



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000576
First-tier Tribunal No:
HU/52566/2022
IA/03992/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

TH
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Ms K Renfrew, of Counsel, instructed by Allied Law
Chambers Solicitors Ltd

Heard at Field House on 9 May 2023

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

Introduction

1. The claimant is a citizen of Egypt born in 1970. He arrived in the UK in September 2009 as a domestic worker. His leave to remain, which would have expired in January 2010, was revoked due to a breach of employment restrictions. He was refused an extension of leave to remain. He applied for asylum but he failed to attend an interview in December 2014 so his claim was treated as withdrawn. On 6th July 2020 the claimant applied for compassionate leave to remain, his claim was treated as a human rights' claim and refused on 12th April 2021. His appeal against the decision was allowed on human rights grounds (Article 3 and 8 ECHR) by First-tier Tribunal Judge Oxlade after a hearing on the 16th January 2023.
2. Permission to appeal was granted by Judge of the First-tier Tribunal S Aziz on 27th February 2023 on the basis that it was arguable that the First-tier judge had erred in law in firstly having placed weight on the expert report of Dr Attalla who failed to have sight of the claimant's GP records when writing his report, which is arguably not in accordance with the guidance in HA (expert evidence: Sri Lanka) [2022] UKUT 00111. Secondly, it is found to be arguable that there was a failure to have regard to AM (Zimbabwe) [2020] UKSC 17, and to demonstrate in the reasoning of the First-tier Tribunal that the high threshold for an Article 3 ECHR medical case was reached.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any such error was material and the decision should be set aside and remade.

Submissions - Error of Law

4. In the grounds of appeal and in oral submissions from Mr Wain it is argued, in summary, that firstly the First-tier Tribunal erred in law by finding that the Article 3 ECHR medical threshold was met based on the evidence of Dr Atalla as the report should not have been seen as a reliable expert report as there is no reference to the claimant's GP records, and the diagnosis was made by video conferencing. It is argued that the First-tier Tribunal failed to follow the guidance in HA (expert evidence: Sri Lanka) with respect to expert medical evidence because it is held that as a general matter GP records should be engaged with by an expert and the First-tier Tribunal is unlikely to be satisfied with a report which brushes aside the GP records.
5. Secondly, it is argued that the First-tier Tribunal failed to apply the test in AM (Zimbabwe) as it cannot be said there is a complete lack of mental health care in Egypt which would breach Article 3 ECHR in light of the Secretary of State's evidence, particularly given the fact that the claimant has family in Egypt and in light of the support package the claimant could access via the voluntary returns scheme.

6. In a Rule 24 response/ skeleton argument and in oral submission from Ms Renfrew it is argued that the decision of the First-tier Tribunal is entirely lawful. In summary it is submitted that the respondent did not criticise the first (2020) report of Dr Attalla and did not apparently challenge the diagnosis and severity of the claimant's mental health condition. There was no challenge to Dr Attalla's credentials either. The headnote in HA (expert evidence: Sri Lanka) requires ultimately that a report should not brush aside differing opinion in GP records. This was not done by the First-tier Tribunal who had two letters from the GP which post-dated the report of Dr Attalla and accorded with his opinion. The First-tier Tribunal Judge appreciated that the report was made without reference to the GP notes and via video conference and gave rational reasons for giving it weight in the particular circumstances of the case.
7. The First-tier Tribunal properly directed itself to AM (Zimbabwe) and MY (suicide risk after Paposhvili) Occupied Palestinian Authority [2021] UKUT 232 in the decision at paragraphs 15 to 18. In these paragraphs there is also sufficient evidence that the Secretary of State's position on mental healthcare in Egypt (which only amounted to one sentence in the refusal letter and which was not accompanied by any country of origin evidence whatsoever) was considered. It was rationally and lawfully open to prefer the position based on the claimant's bundle of country of origin evidence, which included the Secretary of State's CPIN, that he would not be able to access any healthcare which would prevent a real risk that he would suffer a significant reduction in life expectancy on return to Egypt which existed due to his high risk of suicide.
8. There was also apparently a Rule 15(2A) application to adduce new evidence, namely the claimant's GP notes, but this had not made its way to either the Upper Tribunal Judge or the Secretary of State's representative Mr Wain. Ms Renfrew emailed us both the GP notes but they were very lengthy and I decided that it would not be just to admit them at the error of law stage so they play no part in my reasoning. _

Conclusions - Error of Law

9. At paragraph 2 of the decision the First-tier Tribunal sets out the claimant's medical problems as follows: "Central to this appeal is the Appellant's mental health, having been diagnosed with a major depressive disorder, a recurrent depressive disorder, being highly symptomatic; the reports record that he made two suicide attempts in 2020 (both by attempting to throw himself out of a window, but was stopped from doing so), and which assessed him (para 9) as being at a moderate-high risk of suicide. He relies on two reports of Consultant Psychiatrist Dr Abuobieda Attalla (24th August 2020 and 1st August 2022), and two GP letters dated 7th September 2022 and 11th January 2023, which refer to these disorders and the medication that he is prescribed."

10. From paragraph 6 of the decision it is clear that the medical diagnosis was not in dispute between the parties; and that the arguments in the grounds were acknowledged by the First-tier Tribunal as having been made before it: “In closing submissions, Ms. Kugendran relied on the reasons given for the decision, which I note did not challenge the diagnosis of Dr Attalla; rather, in the decision the Respondent addressed the Article 3 ECHR threshold set in AM, said that it was a “high threshold”, and that there was a functioning health service in Egypt, with 18 mental health hospitals, two hospitals with psychiatric units and 7800 mental health patients (based on WHO statistics from 2017); the assisted voluntary package would enable him to buy his medication. I note that in the review, the Respondent said that the reports of Dr Attalla were not accepted as establishing the case, and limited weight should be placed on them because they were based on interviews conducted by video-link, of uncertain length, without reference to GP records, and had taken the Appellant’s account at face value.”

11. I find there is an entirely proper and reasonable assessment of the report of Dr Atalla at paragraphs 13 and 14 of the decision, which include consideration of the fact that the GP records had not been before Dr Attalla but finds that this did not have a materially detrimental impact on the weight to be given to the report as the two GP letters, that are dated after the report of Dr Atalla, are consistent with it, and thus this was not found to be a significant omission. I find that this approach is consistent with the country guidance in HA (expert evidence: Sri Lanka) as it is clear that whilst generally it is expected that GP records should be engaged with the purpose is to avoid an expert report which is at odds with the GP records and here the First-tier Tribunal had good evidence, in the form of two letters, which showed that the report of Dr Attalla was not. Consideration is also properly given to the fact that Dr Attalla’s report is clear, informative, undertook correct tests to assess depression and included consideration as to whether the claimant was fabricating his condition but concluded he was not for reasons which included the fact that he had relevant symptoms not widely known to lay persons. It is acknowledged that the two interviews were conducted via video conferencing but it is found that this is not a reason to give the report less weight as this method is now embraced by many organisations.

12. As set out at paragraph 15 of the decision the medical evidence of Dr Attalla is predictive of: “a deterioration if removed to Egypt; the basis of this is that he is already “highly symptomatic” and he is likely to be “flooded with memories and stimuli” which could precipitate a rapid decline in his mental health, which can include suicide.” I find that it was rationally open to the First-tier Tribunal to find the test in AM (Zimbabwe) and MY (suicide risk after Paposhvilli) Occupied Palestinian Authority was met as the evidence of removal amounting to exposure to a significant reduction in life expectancy was clearly there. Both cases are referred to at this point, making clear that the First-tier

Tribunal properly directed itself to the law, with the test in AM (Zimbabwe) also being set out in full at paragraph 3 of the decision. The First-tier Tribunal then goes on, at paragraph 15 of the decision, to review the various country of origin evidence from both parties on medical provision in Egypt (excluding, at paragraph 16 of the decision, the expert report of Dr Fawzy put forward by the claimant, which, I find, shows a careful approach) reaching the conclusion that: "It presents a picture of overstretched services, making access difficult, and absent of help and support from family, a person with a moderate to high suicide risk would inevitably on arrival without family help, be unable to access help." In the context of this finding I do not find that funds provided as a part of a assisted voluntary removal package would have made a difference. The Secretary of State did not contend that family would be there to assist the claimant in the reasons for refusal letter, or in the summary of her submissions which was not challenged as inaccurate, and the evidence of the claimant, which there is no evidence was challenged, was that he was estranged from them. The friends referred to in the decision at paragraph 7 are ones based in the UK. It was therefore rationally open to the First-tier Tribunal to find at paragraph 18 that the claimant had no family or other support if returned to Egypt.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal on Article 3 and Article 8 ECHR grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th May 2023

