



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004295

First-tier Tribunal No: HU/06116/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23rd April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

X
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mrs. R. Arif, Senior Home Office Presenting Officer

For the Respondent: Not represented

Heard at Birmingham Civil Justice Centre on 19 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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 the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Ford, (the “Judge”), promulgated on 30 March 2022, in which she allowed X’s appeal against the Secretary of State’s decision to deport her from the United Kingdom. X is a national of Kenya who appealed against the decision on human rights grounds, Articles 3 and 8 ECHR.
2. For the purposes of this decision I refer to X as the appellant, and to the Secretary of State as the respondent, reflecting their positions before the First-tier Tribunal.
3. Permission to appeal was granted by Upper Tribunal Judge Mandalia in a decision dated 27 November 2023 as follows:

“4. The respondent relies upon four grounds of appeal. First, the respondent claims Judge Ford erred by in her assessment of the evidence before the Tribunal. Judge Ford rejected, at [58], the respondent’s claim that the appellant’s mental health will be better in the community. The respondent claims that conclusion is at odds with the evidence of Dr Bell that the appellant’s mental health condition was likely worsened by detention, and therefore would improve following release. The respondent claims Judge Ford conflates the evidence of the appellant’s offending, which continued and indeed worsened in severity following release from her first criminal sentence, with that as to her mental health. Second, there was contradictory evidence before the Tribunal from the experts. The evidence of Dr Bell was that that the appellants mental health condition was likely worsened by detention and would improve following release. At the same time, the evidence was that few symptoms of psychosis were observed while the appellant was in detention despite the absence of any form of mental health support or intervention.

5. The respondent claims that that given the contradictions in both the evidence and findings, the assessment of the appellants mental health and therefore Article 3 risk is wholly unreliable. Third, the respondent claims Judge Ford erred in finding that family life exists between the appellant and her children, given the appellant has had no contact with her children for a period of over 4 years. Finally, the respondent claims Judge Ford failed to apply the correct test as required to the assessment of the Article 3 claim. The respondent claims it is unclear on what basis the judge found the appellant would be “immediately” exposed to inhuman and degrading treatment.

6. I am just persuaded that the respondent’s grounds of appeal warrant further consideration and that it is arguable, Judge Ford erred in her assessment of the appellant’s claim for the reasons set out in the grounds of appeal.”

4. The appellant did not provide a Rule 24 response.

The hearing

5. There was no attendance by or on behalf of the appellant. The file indicated that notice of the time and place of the hearing had been sent to the appellant’s representatives on 24 February 2024. The clerk tried to contact them but there was no response. There had been no application for the hearing to be adjourned. I considered that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with rules 2 and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
6. I heard brief oral submissions from Mrs. Arif who relied on the grounds. I reserved my decision.

7. I have taken into account the documents in the Upper Tribunal bundle (279 pages).

Error of law

Grounds 1 and 2

8. I will deal with grounds 1 and 2 together as they relate to the Judge's treatment of the medical evidence and Article 3. Ground 1 asserts that the Judge made "a mistake as to a material fact which could be established by objective and uncontested evidence". With reference to [58] of the decision it is submitted that the Judge has conflated the evidence of appellant's offending "which continued and indeed worsened in severity, following release from her first criminal sentence, with that as to her mental health". The respondent asserts that the Judge ignored the opinion of Dr. Bell who "concluded that the appellant's mental health condition was likely worsened by detention, and therefore would improve following release".
9. Further the respondent submits that the Judge ignored the fact that the appellant was assessed by Dr. Bell while she was in detention. It was submitted that for the Judge "to conclude that deterioration would result upon release is based upon speculation alone". This had resulted in a flawed assessment under Article 3. Ground 2 again refers to the assessment of the appellant's condition in detention, and whether or not the appellant's condition was likely to be worsened by detention.
10. The Judge states at [58]:

"I do not accept that the Appellant's mental health will be better in the community. On the contrary, the evidence shows that when released into the community on completion of her criminal sentence the deterioration in the Appellant's behaviour was rapid and serious."
11. The grounds state that the appellant's offending "continued and indeed worsened in severity, following release from her first criminal sentence". It is unclear what is meant by "first" criminal sentence. The appellant was imprisoned from October 2018 until March 2020. There is no reference to the appellant having spent any time in prison prior to late 2018. In the "immigration history" section at the start of the respondent's decision there is no reference to any period of imprisonment leading up to 2018.
12. The Judge states at [21] that the appellant was released from detention in March 2020. "She almost immediately failed to comply with her probation requirements. She was recalled, although it took over a year before she was actually arrested again." The Judge states that engagement was difficult with the appellant following her release in 2020, and her referral to community mental health services was closed due to non-engagement. There is no evidence before me of the appellant having offended after her release in 2020, save that she did not comply with her probation requirements.
13. Given this lack of clarity, I have considered the Judge's treatment of the evidence of the appellant's mental health more widely to see whether there is a material effect on her assessment of article 3 as asserted in the grounds. In order to have a material effect on Article 3, the respondent must show that the Judge has erred in finding that the appellant's mental health would deteriorate on return to

Kenya. The grounds refer repeatedly to the impact of detention. However, whether or not the appellant's mental health would improve on release from detention in the United Kingdom is irrelevant if it would deteriorate on return to Kenya. The respondent must show that the Judge's overall assessment of the appellant's mental health and the position on return to Kenya is flawed.

14. The Judge turned to consider the expert reports at [23]. She states at [24] that three weeks after the appellant was released from prison in 2020 she attended her GP and was referred to the crisis team on 10 April 2020. Triage was attempted but it proved difficult to engage the appellant who did not attend the assessment. The referral was closed due to non-engagement.
15. At [25] the Judge states that she had reports from Consultant Psychologist Dr. Davies and Consultant Psychiatrist Dr. Bell. She states that Dr. Davies spent three and a half hours with the appellant over two sessions, and Dr. Bell spent an hour with her. Dr. Bell had access to her medical records but Dr. Davies did not. The sessions were remote but the Judge finds that this does not undermine the conclusions reached by either professional. This finding has not been challenged by the respondent.
16. At [26] the Judge sets out the respondent's concerns regarding the reliability of these two reports. She does not come to any conclusions as to the respondent's concerns, but merely sets them out. She states that the respondent does not accept the diagnoses which have been made. At [27] she states the diagnosis as "complex post-traumatic stress disorder with associated severe psychotic disorder".
17. At [28] the Judge states that it was notable that few symptoms of psychosis were observed while the appellant was in detention despite the absence of any form of mental health support or intervention. "It was argued for the respondent that this shows that the appellant does not require mental health support to remain stable and that she portrays few signs of mental distress and that she would not therefore be perceived as someone with serious mental health issues if she were to be returned to Kenya." This not a finding, but the respondent's argument.
18. At [29] the Judge sets out the contrary argument for the appellant:

"It was argued for the Appellant, and I can see the force of the argument, that the evidence shows that once she is in the community and lacks the practical support, security and routine offered by the prison system, this Appellant deteriorates quickly, and her mental health issues become all too apparent."
19. At [30] the Judge states that the appellant has shown a reluctance to engage with support services once she is in the community. At [31] she states that there was consideration by Dr. Davies of whether the appellant was affected by substance misuse but Dr. Davies had no concerns.
20. At [32] the Judge states that Dr. Davies found the appellant's behaviour appropriate at the start of their consultations but that she "gradually started to reveal a fragile grasp of reality". At [33] she refers to Dr. Davies' diagnosis of psychosis and the reasons why Dr. Davies made this diagnosis, which includes the fact that psychotic symptoms went back as far as 2014. She notes that in the course of their first interview Dr. Davies terminated it and asked for an urgent psychiatric review from the mental health team as the appellant was giving details of hallucinations.

21. At [34] the Judge states that the appellant had a tendency to blame others for what has happened and acknowledged avoidance behaviours. It notes her marked history of avoiding offers of treatment. At [35] to [38] the Judge sets out the appellant's history of leaving Kenya and coming to the United Kingdom, as recorded by Dr. Davies. At [39] the Judge states that the appellant is of the view that her life fell apart when her application for leave to remain was refused on 22 November 2018. The Judge states that this cannot be correct as the offences of burglary and robbery were committed before the refusal of leave to remain application.
22. At [40] the Judge turns to Dr. Bell's report. She states:

“But on page 47 of the appeal bundle in his report Doctor Bell notes a deterioration in the appellant's mental health after she was released from criminal detention. Having reviewed her medical records and having spent a period of one hour with the appellant and having considered Doctor Davies report, it was entirely satisfied that the appellant's psychiatric symptoms were real and not fabricated.”
23. The Judge then quotes a large portion of Dr. Bell's report. In summary, he states that he agrees with Dr. Davies' diagnosis. He is entirely satisfied that the psychiatric order disorder is not fabricated and “that the clinical picture is highly consistent with the findings of Doctor Davies and also with the medical records”. He states that her psychiatric disorder is entirely consistent with her history. “The presence of psychotic disassociation and elation of mood made it clear that she did not have a real understanding of the extent of her disorder-in fact she underplayed its significance.” He states that if her mental state further deteriorates, the risk of self-harm and suicide would increase. He notes that she has often been lost to follow up which is common in psychiatric disorders as she is unable to engage with psychiatric services due to her disorder.
24. Dr. Bell states that her disorder is consistent with her history. If she does not receive appropriate treatment and support it is likely that her condition will continue to deteriorate. He states that her condition cannot be properly managed in prison.
25. At [41] Dr. Bell sets out the likely consequences of the appellant being returned to Kenya which is the most relevant part of his evidence in relation to Article 3.

“He said that in the current situation X is not objectively in danger and can sustain the hope that she will make contact with her children. One of the protective factors she identified as preventing her acting on suicidal impulses relates to her emotional attachment to the children. Doctor Bell considered this to be highly likely. He says that “if removed from her current social context to a world in which she has no familiarity, there will be a precipitate and serious deterioration in her psychiatric state. She is likely to become increasingly psychotic to such an extent that she will not be able to provide for herself in the most ordinary of ways”.
26. At [42] the Judge states that Dr. Bell gave a number of reasons for this which the Judge sets out from [42(a)] to [42(e)]. There is no reference to this in the respondent's grounds of appeals, which rely on the fact that the reports cannot be relied on without reference to these particular findings. It is worth setting these out in full owing to their relevance and importance.
 - (a) “psychiatric disorders of this type are highly sensitive to the immediate and social and emotional context-removal from the current stable context would be

sufficient in itself to cause a sudden and serious deterioration in her psychiatric state

(b) return to Kenya is returned to the context in which she suffered severe emotional, physical and sexual abuse. He commented that there is some degree of disassociation which serves as a defence albeit a fragile defence to protect her from thoughts and memories in relation to her highly traumatic past. Being returned to the context in which she suffered such [traumatic] experiences would have the likely consequence of overwhelming this fragile defence, with the result that her mind would become full of thoughts and memories in relation to previous traumatic experiences that she would be unable to manage.

(c) Living in an environment with which she has no familiarity and no means of support would act as an ongoing major external stressor causing further deterioration in her psychiatric state. She would be easily vulnerable to being exploited by others and given the history of previous exploitation, I would regard the possibility of her being sexually exploited as being very high

(d) Doctor Bell does not know to what extent in Kenya psychiatric disorders are associated with a high degree of social stigma. But if this is the case then this will act as a major further external stressor

(e) the appellant psychotic symptoms include paranoid ideation. In the circumstances of being under object of threat, she would become increasingly unable to distinguish between objective reality and her paranoid thoughts. In other words, her capacity to reality test would be extremely compromised. He considers it highly likely that he and can year she would live rough and be unable to fend for herself in the most ordinary ways as a result of her distorted thought process and severe deterioration. The end result could well be a continuous physical and mental deterioration until she succumbs perhaps from intercurrent illness or suicide.”

27. The Judge concludes her assessment of the medical evidence by stating that Dr. Bell observes that the appellant needs a highly specialist team to provide for her. “Even if such specialist care is available it is very highly unlikely that she would be able because of her psychiatric disorder, to cooperate with such treatment in her deteriorated state that would occur in the situation of her being deported.” The Judge then considers the OaSys report.
28. At [48] the Judge starts her findings and conclusions. In relation to the medical evidence I find that she accepts the diagnosis at [52]. She then correctly sets out what she must determine which is “the risk of inhuman or degrading treatment to her if returned to Kenya with the diagnosed vulnerabilities that she has today” [52].
29. At [53] she refers to Dr. Bell in the context of the appellant’s lack of capacity. She states that he is a “highly experienced qualified professional and I have nothing for me to undermine the [capacity] assessment”. She finds that Dr. Bell has seen the appellant’s medical records and has considered the “very detailed assessment” carried out by Dr. Davies. I find that the Judge accepts the evidence of Dr. Bell and gives reasons for that, including the fact that he is a highly experienced qualified professional who had access both to the appellant’s medical records and the assessment carried out by Dr. Davies.
30. At [54] the Judge states that the appellant would suffer a serious and rapid deterioration in her mental health. At [55] she finds that, due to her psychiatric issues, she would be reluctant to access medical assistance. Again, in reliance on the evidence of Dr. Bell she states that the appellant will need access to a

highly specialised mental health team not only to ensure treatment but to ensure that her she engages with that treatment. She refers to the respondent's CPIN showing the limited availability of suitable psychiatric treatment in Kenya. At [55] she finds that without the treatment the appellant is likely to "become homeless, become involved in sexual exploitation and abusive relationships drug and alcohol misuse".

31. At [56] the Judge states that "the inescapable conclusion in this case given the psychological and psychiatric evidence is that the removal of the appellant to Kenya would result in a real risk that she will be immediately exposed to human inhuman or degrading treatment". At [57] she refers again to the evidence of Dr. Bell and Dr. Davies of the impact on the appellant of losing the chance of resuming a relationship with her children. She states that returning her to a society with which she has no familiarity as an adult, having left Kenya when she was 15, is another significant risk factor.
32. At [58] the Judge states that she does not agree with the submission made by the HOPO that her psychosis does not lead to observable symptoms and will not attract the adverse attention of others, the submission which she set out earlier in the decision at [28]. She states that this is because Dr. Bell and Dr. Davies described observed psychotic behaviours in their reports. She referred to the fact that Dr. Davies stopped one of her assessments with an immediate referral to mental health services [33], and to Dr. Bell's observation of psychotic symptoms [40]. She states at [58], the part referred to in the grounds, that the deterioration in her behaviour was rapid and serious on completion of her criminal sentence.
33. At [59] the Judge rejects the submission made by the respondent that the appellant does not present as ill, which she was entitled to do given the evidence from Dr. Davies and Dr. Bell. She states that "the truth is that the appellant is yet to receive any suitable treatment for her serious mental health issues that go back many years" [60]. Again, this finding is open to her based on the medical evidence. At [61] she considers the evidence of psychiatric services in Kenya. There has been no challenge to these findings. At [62] she states that the appellant will be alone in Kenya and it is more probable than not that she will suffer a rapid decline in her mental health and that her psychosis will be apparent to others in the community.
34. I find that the Judge clearly accepted the evidence of Dr. Bell and Dr. Davies and gave reasons for this. She gave reasons for rejecting the respondent's submissions in relation to the appellant's presentation. She rejected the respondent's concerns about the reliability of the reports. She noted that Dr. Bell had access to the appellant's medical records. In her findings at [53] she accepted his experience and qualifications and gave reasons for why she relied on his evidence. She has set out why she accepted his diagnosis. She set out in her assessment of his evidence why Dr. Bell had come to that conclusion.
35. The respondent's focus on whether or not the appellant's mental health would improve on release from detention is not relevant to the issue that the Judge correctly identifies at [52]. Whether or not the appellant would be better on release from detention in the United Kingdom is not the same as whether or not the appellant will be at risk of inhuman or degrading treatment in Kenya. The Judge has given reasons for her finding that the appellant's mental health would deteriorate on return to Kenya in reliance on the medical evidence but also with reference to the appellant's overall situation, and circumstances in Kenya. This

includes the fact that the appellant has not lived in Kenya since she was 15, and therefore has no familiarity with it as an adult, and also the uncontested evidence of the lack of psychiatric services in Kenya.

36. I find that Grounds 1 and 2 are not made out. The narrow focus on whether or not the appellant's mental health would improve following detention is not the same as the main question which the Judge had to address. The respondent has not shown that the Judge was wrong to rely on the evidence before her. The Judge has clearly considered the evidence in detail and has made findings based on that evidence.

Ground 3

37. The respondent asserts that the Judge has given insufficient reasons for finding that family life continues between the appellant and her children at [49]. Given that the appellant had no contact with her children for a period of over four years, the respondent asserts that it is unclear on what basis the Judge reached this conclusion. The respondent accepts that the appeal was not allowed under Article 8, but asserts that the assessment under family life "has directly contributed to the article 3 conclusion, as it was found that depriving the appellant of direct contact in the future may exasperate (sic) her mental health further". It is submitted that it was material to the overall conclusion and has resulted in misdirection.
38. I have considered whether this finding is relevant to the appeal being allowed under Article 3. Mrs. Arif submitted that it was not material, but that it was another error made by the Judge who had erred holistically in her assessment.
39. The Judge finds at [57]:
- "I say immediately because as Doctor Bell and Doctor Davies have pointed out the impact on the appellant of the loss of chance of resuming a relationship with her children would have a significant adverse impact on her mental health."
40. This finding is based on the evidence of Dr. Bell and Dr. Davies and is not directly related to any finding of family life. It is a separate consideration. Family life does not need to exist for the appellant to be affected by the "loss of chance of resuming a relationship" with her children. This finding was open to the Judge based on the medical evidence, and in reliance on the opinions of the experts. I find that this finding is separate to a finding of family life. Even if the Judge erred in finding that family life existed, I find that there is no material error of law identified in Ground 3.

Ground 4

41. Ground 4 states that the Judge applied the wrong test. The respondent asserts that the appellant has not provided "reliable evidence which can demonstrate 'substantial' grounds for believing that their case is a 'very exceptional case' because of a 'real risk' of being subject to "inhuman" treatment contrary to Article 3". I have found above that the Judge was entitled to rely on the medical evidence and gave reasons for doing so. The grounds assert that it is unclear on what basis it is found that the appellant would be "immediately" exposed to inhuman and degrading treatment. I find that this is not made out as the Judge has given her reasons for finding that she would be "immediately" exposed to such treatment at [57].

42. It is submitted that, “to find an “immediate” risk to exist should the appellant be returned to Kenya is clearly misdirected when a direct comparison can be made to her previous life in the UK, she has lived her adult life without intervention, and without serious and rapid decline”. It is further submitted, that given the above, her rights cannot be said to defeat the public interest. It is asserted that the FTTJ’s failed to have the very high threshold dictated by the Public interest in mind as indicated by the findings [52 and 56]”.
43. It is clear from the evidence before the Judge, and her findings, that, while the appellant has “lived her life without intervention” from psychiatric services, she has not received the treatment that she should have done. At [60] she finds:
- “The truth is that the Appellant has yet to receive any suitable treatment for her serious mental health issues that go back many years.”
44. She repeats at [62] that the appellant is yet to receive the treatment that she needs. Further, it is clear from the evidence that the nature of her disorder means that she does not engage, and needs support to do so. The Judge set Dr. Bell’s evidence out at [40]: “It seems to me looking through the records that X has often been lost to follow-up. This is common in severe psychiatric disorders—that is individuals, because of their disorder, are unable to engage with psychiatric services”. Further, the Judge rejected the respondent’s submissions that the appellant’s psychosis does not lead to observable symptoms. At [58] she states that “Both Dr Bell and Dr Davies describe observed psychotic behaviours in their reports”.
45. In relation to the availability of treatment in Kenya and her ability to access it, the Judge found at [55]:
- “Due to her psychiatric issues she will be reluctant to access medical assistance and in any event the CPIN shows the extremely limited availability of suitable psychiatric treatment. As Doctor Bell makes clear the complexity of the appellant’s condition means that she needs access to a highly specialised mental health team not only to ensure suitable treatment but to ensure her engagement with that treatment. Without it she is highly likely to become homeless, become involved in sexual exploitation and abuse of relationships, drug and alcohol misuse.”
46. The respondent has not asserted that the Judge erred in relying on the evidence in the respondent’s own CPIN which the Judge set out at [61].
47. In relation to the “public interest”, there is no such assessment required by Article 3, as correctly stated by the Judge at [57], a paragraph quoted by the respondent in the grounds of appeal. The Judge states that she disagrees with the respondent’s assessment of the public interest, but then states “But Article 3 does not allow for proportionality”. There is no error of law in this statement.
48. Ground 4 identifies no error of law but is merely a disagreement with the findings of the Judge.
49. I find that the decision does not involve the making of material errors of law. The Judge considered the medical evidence in detail and gave reasons for why she attached weight to it. She gave reasons for why she did not accept the respondent’s submissions in relation to this evidence. She was entitled to place weight on the medical evidence. She applied the correct test under Article 3.

Notice of Decision

50. The decision of the First-Tier Tribunal does not involve the making of material errors of law and I do not set it aside.
51. The decision of the First-Tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 April 2024