the stress of proposed removal triggered the last psychotic episode.

3. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 15.10.20, considering it arguable that the judge did not address the expert evidence and that whilst the judge considered that the appellant's partner's family could provide support in the face of stigma and discrimination, this was not obvious and not canvassed with the parties.

4. The judge granting permission considered that the judge was entitled to conclude that a low risk of relapse in the immediate future, according to the expert, failed to meet the high threshold for an Article 3 claim. However, it was arguable that the judge did not adequately consider the risk of removal triggering an immediate relapse.

5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. The Tribunal has received the respondent's Rule 24 reply, dated 30.10.20, which asserts that the judge was entitled to consider that the appellant could seek some assistance from his partner's family and that he could be financially supported by her on his return to Senegal. Further, the expert's view that mental health care and treatment might not be adequate or available is not sufficient to undermine the judge's conclusion that the appellant could access medical treatment.

6. In relation to very significant obstacles to integration under paragraph 276ADE, it is difficult to see how even taking the evidence relied on in the grounds into account the circumstances could amount to very significant obstacles. The

appellant is familiar with Senegal, having spent most of his life there. Whether or not he will have the support of his partner's family on return and even though there may be widespread stigma and discrimination, he will have, the judge found, his partner's continued financial support and medical treatment is available for his mental health difficulties. This case falls far below the very significant obstacles test and the matters raised in the grounds cannot elevate it to meet the private life requirements for leave to remain under paragraph 276ADE.

7. In relation to Article 3, I am entirely in agreement with the judge granting permission that there is no error of law in relation to the finding of a low risk of relapse in the immediate future.

8. The major difficulty for the appellant in reaching the high threshold required for a viable claim is that his own expert opined that "without anti-psychotic medication and psychiatric input, for example due to financial problems, (the appellant's) risk of relapse of his mental health can dramatically increase in the medium to long term. However, the risk of relapse occurring in the immediate future would be considered low." The expert's somewhat contradictory opinion at 2.2.1 that abrupt discontinuation of anti-psychotic medical or if not readily available amounted to a moderate to high risk of relapse was in the context of the appellant being unable to pay for his prescription. However, the judge found that the appellant was financially supported by his partner and would continue to be so on return to Senegal. There was on the evidence no reason why the appellant would either unilaterally terminate medication or medication would not be available. The judge also took into account that the appellant was outside a two-year period during which there was said to be a high risk of relapse on stopping medication. The evidence was that outpatient care for those suffering mental illness is available in Senegal, including the availability of anti-psychotic medication. The fact that aripiprazole may not be available, according to the country expert is neither here nor there, as alternative antipsychotic medication is available. The refusal decision at [110] sets out that there are six psychiatric facilities spread throughout the country. The appellant was relatively symptom-free, and more than two years had elapsed since his last episode. Visits by the care team had become less frequent, to every 2-4 weeks (before the pandemic). On that evidence the judge was entitled to conclude at [32] that any relapse would not be immediate or short term, but medium to long term. The judge made a correct self-direction on the AM (Zimbabwe) [2018] EWCA Civ 64 to require an imminence of intense suffering or death in the receiving state, which may only occur because of the non-availability in that state of the treatment which had previously been available in the removing state.

9. Mr Greer argued that on the basis of AM (Zimbabwe) the appellant only has to show a prima facie case of a risk for the burden to shift to the respondent. However, as Mr McVeety pointed out, the expert view of a low risk of imminent

relapse entitles the judge to conclude that there is no real risk. In the premises, the burden does not shift.

10. The judge did address at [33] of the decision the expert evidence at 2.3.2 of the report that the physical act of return will increase the risk of relapse. However, as noted by the judge, that expert assessment was predicated on the basis that the appellant was frightened of returning to his father, which claim the judge rejected as not credible and which conclusion has not been challenged in the grounds. As the judge pointed out, the expert report did not address the likelihood of relapse in relation to the general stress of removal, and, in any event, did not address whether any such relapse would be imminent or not. Those were findings and conclusions open to the judge on the evidence. In short terms, the evidence was inadequate to satisfy to meet the threshold. I am satisfied that the judge did adequately address the issue of threat of removal increasing the risk and reached a finding and conclusion open on the evidence.

11. In the premises, it is difficult to see how the article 3 threshold could be met on the available evidence, even without the alleged errors of inadequate reasoning or irrelevant considerations asserted in the grounds. Even if the threat of removal may have triggered a previous psychotic episode and even if there is widespread societal stigma and discrimination towards those suffering from mental illness, the judge was entitled to conclude that there was no real risk of the appellant rapidly experiencing intense suffering on return to Senegal. That was the plain evidence of the appellant's own psychiatric expert. Despite that, the grounds attempt to construct from other factors an alternative scenario for immediate relapse triggered by the threat of removal or stigma or discrimination, but, as stated, that was not the evidence of the psychiatric expert.

12. Whilst the specific anti-psychotic the appellant is presently prescribed is not available, there was no evidence that alternative or equivalent anti-psychotic medication would not be available and, as stated above, with financial support, no reason why the appellant would not be able to access and afford treatment, even without the support of his partner's family. In the circumstances, whether or not the appellant will have his partner's family support, the conclusion would be the same. Similarly, it is difficult to see how widespread stigma and discrimination in Senegal could convert the situation of a person with a low risk of immediate relapse and who has gone two years or more without a psychotic episode into an imminent risk of intense suffering because of the non-availabilty of treatment, when the evidence is that outpatient treatment and anti-psychotic medication is available in Senegal.

13. It follows that the alleged errors of law asserted in the grounds are not made out and even if made out are not material to the outcome of the appeal. In reality, this was a poor case with inadequate evidence to be able to meet either the very significant obstacles test or the high Article 3 threshold. The outcome of the

appeal was inevitably a dismissal. In the premises, and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 9 March 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 9 March 2021