



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17155/2019

THE IMMIGRATION ACTS

Heard at Bradford
On 19 February 2021

Decision & Reasons Promulgated
On 04 March 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SJ
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ul-Haq instructed by J M Wilson Solicitors.

For the Respondent: Mrs Pettersen Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Athwal ('the Judge') promulgated on 11 September 2020 in which the Judge dismissed the appellant's appeal on human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Martin sitting as a judge of the First-tier Tribunal on 1 October 2020, the operative part of the grant being in the following terms:

2. It is arguable, as set out in the grounds, that the judge has failed to deal adequately with the wealth of evidence about the appellant's serious mental health condition or to understand the nature of paranoid schizophrenia which is an enduring, relapsing and remitting illness without a cure and which is controlled by medication and support, which in this case is considerable and despite that he has relapsed several times, including in 2020.

Error of law

3. The Judge sets out the findings and reasons from [27] of the decision under challenge. At [36] the Judge writes:

36. It is for the Appellant to prove that there are substantial grounds for believing that he is a seriously ill person who faces a real risk of being exposed to a serious, rapid and irreversible decline in his state of health which would result in intense suffering or a significant reduction in his life expectancy. The most recent letter of June 2020 from Ms Isaac states the aim of supported accommodation is to '*maximise his independence*'. It is not known whether this aim has been achieved or not because there is an absence of any medical evidence that addresses his current condition. The Appellant was on a Aripiprazole but his aunt has stated he is on depot but there is no medical evidence before me that sets out what medication and treatment he is currently receiving. It may well be the case that the Appellant remains a seriously ill person, but there is no recent medical evidence to substantiate this. The witnesses have all informed me that the Appellants condition has changed, clearly for the better because he is no longer sectioned in hospital. I therefore find, for all these reasons, the Appellant has failed to discharge his burden.

4. The Judge goes on to consider, in the alternative, in the event that he is wrong in the primary finding set out at [36], the second limb of the test which relates to the absence or lack of access to appropriate treatment in India. At [39 - 41] the Judge writes:

39. The Appellant has not discharged his evidential burden and satisfied me that there is an absence of medical treatment in India. There are mental health hospitals 40 km from his village in India. None of the witnesses were able to tell me where the Appellant's sister lives in the Punjab, but I am satisfied from the evidence of JK that she has successfully accessed clinically approved medical treatment and is able to manage her condition and care for a child whilst her husband works in Dubai.

40. I turn to consider whether the Appellant would be able to access medical treatment. Mr Birchall's report states that the government has legislated for free treatment for mental health illness, if that is correct then cost is not an issue. The Appellant has not established why he would not be able to obtain free treatment and the medication he requires from there.

41. The witnesses state that the Appellant needs to be monitored for psychotic episodes and his brother in India cannot be trusted to care for him and take him

to hospital when required. I was told by JSS that it would be culturally inappropriate for the Appellant to live with his sister and that caring for the Appellant may worsen her situation because she has a child to care for and her husband works away from home. All of the witnesses however, stated that they had limited communication with the Appellant's family in India. None of the witnesses have discussed management of the Appellant's condition with his sister. The sister has not provided evidence or a letter stating that she could not care for her brother and the reasons why. The Appellant has not satisfied me that he would not have a support network that he could access in India.

5. The appellants grounds of challenge and skeleton argument reads:

GROUND OF APPEAL

2. The Appellant advances his case with reference to a single ground; The FTTJ materially erred in consideration of the medical evidence in that: a) she was wrong not to find that the Appellant suffered from a serious mental health condition; b) because she failed to consider the wealth of evidence about what paranoid schizophrenia is and in particular that it is an enduring, relapsing and remitting illness without a cure; and c) because she had failed to consider the wealth of evidence and had failed to consider what paranoid schizophrenia is, the FTTJ failed to realise that this illness is controlled by a strict regime of medication and supported living.

3. The Appellant will make good on the above ground by reference to the following submissions.

4. The submissions are advanced in the context of the declaration of the Supreme Court in *AM (Zimbabwe)* [2020] UKSC 17, [2020] 2 WLR 1152 ("*AM (Zimbabwe)*"). Lord Wilson held inter alia at §32 that the requisite capacity of evidence to be adduced by the appellant is to demonstrate 'substantial' grounds for believing that there is a 'very exceptional' article 3 case because of a 'real risk' of subjection to 'inhuman treatment'. In the event that the appellant has presented evidence to such a standard then the respondent can seek to challenge it.

SUBMISSIONS

- i) Failure to treat the Appellant as a vulnerable witness

5. The FTTJ at §9 states that "[t]he Appellant could not attend the hearing because of poor health, he is currently residing in supported accommodation". The FTTJ has erred in not considering that at an earlier case management hearing on 17 June 2020, First Tier Tribunal Judge Gill excused the Appellant's attendance to give evidence on his application that he lacked capacity. There was no dispute between the parties representatives and in fact it was agreed that the Appellant was a vulnerable person.

6. The Appellant's health was as such that his attendance was excused by First Tier Tribunal Judge Gill. The failure by the FTTJ to note and consider the above set the tone for the substantive hearing before her on 19 August 2020.

- ii) Failure to understand paranoid schizophrenia

7. The FTTJ at §2 states that on 23 September 2019, the Appellant submitted that he suffered from schizophrenia. At §27, the FTTJ notes that the Appellant's medical report dated 22 March 2019¹, states that "...he is a 44 year old man with a history of paranoid schizophrenia and past admissions under the Mental Health Act...". At §35, the FTTJ on the basis of the evidence of Dr. Land, Dr. George and Ms. Isaac only, accepts that the Appellant has been diagnosed with schizophrenia and has been sectioned under the Mental Health Act 1983 on four separate occasions, the last being in June 2020.

8. The FTTJ has not considered the letter dated 01 April 2019 of Ms. Emma Perry addressed to Dr. Hamdy. This letter sets out the assessment by Liaison Psychiatry of the Appellant and the decision to section the Appellant under the Mental Health Act 1983.

9. It is alarming that the FTTJ in her decision has not sought to set out what paranoid schizophrenia means. If the FTTJ had done so it would have assisted the FTTJ in understanding the illness. The medical practitioners and social worker all addressed paranoid schizophrenia. The FTTJ has materially erred in her approach to this mental health illness.

10. The FTTJ had before her objective evidence from inter alia the World Health Organisation⁴. In failing to understand the illness, the FTTJ has materially erred in not appreciating that this illness is a chronic and severe mental disorder associated with considerable disability; and that sufferers are 2-3 times more likely to die early than the general population. Stigma, discrimination and violation of human rights of people with schizophrenia is common.

11. The medical notes set out the diagnosis of paranoid schizophrenia and how the Appellant was presenting himself during hospital admission. These notes were not referred to in the FTTJ's decision.

iii) Failure to understand the enduring, remitting and relapsing nature of the illness

12. FTTJ materially erred in not considering the amount of times the Appellant has been sectioned when reaching her finding that the Appellant has not discharged his burden at §36. At the time of the substantive hearing, the Appellant had been sectioned a total of four times as noted by the FTTJ at §35. I am instructed that the Appellant is currently sectioned.

13. At §31, the FTTJ notes that Dr. George, a consultant psychiatrist, in a letter dated 12 June 2020, states that the Appellant is an inpatient and that "...there is a very risk of relapse if he is not supported well in the community. In my opinion there is a high risk of relapse of the psychotic illness if he leaves the country and appropriate support is not available."

14. The FTTJ has not noted that Ms. Amy Isaac, the Appellant's local authority allocated social worker, in her letter dated 11 September 2019 had stated that the Appellant's "...recent admission to psychiatric hospital was triggered by the anxiety and stress caused by his legal status to remain in the UK. Consequently and further stress and anxiety related to his legal status in the UK is likely to trigger a relapse, this includes any request to travel." As the Appellant has been sectioned on numerous occasions and

is currently sectioned, the FTTJ has materially erred in not addressing this within her findings. At §29, the FTTJ notes that Ms. Amy Isaac records from a meeting with Consultant Psychiatrist Dr. Wall that Dr. Wall confirms that the Appellant "...has a diagnosed mental disorder, namely schizophrenia..." which "...is chronic and will not be cured. He will need to receive treatment and support for the rest of his life." The FTTJ has materially erred in not factoring the above into her findings at §36 where the FTTJ finds that there is an absence of medical evidence to address the Appellant's current condition.

16. The FTTJ states at §35 that she has not been provided with any information about the Appellant's current condition, what treatment and medication he is now receiving, how long he will remain in supported accommodation, where he will live thereafter and his prognosis. The FTTJ has materially erred in not considering the letter of Ms. Isaac dated 11 June 2020, in which she states that the Appellant's mental state remains fragile and that his mental state is directly affected by the ongoing legal matters. The FTTJ has materially erred in not appreciating and considering that paranoid schizophrenia is a lifetime illness that is fragile and can ignite at any stage.

17. Furthermore, the FTTJ's comment at §43 that the Appellant's condition is no longer the same as it was sixteen months ago, demonstrates a lack of understanding of the enduring, remitting and relapsing nature of the Appellant's illness.

iv) Failure to appreciate that treatment encompasses medication AND supported living
 18. FTTJ failed to understand that the treatment for paranoid schizophrenia involves community support and assisted living as well as medical treatment. This is set out not only in the objective evidence of the World Health Organisation⁹ but also in the wealth of medical of evidence. These are in the form of care plans and such as in the letter of Dr. George dated 12 June 2020 who describes the Appellant needing support from the Home Treatment team and follow-up care from the Community Mental Health Team Services. The FTTJ it appears at §13 has underestimated the nature of the support provided by the Appellant's aunt. The Appellant's aunt is the primary carer of the Appellant and part of the emotional support network that the wealth of evidence identifies. The description adopted by the FTTJ cannot be reconciled with the FTTJ's note and acceptance of the evidence at §29 that the Appellant needs 24/7 ongoing support from his family and support of the community mental health services. The ongoing and continued support forms part of the Appellant's treatment. The FTTJ has materially erred in not considering this in her findings that there is not an absence of treatment in India.

v) Failing to attach any weight whatsoever to the medical report of Dr. Hanna.

21. At §34 the FTTJ states that she can only attach limited weight to Dr. Gabra Hanna's medical reports dated 26 June 2019 and 12 September 2019 because Dr. Hanna had not considered the Appellant's medical records, not clarified how long he assessed the Appellant for and in what conditions, and for not stating what expertise he has to allow him to comment on what treatment or medication is available in India. Dr. Hanna's reports can be found at B1 and G1 of the respondent's bundle. It is submitted that the FTTJ was wrong to attach 'limited weight'. Rather than limited weight it appears that the FTTJ has attached zero weight presumably on the invitation of the respondent on the purported basis that Dr. Hanna did not have the medical records of the Appellant.

22. Dr. Hanna is the fourth psychiatrist to discuss the Appellant's mental health condition in the wealth of evidence. The others being Dr. Land, Dr. George and Dr. Wall. The FTTJ accepted the evidence of Dr. Land and Dr. George and also the evidence of Ms. Isaac which referred to Dr. Wall. The FTTJ has accepted their evidence whilst unfairly disregarding Dr. Hanna's evidence.

23. The FTTJ notes at §32 that Dr. Hanna assessed the Appellant at the Oleaster Psychiatric Unit on 29 May 2019 where the Appellant was an in-patient. Dr. Hanna was accompanied by a registered mental health nurse at the assessment of the Appellant¹⁰. Dr. George's letter dated 12 June 2019 confirms the treatment and support he was receiving as an inpatient at the time of Dr. Hanna's assessment. The FTTJ ought to have considered the corroborative evidence as support for the weight to attach to Dr. Hanna's evidence. Dr. Hanna had knowledge at the time of the assessment that the Appellant was an inpatient and of the treatment and support he was receiving. The FTTJ simply cannot disregard medical evidence. The FTTJ has unfairly singled out Dr. Hanna and not considered the wealth of evidence in the round.

24. The FTTJ in criticising Dr. Hanna for not stating what expertise he has to allow him to comment on what treatment or medication is available in India has not considered what in fact Dr. Hanna had stated. Dr. Hanna whilst discussing the Appellant's current medication, simply comments that "...[I]f this medication is available in India, it is likely to be very costly."

vi) Failure to consider the social stigma in India and the non-availability of treatment for those with paranoid schizophrenia.

25. The FTTJ materially erred in not considering the objective evidence of the perception of those suffering from mental health illnesses such as paranoid schizophrenia in India. The objective evidence included that of Human Rights Watch which highlighted the morbid practices and treatment administered to those with certain medical health conditions in psychiatric hospitals in India¹²; and the Royal College of Psychiatrists which highlighted some of the abuse perpetuated against those suffering from psychiatric disorders.

26. The FTTJ at §37 placed reliance on the information provided by the respondent's representative that there were a number of psychiatric hospitals in Jullundur, which it was agreed was 40 kilometres from the Appellant's home village. The FTTJ materially erred in not scrutinising the information, especially in light of the objective evidence before her regarding psychiatric hospitals in India. The FTTJ has also failed to consider the letter of Ms. Isaac dated 11 June 2020 in which she expresses her grave concerns regarding the Appellant returning to India without access to professional and personal support he desperately depends on. Dr. George in his letter dated 12 June 2020 also states that there is a high risk of the psychotic illness if the Appellant left the country and the appropriate support is not available.

27. Furthermore, the FTTJ did not correctly apply the second limb of the test as the FTTJ describes at §37. The second limb is relevant if the Appellant has established a prima facie Article 3 claim. The Appellant respectfully submits that he has provided a wealth of sufficiently cogent evidence. Accordingly, the burden switches to the respondent to demonstrate that any medication and treatment the Appellant requires is both available and accessible, what the cost of the medication and treatment would be and what

support networks there would be for the Appellant. In the absence of such a rebuttal, there is a breach of Article 3 unless the respondent can obtain an assurance from the authorities in India that the Appellant would be given the requisite treatment. vii) Failure to appropriately consider the risk of flying. The FTTJ at §42-44 materially erred in not considering the letter of Ms. Isaac dated 11 September 2019 in which she states that any request to travel would likely trigger a relapse as part of her analysis of whether the Appellant was at risk of flying.

viii) Respondent's refusal letter

29. The FTTJ notes at §3 that the respondent in the refusal letter simply stated that the Appellant did not meet the high threshold for Article 3 cases. It is submitted that the reasons set out in the refusal letter and the reliance upon it as advanced by the representative to the FTTJ would not be advanced by the respondent before the First Tier Tribunal today in light of the respondent's own policy information and the declaration from the Supreme Court in *AM (Zimbabwe)*.

CONCLUSION

30. For one or all of the above reasons it is with respect submitted that the decision of the FTTJ cannot stand and is unsustainable. The Appellant respectfully requests that the matter should be remitted de novo to the First Tier Tribunal for an appeal hearing before a Judge other than the FTTJ.

Discussion

6. The reasons for refusal letter is dated 10 October 2019 and it is accepted would not be written in the form today that it was at that date following the handing down of the judgement of the Supreme Court in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17 on 29 April 2020. Mrs Petterson conformed, however, that she opposes the appeal on the basis the findings made were open to the Judge on the evidence.
7. The Judge was also aware of *AM (Zimbabwe)* make specific reference to that case and the judgement of Lord Wilson between [22 - 25] of the decision under challenge.
8. The Judges primary finding at [36] that the appellant had failed to discharge the burden upon him to show that he is a seriously ill person is infected by legal error when one considers the weight of evidence available to the Judge in the numerous medical reports provided.
9. The appellant clearly suffers from paranoid schizophrenia for which he has received both inpatient and outpatient treatment including being sectioned under the Mental Health Act. One of the documents in the bundle available to the Judge was a letter written by Dr George, a Consultant Psychiatrist with the Birmingham and Solihull Mental Health NHS Foundation Trust, dated 12 June 2020, stating:

[JS] is currently detained under Section 3 of the Mental Health Act and has a diagnosis of a Psychotic Disorder. He is currently an inpatient and is treated with antipsychotic

medication, nursing and psychological support. As he is recovering from a Psychotic Disorder, in my opinion he is not fit to appear in Court as well as being cross examined.

Following discharge from hospital, the current plan is for him to stay in supported accommodation. After discharge from hospital he needs support from the Home Treatment Team and subsequent follow up care from the Community Mental Health Team services. There is a very high risk of relapse if he is not supported well in the community. In my opinion there is a high risk of relapse of the psychotic illness if he leaves the country and appropriate support is not available.

10. A letter dated 1 July 2019 confirmed that the appellant had been treated as an inpatient within the NHS Mental Health trust since 31 March 2019 having been detained under section 3 of the Mental Health Act. A letter of 1 April 2019 to the appellant's GP written by a Psychiatric Liaison Nurse states:

[JS] was assessed by Liaison Psychiatry, who identified ongoing/acute psychotic symptoms, including hallucinations, thought disorder and paranoid/delusional beliefs.

He was also refusing psychiatric medication, which was leading to further deterioration of his mental state.

11. A further letter before the Judge is that dated 11 September 2019 written by Amy Isaacs an experienced social worker of the Sutton Coldfield Constituency Team who stated she had been involved in the appellant's care since 4 July 2019 when she attended a discharge planning meeting at George Ward, Highcroft Hospital with Consultant Psychiatrist Dr Wall. The letter states "*According to Dr Wall [JS] mental disorder is chronic and will not be cured. He will need to receive treatment and support for the rest of his life. The letter also notes [JS] was "... discharged from psychiatric hospital back into his Aunties address in order that he will receive the ongoing support he requires to remain as mentally stable as possible. Any threats to [JS] current living situation is only increasing his anxiety and likelihood of relapse".*" The letter states [JS] continues to need 24/7 ongoing support from his family and the support of community mental health services to promote recovery and that without such support or a change/reduction in this support it would cause [JS] greater anxiety and risk contributing to a deterioration in mental state and further psychiatric hospital admissions.
12. There was also before the Judge a psychiatric report dated 26 June 2019 written by Dr Hanna a Consultant Psychiatrist. This report was considered by the Judge who in relation to the same wrote at [34]:
34. I can only attach limited weight to Dr Hanna's report. He has not considered the Appellant's medical records. He has not clarified how long he assessed the Appellant for and in what conditions. He has not stated what expertise he has, that allows him to comment on what treatment or medication is available in India.
13. It was submitted by Mr Ul-Haq that rather than applying 'little weight the Judge, in reality, placed no weight on this document.

14. Dr Hannah clearly sets out his professional qualifications in section 1 of the report headed "About The Author". It is clear from that Dr Hanna possesses the necessary professional qualifications to act as an expert witness in this case.
15. At section 2.2 of the report Dr Hanna writes: *"In order to prepare this report I assessed [JS] on 29 May 2019. The assessment took place on Tazetta Ward at the Oleaster Unit where [JS] is currently an inpatient. I was accompanied by my colleague Dawn Smith who is a Registered Mental Health Nurse. Prior to assessing [JS], I met with his paternal Aunt [JK] in order to take a history and gain some collateral information"*. Although Dr Hanna confirms at paragraph 8.1 that he has not been made privy to [JS's] medical records it is clear that he has had available sufficient information to set out his opinion as to [JS] illness in section 7 of the report in the following terms:
- 7.1 [JS] presentation is consistent with his established diagnosis of schizophrenia. From the information available to me it appears that his response to treatment for this condition has been limited. He has been a psychiatric inpatient for the last 8+ months.
- 7.2 [JS] is currently experiencing significant negative symptoms of this condition. These include: poverty of thought and speech; apathy and blunted affect. As a result he requires prompting and assistance from staff on the ward to attend to all of his activities of daily living.
- 7.3 The negative symptoms of schizophrenia are notoriously difficult to treat and it is likely to require long-term support from those around him. This support is likely to include prompting and assistance with both his personal and domestic activities of daily living including medication administration.
16. The diagnosis is in accordance with the other reports available to the Judge and it is not clear why only a 'little weight' was placed upon something that on the face of it appears uncontentious. Whilst the Judge may have been entitled to place less weight upon Dr Hanna's comments regarding availability of treatment in India without the report establishing the basis of such expertise, that does not justify all of the report being effectively dismissed.
17. At [35] the Judge writes:
35. On the basis of Dr Land, Dr George and Ms Isaac's evidence, I accept that the Appellant has been diagnosed with schizophrenia and has been sectioned under the Mental Health Act 1983 on four occasions, the last occasion being in June 2020. I also accept that he has in the past been moved to supported accommodation and from there returned to his aunt's home I was told in oral evidence by the Appellant's aunt, that he is currently residing in supported accommodation. I have not been provided any information about his current condition, what treatment and medication he is now receiving, how long he will remain in supported accommodation and where he will live thereafter and his prognosis.
18. It is not made out the Judges concerns regarding the nature of the information that had been provided is not a finding reasonably open to the Judge on the

evidence. Whilst in his written submissions at [16], relied upon by Mr Ul-Haq in his oral submissions, it is written "... has materially erred in not considering the letter of Ms. Isaac dated 11 June 2020, in which she states that the Appellant's mental state remains fragile and that his mental state is directly affected by the ongoing legal matters. The FTTJ has materially erred in not appreciating and considering that paranoid schizophrenia is a lifetime illness that is fragile and can ignite at any stage" it is not made out the Judge did not consider that specific piece of evidence or understand that the appellant's mental state remained fragile and was affected by the ongoing legal issues. The comment by the Judge simple comments that he had not been provided in particular with information regarding the appellant's current condition at the date of the appeal hearing, 19 August 2020. That is an observation clearly available to the Judge about the evidence as a whole.

19. I also find it not made out that the Judge did not understand the nature paranoid schizophrenia. Judge clearly had available wealth of medical evidence and the Judge is not required to set out the nature of that evidence or make findings upon the same in the decision under challenge.
20. Reference was made during the submissions to an earlier hearing before another judge the First-tier Tribunal who undertook a telephone CMR and who notes in the summary of that hearing, issued on the same date, a number of issues that were agreed between the parties as follows:

(a) the issues for determination in the appeal are:

- Article 3 - lack of treatment and care in India
- Article 8 - physical and moral integrity
- Article 8 - Private life 276 ADE (1)(vi) very significant obstacles
- Article 8 - family life
- Contact with family in India

(b) the following concessions were made by the respondent:

- Mental illness is accepted
- Indian national

(c) Due to the appellant's ill-health he shall not be called to give evidence. The Tribunal should rely on his witness statement. There should be three witnesses called on the appellant's behalf.

(d) Expert medical evidence is required to address the appellant's medical condition, current treatment (including likely suitability of any other treatment) the effect on them of inability to access it.

(e)

21. Even though the appellant did not give oral evidence he is still a vulnerable witness and was entitled to be treated as such requiring the Judge to set out how the same had been factored into the assessment of the appellant's own evidence. Mrs Patterson submission that this issue is not relevant as the appellant did not attend court to give oral evidence is noted but that does not mean it can be ignored if some evidence is being given by the vulnerable individual. I do not find any error on this point, however, to be material as the decision of the Judge

is based upon expert evidence, country evidence, and the material provided from other sources rather than from the appellant alone that the appellant fails to establish what way he has been prejudiced by the manner in which the Judge treated his evidence. It is not suggested those giving oral evidence should have been treated as vulnerable individuals.

22. The Judge makes further comment at [39 - 41] which are set out above about further problems experienced by him in assessing the appellant's claim in light of the evidence that was provided. The Judge notes in particular that it had not been established why the appellant would not be able to obtain free treatment and the medication he requires in India. That finding has not been shown to be infected by arguable legal error, per se.
23. The Judge was clearly aware of the need for ongoing care in addition to the prescription medication. The Judge records that the appellant has a sister in India who herself has a mental health conditions and a brother but concluded by reference to the evidence that had been made available that the appellant had not satisfied the Judge that he would not have a support network that he could access in India from these sources, as required.
24. It is clear that if the appellant does not access the required medical and practical assistance to monitor his condition and provide day to day support and for when he becomes unwell, there is a likelihood of there being a real risk of intense suffering in the receiving state. The test set out in *Paposhvili*, approved in *AM (Zimbabwe)*, requires that such intense suffering must be as a result of the absence of appropriate treatment in the receiving country or lack of access to such treatment. This is the issue the Judge clearly focused upon when considering the merits of the appeal in the alternative; concluding that it had not been established that access to required medication or other aspects of support and care had not been shown not to be available in India.
25. The grounds of appeal, with in which the paragraphs are not numbered, assert:

“Consideration was not given to the fact that the sister's situation and mental health (paragraph 38) in no way illustrates that the appellant has the same condition, and thus will be able to receive adequate treatment upon return. The judge did not enquire what the sister was suffering on and what medication she was receiving. The judge did have sufficient medical evidence before him and the two can not be compared so casually.”

26. The Judge undertakes no impermissible conclusion at [38] but merely records the evidence. It was not for the Judge to seek out evidence in proceedings that are essentially adversarial but in which the appellant failed to provide adequate evidence to support the claim that no family member in India will be able to provide the required degree of support essential to his welfare. The Judge's finding is clear that insufficient evidence was provided to establish that supported living arrangements would not be available to [JS] on return to India.
27. The Judge clearly considered the report of John Birchall and was aware of the issue of social stigma which is illustrated in the analysis of [JS's] sister's condition at [38]. The Judge was not required to set out the content of John Birchall's report and noted aspects of that report at [40] set out above.

28. The assertion the Judge underestimated the relationship between the appellant and his aunt's challenges to the Judges assessment of the weight such evidence could be given when assessing the proportionality of removal. At [50] the Judge writes:
50. There is no doubt in my mind that there was a family relationship between the Appellant and his aunts and cousins. The care they demonstrated towards him when he was ill demonstrated an element of dependency which went beyond normal emotional ties. However, JK states that the Appellant's condition deteriorated to such a degree that she and her family were no longer able to care for him at home. He was sectioned and is now in supported accommodation where he is no longer dependent on his family for his day to day care. The Appellant's family now visit to the Appellant and provide him with emotional support. The medical evidence addresses the Appellant's situation in June 2020 whilst he was sectioned under the Mental Health Act, it does not explain how dependent he is on his family now that he has settled into supported accommodation. Dr George in his letter of 1 June 2020 only refers to care from NHS support agencies and does not refer to any family support that may be required. The Appellant has therefore failed to satisfy me that there is currently an element of dependency that goes beyond normal emotional ties; that such dependency is likely to exist in the very near future; and if so who he will dependent on to assist him with his day-to-day needs and why that person could not support him in India.
29. In relation to the proportionality of the decision and consideration of the paragraph 276 ADE issues the Judge writes between [53-56]:
53. I can find very little that weighs in the Appellant's favour. For the reasons set out about, the Appellant has not on balance satisfied me that there would be unjustifiably harsh consequences for the Appellant or a member of his family if he was refused leave to remain in the UK. I must also take into account the fact that he does not speak English, is not financially independent and has lived in the UK both unlawfully and precariously.
54. Weighing on the other side is the public interest in removing him from the UK so that effective immigration controls are maintained. The Respondent must establish that the decision to remove is legitimate, taken in pursuit of a legitimate aim and necessary and proportionate in a democratic society. The Respondent has established this and I therefore attach significant weight to this factor.
55. I have balanced these factors for and against the Appellant's removal and I am satisfied that the public interest in maintaining effective immigration controls significantly outweighs the individual rights of the Appellant. Consequently, I am satisfied that the Appellant's removal would be proportionate.
30. Whilst the appellant disagrees with that outcome that is not the issue. Whilst the family and the appellant would rather he was allowed to remain in the United Kingdom where he could continue to receive treatment from the NHS to meet his needs when he suffered a relapse, rather than have him returned to India

- where the burden of providing such assistance would fall upon family members there and the mental health services in India, that is not determinative.
31. It is accepted that the appellant suffers a serious mental health condition through no fault of his own. The Judge was clearly aware of this and of the evidence relating to the recurring nature of such a condition especially for an individual is not compliant with their medication. It is not made out the depot medication which takes away responsibility for the individual to have to take medication on a daily basis is not available in India.
 32. I do not find it made out the Judge was unaware of the enduring, relapsing, or remitting nature of schizophrenia or that it is an illness without cure, controlled by medication and support. A reading of the decision clearly shows that these were the issues that the Judge was seeking to address in relation to which he expresses concerns regarding the nature of the evidence that had been made available to support the appellant's claim.
 33. It was not made out the Judge conclusion that returning the appellant to India will not breach his article 3 rights or result in a breach of paragraph 276 ADE or be a disproportionate interference with a protected right pursuant to article 8 on the basis of physical or moral integrity, family or private life, are findings outside the range of those reasonably available to the Judge on the evidence.
 34. The appellant will clearly be able to continue to have access to professional psychiatric care whilst he remains in the United Kingdom. It was not made out that appropriate steps will not be taken throughout the removal process to protect the applicant from the any identifiable risk. In light of such precautions to be taken within the UK and during removal, and the existence of adequate psychiatric care and the findings in relation to support networks in India, it was not irrational of the Judge to conclude that there would be no breach of Article 3. It is not made out those responsible for treating the appellant in the United Kingdom will not be able to liaise with their professional colleagues in India to pass on the appellant's medical notes or to ensure that he be seen and able to access care upon his return. As the Judge noted the evidence provided was not sufficient to establish the appellant would not have a support network he could access in India which is a finding clearly available to the Judge on the evidence.
 35. The Judge's findings in relation the fitness to fly issue have not been shown to be outside the range of those available on the evidence.
 36. Notwithstanding some issues of concern recorded above, I find that the Judge's findings in the alternative on the basis that the appellant is suffering a serious mental illness have not been shown to be infected by arguable legal error sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

Decision

37. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

38. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 26 February 2021