



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number:  
PA/01355/2015

THE IMMIGRATION ACTS

Heard at: Birmingham  
On: 29<sup>th</sup> June 2017

Decision & Reasons Promulgated  
On: 22<sup>nd</sup> August 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

HL  
(anonymity order made)

Respondent

For the Appellant: Mr Mills, Senior Home Office Presenting Officer  
For the Respondent: Ms Hussain, Counsel instructed by Crown Solicitors

DECISION AND REASONS

1. The Respondent HL is a national of Côte D'Ivoire born in 1980. On the 18<sup>th</sup> November 2016 the First-tier Tribunal (Judge Shanahan) allowed his

deportation appeal on human rights grounds. The Secretary of State for the Home Department now has permission to appeal against that decision<sup>1</sup>.

2. The essence of the HL's case before the First-tier Tribunal was that it would be a violation of his core human rights if he were to be removed to Côte D'Ivoire. He is gay, and has been diagnosed with paranoid schizophrenia: the cumulative impact of these personal characteristics would be such that his removal would give rise to a real risk of a breach of Article 3. The First-tier Tribunal agreed and allowed the appeal. The Secretary of State for the Home Department now contends that the decision is flawed for the following material errors of law:
  - i) The Tribunal has failed to apply the high test applicable in Article 3 health cases, as set out N v UK [2008] ECHR 453 and GS and EO (Article 3 - health cases) India [2012] UKUT 397 (IAC)
  - ii) Making findings contrary to its own directions.

### Discussion and Findings

3. The Secretary of State for the Home Department notes that at paragraph 55 of the determination the Tribunal directs itself as follows:

“However, even taking these matters into account I go back to the very high test set out in N and from a medical point of view I cannot be satisfied that simply being unable to access the treatment available in Kenya [sic] amounts to a breach of Article 3”

She then draws a contrast between that legal direction and the findings at paragraph 59:

“Therefore while there is support from the Government the fact remains that this Appellant would face significant difficulties in finding employment to enable him to pay for medical treatment and medication which would eventually result in a deterioration of his condition and the treatment I have referred to above in paragraph 51”

The Secretary of State for the Home Department submits that the Tribunal has in effect failed to apply the “very high test” set out in N, and has allowed the appeal for the – insufficient - reasons set out at paragraph 59.

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<sup>1</sup> Permission was refused on the papers by First-tier Tribunal Judge Easterman but granted by Upper Tribunal Judge Rintoul on the 30<sup>th</sup> March 2017

4. Had the First-tier Tribunal allowed the appeal simply on the basis of its findings of fact at paragraph 59, I would have agreed. It is however quite plain that it did not. Having carefully evaluated the evidence before it the Tribunal found:

- That HL had been subjected to ritual and voodoo practices as a child (including sexual abuse) [at 37]
- That HL is an openly gay man [38]
- that LGBT men in the Côte D'Ivoire face discrimination and on occasion violence and intimidation (albeit that Abidjan offers a degree of freedom over that available in other parts of West Africa) [43]
- that HL suffers from paranoid schizophrenia [47]
- that his condition deteriorates significantly if he does not comply with his medication regime [49]
- that the provision for mental health care in Côte D'Ivoire is "extremely limited" [52] and that in particular the drug Risperidone, which has been essential to LH's rehabilitation, is not available [53]
- that mental illness is considered in West Africa to be a magical, supernatural event, caused by spirits taking over the body. People suffering from mental disorders are believed to be possessed by evil spirits and are often abandoned by their families, left to wander the streets alone with no food. Alternatively they are sent to 'prayer camps' where the treatment consists of being chained to a tree for an indefinite period whilst others pray for their recovery

5. Having made those findings the Tribunal reminded itself of the high test applicable in health cases [55] before saying the following [at 56-57]:

"Nonetheless I am satisfied that this Appellant's case can be distinguished from N and GS. In both those cases the withdrawal of medical treatment would lead to a drastic shortening of the Appellants' lives through the progress of natural disease. It was said in GS that such a case could only succeed under Article 3 if it fell within the exception set out in *D v United Kingdom* [1997] ECHR 30240/96.

In this appeal the Appellant's case is not so much how his life may be shortened because of the disease/condition but because of the consequences and the ill-treatment and degrading treatment he would be faced with because of his behaviour if he failed to take his medication and became unwell".

6. It is in the context of these comments that the Tribunal makes its findings [at 59] about the likely deterioration in HL's mental health, and that in the Côte

D'Ivoire this would likely result in exclusion from society, destitution or the 'treatment' of being chained to a tree for an indefinite period. The Tribunal goes on to find that the HL has no support mechanism in the Côte D'Ivoire since he has no family or other connections there, and that as an openly gay man he is likely to encounter discrimination. Both of these factors would make him especially vulnerable if, as is likely, his condition deteriorates due to lack of mental health care. It was the accumulation of these factors which led to the decision that the HL's removal would result in a violation of Article 3.

7. I am quite satisfied that the grounds are not made out. The Tribunal has not allowed the appeal on the basis of a withdrawal of health care. It has allowed the appeal on the grounds that there are substantial grounds for believing that HL will face inhuman and degrading treatment in Ivorian society because he has paranoid schizophrenia, because he has no family to support him and because he is gay. That was manifestly a finding open to the Tribunal on the evidence before it.
8. The only error in this determination, if any, is that the appeal was dismissed on asylum grounds. The case had been subject to a section 72 certificate but that had not been upheld. The finding that HL would be subjected to serious harm would amount to a finding that he is a refugee, if any one of the reasons for the persecution feared was one of those adumbrated in Article 1A(2) of the Refugee Convention. The harm was held to result from a combination of factors, two of which would constitute 'membership of a particular social group', those suffering from chronic mental illness, and homosexuals. There being no cross appeal, I do not substitute the findings of the Tribunal on this point, but simply make the observation that as a matter of law, it would appear that the HL is a refugee.

## **Decisions**

9. The determination of the First-tier Tribunal does not contain an error of law such that it should be set aside.
10. LH has been convicted of a criminal offence and is subject to deportation proceedings. He would not, in those circumstances, ordinarily benefit from an order to protect his identity. This appeal does however concerns a claim for protection involving both sexual abuse and mental illness. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Upper Tribunal Judge Bruce  
29<sup>th</sup> June 2017