



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2022-006496

First-tier Tribunal Nos:  
PA/00008/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 24<sup>th</sup> of November 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**  
**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ZH**  
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer  
For the Respondent: Mr R Spurling, counsel instructed by Duncan Lewis solicitors

**Heard at Field House on 2 October 2023**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent, also called “the Claimant”, is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court. We make this order because the Claimant has sought asylum.

**DECISION AND REASONS**

1. The Respondent, who we shall refer to as the Claimant, is a national of Zimbabwe, born in 1974. He arrived in the United Kingdom on 23 January 2002 and claimed asylum on 28 January 2002. This application was refused on 30 January 2002 and his appeal against that decision was dismissed in a Decision and Reasons dated 20 May 2002. The Claimant was subsequently granted ILR following a fresh claim for asylum.
2. On 31 August 2018, the Claimant was convicted of possession of a knife and given a 12 months community order. On 21 August 2019, he was convicted of battery and given a community order with a restraining order which he then breached on 7 occasions, plus other related offences and on 27 November 2020 he was sentenced to 10 days imprisonment. The Claimant was then sentenced to 4 months imprisonment for failing to comply with the community requirements of a suspended sentence order on 10 March 2021.
3. On 29 April 2021, the SSHD made a decision to deport the Claimant on the basis that his deportation would be conducive to the public good as he was considered to be a persistent offender. He appealed against this decision on protection and human rights grounds.
4. The Claimant was referred into the NRM on 10 February 2022 and on 16 February 2022 a positive reasonable grounds decision was made.
5. The Claimant's appeal hearing took place before First tier Tribunal Judge Karbani on 24 May 2022. In a Decision and Reasons promulgated 10 June 2022 the appeal was allowed with reference to article 3 of ECHR. On 15 June 2022, the Claimant's solicitors wrote to the First tier Tribunal seeking clarification of whether or not the appeal had also been allowed with reference to article 8 of ECHR as that was what the Judge appeared to have done. This letter had not been answered when the appeal came before Upper Tribunal Judge Perkins on 27 June 2023 and, after discussion with the representatives, he adjourned the hearing and issued a Memorandum and Directions. On that occasion the Claimant was represented by Ms E Daykin of counsel who had appeared before the First-tier Tribunal and who had prepared grounds of appeal and a skeleton argument.
6. The SSHD sought permission to appeal to the Upper Tribunal in time on 24 June 2022 on the following bases:

*“Ground one: Making a material misdirection of law/ Failing to give reasons for findings on a material matter*

1. *The FTTJ allows the appeal on the basis that the appellant would face treatment contrary to Article 3 of the ECHR on account of his mental ill-health if he were to be deported to Zimbabwe,*

*despite a finding that there has been no formal diagnosis of the appellant's mental illness.*

- 2. It is also noted at [59] that there is no suicidal intent, but that the appellant intends to attempt suicide is deported. It is submitted that the FTTJ has erred in failing to consider that the appellant's claim that he intends to attempt suicide is not the result of mental ill-health, but is a threat intended to avoid deportation.*
- 3. At [63] it is noted that facilities for chronic mental illness exist in Bulawayo. However, it is noted that there is a shortage of drugs, medical professionals and facilities. It is submitted that there is no requirement for the facilities to be of the same standard as those found in the UK.*
- 4. At [65] the FTTJ finds that the appellant would be unable to access such facilities as are available without the support of his family. However, it is submitted that there is no finding that the appellant required support to access medical facilities in the UK, so there is no basis that he would be unable to access facilities in Zimbabwe.*
- 5. It is further submitted that the FTTJ has failed to have adequate regard to the Supreme Court judgment in the case of [AM \(Zimbabwe\) \[2020\] UKSC 17](#) which sets out the test and approach for determining Article 3 medical claims.*
- 6. In order to establish that there would be a breach of Article 3 on medical grounds if removed from or required to leave the UK, a person no longer has to show that they are at imminent risk of dying (departing from the previous 'deathbed cases').*
- 7. The claimant must show that there are substantial grounds for believing that they would face a real risk of being exposed to either:*

- a serious, rapid and irreversible decline in their state of health resulting in intense suffering*
- a significant reduction in life expectancy ('significant' means 'substantial') and whether a reduction in life expectancy is substantial will depend on the facts of the case*

*The serious, rapid and irreversible decline in health leading to intense suffering and/or the significant reduction in life expectancy must be as a result of either:*

- the absence of appropriate treatment in the receiving country*
- the lack of access to such treatment*

- 8. It is further submitted that the appellant's claim that he intends to attempt suicide if deported is not the result of a lack of*

*appropriate treatment, nor lack of access to treatment and therefore the test set in (AM) Zimbabwe is not met.*

*9. It is further submitted that the FTTJ's finding at [65] 'I am not satisfied that Zimbabwe has the necessary medical facilities for his required care without further provisions being put in place the respondent, such as funding for or arranging medical care and medication. I therefore find that the appellant's appeal stands to be allowed on Article 3 medical grounds'. It is submitted that this requirement for the respondent to put in place 'further provisions' goes beyond the test set in AM Zimbabwe.*

*10. Furthermore the FTTJ has failed to consider that the appellant may have access to funds from the Facilitated Returns Scheme:*

- SB (refugee revocation; IDP camps) Somalia [2019] UKUT 00358 (IAC) para 70 which sets out a requirement to assess the appellant's ability to secure employment in Mogadishu and the fact that he would have the opportunity to call on up to £1,500 from the Facilitated Returns Scheme in order to assist his return.*

*11. It is therefore submitted that the FTTJ has failed to have regard to the above and has failed to give adequate reasons for finding that the appellant's Article 3 rights would be breached if he were to be deported to Zimbabwe.*

*12. It is submitted that the FTTJ has erred in law, such that the decision should be set aside."*

7. In a decision dated 17 June 2022, permission to appeal was refused by FtTJ Aziz, but following a renewed application, permission to appeal was granted by Upper Tribunal Judge Jackson on 27 April 2023 in the following terms:

*"The grounds of appeal are that the First-tier Tribunal erred in law in*

*(i) allowing the Appellant's appeal on Article 3, health grounds in circumstances where there was no formal diagnosis of PTSD and no suicidal intent due to mental ill-health but only a threat of such action to avoid deportation. Further, finding that the Appellant would be unable to access health facilities without the support of his family, but without finding that the Appellant requires any such support in the United Kingdom;*

*(ii) failing to have adequate regard to AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17, the test for which is not met in circumstances where the claimed intention of suicide is not the result of a lack of appropriate treatment nor access to such*

*treatment and by requiring the Respondent to put in place funding or arrangements for medical care and medication;*

*(iii) failing to consider the Appellant's access to funds from the Facilitated Returns Scheme.*

*The grounds of appeal are just arguable, particularly in relation to the lack of formal diagnosis of PTSD, the history of a failed asylum claim (but reliance on past torture in Zimbabwe), lack of current suicidal ideation and findings on access to treatment; in the context of what remains a very high threshold in AM Zimbabwe. As to the third ground, it is not clear whether this was relied upon expressly, nor that financial concerns were key as to the situation on return, but I do not exclude it from the grant of permission."*

8. Following directions by Upper Tribunal Judge Perkins made on 27 June 2023, on 29 June 2023, the First tier Tribunal responded to the Claimant's solicitors' letter in the following terms:

*"You will be aware that Upper Tribunal Judge Perkins has adjourned the appeal to allow for consideration to be given to the terms of Judge Karbani's order. Having done so, the tribunal considers the meaning of Judge Karbani's order is clear: she allowed the appeal on human rights grounds by reference to Article 3. Her findings from paragraph 66 onwards were made in the alternative in case she was wrong on Art 3."*

9. A conclusive grounds decision was made on 4 August 2023 but in a decision dated 4 September 2023 the SSHD refused to grant leave pursuant to this decision.

#### *Hearing*

10. At the hearing on 2 October 2023 we heard submissions from Mr Terrell on behalf of the SSHD and Mr Spurling on behalf of the Claimant.
11. With regard to the article 8 findings, Mr Spurling submitted that, even if the appeal had not formally been allowed under article 8 of ECHR the Judge made findings of fact that she was entitled to make, found deportation would be disproportionate under article 8 and allowed the appeal.
12. Whilst the SSHD had not challenged the Judge's findings in respect of article 8 of ECHR, given that it was accepted by all parties that the Judge had allowed the appeal in the alternative with reference to article 8 but this had only recently been clarified, we permitted Mr Terrell to formally amend the grounds of appeal to add the additional ground that: *"the error in the article 3 assessment*

*infects the findings on article 8 ECHR.*" Mr Spurling had no objection to this course of action.

13. Mr Terrell submitted that the Judge had erred in finding that the risk of suicide engaged article 3 given that there was no evidence of the cause of the risk of suicide and whether it was just a threat or whether it was motivated by mental ill health and fear of return to Zimbabwe and submitted that the risk of suicide was not likely to materialise as it was not objectively well founded.
14. In reply, Mr Spurling submitted that in granting permission to appeal, Upper Tribunal Judge Jackson had reformulated the grounds of appeal, which was problematic, given that the issue is not about the intention to commit suicide but about the risk and inadequate management of the risk of suicide. He submitted that the SSHD was attempting to re-argue her case before the First tier Tribunal and the difficulty for the SSHD is that "Dr Allison" does not restrict her analysis of the risk to simply the threat of deportation. This is a reference to a medico-legal report by Dr Kathryn Allison dated 8 March 2022 that was before the First-tier Tribunal. Dr Allison is a general medical practitioner with a particular interest in victims of torture. She has relevant post-graduate qualifications and has more than 11 years experience working for Medical Justice, currently as a report writer and trainer.
15. Mr Spurling drew attention to the fact that Judge Karbani noted at [59] that relevant factors are: active mental illness, social isolation, history of alcohol and substance abuse, previous suicide attempt and being male, all of which would increase the risk in the event of deportation. None of that depends on a finding that the Claimant's only reason for threatening suicide is to blackmail the UK authorities. The Judge gave reasons why she found the Claimant is credible and those reasons are lawful.
16. With regard to Ground 1 and the assertion that there was no formal diagnosis, Mr Spurling sought to rely on the skeleton argument of Ms Daykin dated 21 June 2023 and the rule 24 response incorporated into that, which provides:

*"[9] The grounds misrepresent what Judge Karbani said at paragraph [59]. Firstly, is it not correct that there has been no formal diagnosis of mental illness but in fact a diagnosis of depression and symptoms of PTSD. Secondly, as noted in the refusal of permission decision of FTTJ Aziz, the assertion that the Respondent intended to take his life if deported is against the backdrop of his mental health and not independent from it. Expert evidence of Dr Allison, to which FTTJ Karbani had regard [59] concluded that Respondent's mental health would decline upon removal and be at risk of suicide. The contributory factors which are*

*likely to increase the risk of suicide on removal, such as active mental illness, social isolation, history of alcohol or substance misuse, previous suicide attempt and being male are independent of the previous rejected protection claim and are clearly identified by the Judge in her decision. So too is that for the same reasons there would be significant challenges to integrating into a new environment and that is likely to increase the risk of further deterioration in mental health, risk alcohol relapse and increase suicidal ideation. Notably, these are all factors that the Tribunal in PS (cessation principles) Zimbabwe [2021] UKUT 00283 (IAC) found relevant to the article 3 question:*

*(i) PS would find it very difficult to adjust after a 19-year absence and without family or social support in Harare. PS has extensive support in the UK, which is a pivotal aspect of the “treatment” she has been receiving in the UK [107].*

*(ii) “Accessing basic amenities such as food and water is challenging for those without mental illness and who have lived in Harare for lengthy periods.” [108]*

*(iii) Employment in Zimbabwe is entirely implausible for PS, given her mental health. [108]*

*(iv) It is likely that the symptoms associated with her depression and bereavement disorder will worsen and intensify within a short period of her arrival in Harare to the extent that it will break her mental and physical resolve [109].*

*(v) “It is against this background that we conclude there is a real risk of a serious, rapid and irreversible decline in her health resulting in intense suffering.” [109]*

*(vi) “Remittances might be able to fund basic accommodation and food but she will be entirely unable to negotiate the daily challenges of accessing day to day basic amenities without support, such that within a short space of time she is likely to deteriorate to such an extent that she will experience intense suffering and degrading treatment in breach of the high threshold required by Article 3” [110].*

17. Mr Spurling also sought to rely on [5] of Dr Allison’s report and AB 82-83 which diagnoses the Claimant with PTSD and depression.
18. In relation to [2] of the grounds of appeal and the Claimant’s suicidal intent, the Judge sets out all the reasons. In relation to [3] of the grounds of appeal there is no requirement that facilities in Zimbabwe have to be to the same standard. With regard to [4] there was no suggestion the Claimant required family support in the UK so

this is not relevant in Zimbabwe but rather is an attempt to re-argue the case and depends on the assumption that life is the same there which it is not. With regard to [5] and the assertion that the Judge did not have adequate regard to *AM Zimbabwe* she rehearses the caselaw at [43]-[45].

19. Mr Terrell in reply further drew attention to the jurisprudence regarding suicide cases *viz J* [2005] EWCA Civ 629 at [30]

*“30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.”*

He also relied upon *Y* [2009] EWCA Civ 362. He submitted the jurisprudence was not reflected in the judge’s decision at [64] where she held:

*“64. Looking at the evidence in the round, I find that there is a real risk that the appellant will not be able to access either medical care or medication that he requires for his depression, or to address the risk of attempted or actual suicide on return to Zimbabwe.”*

20. With regard to [10] of the grounds and the Facilitated Returns Scheme, Mr Terrell, who had also been the Presenting Officer before the First tier Tribunal, fairly accepted that not much had been made of this point in the proceedings before the First tier and did not seek to make further submissions on the point.

#### *Decision and reasons*

21. We consider the SSHD’s grounds of appeal in turn. At [2] it is asserted that the First tier Tribunal Judge erred at [59] in failing to consider that the Claimant’s claim that he intended to attempt suicide is not the result of mental ill-health but a threat intended to avoid deportation and that there is no suicidal intent.
22. We note that the First tier Tribunal Judge considered MY (Suicide risk after Paposhvilli) [2021] UKUT 00232 at [43] of her Decision and Reasons and the judgment of the Grand Chamber of the European Court of Human Rights in Savran v Denmark [2021] ECHR 1025 at [44] both of which consider the application of Paposhvili v Belgium [2017] Imm AR 867 to cases involving mental health and the risk of suicide. At [45] the Judge further considered the decision in JL (medical reports - credibility) China [2013] UKUT 00145 and that the approach when considering medical reports, which is ultimately a



matter for the judge as to whether an account is plausible or credible, was confirmed in KV (Sri Lanka) [2019] UKSC 10.

23. The Judge took account of the diagnoses of Dr Allison at [59] that the Claimant has depression and symptoms of PTSD consistent with childhood abuse, abduction, torture and forced labour and found that the report was detailed and significant weight should be attached to it. Dr Allison explored the Claimant's suicidal intent and he denied immediate suicidal intent, but reported intent to take his life if he were to be deported. Dr Allison reported a compelling and spontaneous conversation of the Claimant's prior attempt on his life, which the Judge accepted as credible and accepted the factors identified by Dr Allison as being associated with a higher risk of suicide on return relevant to his case, including active mental illness, social isolation, a history of alcohol and substances misuse, previous suicide attempt and being male.
24. We find the Judge was entitled to attach weight to the conclusions of Dr Allison and to the factors she identified as placing the Claimant at increased risk of suicide in the event of removal, including a previous suicide attempt. The fact that the Claimant may not have had any immediate suicidal intent at the time he was examined by Dr Allison does not mean that he would continue to have no intent if he faced deportation and the evidence before the Judge indicated that his intent would change, for the reasons identified by Dr Allison and set out at [59]. It was not incumbent upon the Judge in light of that evidence to speculate as to the Claimant's motives for the threat of suicide upon deportation and we find that this ground of challenge is essentially simply a disagreement with the Judge's findings of fact on this aspect of the appeal, which were open to her on the evidence before her.
25. At [3] of the SSHD's grounds, reference was made to [63] of the Judge's Decision and Reasons, where it was noted that facilities for chronic mental illness exist in Bulawayo but that there is a shortage of drugs, medical professionals and facilities and that there is no requirement for the facilities in Zimbabwe to be of the same standard as those found in the UK.
26. Whilst the Courts have consistently found that there is no legal requirement for the facilities in the receiving country to be of the same standard as those found in the UK this is not what the Judge found at [63]. She was simply noting the evidence before her as part of her consideration at [62] through to [64] of whether the Claimant would be able to receive the required treatment for his mental health issues and other conditions in Zimbabwe, which included a higher dose of sertraline and High Intensity Psychological Therapy. We find the Judge was entitled on the evidence before her to reach the conclusion that there is a real risk that the Claimant would not

be able to access medical care or medication or to address the risk of attempted or actual suicide if deported to Zimbabwe.

27. Paragraph [4] of the SSHD's grounds of appeal assert that at [65] the Judge found that the Claimant would be unable to access such facilities as are available without the support of his family. However, there was no finding that the Claimant required support to access medical facilities in the UK, so there is no basis to find that he would be unable to access facilities in Zimbabwe for that reason.
28. We consider that in fact this a misunderstanding of what the Judge found at [65] which was that there was a risk of relapse to alcoholism which would impact the Claimant's ability to seek assistance. The Judge placed weight on the expert report which set out situations of decline in the past whereby he became mentally unable to cope and had relapsed. The issue of familial support was addressed by the Judge previously at [61] where she found that the Claimant was not in regular contact with his children and whilst he was in indirect contact with his mother via his sister, neither of them were aware that he faced deportation nor were they aware of his mental health difficulties or alcohol addiction and she found that he had not received family support in the past.
29. We consider that it is clear that the ability to access medical facilities in the UK is not directly comparable with the ability to do so in Zimbabwe, where the Claimant would be so much more disadvantaged, due to a likely deterioration in his mental health due to the likely relapse into alcoholism and increased risk of suicide, as found by the Judge and in any event, as the SSHD noted at [3] of her grounds of appeal, the facilities available in Zimbabwe would not be to the same standard as those in the UK. We find no error of law in this respect either.
30. With regard to [5]-[9] of the SSHD's grounds of appeal, which are concerned with the Judge's application of the test set out in AM (Zimbabwe) [2020] UKSC 17, we find that the Judge did correctly direct herself with regard to the application of *AM (Zimbabwe)*, where the Supreme Court considered the obligations upon the Respondent at [33] of their judgment and held *inter alia*:

*"33. In the event that the applicant presents evidence to the standard addressed above, the returning state can seek to challenge or counter it in the manner helpfully outlined in the judgment in the Paposhvili case at paras 187 to 191 and summarised at para 23(b) to (e) above. The premise behind the guidance, surely reasonable, is that, while it is for the applicant to adduce evidence about his or her medical condition, current treatment (including the likely suitability of any other treatment) and the effect on him or her of inability to access it, the returning*

state is better able to collect evidence about the availability and accessibility of suitable treatment in the receiving state...

(emphasis added).

31. We find that, the Judge having found that the Claimant had discharged the initial burden, the reference by the Judge at [65] of her Decision and Reasons requiring the Respondent to put in place provisions for the Claimant is not a fair reflection of her finding. We find that it was open to the Judge to find that the Respondent had not provided any specific indication of the measures taken on her part, in light of her finding that she was not satisfied that Zimbabwe has the necessary medical facilities for the Claimant's required care without further provisions being put in place such as funding or arranging medical care and medication. We find that this reflects [191] of *Paposhvili* viz that if there are serious doubts as to the impact of removal the returning state has to obtain an individual assurance from the receiving state that appropriate treatment would be available and accessible. Whilst we accept that the Judge appeared to be suggesting that the Respondent make provision for the Claimant by way of medication, which might appear to be over and above the requirements set out in the jurisprudence, the fact remains that in this Claimant's case the Respondent has neither obtained an individual assurance from the Zimbabwean authorities that the Claimant will receive medication and the specific therapy advised by Dr Allison nor has she provided evidence as to the availability and accessibility of suitable treatment for this Claimant in Bulawayo, or elsewhere in Zimbabwe and this was the essential point that the Judge was making.
32. It follows that we find no material error of law in the Decision and Reasons of the First tier Tribunal Judge in relation to her reasons for allowing the appeal with regard to article 3 of ECHR. Whilst we gave permission for Mr Terrell to challenge the Judge's article 8 findings in the alternative: that "*the error in the article 3 assessment infects the findings on article 8 ECHR*" no separate or additional grounds were raised. Given that we find no error in relation to the article 3 assessment no additional matters arise in relation to article 8 of ECHR.

### **Notice of Decision**

33. The appeal by the SSHD is dismissed, with the effect that the decision of First tier Tribunal Judge Karbani to allow the Claimant's appeal is upheld.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

16 November 2023