Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01027/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 4 November 2015	**On 27 November 2015**

Before

LORD TURNBULL
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr L. Tarlow, Senior Home Office Presenting Officer
For the Respondent: Ms S. Harrison Q.C. instructed by Wilson Solicitors

DECISION AND REASONS

1. This appeal concerns HA, a Nigerian citizen born 25 December 1977, who successfully appealed to the First-tier Tribunal against a decision of the Secretary of State dated 22 May 2014 refusing to revoke a Deportation Order. In this appeal we shall use the same terminology

as used by the First-tier Tribunal Judge and refer to HA as the appellant.

2. By decision dated 23 January 2015, First-tier Tribunal Judge Metzer held that the appellant had established a well-founded fear of persecution for a Convention reason and that his return to Nigeria would constitute a breach of Article 3 of the Convention. He therefore allowed the appellant's appeal on asylum grounds and on human rights grounds.

3. The Secretary of State has been granted permission to appeal the decision of the First-tier Tribunal Judge on a single ground, namely a failure to give reasons, or adequate reasons, for his findings on material matters.

Background

4. The appellant arrived in the United Kingdom in December 2005 on a visitor's visa but overstayed. In March 2009 he was convicted at Newcastle Crown Court of an offence of being concerned in the supplying of cannabis and was subsequently sentenced to a period of 14 months imprisonment.

5. Three days before his conviction the appellant was interviewed and served with a Notice of Liability to Remove as an illegal entrant and on 8 April 2009 he claimed asylum and a screening interview was conducted. In light of further developments it was not until October 2010 that he was finally interviewed for the purposes of his asylum claim.

6. The appellant was served with a Notice of Liability for Automatic Deportation in July 2009 and on 27 August 2009, after his release from prison, he entered immigration detention. Whilst in detention he developed a serious psychotic mental illness, eventually diagnosed as paranoid schizophrenia. He required hospitalisation for a time but, after his condition was stabilised, he was returned to an Immigration Removal Centre. In December 2010 he was released from detention.

7. In February 2011 judicial review proceedings were commenced which, in due course, established that the appellant had been subject to inhumane and degrading treatment in breach of Article 3 of the Convention during his detention on account of the deterioration in his mental state. The appellant also raised proceedings before the First-tier Tribunal but this appeal was dismissed on asylum, humanitarian protection and human rights grounds by a decision dated 30 November 2011. Around that same time he travelled to Switzerland using a friend's identity card, and the name Ken Eze, where he came to make an asylum claim on a significantly different factual basis from that previously made in the United Kingdom.

8. In May 2012 the appellant was returned to the United Kingdom, detained and then subsequently released again on bail. By further decision of the First-tier Tribunal dated 29 May 2013, the appellant's appeal against the 30 November 2011 decision was allowed, to the extent that it was remitted for further consideration on the basis of the availability of new evidence which had not been before the previous Tribunal. The Secretary of State therefore reconsidered the appellant's appeal on asylum and human rights grounds and refused it by letter dated 22 May 2014, which decision the appellant then successfully appealed before the First-tier Tribunal.

First-tier Tribunal Hearing.

9. At the hearing before the First-tier Tribunal uncontested psychiatric evidence was led establishing that the appellant lacked the capacity to conduct the proceedings as a consequence of paranoid schizophrenia and Post-Traumatic Stress Disorder. At that time he was under the care and supervision of a consultant psychiatrist and a care coordinator at a community mental health facility in Haringey. He did not attend the hearing.

10. In the circumstances the First-tier Tribunal Judge took account of the various witness statements which the appellant had provided in the earlier proceedings which were to the effect that:

    i. In November 2004 his father, mother and siblings were all killed in an incident of religious unrest in his village;

    ii. With the exception of his uncle, who was Muslim, his family were all Christian and he believed that his uncle had been responsible for their deaths;

    iii. The police were informed but nothing was done;

    iv. He was threatened by his uncle to become a Muslim or the same thing would happen to him;

    v. The following month he was kidnapped at gunpoint and tortured by a group of people who wanted him to convert to Islam;

    vi. He then went into hiding with an aunt who lived in Abuja in the north of the country before leaving Nigeria with the help of that aunt around three months later.

11. Oral evidence was led from Dr Wilhelm Skogstad, a consultant psychiatrist, who had provided a number of medical reports on the health of the appellant. His evidence was to the following effect:

    i. The appellant continues and will continue to suffer from paranoid schizophrenia, which is a severe and enduring mental illness, leaving him highly vulnerable to further severe psychotic states;

ii. On World Health Organisation information it was extremely unlikely that he would receive necessary and appropriate treatment in Nigeria;

iii. The appellant's condition had deteriorated very significantly since August 2013 and he would be unable to cope with the massive change in his circumstances and environment that removal to Nigeria would bring about and this would cause a severe relapse in his condition.

12. Medical evidence was also led in the form of a report from Dr Arnold dated 5 May 2013, in which he noted that the appellant was found to be suffering from thirty-eight scars, many of which had the appearance of being inflicted through torture by the application of lit cigarettes. His report noted that his physical examination of the appellant led him to conclude that it was overwhelmingly probable that the appellant had been tortured in Nigeria in some or all of the ways he described, namely being tied up, beaten, kicked, burned with cigarettes and cut with a blade.

13. Evidence was also led in the form of a Country Expert report from Professor Aguilar of St Andrews University, which was, on the basis of the detailed information contained within it, to the effect that:

i. The appellant's account was consistent with the nature and extent of religious violence and tensions in Nigeria;

ii. The appellant would be at a very high risk of Muslim violence at the hands of Islamic extremists in the state of Kaduna;

iii. The Nigerian police force is not capable of protecting people;

iv. The possibility of relocation for a Christian resisting conversion to Islam is very difficult because of the attacks by Muslim fundamentalist groups on Christians throughout Nigeria and the police would be likely to respond to pressure from the appellant's uncle and his Muslim associates to disclose his presence at any other part of the country;

v. The appellant would be unlikely to get access to any inpatient medical care if his condition deteriorated;

vi. Because of the close cultural connection between mental illness and witchcraft in Nigeria the appellant would be socially rejected resulting in the possibility of violence against him from other Nigerians.

14. It is plain from the terms of his decision that the First-tier Tribunal Judge was very careful to take full account of the findings of fact made in the previous decision dated 30 November 2011. He appreciated that some of those were adverse credibility findings and that the appellant's appeal on asylum grounds had been dismissed. However, as he noted, there had been substantial developments since that previous hearing. In the first place the Secretary of State

now made the significant concession that the appellant had been subjected to ill treatment in Nigeria in the past. In addition, there was now considerably more medical evidence available concerning the appellant's condition. There was also the expert report and the report from Dr Arnold himself, which had led to the concession made by the Secretary of State. In these circumstances, as he explained in paragraph 38 of his decision, the First-tier Tribunal Judge considered that he would not be deviating from the principles set out in the decision in Devaseelan by considering the appellant's credibility again in light of the evidence which he had heard.

15. Having decided to deal with the matter in this fashion, the First-tier Tribunal Judge concluded that the appellant had given a consistent account over time of the facts at the core of his case. He found that the appellant's account of religious persecution and torture was consistent with the report prepared by Dr Arnold documenting the injuries to his body and with the evidence of Professor Aguilar as set out in his country report. He proceeded upon the presumption that in light of the evidence as to past ill treatment (and the concession thereon) there was a future risk of further persecution. He accepted the evidence before him concerning the high rate of communal religious violence in the state of Kaduna and the evidence that the appellant would be at risk if returning to his home area as a Christian.

16. The First-tier Tribunal Judge accepted the appellant's evidence that the police did nothing when he and his family reported difficulties with his uncle in the past and the evidence that no action was taken when the deaths of his family were reported. He also accepted the expert evidence to the effect that the authorities would be unable to afford the appellant sufficient protection and concluded that no area would be safe for the appellant to return to as a Christian.

17. The First-tier Tribunal Judge made a number of findings as a consequence of the evidence as to the appellant's medical condition. He concluded that even a threat of harm and the more generalised threat of religious conflict would cause the appellant serious harm. He did so because of the appellant's vulnerability to further extreme relapse, and that his delusional conduct, which was at times linked with his religious beliefs, would increase the risk of him being exposed to religious hostility and violence. He concluded that even if internal flight might be possible to an area in which Christians were in the majority, it would be unduly harsh to expect the appellant to do so given the likelihood of a catastrophic deterioration in his mental health which would result as a consequence of such a change to his environment.

18. Lastly in relation to the appellant's medical circumstances, the First-tier Tribunal Judge concluded that the level of vulnerability to which the appellant was exposed as consequence of his severe medical condition was such that even if he had not been satisfied in regard to

his credibility he would still have allowed the appeal under Article 3 of the Convention. He arrived at this view on the basis of the evidence as to the difficulty which the appellant would have in obtaining relevant medical treatment and the evidence concerning the stress which he would be exposed to in returning to Nigeria and the evidence of the risk of a relapse, resulting in serious danger to his health.

19. In light of the evidence which he accepted the First-tier Tribunal Judge upheld the appellant's appeal on asylum grounds and on human rights grounds.

The Appeal From The First-tier Tribunal Judge's Decision.

20. The single ground of appeal on which the Secretary of State was given permission to appeal to the Upper Tribunal is: "Failing to give reasons, or adequate reasons for findings on material matters." In the application for leave to appeal five separate points are itemised in support of that ground. The first point is a general contention that the First-tier Tribunal Judge failed to provide adequate reasons for his decision that the appellant would be at risk upon return to Nigeria and that his Article 3 rights would be breached because of being at substantial risk of suffering relapse which would seriously endanger his health. The second point is predicated upon an absence in the First-tier Tribunal Judge's decision of any reference to the appellant's asylum claim in Switzerland, or any reference to him travelling there at all. It is contended that the making of an asylum claim on a different basis in Switzerland ought to have cast doubt upon the credibility of the claim made in the United Kingdom and that his failure to explain the weight given to this factor resulted in the First-tier Tribunal Judge's findings being flawed. The third point concerns the First-tier Tribunal Judge's decision on adequacy of protection. It argues that insufficient, if any, weight was given to the respondent's evidence as to availability of protection, arguing that the judge gave undue weight to the report from Professor Aguilar and asserting that he failed to address the possibility of internal flight. The fourth point argues that there was no evidence of the appellant ever having sought assistance from the police in Nigeria and extends the earlier argument on adequacy of protection. The fifth point concerns the findings in relation to medical care and asserts a lack of reasoning by the judge in his finding on the availability of appropriate medical care in Nigeria.

21. It seems clear from this summary that, despite the way in which the Secretary of State's single ground is headed, the argument in fact goes beyond mere adequacy of reasons and extends to assertions that the First-tier Tribunal Judge failed to consider certain evidence at

all or made decisions in the absence of any evidence and thus, in those ways, separately erred in law.

The Hearing Before The Upper Tribunal

22. In support of the appeal Mr Tarlow took us through the five points mentioned above and expanded upon them by emphasising that the evidence specified in the Secretary of State's decision letter of 22 May 2014 demonstrated that there was a functioning police force in Nigeria. The material in that same letter also made it plain that, whatever deficiencies there might be, there was "some" medical care available in that country. Mr Tarlow criticised the First-tier Tribunal Judge for relying on the report prepared by Professor Aguilar on the premise that he had based his assessments on the account given to him by the appellant and upon the submission that there was only scant consideration given to the question of internal relocation.

23. On behalf of the appellant Ms Harrison commenced her submissions by drawing our attention to paragraph 13 of the appellant's written response submitted in terms of Rule 24 of the Upper Tribunal Procedure Rules. She explained that the content of that paragraph was included in light of the second point identified in the ground of appeal concerning the appellant's trip to Switzerland. The terms of paragraph 13 are as follows:

> "The FFT gave the HOPO at her request time to seek instructions on what points in the appeal she wished to positively advance in light of all of the evidence produced by HA. The SSHD made a decision and took no issue with HA's credibility and account of past events, placed no reliance on the events in Switzerland, made no submissions on this issue in the context of either the asylum and (sic) human rights claim."

24. In these circumstances Ms Harrison submitted that it was unfair and inappropriate of the Secretary of State now to characterise any absence in the First-tier Tribunal Judge's decision of an assessment of the appellant's credibility based upon the circumstances of his trip to Switzerland as an error of law. No such assessment was undertaken but this is explained by the fact that the Secretary of State's representative took specific instructions on the issue and decided that nothing would be made of it.

25. In relation to the remaining points made in support of the appeal Ms Harrison's submissions, in summary, were that the First-tier Tribunal Judge had dealt well with the evidence presented to him and had set out his conclusions in a cogent and well modelled fashion. She submitted that the criticisms of Professor Aguilar's report were misconceived and the contention that there was no evidence of the appellant seeking assistance was wrong. She submitted that Professor Aguilar had provided evidence on absence of protection, which was consistent with the information provided by the Secretary of State,

and emphasised that the concern which arose out of the medical evidence was not just the availability of medication but an issue about environment.

Discussion

26. As mentioned above, it is correct to observe that the First-tier Tribunal Judge makes no mention of the appellant's trip to Switzerland in 2011, nor of the asylum claim which he made there. The information available to us discloses that the claim was indeed made on a completely different factual basis to that made in the United Kingdom. It might be described as a rather grandiose account in which the appellant apparently sought to pass himself off as the son of a very important and wealthy individual, who had been a friend of the Nigerian president. By this stage, of course, the appellant had been diagnosed as suffering from paranoid schizophrenia, had been in receipt of compulsory care and required to take constant medication to keep his symptoms under control. It is obvious that there must be an explanation for the absence of any reference to the Switzerland episode in the decision, but it is worthy of note that there is no record of any submissions having been made on the Secretary of State's behalf on this matter either. It seems to us that the most obvious explanation is the one provided by Ms Harrison. We should observe that on being asked to provide a response, Mr Tarlow explained that he did not know what instructions had been taken by the presenting officer at the First-tier Tribunal, nor whether any decision had been made to abandon an attack on the credibility of the appellant's claim based upon the circumstances of his trip to Switzerland. His position was that the First-tier Tribunal Judge ought to have dealt with the point, given that it was relied upon in the decision letter of 22 May 2014, even if it was just to the extent of recording that it was no longer relied upon. As Ms Harrison observed, the Secretary of State had been given intimation of the appellant's Rule 24 Response in March of this year and we agree with her that it is simply not good enough for the appeal to the Upper Tribunal to commence in November with no enquiry ever having been made as to the accuracy of the information provided in that Response concerning the decisions made at the previous hearing.

27. It might have been better had the First-tier Tribunal Judge recorded in his decision that the Secretary of State was placing no reliance on the events in Switzerland. That would have had the benefit of making the circumstances plain to those who might become involved at a subsequent stage. The First-tier Tribunal Judge cannot though be said to have made an error of law, as is argued in point two of the ground of appeal, in failing to take account of events which were expressly discounted before him. We are entirely satisfied that we should proceed upon the basis that this is what occurred before the First-tier Tribunal Judge, given the explanation provided by Ms Harrison who was present and conducted those proceedings. We therefore see no

merit in the argument advanced under point two in the ground of appeal. Furthermore, it is difficult to see the logic of the underlying contention specified in this second point given the concession in the 22 May decision letter that the appellant was likely to have suffered ill treatment in Nigeria and the evidence which patently supported this.

28. Once the events in Switzerland are removed from consideration it is perfectly plain why the First-tier Tribunal Judge concluded that the appellant would be at risk upon return to Nigeria. As he explains in paragraphs 39 – 44 of his decision, he accepted the appellant's account of the fate which befell his family and his account of the subsequent torture to which he was subjected. He noted that his account was supported by medical evidence and by Professor Aguilar, who commented in his report at paragraph 9 that the appellant's account was consistent with his own knowledge of the nature and extent of religious violence and tensions in Nigeria, and at paragraph 10 that the appellant's account was consistent with other contemporary human rights reports, which he specified. The Judge also took account of the passages in Professor Aguilar's report in which he drew attention to the evidence to the effect that violence by extremist Muslims against the Christian community has substantially increased in recent years and demonstrating a high rate of religious violence in Kaduna. None of this evidence was disputed and, as the First-tier Tribunal Judge recorded at paragraph 42 of his decision, the Secretary of State's concession that the appellant had been subject to ill treatment in the past led to a presumption of future risk based upon what had been said in the case of Karanakaran.

29. The evidence as to the appellant's mental health is described by the First-tier Tribunal Judge at paragraph 17 – 28 of his decision. We have summarised, the import of it at paragraph 9 above. There was no competing evidence as to the extent of the appellant's condition. As Ms Harrison reminded us, the evidence which Dr Skogstad gave demonstrated that the appellant's mental state had deteriorated very significantly over the last two years and the renewed threat of deportation had contributed to this deterioration. It seems obvious that the appellant is very unwell but it is important to appreciate that the risk of severe relapse and serious endangerment to the appellant's health was not predicated only on a concern about the availability of medication. As Ms Harrison submitted, an important aspect of the evidence which Dr Skogstad provided concerned the appellant's inability to cope with any form of change and the risk of severe breakdown which was associated with a change in his environment. It was this evidence which persuaded the First-tier Tribunal Judge to conclude, as he explains in paragraph 45 of his decision, that the appellant's severe psychiatric state meant that even the threat of harm and the more generalised threat of religious conflict would cause him serious harm as he would be vulnerable to further extreme relapse in such an environment. We therefore find that in the detailed references to the evidence led before him, which

the First-tier Tribunal Judge sets out in his decision, and in paragraphs 39 to 45 where he explains his conclusions on that evidence, the First-tier Tribunal Judge has provided perfectly adequate reasons for his decision that the appellant would be at risk upon return to Nigeria. We therefore see no merit in the argument advanced under the first part of point one of the ground of appeal.

30. We consider that the criticisms which were made of the quality of Professor Aguilar's evidence were misconceived. The submission set out in the written grounds, and repeated before us, was that the Professor's report was based on the appellant's own evidence, which in turn was not credible. At paragraph 9 of his report the Professor noted: "I find his account of events in Nigeria to be entirely plausible and consistent with my knowledge of the nature and extent of religious violence and tensions in Nigeria." He then goes on to explain in detail the circumstances of religious tension and violence as he knows them to be from his experience and draws upon contemporary accounts and reports from international organisations. There is no sense in which Professor Aguilar's report can be criticised in the manner suggested. He is an eminent expert who provided an independent report expressed in familiar fashion. We are satisfied that the First-tier Tribunal Judge was entitled to accept and act upon this evidence to the extent which he did.

31. The First-tier Tribunal Judge explains in paragraph 46 of his decision that he accepted the evidence which Professor Aguilar provided concerning the inability of the Nigerian police to provide appropriate levels of protection. The Professor dealt with this issue at paragraphs 44 to 51 of his own report where he explained the concerns he had and quoted from a number of recent reports prepared by Amnesty International. Whilst the written ground of appeal included the contention that insufficient weight had been given to the Secretary of State's evidence as to availability of protection, as set out in the decision letter of 22 May 2014, no submissions were made as to how this evidence differed from or contradicted that of Professor Aguilar. Having re-read her decision letter we do not consider that the information relied upon by the Secretary of State was to any material extent different from the evidence placed before the First-tier Tribunal Judge in Professor Aguilar's report. We cannot see any valid criticism to be levelled against the First-tier tribunal Judge in accepting and relying upon his evidence. Furthermore, as is set out at paragraph 46 of the decision, the appellant's evidence to the effect that no action had been taken by the police following the report by him of the death of his family members was accepted. The assertion in the fourth point of the ground of appeal that the appellant never claimed to have sought assistance from any police station appears to be simply incorrect. We therefore find that the First-tier Tribunal Judge has provided appropriate and sufficient reasons for his conclusion concerning adequacy of protection and that there was

ample evidence before him entitling him to reach the view which he did.

32. A further aspect of the complaint levelled against the evidence provided by Professor Aguilar in the third point is that he concerned himself only with the circumstances in Kaduna state and failed to consider whether the appellant may be able to relocate elsewhere. Again this is simply incorrect. Paragraph 53 of the Professor's report is headed "Relocation". As one would expect, this is then the subject which is addressed in this and the following three paragraphs. Professor Aguilar makes it plain in this section of his report that the possibility of relocation for a Christian resisting conversion to Islam is very difficult and explains why that is so. He also draws attention to the fact that Nigerian society operates through a system of kinship and family-based networks which are able to locate individuals who move from their home area. Such networks, he explained, can also bribe the police to help them locate a family member. Professor Aguilar draws attention to the important difference to be understood between the environment in Nigeria and that found in Western locations. He emphasised that even in the largest cities strangers are not welcome and it was common for the local residents to work out who any incomers were and where they were from. News would then be passed and would travel quickly concerning the circumstances of such individuals.

33. It was the evidence from these paragraphs of Professor Aguilar's report which the First-tier Tribunal Judge accepted and relied upon in making the findings on internal relocation which he set out at paragraph 47 of his decision. In doing so he also considered and gave full weight to the Country of Origin Information Report relied upon by the Secretary of State. It is therefore plain, in our view, that there was compelling information before the First-tier Tribunal Judge on this matter which he was entitled to rely upon and his reasons for doing so cannot be criticised. It should also be borne in mind that, as he explained in paragraph 49 of his decision, the First-tier Tribunal Judge also accepted the unchallenged evidence of Doctor Skogstad concerning the catastrophic effect on the appellant's health which would likely follow if there was to be any significant change to his environment. On the basis of this evidence the judge concluded that it would be unduly harsh to expect the appellant to engage in internal flight, even if that was possible. This finding was not challenged in the Secretary of State's ground of appeal. For the reasons set out in this and the preceding three paragraphs we are satisfied that there is no merit in the argument advanced under the third and fourth points of the ground of appeal.

34. The final aspect of the ground of appeal is addressed in both the first and the fifth points. It concerns the extent of the risk to the appellant's health should he be returned to Nigeria and the availability of medical treatment in that country. The argument seems

to be in two parts. First, that the First-tier Tribunal Judge has failed to provide adequate reasons for concluding that the appellant's Article 3 rights would be breached if he were to be returned to Nigeria. Secondly, it appears to be argued that no regard was had to the information concerning the availability of medical treatment referred to in the Secretary of State's decision letter, or at least that the First-tier Tribunal Judge has failed to provide adequate reasons for concluding that the available treatment would not be sufficient.

35. The import of the unchallenged evidence concerning the appellant's mental health is mentioned in paragraph 9 above and we have referred to it a number of times. The Secretary of State proceeded upon the assessment of the appellant's condition as it was in 2013 (see para 67 of the decision letter). His condition has deteriorated since then though and, as is explained in paragraph 9 of this decision, by the date of the hearing in January 2015 he lacked the capacity to participate. The evidence as to the appellant's current mental health condition could not be clearer. In his reports, and in oral evidence, Dr Skogstad gave unchallenged evidence as to the impact of removal. He explained that factors such as the state of religious tensions within Nigeria and attitudes towards mental health would impact adversely on the appellant's condition, and that subjective factors, including the way in which the appellant experienced threats, would have a similarly adverse impact. As he explained in paragraph 4.7.6 of his report, Dr Skogstad was concerned that the appellant's own terror of being killed by his Muslim uncle and other extremists was, whether or not objectively likely to happen, sufficient to cause a deterioration in his mental condition resulting in relapse into severe psychotic state. Moreover, in his evidence Dr Skogstad emphasised the importance of stability in the appellant's circumstances as a factor which enables his condition to remain managed. He explained the need for an environment in which there was an absence of threat, a level of support from family, friends or professionals and a stable life situation. The general import of Dr Skogstad's evidence is noted by the First-tier Tribunal Judge in paragraph 17 – 28 of his decision. At paragraph 21 of his decision he notes Dr Skogstad's evidence that, in his opinion, any attempt at forced removal would lead to a very serious mental breakdown for the appellant, who would be unable to cope with the change in his circumstances and environment that removal to Nigeria would bring about.

36. It is correct that information concerning the availability of mental health treatment was provided by the Secretary of State in her decision letter, which included information to suggest that the medication currently prescribed to the appellant is available. The information which she provided also included evidence to the effect that shortages of pharmaceutical and medical supplies were endemic, that the health system was ranked 187 out of 191 nations, that there is limited availability of mental health services and that only around

10% of those with severe mental illnesses such as schizophrenia received treatment.

37. In his report Dr Skogstad also dealt with this subject. At paragraph 1.2. he listed the information which he had taken account of which included the World Health Organisation Mental Health Atlas 2011, the World Health Organisation Report on Mental Health System in Nigeria 2006, the UK Border Agency Country of Origin Information Report on Nigeria dated 2012 and the contents of a survey conducted in a Nigerian teaching hospital concerning attitudes towards the mentally ill published in the South African Journal of Psychiatry in 2010. At paragraph 4.7.2 of his report, Dr Skogstad quoted from the World Health Organisation Mental Health Atlas to the effect that there is hardly any provision for the mentally ill in Nigeria and drew attention to the highly stigmatising attitudes referred to in the article published in the South African Journal of Psychiatry. He also made reference to the content of Professor Aguilar's report, who also drew attention to the lack of provision for treating mental health conditions. In light of the information available to him Dr Skogstad expressed the view at paragraph 4.7.3 of his report that it is extremely unlikely that the appellant would receive necessary and appropriate treatment for his severe and enduring illness in Nigeria with the result that his condition would deteriorate very rapidly. In the following paragraph he expressed the view that the combination of the lack of mental health services and professionals even partially trained in mental health issues, taken along with highly stigmatising attitudes, meant that any response to a deterioration in the appellant's condition would be highly inappropriate.

38. The evidence concerning the appellant's mental health required the First-tier Tribunal Judge to weigh more than just the question of whether the medication which he currently receives is available in Nigeria. In our view it is obvious that the First-tier Tribunal Judge gave careful consideration to all of the evidence concerning the appellant's mental condition and the impact on that of change in his environment. At paragraph 45 of his decision he explains he concluded that the threat of further violence and a significant change in his environment would each lead to a deterioration in the appellant's mental health. At paragraph 52 he explains that such a deterioration as was envisaged would seriously endanger the appellant's health. These conclusions were validly made in light of the medical evidence led.

39. In our view therefore it is clear that the First-tier Tribunal Judge has given due weight to the totality of the information available to him concerning the appellant's mental health, the impact on his health of return to Nigeria and the extent to which his condition could be managed in that country. In paragraph 52 of his decision he explains that in allowing the appeal under Article 3 on the basis of the appellant's medical condition he took account of the decisions in

Bensaid v The United Kingdom [2001] 3 EHRR 10 and Aswat v The United Kingdom (Application no. 17299/12). We can detect no error of law in the First-tier Tribunal Judge's approach and it is not contended in the ground of appeal that the evidence led did not permit him to reach the decision which he arrived at. In these circumstances we are satisfied that the First-tier Tribunal Judge has given adequate reasons for concluding that a return to Nigeria would seriously endanger the appellant's health and thus breach his rights in terms of Article 3 of the Convention. Equally, he has adequately dealt with the evidence concerning the availability of medical treatment in Nigeria and given sufficient reasons for the weight which he attached to that evidence. We are therefore satisfied that there is no merit in the argument advanced under the second part of the first point or in the fifth point of the ground of appeal.

Conclusion

40. For the reasons which we have given above we are satisfied that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision dated 23 January 2015 shall stand.

Notice of Decision

41. The appeal is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Alan D. Turnbull

Date: 24/11/2015
Judge of the Upper Tribunal