



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

Case No: UI-2023-000957

First-tier Tribunal No: PA/10274/2018

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 9<sup>th</sup> of November 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**  
**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**SF**  
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr M Parvar, Home Office Presenting Officer

For the Respondent: Ms S Khan instructed by Parker, Rhodes Hickmotts  
Solicitors (Bradmarsh)

**Heard at Field House on 23 October 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, SF is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify SF. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this decision we will refer to the parties as they were described in the First tier Tribunal that is FS as the appellant and the Secretary of State as the respondent.
2. The appellant is an Ethiopian national born on the 12th of September 1987 and he appealed against the decisions of the respondent dated the 15th November 2017, the 13th August 2018 and the 25th August 2020 to refuse his protection and human rights claim. The respondent issued a supplemental refusal letter on the 3rd of February 2020.
3. In a decision promulgated on the 16th of September 2022 First tier Tribunal Judge Pickering (“the judge”), allowed the appellant’s appeal against the Secretary of State’s decisions refusing his protection claims. The judge considered the section 72 certificate finding that the appellant had committed a particularly serious crime, the rape of a child, which in involved grooming and sexual abuse of a large number of children within Yorkshire, and which the judge described as an extremely serious and grave offence. The appellant was sentenced to eight years in prison. The judge found at [64]-[65] of her decision that the appellant had not rebutted the statutory presumption owing to the lack of recognition of his offending and his ongoing mental health difficulties. The appellant was described as remaining a danger to the community and that any re offending was likely to involve offences of violence and sexual inappropriateness. The judge was not persuaded that the evidence demonstrated any sustained pattern of improvement, and which was characterised by multiple relapses.
4. There was no challenge by the appellant’s representatives to the finding under section 72.
5. The judge heard oral evidence although the opponent himself was not produced. The hearing had been previously adjourned twice and when the appellant was not produced on a second occasion, Ms Khan who represented the appellant before the First-tier Tribunal, having taken instructions, invited the judge to proceed. The judge acceded and heard the evidence of the appellants’ mother and sibling. There was no challenge to this approach. The judge, indeed, found that she would be more assisted by the evidence of the witnesses and the evidence of Dr Sen, a consultant psychiatrist who produced three reports dated 14<sup>th</sup> January 2020, 30<sup>th</sup> April 2020 and 14<sup>th</sup> July 2021, and the report dated 27<sup>th</sup> September 2020 of Professor Campbell, a country expert and Emeritus Professor with The School of African and Oriental Studies.
6. The judge noted that the appellant has chronic paranoid schizophrenia which started in his 20s and had persisted since. His illness had become increasingly complex, and he was not fully responsive to treatment. She identified that the prognosis was guarded. The appellant was currently taking Flupentizxol (Depixol) and it was recorded that he needed to remain on this medication. The treatment recommended was access to

antipsychotic medication, abstinence from illicit drugs and rehabilitative activities. The judge added at [42] that the appellant 'does not seem capable of taking responsibility for the management of his condition and needs considerable support in ensuring he takes his medication attends appointments and making positive choices to better support his health' and needed 'considerable support within the community in terms of his well-being.' There was strong evidence to link his offending with the deterioration of his mental health whereupon he became aggressive towards members of his family and the public and sexually inappropriate towards women.

7. On the basis of Dr Campbell's report, the judge found that there was 'considerable social stigma attached to mental illness in Ethiopia', [45] and thus the appellant would be unlikely to receive assistance from the community. Dr Campbell, on behalf of the appellant, identified 2 mental health facilities in Ethiopia both in Addis Ababa. The judge in relation to Amanuel Hospital (Addis Ababa) referred to Dr Campbell's reliance on a WHO (World Health Organisation) report from 2011 which the judge herself stated was 'of some vintage but I accept that this is the most recent evidence that Dr Campbell could identify'. The judge merely recorded that the clinic identified by the Secretary of State was a private clinic [50] and the appellant's family would not provide funding. Dr Campbell also identified the ease with which illicit drugs could be obtained. The appellant's only remaining family in Ethiopia was his grandmother [54] (she lived in Addis Ababa), but she would be unable to provide meaningful support. The judge recorded that the appellant had a 'long history of non-compliance with his treatment. The prognosis is guarded for the appellant because of his repeated relapses and numerous hospitalisations', [56]. The judge did note that MM (his mother) had travelled to Ethiopia over the years with funding from family pooled resources, [57]. The judge however went on to state at [58] that 'even in the UK the family have not been able to provide him the necessary support financial or otherwise to prevent the multiple relapses the appellant experienced' although that was not a criticism of the family, [58] and that the family had 'not been able to exert any influence over him to prevent his criminal offending'. The judge proceeded to find that the appellant had no further family in Ethiopia and although he had lived in the first 15 years of his life there, she did not consider that this would assist him to his drug use [60].
8. The judge then found the appellant had not rebutted the section 72 certificate and proceeded to consider in a section what she entitled 'the Article 3 -mental health the 'DH' argument', stating that she had applied the guidance contained within DH. She proceeded again to outline his mental health problems stating that she did not consider that his mental health 'would improve if returned to Ethiopia', [68] and that 'Even with his treatment he still experiences hallucinations and delusions'. As a result, he would not be able to manage his condition. She concluded he would not 'be capable on return to Ethiopia of doing what he needed to access medication and care'. Based on Dr Campbell's report she considered 'because of the health care system' the appellant would be unable to

access the necessary medication and care that he needs'. There was a lack of resources, services and family support. There were no financial resources. She added when he had been given money, he spent this on drugs. She simply stated that as a result 'the appellant's mental health would deteriorate on return to Ethiopia.' [73]. She found there was a real likelihood he would behave in a sexually inappropriate manner on return.

9. At [75] - [76] she concluded this section stating as follows:

'As pointed out by Dr Campbell that if the appellant behaved in a sexually inappropriate way it would not matter that this was due to his mental health. He would likely be arrested... and would be at risk of societal retribution.... Prison conditions are likely to engage article three conditions.... That would also be concerns about societal treatment as well given the serious stigma that attaches to the appellant's health.' [75].

'Drawing the strands together I considered that the appellant had demonstrated that there was a real risk that he would be at real risk on return to Ethiopia due to his mental health.' [76].

These two paragraphs were the essential findings in relation to general Article 3 risk.

10. Under the rubric 'Article 3 - health case' the judge reasoned as follows:

'77. My findings on this matter are no longer material in light of my findings at paragraph 64-74. For completeness those findings would have led me to a positive conclusion on the 'health case' argument advanced on behalf of the appellant. I have applied the guidance from AM in the Supreme Court.

78. It is uncontroversial that the appellant is a seriously ill person.

79. The appellant has produced evidence from Dr Sen and Dr Campbell which is capable of demonstrating that there are substantial grounds for believe that as a seriously ill person the appellant would face a real risk of treatment contrary to article 3. This is because he would be unable to access appropriate treatment due to the reasons set out at paragraphs 64-74 of my judgment. The appellant does not have the capability to take responsibility for/manage his own condition. He requires a significant support package which includes medication, frequent monitoring and community care. The appropriate treatment and care package is not available to the appellant in any event.

80. On that basis I considered that there was a real risk of the appellant being exposed to a serious, rapid and irreversible decline in this health which would lead to intense

suffering. This has already been demonstrated in this country in the repeated deterioration and relapses in the appellant's medical history. Given the societal attitudes and attitudes within the health care system in Ethiopia I have concluded that this is one of the exceptional categories of case that fell to be allowed under article 3.'

### Application for permission to appeal

11. The Secretary of State applied for permission to appeal on the following grounds:
12. Ground (i) the judge erred in applying the case of DH (particular social group: mental health) Afghanistan [2020] UKUT 00223. The judge found the appellant had not rebutted the s72 certificate and thus could not benefit from the protection of the Refugee Convention. DH concerned whether those with mental health problems could fall within a particular social group for the purpose of the Refugee Convention. DH did not concern the threshold in an Article 3 case and the judge did not apply any particular threshold.
13. Ground (ii) The judge erred in determining the article 3 threshold was met. There was no evidence that the appellant's condition would be exposed to a serious rapid and irreversible decline in his state of health resulting in intense suffering. The judge merely stated that his health would deteriorate but there was no proper assessment as to why this would result in a serious rapid and irreversible decline in his state of health resulting in intense suffering and the judge made no reference to the evidence leading to the conclusion that this threshold was met.
14. Ground (iii) the judge erred in concluding that any treatment in his condition would be the result of the absence of appropriate treatment in Ethiopia. The judge found the appellant had not shown he had been able to manage his condition and had experienced relapses in his health in the United Kingdom, [41]. The illness was not fully responsive to treatment and the prognosis was guarded. Thus, the return to Ethiopia and lack of treatment would not be the cause of any deterioration.

### The hearing

15. At the hearing we Mr Parvar expanded upon the grounds.
16. Ms Khan submitted a Rule 24 notice. This defended the analysis of the use of DH and contended that there was no material error of law in the determination. DH related to an appellant experiencing serious harm owing to his mental health in Afghanistan such that his claim was ultimately allowed on Article 3 grounds. She referred to [43] and [44] of DH as to what type of mental illness can meet the threshold. The judge did not allow the claim on asylum grounds. She properly applied the test of article 3. Ms Khan also submitted that the judge had set out the law at the

outset of her determination. The judge stated the appellant would not be able to access the medication and support to manage his condition. None of the factual findings were challenged. His lack of insight and management of his condition would not break the causative link.

17. In relation to ground (ii) Ms Khan submitted that the Secretary of State had failed to consider the determination as a whole. The judge based her findings on his health on the medical evidence of Dr Sen and the availability of treatment on the report of Dr Campbell. The judge did consider the law on Article 3 mental health. The guarded prognosis, complex illness was evidence itself of serious rapid and irreversible harm experienced by the appellant if he did not have access to appropriate treatment. Dr Sen had detailed the appellant's difficulties.
18. Ground (iii) Ms Khan submitted showed the Secretary of State had not read the report of Dr Sen. The appellant's condition was complex and could not be fully treated but treatment did make a difference. The lack of treatment would mean he would be at risk to himself and others.

### Analysis

19. Ground (i). Although the judge set out the law at the outset of her determination from [3] to [14] and there was full reference to the head note of DH which concentrated on eligibility for being within a particular social group, the judge did not set out the criteria for considering a case under Article 3 generally. We consider that hampered the judge. There was merely a description of the appellant's case as a 'health case' noting regard was had to AM (Zimbabwe) [2020] UKSC 17, AM (Art3; health cases) Zimbabwe [2022] UKUT 00131 and Savran v Denmark (application no 5767/15. We agree with Ms Khan that the fact that the judge did not set out the law in detail would not necessarily be fatal but as we pointed out, the judge's application of the tests did not bear out that the proper and relevant tests had been appreciated or applied in practice.
20. The test in relation to article 3 is that there should be substantial grounds for believing that there is a real risk of ill treatment which amounts to inhuman and degrading treatment. The judge made no mention of this threshold when considering Article 3 generally. The description in her conclusions from [66] onwards under the title 'Article 3 - mental health the 'DH' argument' was that the appellant had demonstrated that there was 'a real risk that he would be at real risk on return.' That demonstrates an omission from the proper description of the test.
21. There was, essentially, as can be seen from the findings at [75] above, one line as to the consequences of any treatment for the purposes of article 3 which would engage inhuman and degrading treatment and that was that 'prison conditions are likely to engage article 3 conditions.' That finding was based on an extract from Dr Campbell's report and without more analysis. The judge added that there would also be concerns about societal treatment as well. Those findings do not engage with the

stringent threshold of article 3 to establish inhuman and degrading treatment and although we accept that the judge did not allow the appeal on refugee grounds or humanitarian protection, we conclude that she deflected herself because of her analysis in relation to DH. It was the possible inhuman treatment the appellant would receive in Ethiopia that she needed to analyse rather than pointing to his descent into re-offending. When considering article 3 generally, it is clear that the individual circumstances of an appellant should be taken into account of which his mental health is one but in this instance, we consider that the relevant test is a high threshold and that established by D v United Kingdom (1997) 24 EHRR 43 and N v United Kingdom (2008) 47 EHRR 39).

22. In relation to ground (ii) and the test applied on mental health grounds alone, AM (Art 3; health cases) Zimbabwe [2022] UKUT 131 (IAC) sets out in the headnote that:

1. *In Article 3 health cases two questions in relation to the initial threshold test emerge from the recent authorities of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 and Savran v Denmark (application no. 57467/15):*
  - (1) *Has the person (P) discharged the burden of establishing that he or she is “a seriously ill person”?*
  - (2) *Has P adduced evidence “capable of demonstrating” that “substantial grounds have been shown for believing” that as “a seriously ill person”, he or she “would face a real risk”:*
    - [i] *“on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment,*
    - [ii] *of being exposed*
      - [a] *to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or*
      - [b] *to a significant reduction in life expectancy”?*
2. *The first question is relatively straightforward issue and will generally require clear and cogent medical evidence from treating physicians in the UK.*
3. *The second question is multi-layered. In relation to (2)[ii][a] above, it is insufficient for P to merely establish that his or her condition will worsen upon removal or that there would be serious and detrimental effects. What is required is “intense suffering”. The nature and extent of the evidence that is necessary will depend on the particular facts of the case. Generally speaking, whilst medical experts based in the UK may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful.*

4. *It is only after the threshold test has been met and thus Article 3 is applicable, that the returning state's obligations summarised at [130] of Savran become of relevance - see [135] of Savran.*
23. We find the Secretary of State's grounds have force. The judge addressed this aspect of the claim at paragraphs [64] to [74] of her judgment but although she made a description of the evidence and found he was likely to relapse into offences of violence and sexual appropriateness, she accepted that his condition remained prevalent whilst in the UK, his condition was 'characterised by significant relapse' and his 'prognosis guarded' and that 'even with treatment he still experiences hallucinations and delusions'. In effect the judge did not engage with 1(2) of the headnote of AM cited above. The judge relied solely on the report of Dr Campbell in relation to the health facilities in Ethiopia, which in turn as pointed out, relied on dated material (we see reports from 2007-2017) and who gave a medical opinion on the appellant's ability to cope, and we note the judge failed to engage at all with the Secretary of State's Response to an Information Request Ethiopia: paranoid schizophrenia dated 22nd October 2020 save for a brief reference to the respondent's position. That was not analysed further. In term of the appellant's detention, the report of Dr Campbell stated that 'it is possible that he *may* be arrested and detained if he publicly behaves inappropriately' and appeared to rely on two individual reports from 2012 and 2016 and then relied on the latest report (undated) from the more widely sourced USSD which did not identify per se that prison conditions breached the article 3 threshold. There was reference to social stigma in the report but mere social stigma itself does not necessarily equate with inhuman and degrading treatment.
24. Ground (iii). Ms Khan resisted the argument on the 'causative link', but this was unarguably raised by the respondent in ground (iii) and the judge failed to consider her own findings that the appellant experienced 'significant relapses in his condition' and his 'delusions and hallucinations' occurred in the UK even with treatment. There was thus no engagement with whether the causative link in relation to removal was broken. Although asserting that the community and family support was needed, the judge did not factor into her earlier findings at [58] that 'even in the UK the family have not been able to provide him the necessary support financial or otherwise to prevent the multiple relapses the appellant experienced'. Nor did the judge factor in her own finding in her assessment that in the United Kingdom when given finance he simply spent it on drugs. The judge did not address the *substance* of the deterioration or the obvious point that the lack of treatment would not be the cause of any deterioration.
25. For the reasons given above we find that the judge erred in law in her decision. We found the errors material.



26. We have preserved the findings at [62]-[65] in relation to the finding on the Section 72 certificate because there was no challenge to those findings from the appellant.

### **Notice of Decision**

27. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) save for the paragraphs 62 to 65. We do not preserve any other findings of fact because we consider that the decision is, overall, lacking in relevant findings of fact and simply referenced reports without adequate analysis.
28. We make no criticism of the decision of the judge to proceed but we do note the appellant was not in attendance at his hearing because he was not produced. We consider, owing to the nature and extent of the findings to be made, and albeit bearing in mind Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), that the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and 7.2 (a) of the Presidential Practice Statement.

**Helen Rimington**

Judge of the Upper Tribunal Rimington  
Immigration and Asylum Chamber

3<sup>rd</sup> November 2023