



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03783/2018

THE IMMIGRATION ACTS

Heard at Field House
On 24th January 2019

Decision & Reasons Promulgated
On 12th February 2019

Before

LORD BECKETT
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

CO

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr N. Bramble, Senior Presenting Officer

For the Respondent: Miss P. Solanki, Counsel instructed on behalf of the Appellant

DECISION AND REASONS

Anonymity

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her.

This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Secretary of State with permission, appeals against the decision of First-tier Tribunal Judge Young-Harry (hereinafter referred to as the "FtTJ"), who, in a determination promulgated on the 7th November 2018, allowed CO's protection claim on human rights grounds (Article 3/humanitarian protection grounds).
2. Although the Secretary of State is the Appellant before the Tribunal, we will for ease of reference refer to him as the Respondent as he was the Respondent in the First-tier Tribunal. Similarly we will refer to CO as the Appellant as she was the Appellant before the First-tier Tribunal.

The background:

3. The Appellant's immigration history and factual background is set out within the determination and in the papers before the Tribunal. The Appellant is a national of Ghana who claims to have arrived in United Kingdom in 2004.
4. In February 2010 she applied for leave to remain in the UK and an EEA residence card. That application was refused in July 2010.
5. On 14 August 2013 she was convicted at the magistrate's court for failing to surrender to custody and was fined £55 and ordered to pay the victim surcharge of £20.
6. On 26 September 2014 she was served with an IS.15A as a person liable to be removed from the United Kingdom which resulted in an application made by her in March 2015 for leave to remain on the basis of having accrued 10 years residence (on the basis of her private life).
7. On 15 April 2016 she was convicted at the Crown Court of possessing or controlling identity documents with intent to which she was sentenced to a period of 12 months imprisonment.
8. As a result, on 21 April 2016 a stage I deportation decision was issued to her. She responded to that letter asserting that she could not return to her country of residence and raising issues relevant to a protection claim and also based on her mental health. An asylum interview was held in June 2016.
9. On 27 July 2016 a deportation order was signed and on the 28 July 2016 a decision was made by the respondent to refuse her protection and human rights claim. The claim was certified.
10. Further submissions or representations were submitted on her behalf on the 7 September 2016 raising a further protection human rights claim. Thereafter the respondent requested further information relating to her medical circumstances.
11. On 1 March 2018 the certification was withdrawn and a new decision was made to refuse her protection and human rights claim.

Respondent's decision letter of 1 March 2018:

12. The Respondent made reference to the appellant's immigration history at paragraphs 1 - 15. At paragraphs 26 - 28 the respondent summarised the factual basis of the claim based on her fear of forced marriage upon return to Ghana but considered with reference to the country materials that there would be a sufficiency of protection from the police in this context. In the alternative she could internally relocate (see paragraphs 42 - 46).
13. Consideration was given to her claim that she would be considered a witch as a result of her mental health condition at paragraphs 47 - 52 but the conclusion reached was that she had provided no reason why she could not internally relocate to a non-rural area or that she could seek assistance from a non-governmental organisation (paragraph 51).
14. The decision letter also considered her claim on Article 8 grounds and in accordance with paragraph 398 of the Immigration Rules at paragraphs 67 - 74; noting that she did not claim to have a family life with any partner or children and in respect of a private life she had not been lawfully resident in the UK for most of her life having arrived in 2004 and having spent her youth and formative years in Ghana. It was considered that there were no compelling circumstances in her case in the light of her criminal conviction and the public interest in her deportation.
15. At paragraphs 89 - 101 the respondent considered her claim based on Article 3-medical grounds but reached the conclusion that whilst the quality of healthcare was not to the same standard as that in the UK, she had not shown that there were very compelling circumstances on the facts of the case. Applying the test set out in N (FC) v SSHD [2005] UKHL 31 at paragraph 97 and in the light of the medical facilities available in Ghana at paragraph 99 it was concluded that her removal did not reach the high threshold of severity to breach Article 3 on the basis of her medical condition.
16. The respondent therefore refused her protection and human rights claim and it was not accepted that she felt with any of the exceptions to deportation section 33 of the UK Borders Act 2007.
17. The appellant lodged grounds of appeal on 13 March 2018 and her appeal came before the First-tier Tribunal on 11 September 2018.
18. The basis of her challenge to the respondent's decision to deport her from the United Kingdom was that section 33 of the UK Borders Act 2007 applied founding on the Refugee and Human Rights Conventions.
19. The basis of the claim was that she feared forced marriage on return to Ghana and secondly, that she would face a real risk of serious harm or treatment contrary to Article 3 on account of her mental health in the light of the expert evidence (both country materials and psychiatric evidence) and the likelihood of being subjected to such ill-treatment in an unregulated and unofficial prayer camp.

The FtT decision of the 7 November 2018:

20. In her findings of fact, the FTtJ rejected her account that the appellant would be at risk of forced marriage for the reasons set out at paragraphs 17 – 23. The judge also found that paragraph 399 (a) or (b) did not apply and the appellant could not demonstrate that paragraph 399A applied and that there were no other “exceptional compelling considerations” that applied. None of those issues form the subject of this appeal before the Upper Tribunal.
21. As regards the alternative basis and the Article 3/humanitarian protection claim, the judge made the following findings of fact relying upon the unchallenged evidence in the form of the expert report and country materials and the psychiatric/medical reports:-
- (1) The appellant suffered from paranoid schizophrenia which was a severe and enduring mental illness alongside psychotic symptoms and symptoms of a depressive illness (at [25-27]).
 - (2) The appellant required medication to treat her condition and reduce the risk of relapse (at [28]).
 - (3) The same level of psychiatric support was required to avoid a relapse of a schizophrenic illness in the light of the number of episodes she had had in the past and the medical opinion was that long-term treatment with antipsychotic medication was necessary. Furthermore, medication alone would not be sufficient and she required that alongside a multidisciplinary and holistic treatment plan (at [30-31]).
 - (4) The absence of a treatment plan coupled with the input and support from a multidisciplinary team may lead to a deterioration in health and she would have a relapse (at [31-32]).
 - (5) The report from a country expert was accepted (relating to health services and society in Ghana for those with mental illness). Psychiatric facilities in Ghana were limited and below standard; the report included documented incidents of abuse against mentally ill patients. Psychiatric patients are forced to live in prayer camps and psychiatric hospitals (at [33-34]).
 - (6) The appellant’s current medication was not available in Ghana (as set out in the report and also on the basis of the material relied upon by the respondent). As the appellant was unlikely to have her medication on return, the alternative would be to change her medication but the transition would be an additional psychosocial stress increasing the risk of relapse. The multidisciplinary treatment plan would not be available (at [35-37]).
 - (7) Those with mental illness are taken to a traditional doctor, healer priest or prayer camp. The expert’s report on the conditions in prayer camps made reference to people being chained, shackled and beaten, being subjected to forced ingestion to induce vomiting, administered poison and made to endure heat tests. Those with limited family networks/support systems

were likely to be taken to prayer camps and that despite the state ban on such practices, they continue to be used widely (at [38-41]).

- (8) The respondent's country materials also made reference to the deficiencies in mental health care facilities in Ghana and also identified that there were hundreds of unregistered, and unregulated prayer camps which had reportedly used torture, inhumane and degrading treatment including shackling and forced fasting (at [42-43]).
- (9) Other material referred to mental health conditions perceived as having a spiritual basis so sufferers are sent to prayer camps and other faith-based healing centres where ill-treatment and degrading living conditions are rife. Such treatment is not certified or regulated (at [44]).
- (10) The judge reached the conclusion that the likelihood that the change in her current treatment regime and the transition period, may cause a deterioration in her mental state and result in relapse and may be considered a "psychological stressor." On return the appellant may begin displaying psychotic behaviour and in the absence of family and close friends may be placed in prayer camp where ill-treatment could not be ruled out. Thus the combined effect that a change in or absence of medication along with how society treats the mentally ill, will give rise to risk on return (at [46-47]).
- (11) The appellant could not avail herself of State protection as the authorities share similar views (at [47]).
- (12) The FtTJ therefore allowed the appeal on Article 3/humanitarian protection grounds.

The grounds of challenge:

22. In grounds of appeal dated the 12 November 2018 the respondent sought permission to appeal the decision of the First-tier Tribunal.
23. We set out those grounds in full:
 - "1. It is respectfully submitted that the FtTJ erred in law in the approach to Article 3 in allowing the appeal.
 2. The appellant suffers from paranoid schizophrenia that is currently described as moderate with a low risk of suicide. It is well established in the context of a foreign case, the Article 3 threshold is particularly high simply because it is a foreign case, and it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving State, the results from some naturally occurring illness, whether physical or mental. This is made clear in paragraphs 49 of D v United Kingdom (1979) 24 EHRR 425 and paragraph 40 of Bensaid v UK 2001 33EHRR.
 3. It is respect it is submitted that the due consideration to the leading authorities in this field have not been correctly considered and if they had

the Tribunal was bound to come to the conclusion that the appellant's position did not meet the high Article 3 threshold because any deterioration would not be serious, rapid and irreversible, resulting in intense suffering.

4. This is further reinforced by the authority of N [2005] 2 AC 296 that at paragraph 94 makes reference to

“It must be shown that the applicant's medical condition has reached such a critical stage that there are compelling humanitarian grounds were not removing him or her to a place which lacks the medical and social services when he or she would need to prevent acute suffering while he or she is dying.”
5. The essential principle is that the ECHR does not impose any obligation on the contracting states to providers liable to deportation with medical treatment lacking in their “home countries”. This principle applies even when the consequence would be that the deportees life will be significantly shortened, see N v UK [2008] 47 EHRR 885 paragraph 44

“advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the contracting state and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the convention system, the court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the contracting state to alleviate such disparities through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. Finding to the contrary would place too great a burden on the contracting states.”
6. As confirmed in the recent authority of MM Malawi [2018] EWCA Civ 2482, the test identified in N is still binding on this Tribunal and should be followed. There is no suggestion that treatment although significantly below that the appellant currently receives is not available in Ghana. The test to determine when Article 3 May prevent removal of the foreign national in the UK in a medical case was authoritatively settled so far as domestic law is concerned in N v Secretary of State for the home Department [2005] UK HR 31 as endorsed by the grand chamber of the European Court of human rights in N v United Kingdom (2008) 47 EHRR 39.
7. The fact that a journalist considers that the psychiatric care facilities are limited and are of a low standard is no more than background evidence and does not undermine the relevant test identified in N and Bensaid.
8. In a similar way the suggestion that the police will view mental illness as witchcraft speculation suggests although suffering from mental health illnesses in Ghana would be needed protection. The appellant may be

subject to stigma, discrimination and even harassment, but however unpalatable they do not breach the threshold envisaged of inhuman or degrading treatment. Whilst the suggestion that the appellant before slipping a prayer can begin without more is no more than speculation.”

24. Permission to appeal was granted by Designated Judge Woodcraft in the following terms:-

“The appellant is a citizen of Ghana. She appealed against the refusal of International protection (following a deportation order) arguing that she was at risk upon return because she would be forced to marry against her will. The judge rejected this claim but allowed the appeal because, he held, the appellant would not receive adequate care for her mental health problems on return.

The respondent’s grounds of onward appeal argued that the judge misdirected himself in relation to whether the appellant’s condition brought within the parameters of Article 3. This issue has been recently clarified by the Court of Appeal in MM Malawi [2018] EWCA Civ 2482 and the determination arguably errs in law is not following authorities such as N [2015] 2AC 296 and the law as explained in MM. All of grounds may be argued.”

The appeal before the Upper Tribunal:

25. The appeal therefore came before us in order to determine whether there was an error of law in the decision of the FtIJ and if so, whether to set that decision aside and give further directions for its re-making. The appellant was not present at the proceedings and we were informed that this was because she was currently the subject of treatment under the Mental Health Act.
26. We heard submissions from both advocates. Mr Bramble relied upon the written grounds seeking permission to appeal. He submitted that the evidence provided did not breach the threshold to constitute inhuman or degrading treatment. He drew our attention to paragraph 46 of the determination where the judge had made a finding as to the circumstances upon return to Ghana. He submitted that in that paragraph the judge had engaged in speculation and this was evidenced by the use of the word “may” where he stated that she may begin displaying psychotic behaviour, and “may” be placed in a prayer camp. Thus the language used by the judge demonstrated that he had not applied the required high threshold for a breach of Article 3 which would imply that potentially all of those who suffer from mental health in Ghana would be in need of protection.
27. In his submissions he accepted that the grounds did not challenge the findings of fact made by the FtIJ but there was an assumption made by the judge that the appellant would end up in a prayer camp, which went further than was justified by the use of the word “may” set out in paragraph 46.
28. Mr Bramble made reference to the expert’s report which referred at paragraph 16 to societal attitudes towards those with mental illness and at paragraph 22 stated that “patients with limited family networks and support systems are more likely to be taken to prayer camps, simply because they are less likely to have the means and peer support to get the medical care they need.” By reference to that paragraph, he

submitted that the report did not state that all people with mental illness would be taken to such a camp and it would depend on the individual circumstances of the appellant.

29. He did not seek to advance any submissions to counter the rule 24 reply served on behalf of the appellant as he stated that there was no challenge in the grounds to the findings of fact made by the judge which were not in dispute. Thus he submitted that the issue was whether applying those findings it was sufficient to reach the threshold for a breach of Article 3.
30. Miss Solanki in her submissions on behalf of the appellant relied upon her rule 24 reply dated 10 January 2019.
31. In that reply she stated that the grounds of appeal and the grant of permission misunderstood the basis upon which the appeal had been allowed by the FtTJ. It had not been allowed on Article 3 medical grounds but had been allowed on humanitarian protection grounds, on the basis that the appellant would be subjected to torture or to inhuman or degrading treatment or punishment or "serious harm" (Article 15(b)) on return to Ghana.
32. In her oral submissions she stated that the starting point must be the findings of fact which were unchallenged and that contrary to what was asserted in the grounds, could not be described as speculative but were in fact well-reasoned when set against the objective background evidence provided by both the appellant and the respondent and by reference to the expert evidence before the FtTJ.
33. In respect of the objective background material, she submitted that the respondent's own evidence did not run contrary to that submitted on behalf of the appellant. At paragraph 43, the judge recorded the respondent's evidence (the UN HR committee concluding observations on initial Ghana report, August 2016) which made reference to the deficiencies in the mental health care facilities in Ghana, including overcrowding and limited staffing but also that there was a concern about the hundreds of unregistered, unregulated "prayer camps" which deal with mental illness. The report referred to the "use of torture, inhumane and degrading treatment at these camps, including shackling and forced fasting."
34. She submitted that in the light of the medical evidence, which had not been the subject of challenge, she had been described as having a severe and enduring condition which had resulted in her being the subject of hospitalisation under the Mental Health Act on a number of occasions. The findings made by the judge were therefore made in the light of the medical evidence the psychiatric report and the objective material. She summarised those findings at paragraph 8 of the rule 24 reply.
35. Thus she submitted that the evidence demonstrated that there was a real risk that the appellant would find herself in one of those prayer camps and would be subjected to treatment contrary to Article 3 of the ECHR, namely being shackled, chained or beaten and this was based on the respondent's own background material. The ill-treatment described as occurring in the prayer camps therefore amounted to torture, inhuman or degrading treatment as set out in the definition of Article 3 or within

“serious harm”. She reminded the Tribunal that the grounds had not engaged with the law in this area nor had any submissions been made in this respect.

36. She reiterated that this was not a medical case which relied upon the lack of treatment in the receiving country but one in which the appellant had been found to be at real risk of relapse and whereby she would display behaviour which would result in her being placed in a prayer camp where there was a reasonable degree of likelihood or real risk of being subjected to treatment contrary to Article 3. The judge had given a properly reasoned decision based upon the country evidence, the evidence of the psychiatrist and the range of objective evidence from both parties and had reached a conclusion that was open to her.
37. Mr Bramble made no reply to the submissions made by Miss Solanki.
38. At the conclusion of the hearing we reserved our decision which we now give.

The Law:

39. We have not been directed to any case law by Mr Bramble in his submissions relevant to the burden and standard of proof necessary for a breach of Article 3. We do not think that the legal principles that are applicable are in any way controversial and have been most recently been set out in the decisions of the Court of Appeal and the Upper Tribunal.
40. Article 3 provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
41. As regards Article 3 the Strasbourg court has consistently stated that "to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity".
42. An appellant in a human rights appeal who asserts that his or her removal from the United Kingdom would violate Article 3 of the ECHR must establish that claim. In other words, the appellant bears the burden of proof. The standard of proof requires the appellant to show a “reasonable likelihood” or “real risk” of Article 3 harm.
43. The Immigration Appeal Tribunal so held in Kacaj (Article 3 – Standard of Proof – Non-State Actors) Albania* [2001] UKIAT 00018 (“Kacaj”). At paragraph 12 of its determination, the IAT said that “the standard may be a relatively low one, but it is for the applicant to establish his claim to that standard”.
44. It is undisputed that Kacaj is “starred” for what it says in paragraph 12 of the determination. There is no domestic case law that is inconsistent with Kacaj (and see Section 107(3) and (3A) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) provides that practice directions made under section 23 of the Tribunals, Courts and Enforcement Act 2007 may require the First-tier Tribunal and the Upper Tribunal to treat a specified decision of, amongst other bodies, the Immigration Appeal Tribunal, as authoritative in respect of a particular matter).
45. More recently in AM (Zimbabwe) and Another v Secretary of State for the Home Department [2018] EWCA Civ 64, Sales LJ held:-

“16. It is common ground that where a foreign national seeks to rely upon Article 3 as an answer to an attempt by a state to remove him into another country, the overall legal burden is on him to show that Article 3 would be infringed in his case by showing that there are substantial grounds for believing that he would face a real risk of being subject to torture or to inhuman or degrading treatment in that other country ...”

46. In Paposhvili v Belgium (Application no. 41738/10), given on 13 December 2016, the Grand Chamber of the ECtHR examined the threshold in an Article 3 case, involving a claim by a person that to remove him from Belgium would lead to a real risk of serious harm as a result of a deterioration in his medical condition, where that condition could not be said to be attributable to the authorities of the country to which he was proposed to be returned.
47. Paragraphs 186 and 187, contain what can be seen to be standard statements of the ECtHR regarding the burden of proof:-

“186. In the context of these procedures, it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see, in particular, *Trabelsi v. Belgium*, no. 140/10, § 130, ECHR 2014 (extracts)).

187. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). The risk alleged must be subjected to close scrutiny (see *Saadi*, cited above, § 128; *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 214, 28 June 2011; *Hirsi Jamaa and Others*, cited above, § 116; and *Tarakhel*, cited above, § 104) in the course of which the authorities in the returning State must consider the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual’s personal circumstances (see *Vilvarajah and Others*, cited above, § 108; *El-Masri*, cited above, § 213; and *Tarakhel*, cited above, § 105). The assessment of the risk as defined above (see paragraphs 183-84) must therefore take into consideration general sources such as reports of the World Health Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question.”

48. We have already set out in paragraph 16 of the judgments in AM (Zimbabwe), whereby Sales LJ stated that the overall legal burden is on an applicant for international protection relying upon Article 3 to show that there are substantial grounds for believing that person would face a real risk of being subjected to treatment contrary to that Article, in the event of removal. Sales LJ then said the following:-

"In *Paposhvili*, at paras. [186] - [187] ... the Grand Chamber of the ECtHR has given guidance how he may achieve that, by raising a prima facie case of infringement of Article 3 which then cast an evidential burden onto the defending state which is seeking to expel him."

49. As regards Article 3 the Strasbourg court has consistently stated that "to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity" (we refer to N v UK (2008) 47 EHRR 39 where the Strasbourg court observed at paragraph 31:
- "Article 3 principally applies to prevent a deportation or expulsion where the risk of ill-treatment in the receiving country emanates from intentionally inflicted acts of the public *authorities* there or from non-State bodies when the authorities are unable to afford the applicant appropriate protection..."
50. Article 3 imposes "absolute" rights, but in order to fall within the scope of *Article 3* the ill-treatment must attain a minimum level of severity. Whether the minimum level is attained in a particular case depends on all the circumstances, such as the nature of the treatment, its duration, and its physical and mental effects and, possibly, the age, sex and health of the person concerned. In that sense, the test of whether there has been a breach of *Article 3* in a particular case is "relative".
51. "Degrading treatment" means treatment "such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance" (Republic of Ireland v United Kingdom (1978) EHRR 25 at [167]). For treatment to amount to a breach of Article 3, it requires a "minimum level of severity" (see, e.g., Pretty v United Kingdom (2002) 35 EHRR 1 at [52]).

Discussion:

52. The majority of the grounds, both written and oral, advanced on behalf of the respondent relate to Article 3 in the context of lack of medical treatment in the home state (we refer to paragraphs 1 - 7 of the written grounds). Those grounds cite the relevant jurisprudence, from the decisions in D v UK and N to the most recent decisions of the Court of Appeal in MM (Malawi) and the ECHR in Paposhvili.
53. There can be no dispute that if the FtTJ had reached the conclusion that the appellant's return to Ghana was contrary to Article 3 or that she would be at a real risk of serious harm (Article 15(b)) on the basis of the lack of medical treatment/unavailability in the home state, that would be contrary to the cited authorities. Miss Solanki readily accepted that in her submissions made to this Tribunal.
54. In our judgement the grounds at paragraphs 1 - 7 misconstrue and fail to properly engage with the factual and legal basis upon which the judge allowed the appeal and his reasoning by reference to the evidence.

55. As to the medical circumstances of the appellant, they were set out in a number of documents and specifically in an expert psychiatrist's report (dated 4 September 2018) and were not the subject of challenge by the respondent.
56. The judge summarised the medical evidence at paragraphs 25 – 32. There was no dispute that the appellant has a long-standing history of mental health problems which have included her treatment as an inpatient under the Mental Health Act where she remained for a period of five months (see letter dated 14th of June 2018. It is recorded that her symptoms were characteristic of paranoid schizophrenia and that in addition she had psychotic symptoms and symptoms of a depressive illness. At the time of the report it was confirmed that she was accessing medication to help address her psychosis and reduce the risk of relapse and that her mental health had improved due to a "robust treatment plan" which included regular monitoring, the help of the multidisciplinary team of mental health professionals involved.
57. In his opinion, the doctor considered that the same level of psychiatric support would be required on return to avoid a relapse of her schizophrenic illness which would make day-to-day life difficult and result in social isolation. He made reference to the number of episodes the appellant had historically and was of the opinion that long-term treatment with antipsychotic medication would be necessary. His opinion also was that medication would not be sufficient by itself and that she also required a multidisciplinary and holistic treatment plan.
58. At paragraph 26 the judge accepted that the psychiatrist was an expert for these proceedings and given the contents of the report, which had been consistent with her previous mental health history, attached weight to that report (see paragraph 32). The judge therefore accepted the contents of that report both in terms of the description and diagnosis of the condition and also as to the likely effect upon her mental health in the absence of any treatment plan and medication in Ghana which he concluded may lead to a deterioration in her health and a relapse.
59. Similarly there was no challenge to the country expert report dated 3 September 2018, the author of which was also accepted as an expert in the light of her qualifications, experience and expertise in health services and society in Ghana (see paragraph 33).
60. The judge summarised the important aspects of that report in the determination at paragraphs 34-41. In respect of psychiatric care facilities in Ghana such facilities were limited and of a low standard and included there were documented incidents of abuse against mentally ill patients (see Human Rights Watch report). Reference was made to underfunding and that psychiatric patients are forced to live in prayer camps and psychiatric hospitals.
61. As regards medication, that which the appellant had been currently taking was not widely available and upon her own research undertaken at the "best stocked" psychiatric hospital in Ghana it was confirmed that they did not have access to it. In this context the judge also observed that the medication did not appear on the list that had been provided and relied upon by the respondent. The expert was of the view that the appellant would be unlikely to have access to this medication on return

and that any change in medication could be considered as one of the “additional psychosocial stressors” identified by the psychiatrist which would increase the risk of a relapse in her mental health. In terms of the multidisciplinary, holistic treatment plan which formed the basis of the appellant’s treatment would not be available in Ghana.

62. The general circumstances in Ghana were described in the report which indicated that there were less than progressive attitudes in Ghanaian society towards those with mental illness which resulted in sufferers being chained and beaten because they were considered to be witches. In this context the expert made reference to the state authorities in 2017 banning the use of chaining and shackling of such sufferers but despite which the practice continued to be widely used. She gave an example from her own experience of witnessing a young girl suffering from psychosis having been chained to a tree trunk by her family. The report made reference to those people who display signs of mental illness being taken to a traditional doctor, healer, and priest or prayer camp and at the prayer camps chaining, shackling and beating occurring. Other forms of mistreatment included forced ingestion in order to induce vomiting, administering poison and enduring heat tests to determine whether or not the person is a witch. Those with limited family networks or a support system are more likely to be taken to prayer camps.
63. It is plain from reading the material placed before the FtTJ and recorded in the determination that the country materials relied on by the respective parties were not in conflict with each other. The respondent provided evidence before the Tribunal concerning how those with mental illness are perceived in Ghana, the prevalence and use of unofficial and unregulated prayer camps and the resulting ill-treatment in such establishments. The judge recorded the respondent’s own country evidence at paragraphs 42 – 44 which confirmed the appellant’s evidence that in the camps there were reports of the use of torture, inhumane and degrading treatment including that identified by the appellant’s country expert.
64. It is therefore against that evidential background and the unchallenged evidence that the judge made her final analysis. At paragraphs 45 – 47 the judge stated as follows:-
- “45. On carefully considering the expert in background evidence, it seems that this is not a matter of the availability of health care in Ghana on the appellants return, as the aim is not to guarantee she will receive the same level of health care she currently receives in the UK, but rather the likelihood that the change in her current treatment regime and the transition period, may cause a deterioration in her mental state and result in a relapse, according to the doctor. This may be considered a psychological stressor.
46. The appellant on return may begin displaying psychotic behaviour and in the absence of family or close friends, may be placed in a prayer camp where ill-treatment cannot be ruled out. Thus the combined effect the changing or absence of medication will have, along with the way society treats the mentally ill, I find will give rise to a risk on return.
47. I find the appellant cannot avail herself of the help or protection of the state authorities, as they share similar views. I find the appellant is established in Article 3 risk on return.”

59. In our judgement, whilst the appellant relied upon the medical evidence relating to her mental health, it was not simply in the context of lack of treatment upon return to Ghana but was founded on the evidence which demonstrated that the change in her regime of care (including the removal of the multidisciplinary treatment plan, support from the UK, the lack of medication) demonstrated that there was a real risk of relapse in her condition which would give rise to further consequences. The judge was entitled to place weight and reliance upon the unchallenged evidence that the effect of this upon the appellant was that there was a real risk of her displaying behaviour of a type identified in the expert evidence which would result in a reasonable likelihood or real risk of her being placed in a prayer camp. The evidence before the Tribunal demonstrated not only that general psychiatric care facilities were limited but that there were hundreds of unofficial and unregulated prayer camps where those displaying signs of mental illness were likely to be taken to for "treatment".
60. Similarly there was no dispute as to the level of severity of the ill-treatment at such prayer camps which involved people being chained, shackled or beaten, made to endure forced ingestion and undergoing treatment such as chaining and shackling which continued in practice despite having been banned by the state authorities.
61. In the light of the evidence before the FtTJ and the analysis of that evidence, we reach the conclusion that the decision was one that was reasonably open to the judge to make and thus it has not been demonstrated that there is any error of law in her decision. The judge identified and analysed the evidence which in its contents was sufficient to demonstrate substantial grounds for believing that there was a real risk that the appellant, in the light of her own personal circumstances and characteristics, would find herself in an unregulated and unofficial prayer camp. It has not been argued before us that the treatment identified by the country materials relied on by both parties would not fall within the definition of "inhuman or degrading treatment" contrary to Article 3 or "serious harm" (Article 15 (b)).
62. We do not consider that the language used by the judge at paragraph 46 indicates that he engaged in any form of speculation, rather that it demonstrates that the judge had properly analysed the evidence of risk in the light of the appellant's personal background, circumstances and characteristics. We observe that the judge did refer to "risk on return" as opposed to "real risk on return" but we consider that this does not undermine the decision the judge reached. Earlier in the determination, at paragraph 8 the judge set out a self-direction as to the correct burden and standard of proof and made express reference to "real risk on return" and we are satisfied that the judge had the self-direction in mind when reaching her overall analysis and conclusions.
63. Nor do we accept the submission made by Mr Bramble that the FtTJ failed to have regard to the fact that the report stated that not all people with mental illness would be housed in such a camp. That submission fails to take into account that the report also stated that those who were more likely to be taken to prayer camps and to be the subject of mistreatment were those with limited family networks and support. The judge in his findings had regard to the evidence as a whole concerning her personal

circumstances and her health and the judge expressly found at [41] that she had no close family in Ghana or any close social network to provide her with any assistance in accessing protection. She therefore fell into the category identified by the expert.

63. Furthermore given the judge's unchallenged finding at [47] it was open the judge to find that the receiving state would not be able to provide sufficiency of protection for the appellant from non-state actors to prevent the real risk of harm identified from occurring.
64. For those reasons we have therefore reached the conclusion that the grounds advanced by the respondent do not identify any error of law in the decision of the FtTJ.

Decision:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the appeal is dismissed; the decision of the First-tier Tribunal to allow the appeal shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

SM Reeds

Signed

Date: 9/2/ 2019

Upper Tribunal Judge Reeds