



**Upper Tribunal
(Immigration and Asylum Chamber)
Number IA/00167/2020**

Appeal

(PA-50527-2020)

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons
Promulgated
On 06 May 2022

On 28 April 2022

Before

UT JUDGE MACLEMAN

Between

A O

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms M Sardar, instructed by Duncan Lewis & Co, Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision dated 20 May 2021, FtT Judge Aldridge dismissed the appellant's appeal "on asylum and humanitarian protection grounds" but allowed it "on human rights grounds". In the body of the decision, he explained that the outcome was against the appellant on article 3 but in his favour (on a rather different basis of fact) on article 8.
2. The SSHD has made no application for permission to appeal.
3. The appellant applied to the FtT for permission to appeal to the UT "against the determination refusing the asylum / article 3 claim (one being parasitic on the other)" on the "sole ground" of "inadequate reasoning for departure from country report / medical evidence". The FtT refused permission, on the view that the grounds were simply disagreement.

4. The appellant applied to the UT for permission on grounds set out in a document dated 8 July 2021, again stating the “sole ground” as above. The report and evidence were relied upon to show “social stigma, exploitation and discrimination to persons with mental or physical disabilities and persons who are often accused of witchcraft.”
5. On 3 November 2021, UT Judge Plimmer granted permission, based on arguable inconsistency of approach to the evidence on access to treatment for purposes of article 3 and of article 8. Judge Plimmer did not restrict the grant, but observed that the grounds on asylum were unclear, because they went to identification of a particular social group, not to key findings of no serious risk.
6. In a rule 24 response dated 1 December 2021, the SSHD maintains her position on asylum grounds, but concedes and asks the UT to revisit the findings on the medical claim under article 3.
7. Having considered the grant of permission, the appellant sought to amend his grounds, as set out at [10 – 14] of his application dated 21 February 2022, to include a challenge based on absence or inadequacy of reasons on sufficiency of protection and on internal relocation. The background evidence cited to the FtT is specified in the grounds.
8. In a further rule 24 response, dated 3 March 2022, the SSHD does not oppose amendment. She maintains that as the appellant was found to be not at risk, sufficiency of protection was irrelevant, but that in any event, it is adequately dealt with at [54-55] of the decision. She also submits that although the appellant had shown that sufferers from mental health issues or disability could form a particular social group, the Judge had not found the appellant to be in that category, given his good level of health and ability to access treatment, [57-62].
9. By a decision dated 7 March 2022, UT Judge Norton-Taylor granted the appellant’s application to amend his grounds.
10. The SSHD’s second rule 24 response is inconsistent with the first. When I checked over the papers prior to hearing submissions, it emerged that neither representative was aware of the first response. Having given them both the opportunity to consider it, Mr Tufan did not seek to resile from its terms.
11. Mr Tufan also accepted, fairly and correctly, that the health claim should be considered in terms of the findings of fact stated when dealing with article 8, the outcome on which was unchallenged, and not as stated when dealing with article 3.
12. It follows that the appeal should have succeeded also under article 3.
13. Parties were finally at odds only over whether the claim falls with the Refugee Convention protection category of a particular social group.

14. The FtT at [59], having considered the country expert report and country evidence, said that it was “apparent that there is social stigma, exploitation and discrimination to persons with mental or physical disabilities ... [who] ... are often accused of witchcraft. To this extent, I accept it is plausible that persons with a mental or physical disability could amount to a member of a PSG”.
15. The reasons which follow for finding the appellant not to be likely to attract adverse attention within that framework are the same reasons by which it has been conceded that the Judge went wrong on article 3.
16. Mr Tufan submitted that the evidence did not support a finding of discrimination against sufferers throughout Nigeria. However, on correcting for the errors conceded in the decision, and accepting the outcome as stated in terms of article 8, the logic of the rest of the decision is that the risk to the appellant is not only from ill-health but from his being likely to be perceived as a member of the particular social group identified in principle by the Judge at [59].
17. For error as identified in the grounds, and as conceded, the decision of the FtT is set aside.
18. The UT substitutes its decision that the appeal, as brought to the FtT, is allowed on the grounds that the removal of the appellant from the UK would breach the UK’s obligations under the Refugee Convention and would be unlawful under section 6 of the Human Rights Act 1998 (in terms of both article 3 and article 8 of the ECHR).
19. I am obliged to both representatives for their assistance in resolving the issues.
20. The FtT made an anonymity direction. There is no obvious reason to continue that order, but as the matter was not mentioned at the hearing, anonymity is maintained herein.

H Macleman

28 April 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.