



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/12034/2015

THE IMMIGRATION ACTS

Heard at: Columbus House,  
Newport  
On 25 May 2018

Decision & Reasons Promulgated  
On 30 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

MIA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Clark, Counsel instructed by Migrant Legal Project  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Burnett in which he dismissed the appeal of the Appellant, a citizen of Nigeria, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 15 March 2015. The Appellant exercised his right of appeal to the First-tier Tribunal, his appeal was dismissed by the First-tier Tribunal but on appeal to the Upper Tribunal was remitted to the First-tier Tribunal for a de novo rehearing. This is the appeal which came before Judge Burnett on 16 May

2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Adio on 7 November 2017 in the following terms

... In the lengthy grounds for permission to appeal the representatives set out eight grounds which it is sought for permission to be granted. The key aspects of the grounds is that the judge failed to address or adequately address the appellant's claim for protection on the basis that mentally ill persons in Nigeria form a particular social group or face persecution by reason of their mental illness and that the judge failed to engage with the relevant medical evidence with regards to availability of medical treatment. It is argued that the judge misdirected himself on the test for Article 3 in medical treatment cases.

It is at paragraph 75 that the report from Dr MM Heaton dated 5 June 2017 noted that the expert is of the opinion that due to the appellant's particular mental illness the appellant would likely need significant mental health treatment and that the expert expresses the opinion that this would be extremely difficult to access in Nigeria. He refers to the fact that part of the factors referred to is the fact the appellant is gay. The judge noted that he had not accepted this aspect of the appellant's evidence. I find that regardless of whether it was accepted that the appellant is gay or not it is independently noted by the expert that the appellant has mental health problems. But the overwhelming medical evidence is that the appellant would find it extremely difficult to access adequate mental health care in Nigeria. The judge does not state that the appellant has family members in Nigeria who are able to assist him. It is noted that his parents are dead. Despite the mental illness suffered by the appellant the judge stated that the appellant could engage with people he trusts by forming a relationship. The grounds in the application for permission to appeal identify an arguable error of law as set out in the grounds in particular the fact that the findings of the judge do not adequately address the particular aspects in the medical evidence concerning the appellant's condition. Although I have not set out all the grounds independently I have read the totality of the grounds supporting the application and I find that each raises an arguable error of law.

### **Submissions**

3. For the Respondent Mr Mills said that he and Mr Clark had discussed the issues involved and were agreed that there were material errors of law in the decision of the First-tier tribunal to the extent that this matter needed to be remitted to the First-tier tribunal for de novo hearing. It was unfortunate that, despite this being a previously remitted hearing, the First-tier Tribunal judge had essentially missed the same issues as the original judge. There was little if anything that could be salvaged from the decision. No findings of fact had been made. Mr Mills added that, were the case to be remitted, he would suggest to the Home Office decision maker that it may be appropriate to reconsider the decision bearing in mind the particular circumstances of the Appellant.

4. For the Appellant Mr Clarke agreed that a remission to the First-tier Tribunal was the appropriate course as errors of law had been conceded. He suggested that this was perhaps a paradigm case where the issue of mental illness may need to be examined within the context of the well-known Article 3 jurisprudence.
5. I agreed that the decision of the First-tier tribunal could not stand and that given the circumstances the appropriate course was to remit to the First-tier tribunal.

### **Decision**

6. As noted above this is a matter which has already taken a considerable amount of time to deal with. The Appellant has been in the United Kingdom since 2010 and his claim for asylum was made on 19 September 2014 after removal directions had been set. His claim was refused on 15 March 2015 and since then it has been going through the appeals process. It has been remitted to the First-tier tribunal previously and is now set to be remitted once more.
7. The circumstances of this case present a particular difficulty. Whereas the basis of the claim for asylum is founded on a singular set of facts ascertaining the reliability of those facts has become complicated by the mental health issues affecting the Appellant. These mental health issues have become a separate part of the claim in their own right with it being suggested on the Appellant's behalf not only that on the asserted facts a return to Nigeria would breach the obligations of the United Kingdom under the Refugee Convention and the Human Rights Convention but also that his mental health condition places the Appellant in a particular social group for a separate head of Refugee Convention claim and also an Article 3 risk of serious harm upon return
8. In his decision Judge Burnett clearly recognised the Appellant's difficulties and essentially reached the conclusion that because he lacked capacity and was not able to give evidence he was unable to prove his case to the requisite standard without corroboration. This of itself is a misdirection in law, corroboration as the Judge noted, is not necessary and other factors need to be taken into account. The authority of AM (Afghanistan) v SSHD [2017] EWCA Civ 1123 makes this clear. In this case the Tribunal did have a wealth of psychiatric evidence some of which was potentially corroborative of parts of the Appellant's account. The Judge's reasons for rejecting some of this evidence or not giving weight are not clear. It is however clear that the Judge failed to consider at all the aspect of the claim referred to above being whether the Appellant's mental illness would itself place him in a particular social

group and if so whether such group was subject to treatment that could be considered persecutory.

9. For the reasons given there are in my judgement material errors of law in the decision meaning that the matter must be remitted to the First-tier Tribunal so that appropriate findings of fact can be made taking full account of all of the psychiatric evidence. However, given the particular circumstances of the Appellant it would in my view be appropriate for the Respondent to use the time between this decision and the remitted hearing to consider how he wishes to deal with this matter and I am grateful to Mr Mills for agreeing to raise this matter with the caseowner.

### **Summary**

10. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Appellant's appeal and set aside the decision of the First-tier Tribunal. As the error of law was fundamental to an assessment of the facts it is appropriate that this matter is remitted to the First-tier Tribunal for hearing de novo.

**Signed:**

**Date: 25 May 2018**

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

**J F W Phillips  
Deputy Judge of the Upper Tribunal**