



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/50059/2019
UI-2021-001711; LP/00304/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 8 August 2022**

**Decision & Reasons Promulgated
On 7 October 2022**

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

A A A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms S Cunha, Home Office Presenting Officer

For the Respondent: Ms A Harvey, instructed by Birnberg Peirce & Partners

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, we shall refer to the parties as in the First-tier Tribunal. The appellant is a citizen of Nigeria born in 1975. His appeal against the refusal of his protection claim was allowed by First-tier Tribunal Judge Bartlett on 22 October 2021 on human rights grounds. The Secretary of State appealed.

2. Permission to appeal was granted by Designated First-tier Tribunal Judge Woodcraft on 26 November 2021 for the following reasons:

“The grounds of onward appeal rely on re J [2005] EWCA Civ 629 and argue that ‘there is no causal link between the appellant’s threat that he will commit suicide if removed and [the] claimed inhuman treatment relied on’. The Court of Appeal extended the risk of suicide to embrace the subjective view of an appellant, see Re Y and Z [2009] EWCA Civ 362. However, the judge found that adequate medical facilities existed in Nigeria and arguably therefore treatment to alleviate the risk of suicide would be available. Arguably the judge erred in finding that the risk of suicide persisted.

Judge’s findings

3. The judge made the following relevant findings:
- (a) The appellant suffers from sickle cell disease and a number of comorbidities including depression, PTSD and chronic back pain [37(i)].
 - (b) The appellant takes a substantial number of drugs, a significant number of which are painkillers [37(iv)].
 - (c) The withdrawal of the prescribed antibiotic is not likely to reduce life expectancy [37(iv)].
 - (d) The withdrawal of immunisations will not make the appellant more prone to infections [37(iv)].
 - (e) The appellant suffers from frequent pains, which have required heavy pain medication on admission to hospital three times a year and he takes pain medication which he administers orally [37(vi)].
 - (f) In Nigeria the appellant could not receive the blood transfusions which he receives every 6 to 8 weeks in the United Kingdom and this is likely to cause an increase in the frequency of sickle cell crises he experiences. This will increase the pain from which the appellant suffers [38].
 - (g) The appellant will not be able to fund the same medical treatment in Nigeria as he receives in the United Kingdom [39].
 - (h) The appellant will be able to receive some medical treatment in Nigeria, including pain medication [39].
 - (i) The appellant would not have access to blood transfusions in Nigeria. This will reduce his quality of life but will not create a serious, rapid and irreversible decline in his state of health resulting in intense suffering or a significant reduction in life expectancy [42-43].

- (j) The appellant will have access to painkillers which will limit his suffering [44].
- (k) Progression of his disease combined with healthcare of a lesser standard is likely to increase difficulties with his joints but this will occur over the longer term and will not be rapid [45].
- (l) His mental health will not prevent him from accessing healthcare [47].
- (m) The appellant will be able to support himself financially and pay for necessary medication and the limited hospital treatment which is available to him as a sickle-cell disease sufferer in Nigeria [58].
- (n) The appellant has made two previous suicide attempts and his threat to kill himself if forced to leave the UK is recorded in a number of documents [61].
- (o) The appellant receives very little treatment for his mental ill-health: anti-depressants and befriending services, and what he receives currently, can largely be replicated in Nigeria [28] and [63].
- (p) Some of the appellant's fears in relation to reduced medical care are well-founded but not all of them. This is because the fear that the appellant has expressed is fear of an almost total lack of medical care [62].
- (q) The appellant has also benefited from some acute treatment of mental health issues in the United Kingdom particularly in relation to his two previous suicide attempts. I find that Nigeria would not be able to offer acute treatment of mental health issues in relation to actions the appellant may take or consider taking in relation to suicide. Nigeria would not provide an effective mechanism to reduce the risk of suicide [63].
- (r) Risk factors for suicide include suffering from chronic pain, ill health, limited finances and his perceived lack of social and financial support in Nigeria [64].
- (s) The appellant is at real risk of committing suicide on return because he fears a painful, lonely and destitute existence away from his entire support network [64].
- (t) The appellant's view is in part clouded by his strong desire not to return to Nigeria and is not objectively well-founded. However, taking into account the entire situation and given his painful condition, there is a real risk of a breach of Article 3 by virtue of suicide [64].

Relevant case law

4. In J v SSHD [2005] EWCA Civ 629, the Court of Appeal set out the relevant Article 3 test in suicide cases at [26] to [31] which we summarise below:
- (i) First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity.
 - (ii) Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights.
 - (iii) Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case.
 - (iv) Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).
 - (v) 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.
 - (vi) Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights.
5. In Y and Z v SSHD [2009] EWCA Civ 362, the Court of Appeal considered the fifth principle in J and added to it as follows
- "14. ...if a fear of ill-treatment on return *is* well-founded, this will ordinarily mean that refoulement (if it is a refugee convention case) or return (if it is a human rights case) cannot take place in any event. In such cases the question whether return will precipitate suicide is academic. But the principle leaves an unfilled space for cases like the present one where fear of ill-treatment on return, albeit held to be objectively without foundation, is subjectively not only real but overwhelming.
 15. There is no necessary tension between the two things. The corollary of the final sentence of §30 of J is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.
 16. One can accordingly add to the fifth principle in J that what may nevertheless be of equal importance is whether any genuine fear

which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return.”

...

“38. Both cases therefore come, in my judgment, within the ancillary principle set out in §16 above.

39. What remains is the question whether, if returned, the appellants will have access to care and treatment which will keep the risk of self-harm under control.”

6. In MY (Suicide risk after Paposhvilli) Occupied Palestinian Authority [2021] UKUT 232 (IAC), the Upper Tribunal held:

“Where an individual asserts that he would be at real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State and meets the threshold for establishing Article 3 harm identified at [29] - [31] of the Supreme Court’s judgment in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17; [2020] Imm AR 1167, when undertaking an assessment the six principles identified at [26] - [31] of J v Secretary of State for the Home Department [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362) apply.”

Respondent’s submissions

7. Ms Cunha submitted the judge misapplied the law because there was no causal link between the appellant’s threat to commit suicide if removed and the claimed inhumane treatment relied on. Further or alternatively, the judge failed to give reasons for why the appellant’s suicidal ideation could not be managed in Nigeria.

8. Ms Cunha referred to MY and AM Zimbabwe and submitted the court had endorsed the six principles reformulated by Y. There had to be a causal link and the appellant’s fear had to be objectively well-founded. The judge had misdirected herself. Having found the appellant’s fear was not objectively well-founded, then it was not open to her to find that an Article 3 suicide risk was made out. She had fallen into error because she failed to appreciate the restatement of the law made in Y.

9. Having found the appellant was not at risk of persecution or Article 3 treatment as a result of his medical condition and rejecting his well-founded fear on return as not objectively well-founded, the judge failed to give reasons why his subjective fear was sufficient. There was no reason why the appellant’s suicide ideation in 2015 would not be sufficiently managed now and the medical reports did not support the findings at [64]. The judge’s findings were speculative.

10. Ms Cunha submitted there was no reason why the judge found at [63] that Nigeria would not be able to offer acute treatment of mental health issues and no evidence to support such a finding. The respondent did not accept this part of the appellant's case and the judge should have resolved the conflict in evidence giving reasons for why she preferred the appellant's expert evidence. The expert evidence did not show that the appellant's fear of return was objectively well-founded or that mental health treatment did not exist. The judge did not grapple with how the lack of blood transfusions would lead to long term irreversible pain or with the positions of the parties taking into account current case law.

Appellant's submissions

11. Ms Harvey submitted the grounds relied only on the lack of causal link and failed to show a material error of law. The causal link was apparent from the judge's finding at [64]. The appellant was in chronic pain and had made two previous suicide attempts. He had repeatedly stated he would commit suicide if returned. The judge made clear what the appellant feared and took into account the entire situation in concluding there was a real risk of suicide.
12. The fifth principle in J was altered by [16] of Y. Any genuine fear without objective foundation may well be of equal importance such as to create a risk of suicide. There was expert medical evidence before the judge that the appellant's fear was real and he was in significant pain. His situation was unusual in necessitating two total hip replacements. The appellant would not receive blood transfusions in Nigeria and could not afford all the medication he required. Dr Babu Anusa was of the view that his quality of life would be significantly more impaired on return. The appellant would be in incredible pain and driven to suicide without the protective mechanisms he has in the UK.
13. Ms Harvey submitted the judge gave adequate reasons at [64] and accepted the appellant's fear was genuine. The evidence demonstrated that his fear was objectively well-founded notwithstanding he could access some form of medical support. The One World Research briefing paper in the respondent's bundle supported the finding at [63] that Nigeria would not be able to offer acute treatment of mental health issues in relation to suicide.
14. In summary, the judge's findings at [62] to [64] were open to her given the evidence and findings set out in the previous paragraphs. The appellant's fear was objectively well-founded and there was sufficient evidence to show there was not an effective mechanism to reduce the risk of suicide.
15. Alternatively, the appellant truly believed his life was hopeless and he was in chronic continuous pain. His fear was supported by expert medical evidence. Following J, Y and MY, the appellant's subjective fear was

enough to succeed under Article 3: suicide risk. At [139] of MY, the Tribunal accepted the medical evidence that stress would exacerbate the appellant's condition and at [142] found that the risk of suicide was high in the UK. Given the low level of support and lack of protective factors in Nigeria, the appellant would be at high risk of suicide. Following [144], the health care provisions could not dispel the doubts raised by the appellant.

16. In the addendum report of Dr Issacs, she gives her clinical opinion that the sense of threat on return would precipitate a relapse and the appellant would become actively suicidal. The judge made this same point at [13] of the decision.
17. In response, Ms Cunha submitted that Ms Harvey had highlighted what the judge should have done. Unfortunately, the judge failed to state the appellant's fear was objectively justified or that his subjective fear was sufficient. It was not possible to infer findings into the gaps in the judge's reasoning. The test in Article 3 was a demanding one. Given the judge's earlier findings that the Article 3 threshold was not met, these factors could not assist the appellant to infer that his subjective fear was sufficient. The finding that the appellant would commit suicide was not open to the judge having rejected the appellant's reasons for doing so. The decision lacked reasons.

Conclusions and reasons

18. The issue in this appeal is a narrow one: whether the appellant's fear on return is real and overwhelming such that there is a real risk of suicide on return because the appellant will be unable to access care and treatment which will keep the risk of self-harm under control.
19. The judge found that some of the appellant's fears in relation to medical care were objectively well-founded, but not all of them [62]. She also found that the appellant could obtain treatment for his medical conditions, but mental health treatment was limited and Nigeria would not be able to offer acute treatment in relation to suicide [63].
20. At [64], the judge concluded:

"I consider that because the appellant has attempted suicide twice before, he has risk factors which have been identified which include suffering from chronic pain, ill health, limited finances and his perceived lack of social and financial support in Nigeria and he has repeatedly stated to different people that he will commit suicide if he is required to return to Nigeria, he is at real risk of suicide on return. I do not find that he fears suicide on return because of the events of 2003 what he fears is a painful, lonely and destitute existence away from his entire support network. I find that the appellant's view is in part clouded by his strong desire not to return to Nigeria and it is not objectively well-founded. However, taking into account the entire

situation and given his painful condition, I accept there is a real risk of breach of Article 3 by virtue of suicide.”

21. In our view, the judge’s findings at [62] to [64] are sufficient to establish the causal link and demonstrate the appellant’s subjective fear is real and overwhelming. These findings were supported by expert medical evidence which the judge referred to in detail. Dr Issacs was of the opinion the appellant would become actively suicidal if returned to Nigeria. The respondent did not dispute Dr Issacs had the expertise to make assertions about the appellant’s mental health in her decision of 13 March 2019. The judge was entitled to attach weight to this opinion.
22. The background evidence supports the judge’s finding that mental health services are limited in Nigeria and her finding that acute treatment was not available to prevent the risk of suicide was open to the judge on the evidence before her. On the respondent’s own evidence there are ‘less than 300 psychiatrists to Nigeria’s estimated 180 million people’.
23. On reading the decision as a whole it is apparent that the judge properly directed herself in law, setting out relevant case law, which she applied to the facts as she found them. The appellant’s subjective fear in conjunction with the lack of facilities to alleviate the risk of suicide was sufficient, on the particular facts of this case, to create a real risk of suicide in breach of Article 3.
24. Accordingly, we find the judge’s findings were open to her on the evidence before her and she gave adequate reasons for her conclusions. There is no material error of law in the decision of 22 October 2021 and we dismiss the respondent’s appeal.

Notice of Decision

Appeal dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 2 September 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.