



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM
CHAMBER)

Appeal Number: HU/10770/2017

THE IMMIGRATION ACTS

Heard at Field House
On the 17 January 2022

Decision and Reasons Promulgated
On the 28 February 2022

Before

Upper Tribunal Judge Norton-Taylor
Deputy Upper Tribunal Judge Mailer

Between

AO
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P Hayood, counsel, instructed by Wilson Solicitors LLP

For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

Direction Regarding Anonymity

Rule 14: 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 him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Decision and Reasons

1. For ease of reading, we continue to refer to the parties as they were before the First-tier Tribunal: thus, Secretary of State is once more “the respondent” and AO is “the appellant”.
2. The respondent raises a challenge to the determination of First-tier Tribunal Judge T Lawrence, who, in a decision promulgated on 13 April 2021, allowed the appellant’s appeal against the respondent’s deportation order, on the basis that it would breach Article 3 of the Human Rights Convention.
3. The appellant is a national of Somaliland, who has a very serious record of offending. The respondent sought to deport him to Somaliland. The background to the appeal before Judge Lawrence is set out from paragraphs 4 to 15 of his decision.
4. It is accepted that the appellant has been diagnosed with paranoid schizophrenia, which is long standing. It is contended by the appellant that the only effective medication allowing him to remain well is Clozapine which requires careful administration and regular blood tests. The treatment also includes care and support in the community to ensure that he remains well.
5. A country expert report by Mary Harper was produced before Judge Lawrence. She dealt with the availability of Clozapine and associated blood testing in Somaliland. Her report indicated that there is no reliable source of genuine Clozapine in Somaliland. Further, the required blood testing and monitoring for users of Clozapine is unavailable. Ms Harper’s expert report was produced at pages 77-87 of the bundle.
6. Ms Harper referred to information provided by a psychiatrist in Hargeisa, Dr Hersi, who ‘did not believe’ that Clozapine was available at Hargeisa Group Hospital.
7. Judge Lawrence found at [61] that

‘Dr Hersi did not work at the hospital so he could thus not reliably say that and the information he had provided was speculation. The information also contradicted the information given to Ms Harper by a foreign doctor, who confirmed that Clozapine was available in Hargeisa and that colleagues would monitor users of the drug, which showed that blood testing was available. There were therefore inconsistent reports on the availability of Clozapine’.
8. He concluded that Clozapine is the only effective treatment for the appellant. He found that the evidence for the availability of Clozapine in Somaliland and the required monitoring of the administration of the drug was contradictory and unreliable – [130.3] and [130.6]. The appellant’s removal from the UK would thus be in breach of Article 3 of the Convention [130.9].
9. It was contended at paragraph 5 of the respondent’s grounds seeking permission to appeal, that evidence obtained from the Department for International Development and the Foreign Office, provided that medications such as Clozapine were available

at Hergeisa. Confirmation had been received from UNICEF in Hergeisa, that Clozapine was available at Hergeisa Hospital and is administered through sufficient numbers of doctors and nurses at the psychiatric department at the hospital.

10. It is also contended at paragraph 9 that it is clear that on factual matrix of this case where there was a plethora of evidence of availability of necessary medication, where at the destination of removal, Hergeisa, there is a hospital which would administer necessary blood tests the appellant cannot meet the 'test,' following AM (Zimbabwe v SSHD [2021] USC 17.
11. On 21 April 2021, Upper Tribunal Judge Martin found it that it was arguable that the Judge erred by giving inadequate reasons for rejecting the Secretary of State's evidence that Clozapine is available in Somaliland as are the necessary blood tests and that the case does not reach the high threshold of Article 3.
12. Mr McGirr on behalf of the respondent referred to the evidence produced by the respondent at the hearing, which is noted by the Judge at [22-23] as to the availability of Clozapine in Somaliland and the treatment available. He stated that having read the report of Ms Harper, this might explain why the evidence from the Secretary of State may be regarded as unreliable. He accordingly accepted that "it may appear" that the grounds seeking permission were misconceived. Nor did paragraph 9 of the decision take the Secretary of State's case any further.
13. On behalf of the appellant, Mr Haywood has provided a helpful Rule 24 Notice, in which he succinctly sets out the appellant's case before the First-tier Tribunal. He contended that on the basis of this evidence, were the appellant to lack the treatment that he requires, his mental state would deteriorate and there would be a relapse of his psychotic condition. He referred to Bensaid v UK as to how the descent into psychosis may indicate a breach of Article 3 of the Convention.
14. Moreover, that deterioration will occur in conditions where he is unable to subsist, lacks family or other support and will self neglect. He will be acutely vulnerable as someone who may become floridly psychotic, disinhibited and aggressive, have paranoid or persecutory ideation, with grandiose delusions, so as to likely pose a risk to himself or from others.
15. He submitted that the evidence did not demonstrate, nor has the respondent shown, that the appellant would have access to a reliable supply of genuine Clozapine and that the blood testing he requires while taking the drug and other support and supervision he requires to remain well, is available.
16. The grounds did not contend that the Judge's other factual findings at [130] were not correct. These findings were informed by the consistency of opinions with regard to

the appellant's diagnosis, needs and prognosis in the event of discontinuation of treatment, monitoring, care and/or support.

17. Mr Haywood contended with regard to the medical evidence presented, that Judge Lawrence was entitled to find that the discontinuation of the appellant's treatment would present a real risk that he would suffer a rapid deterioration in his mental state within a few months. This would result ultimately in a full blown acute relapse. Once established it would be extremely difficult to reverse that condition, which would aptly be described as a serious, rapid and irreversible decline in his state of health resulting in intense suffering [130.2].
18. The unchallenged evidence was that Clozapine is the only effective treatment for the appellant and requires regular monitoring, including blood tests without which the appellant will be at risk of being immunocompromised [130.3].
19. The appellant currently has a package of ongoing care and support that is still considered as being required to mitigate against setbacks. Close monitoring is required. He has supported accommodation in a hostel, that is constantly staffed, a support worker and regular appointments with his psychiatrist.
20. Were such supervision and support in the community not to be available to the appellant, Dr Odutoye, the treating consultant, stated that there is substantial risk that he will become ill again because of the substantial support that he has required [130.4]. Removing the appellant from contact with his family would have a devastating impact emotionally and substantially increase the risk of a full blown schizophrenic relapse [130.5].
21. Judge Lawrence found that the evidence for the availability in Somaliland of genuine Clozapine and the required monitoring of the administration of the drug was contradictory and unreliable [130.6]. Nor was there evidence for the availability of the substantial ongoing care and support which the appellant still requires to mitigate against setbacks [130.7].
22. Mr Haywood submitted that having assessed all the evidence, Judge Lawrence was entitled to conclude that serious doubts remain as to whether the appellant has a real possibility of receiving the treatment he requires. The respondent had not obtained any individual and sufficient assurances from the receiving state in this case [130.8].
23. He referred to two reports produced at the First-tier hearing: Information Requests 0920.038 and 0419.020, which dealt with the provision of psychiatric treatment in Somalia, including Somaliland, which refer to treatment in Hargeisa.
24. The response to request 0920.038 dated 23 September 2020, indicated that CPIT found information that indicates that there are five psychiatric hospitals in Somalia

including one in Hergesia (Somaliland) but no information could be found about the availability of antidepressant drugs in Somaliland or other parts of Somalia.

25. A WHO report about mental health stated, inter alia, that Somalia has five mental health centres situated in and around Somalia. These provide basic care to people suffering from mental health conditions. However only three psychiatrists are working in the mental health facilities in the country. The Chain-Free Initiative (CFI) aims to restore the rights and dignity of mentally ill persons by advocating for chain free hospitals and homes and a chain free environment where mentally ill patients can receive treatment and care. With the support of the WHO the initiative has been implemented at the Habib Hospital in Mogadishu and the Hargisa group hospital mental health ward.
26. In Request 419.020, information was sought as to what treatment and/or facilities are available for people with schizo-affective disorder in Somalia. At 1.2.1 of the response it is noted that CPIT could not confirm the availability of Clozapine or sodium valproate in Somalia. Mr Haywood noted that this had not been referred to in the respondent's grounds seeking permission.
27. Further, Ms Harper's report indicates that blood tests for Clozapine users were not available at Hargeisa General Hospital and there was no community based mental health services in Somaliland.
28. Having assessed the submissions on the grounds on which permission was granted, we find that they do not disclose any material errors of law.
29. We find, contrary to the respondent's assertion, that Judge Lawrence's finding as to the availability of Clozapine is not against "all of the evidence provided by SSHD." The respondent's most recent country information did not confirm the availability of Clozapine in Somalia.
30. Nor, with regard to the second ground, was there a "plethora of evidence" to demonstrate the availability to the appellant of the necessary medication and blood testing with the consequence that he cannot meet the threshold test in AM (Zimbabwe). As submitted by Mr Haywood, there were additional elements of the treatment which the appellant requires, including care and support in the community, to ensure that he remained well and did not suffer the consequences identified by Judge Lawrence at [130.2], which would amount to a breach of Article 3.
31. The decision of Judge Lawrence contains a detailed and thorough rehearsal of the evidence and submissions, including the applicable law. This was followed by a careful analysis of the evidence and submissions set within the framework of the applicable law resulting in well reasoned findings of fact.

32. His conclusion that Clozapine would not be readily available to the appellant on the basis of a dependable, consistent and affordable long-term basis, is sustainable as is his finding that the appellant would not obtain the high level of supervision which he requires, resulting in a significant risk to himself and others were he to relapse, including a risk of retributive violence.
33. For the reasons given, we reject the respondent's challenge. We can identify no error of law in the decision of First-tier Tribunal Judge Lawrence in respect of the appellant. The decision allowing the appellant's appeal stands.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction continued.

Signed: C Mailer

Date 27 January 2022

Deputy Upper Tribunal Judge Mailer