



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003248
First-tier Tribunal No:
HU/06674/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZM

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Thompson, a Senior Home Office Presenting Officer.

For the Respondent: Mr D Furner of Birnberg Peirce Solicitors.

Heard at Phoenix House (Bradford) on 21 August 2024

Order Regarding Anonymity

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

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Groom, promulgated on 21 June 2023, following hearings at the Nottingham Justice Centre on 25th April, 16th May, and 13 June 2023, in which the Judge allowed the above Respondent's appeal against the decision to refuse his human rights claim, relied upon him by him as an exception to the order for his deportation from the United Kingdom.

2. The above Respondent is a citizen of Uganda born on 2 June 1987 who is the subject of the deportation order by virtue of section 32 (5) UK Borders Act 2007. The Deportation order and a Stage 2 letter was served upon him on the 24 April 2020.
3. The Judge sets out his offending history from [6] of the decision under challenge. At [9] the Judge writes:
 9. On 22 December 2005 at the Central Criminal Court Appellant was convicted of murder. On 27 January 2006 at the same court the Appellant was sentenced to life imprisonment with a minimum term to be served before consideration of release of 16 years.
4. The Judge sets out findings of fact from [56] of the decision under challenge. At [57] the Judge records that the above respondent was 17 years of age at date of sentence. The facts of the offence as recorded in this paragraph read:

“The Appellant acted jointly with others having chased the victim, who then attempted to escape into the back of an ambulance. The victim was followed by the Appellant and others into the ambulance, the vehicle containing ambulance crew at the time, and the Appellant proceeded to act jointly with others in beating the victim to death. Mr Furner accepts that the offence of murder and the circumstances in which the offence took place are at the very highest level of seriousness”.
5. The Judge allowed the appeal on Article 3 ECHR grounds. At [75], having considered the risk of ill treatment in the context of reception conditions in Uganda, the Judge writes:
 75. I take into account the length of time that the Appellant has been away from Uganda, the fact he has never returned, he has not family or social network in Uganda, he has been convicted of the most serious offence of murder and has a severe psychiatric disorder. All of those factors lead me to conclude that there is a real risk, as outlined by Ms Alupo, of ill treatment, capable of breaching the Appellant’s Article 3 rights, in the context of reception procedures in Uganda.
6. Having considered whether circumstances on return will constitute prohibited ill treatment the Judge writes at [98] – [100]:
 98. In view of such fundamental analysis both in the written report and oral evidence of Dr Bell, I attach significant weight to Dr Bell’s conclusions about the potential effects of removal of the Appellant, including the risk of deterioration of his mental health.
 99. The burden of proof is upon the Appellant to establish a prima facie case to the lower standard, including that the necessary medical treatment is either not available or not accessible to him. I am satisfied, taking the evidence in the round, that the necessary treatment is either not available or not accessible to the Appellant.
 100. I find that if the Appellant was removed to Uganda there would be serious, rapid and irreversible decline in their state of health resulting in intense suffering or significant reduction in life expectancy.
7. The Secretary of State sought permission to appeal on two grounds. Ground 1, the main challenge, submitting:

Ground one: Failing to take into account and/or resolve conflicts of fact or opinion on a material matter

2. At [93] the FTTJ states: ‘Dr Bell further indicated in oral evidence that a disorder of the type suffered by the Appellant “*needs sophisticated rehabilitation structure*” Based on the documentary evidence provided on behalf of the Appellant, of which, Ms Arif has not challenged, it is evident that the facilities for mentally disordered patients in Uganda is far from sophisticated or rehabilitative.’
3. However, the Home Office Presenting Officer did make submissions to the effect that Dr Bell’s evidence ought to be treated with caution, in light of his own admission that ‘he did not have knowledge of psychiatric facilities in Uganda’ [82]. In light of Dr Bell’s lack of knowledge on the facilities that would be available to the appellant in Uganda, it is submitted that the FTTJ has erred in placing weight on his evidence that the appellant’s deportation would result in a decline in the appellant’s mental health, such et as to breach his Article 3 rights. The threshold is set out in AM (Zimbabwe) [2020] UKSC 17, it is submitted that there is inadequate evidence upon which to make a finding that the relevant threshold is met.
4. It is therefore submitted that the FTTJ erred in failing to take into account the HOPO’s submissions and has failed to resolve the conflict of facts/opinion in respect to the facilities that would be available to the appellant in Uganda and the claimed consequences that his deportation would have on his mental health.
5. Furthermore, at [74] the FTTJ states that the HOPO did not challenge the evidence of Ms Arupo. Again this is contrary to the HOPO’s Hearing Minute and Records of Proceedings documents, which are attached to this application, in which she states that she made submissions on the country expert’s evidence in respect to the risk of Article 3 and torture. It is therefore submitted that the FTTJ has failed to resolve a conflict of fact/opinion on a material matter.
6. It is therefore submitted that the FTTJ erred in failing to take the HOPO’s submissions into account when making findings in respect to the effect of the appellant’s deportation on the appellant’s mental health and the risk of torture on return to Uganda and that this amounts to an error of law, as set out at [9] R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982.
8. Permission to appeal was refused by another judge of the First -tier Tribunal but granted by Upper Tribunal Judge Bruce on 8 May 2024, the operative part of the grant being in the following terms:
 1. Whilst I agree with Judge Gumsley that the grounds fail to identify the evidence that the HOPO might have been relying upon, I consider it appropriate to grant permission so that the issues raised by the Respondent can be ventilated at an oral hearing. The factual dispute raised by these grounds will have to be established by the production of evidence. It is for the Respondent to establish what happened at the hearing and to identify the evidence before the First-tier Tribunal which could have led to it reaching a different conclusion about the availability of treatment in Uganda and the risk of ill-treatment.
 2. The Article 8 ground stands and falls with that relating to Article 3. The grant of permission is not restricted.

Discussion and analysis

9. The Secretary of State does not challenge the professional opinion of Dr Bell in relation to Mr Mayanja’s diagnoses which is as follows:

“It is clear to me that Mr Mayanja suffers from a severe psychiatric disorder. The symptoms I have described fulfils the diagnostic criteria for paranoid personality disorder – 301.0 in the Diagnostic and Statistical Manual of Mental Disorders, Version V (DSM -5). He shows the typical features of pervasive distrust and suspiciousness, overwhelming preoccupation with grievances and grudges against those who he

believes has done him harm, easily sensitive to feelings of being attacked, unpredictable outbursts of rage and suicidality.

Mr Mayanja hold himself together by constantly returning to the complaints against others, individuals, organisations, authorities, - this has a kind of campaigning quality. My view is that this functions as a defensive structure which helps protect him from collapse. He is also very preoccupied with taking care of others, prioritising his family. His biggest fear is that his mother becoming ill and he is unable to provide for her. He told me, *"My purpose is to go home and look after my mother and partner"*.

It is typical of personality disorders of this type that there is a history of severe abuse, neglect, abandonment in childhood, as in this case.

The records refer, at various points, to anxiety and depression. Those suffering from Personality Disorders of this type are prone to anxiety and depression at times this may reach the diagnostic threshold for a diagnosis of Anxiety Disorder or Depressive Disorder. However the principal diagnosis is of Personality Disorder and this diagnosis is entirely compatible with episodes of anxiety or depression.

I repeat here comments of Dr Halcyon (Forensic Psychology Report) with which I entirely concur:

'Having reviewed Mr Mayanja's experiences relating to his upbringing ... In my assessment the dysfunction and trauma within these critical developmental stages has significantly impact upon his personality development. The persistent and pervasive nature of his problematic personality traits suggest a primary diagnosis of personality disorder...

Mr Mayanja's history of adverse child rearing experiences and early trauma (repeated episodes of separation from primary caregivers, harsh physical punishment and failures to protect him - from both family and those in authority) are likely to have contributed to difficulties trusting others or forming close prosocial attachments. From these developmental experiences, he learnt and developed beliefs that people are unreliable and may take advantage or abuse him. This is likely to have also impacted on his sense of safety and security.'

The term personality disorder refers to situations where the psychological problems are enduring and have affected global personality functioning. Some personality disorders are relatively mild and individuals can largely function. Others are more severe, undermined functioning, and are associated with frequent episodes of highly disturbed behaviour. This latter form is the case with Mr Mayanja.

So suffering from paranoid personality disorder can at times manifest features of frank psychosis. Often the borderline between actual psychosis and personality disorder is grey. It was apparent in this interview that at times Mr Mayanja manifested a disorder of thinking; that is he became rambling and incoherent/difficult to follow, with fleeting grandiose ideas. Episodes of more psychotic functioning can be quite sudden, usually provoked by stress, particularly feeling when threatened (real or imagined).

10. In relation to risk on return in relation to his mental health, one of the specific questions Dr Bell was asked to address, he writes:

3. I am asked to comment upon the consequences for Mr Mayanja if he is returned to Uganda.

Return to Uganda will be associated with the precipitate and serious deterioration in MR Mayanja's psychiatric state. This arises for a number of reasons:

- i) As I have explained this kind of psychiatric disorder is very highly sensitive to disruptions in the social context. Mr Mayanja is familiar with the cultural context of living in England, and of course can be provided support by his immediate family. Removal to Uganda would constitute a major traumatic event of considerable psychological violence. The awareness that there will be a breaking of attachments with the world that he knows would act as a major traumatic event which would be experienced with considerable psychological violence. That is the treated disruption of his world would be sufficient in itself to cause this deterioration. There is a high risk that you would become frankly psychotic. The final actualisation of deportation, that is when all hope is removed, will clearly result in further deterioration.
- ii) Living in a world which is now entirely alien to him would add to feelings of suspiciousness, resulting in him becoming increasingly paranoid. He is very highly likely to become isolated, likely to draw attention to himself, through outbursts of obviously disturbed behaviour and would be easily exploited by others.
- iii) Bring [sic] returned to Uganda involves of course separation from his mother who would repeat the traumatic event of separation from [sic] his mother this is likely to flood his mind with thoughts, memories and feelings which he would not be able to manage.

I do not have knowledge of the presence of stigma against mental illness in Uganda (a country expert will be able to comment on this). If there is presence of such social stigma in Uganda, that is that he would be the object of hostility and ridicule, this would act to increase his paranoia and more generally cause further deterioration in his psychiatric disorder. His limited capacity to tell the difference between the suspiciousness that arises from his disorder, and real threat in the external world, would be seriously undermined, that is he would be increasingly unable to reality-test.

Even in a carefully and sensitively conducted psychiatric interview, Mr Mayanja decompensated on many occasions, that is he ceased to be able to talk coherently. I therefore think it is a very highly likely that on arrival in Uganda, Mr Mayanja would be unable to give a proper account of himself to Ugandan immigration authorities.

It should be noted in this context that individuals suffering from personality disorder may not appear, at first, to be obviously mentally ill. That is sudden outbursts of rage, behavioural disturbance, and unwarranted accusations are likely to be misunderstood as purely under his control and not as resulting from psychiatric disorder.

If Mr Mayanja is deported to Uganda, the deterioration of his psychiatric disorder would be associated with an increasing inability to provide or look after himself. He would be unable to gain any employment because of his psychiatric condition, and further would be unable to acquire for himself the basic necessities of life. He would be likely to be socially isolated, live rough, and further deteriorate physically and mentally. In such a situation he may well succumb to intercurrent infection/inanition - that is steady bodily and mental deterioration.

The deterioration in his psychiatric state would be associated with a marked increase in the risk of suicide from medium-high as it is at present to 'Very high'.

11. In reply to the fifth question he was asked, Dr Bell writes:

I am asked whether Mr Mayanja will be capable of engaging with psychiatric services in Uganda to effectively manage his suicidality. I do not have expert knowledge of the psychiatric facilities available in Uganda. However, given his deteriorated state, it is in my view highly unlikely that you would be able to engage with such services. He is, in his current state, suspicious of mental health personnel/authority figures -

this will be considerably increased given his deteriorated mental state and in the context of living in an alien environment.

Pharmacological treatment is not likely to be very relevant in such situations, and should not be administered outside the context of an enduring and trusting relationship with psychiatric resources. This is partly because of the risk of storing medication for the purposes of taking an overdose.

12. Ground 1 raises a number of issues. It is not disputed the Presenting Officer before the Judge made submissions to the effect Dr Bell's evidence ought to be treated with caution but that was only in relation to the availability of, and access to, psychiatric facilities in Uganda, not the evidence in relation to how the above Respondent is likely to react if deported, including risk of suicide.
13. The Ground suggests the Judge concluded that the test in AM (Zimbabwe) was satisfied solely on the basis of the evidence of Dr Bell. That is not the case. Whilst Dr Bell produced a report and attended to give oral evidence and was cross examined, that is only one part of the picture. The actual finding of the Judge is that it was both the oral and documentary evidence that was taken into account that justified the finding that the test in AM (Zimbabwe) was satisfied. The documentary evidence is country evidence which was provided in the above Respondent's bundle.
14. Even though Dr Bell quite properly stated he did not have knowledge of psychiatric facilities in Uganda, the Judge had additional documentary evidence dealing with this point.
15. There is no merit in the claim the Judge failed to take into account the Presenting Officer's submissions or failed to resolve any conflict of fact or opinion. In that respect the Ground fails to properly understand the actual finding made by the Judge.
16. It is also claimed within this Ground that the Judge found the Presenting Officer did not challenge the country evidence whereas submissions were made on the country evidence in respect of the Article 3 risk in her submissions. There is a material difference in relation to whether evidence is challenged, by way of cross-examination or otherwise, and what is said in later submissions. The Presenting Officer may well have accepted the country expert's report, as the Judge indicated, but made submissions indicating that that report did not establish the required threshold had been met. That is no more than a disagreement with the weight the Judge gave to the evidence and the finding it was.
17. I do not find it out made out the Judge failed to consider the evidence with the required degree of anxious scrutiny. The findings made are adequately reasoned. An appellate court should not interfere with a finding of a First-tier Tribunal Judge unless they are clearly wrong and/or good reason has been established to justify such a course of action. It has not been made out the conclusions in relation to Article 3 on medical grounds, and in relation to the risk of torture and ill-treatment which is in part based upon the above Respondents medical condition, are outside the range of findings reasonably open to the Judge on the evidence.
18. Ground 2 asserts the Judge failed to give adequate reasons on a material matter in relation to Article 8 ECHR. At [7] of the Grounds it is stated the Judge allowed the appeal on Article 8 on the basis of the findings that return would breach Article 3, which the author of the Grounds states is flawed, although this has not been shown to be the case.
19. As the Article 3 ECHR decision must stand, as it has not been shown to be rationally objectionable, allowing the appeal on Article 8 grounds is also a sustainable finding.

Notice of Decision

20. The First-tier Tribunal Judge has not been shown to have materially erred in law.
21. The determination shall stand.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 August 2024