Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001091
On appeal from PA/00716/2020

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On the 14 September 2022

Decision & Reasons Promulgated
On the 31 October 2022

Before

UT JUDGE MACLEMAN

Between

ISA [B]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has been known to the respondent in several identities and nationalities. He is now taken to be a citizen of Morocco, in the name above, born on 5 May 1988. He has been in the UK since at least 2005. He had leave as an unaccompanied minor but was unsuccessful in later applications and appeals. He made further submissions, dating back to

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2012. He appealed to the FtT against the most recent refusal of those submissions.

2. FtT Judge Fox heard the appeal on 29 June 2021. There were various items of medical evidence, the most recent being a report by Dr Bett, consultant psychiatrist, dated 21 February 2021. The nub of the appellant's case, recorded at [11] of the FtT's decision, was that he feared persecution as a member of a "particular social group, namely a as a sufferer of mental illness"; without medical treatment, would be "a significant risk to his own health, safety and welfare and to the safety of others"; and without compulsory measures, would not comply with treatment.

3. At [23–24] the Judge found that the appellant had not complied with tablet medication, but did present for injection, and "had the ability to be compliant". Having considered the medical and background evidence in some detail, the Judge found at [52] that any non-compliance would be "a choice" and that in any event the consequences "taken at their height, do not engage article 3"; at [53] that the health service in Morocco, while not of UK standard, had the capacity to deal with the appellant "if he chooses to engage with them"; and at [54] that he "would be able to access such treatment as required". Those paragraphs contain the essence of the decision.

4. The grounds of appeal to the UT are:

> (1) failing to give anxious scrutiny to the underlying medical evidence; at [52], failing to understand that the appellant has little insight into his illness and need for medication; absence of reasoning for the finding that he has sufficient insight; and
>
> (2) failing to consider article 8 with reference to mental illness, losing sight of factors other than comparable levels of treatment.

5. UT Judge O'Callaghan granted permission on 27 January 2022, on the view that the Judge arguably erred "… in fact, and therefore in law, as to the appellant's insight into his condition" with an arguable impact upon subsequent conclusions.

6. The thrust of the submissions by Mr Winter was that the decision overlooked that the appellant has very little insight into his illness and his need for anti-psychotic medication, and complies only because compulsory measures are in place. He said that there was an absence of reasoning and indeed an absence of evidence for finding that he did have sufficient insight. The respondent has supplied some evidence of treatment available in Morocco, but had not shown a system of compulsory orders as in Scotland. The appellant's expert evidence suggested that in Morocco the same drug is available, but as a daily tablet, not by injection. That implied that there would have to be a system of daily compliance and monitoring. He said that although there was evidence that there might be compulsory treatment in Morocco if

necessary, that would involve the appellant falling into a cycle of enforcement.

7. In terms of ground 2, Mr Winter argued that when looking at the case beyond the rules, the FtT lost sight of the need to decide not only on the medical aspect but on all facets of private life, under reference to *Akhalu* [2013] UKUT 00400 (IAC).

8. Mr Mullen submitted that the appellant's co-operation in taking his medication in the UK showed at least a degree of insight, all that was needed to justify the FtT's conclusions. It was wrong in principle to make his case on the possibility that he might be non-compliant in Morocco. That would be his choice. In any event, the evidence did not show he would be less likely to comply; rather, the Judge found factors, such as possible family support, which suggested he might be more likely to do so. Even if the psychiatric health system was not as comprehensive or beneficial as in the UK, it is well established that a lower standard does not provide a right to remain.

9. I reserved my decision.

10. Mr Winter confirmed that the appellant (who was not present) is competent to instruct his representatives directly. He has not succeeded in his various other grounds of claim. It is somewhat paradoxical that he now founds mainly on the adverse consequences of his wish not to take his medication, which is not among his own reasons for resisting return. As Mr Mullen submitted, cases are usually advanced on restriction of liberty, not on someone being free to do as they choose. However, that is ultimately beside the point. The case depends on the likely consequences of return, however they arise.

11. The decision surveys the medical and background evidence with notable thoroughness. At [30], it is noted that the appellant attends for his two-weekly injection, and understands the requirement placed upon him by the compulsion order. Other anti-psychotic medication might be given. The community psychiatric nurse says that oral medication would only be viable "if concordance was monitored daily". (The Judge observes in passing that it is not said if slow release / long-acting tablets are available.) The consultant psychiatrist considers that compulsory measures will be necessary indefinitely. At [36] it is noted that she has found no equivalent statutory provisions in Morocco and opines that it would be "impossible for this gentleman to be adequately managed there", and that discontinuation of medication would involve "the very real possibility of risk to himself and others". At [37], the Judge recognises the "impossibility" of assessing the extent of likely harm but finds no suggestion "that his life is at risk and there is an inevitable consequence of death".

12. The appellant also provided a report by Dr Elliott, a country expert (which Dr Bett is not). She describes stigmatisation of mental illness and serious

inadequacies of psychiatric care. She states that the appellant's medication is available, but in tablet form only, and that the appellant might not afford it.

13. The Judge next notes the background information from the respondent which describes medical care of decent quality, with free access to primary health centres, only a national ID card being needed to obtain treatment. In respect of mental health, "forced admittance" applies where necessary. "Assisted living and care at home by a psychiatric nurse" are available upon authorisation from the hospital psychiatrist. At [46] the Judge sees "no material conflict between Dr Elliott's report and the objective material relied upon by the respondent that requires reconciliation". The appellant has raised no real challenge to that analysis.

14. At [47 – 48] the Judge concludes that the evidence does not show the high threshold for an article 3 medical case to be met.

15. In the passage challenged in the grounds, at [52], the Judge says, "As recorded above there is no suggestion in the clinical evidence that [the appellant] does not fully understand today the requirement to adhere to his medication regime and the benefits arising therefrom".

16. In submissions, representatives concurred that the gist of the evidence was that the appellant does not accept that he needs medication and takes it only because he understands that non-compliance may lead to his further detention, rather than because he accepts the therapeutic need. He is visited at home by a psychiatric nurse to administer an injection, every two weeks.

17. The comment at [52] should be placed in context of the whole decision. In particular, at [23] the judge noted non-compliance as the significant feature of the disease, with a history clearly documented by the health professionals. At [24] he measured this against the appellant's regular presentation for administration of the drug by injection which "does not reinforce the view that he would not be compliant in any medication regime provided in the UK or another country."

18. I am not persuaded, on reading the decision as a whole, that the Judge over-estimated the appellant's degree of insight into his condition and his need for medication.

19. Even if [52] does disclose a factual error on that point, I would not find that ground 1 shows that to require the decision to be set aside, for several reasons:

    (i) the case did not turn on an accurate assessment of the nature of the appellant's insight, but on the consequences of return;

    (ii) the respective extent to which the appellant's compliance with medication arises from insight or from avoidance of compulsion is irrelevant, because the effect is the same;

(iii) the statutory regime for compulsion in Scotland is not replicated in Morocco, but no error is shown in the finding that compulsion is available;

(iv) the evidence does not show that in Morocco the appellant is not likely to have similar motives to comply in taking medication;

(v) the evidence does not support the assertion in the psychiatric report that it would be impossible to manage the appellant's condition in Morocco; and

(vi) in any event, no error is shown in the finding that the case, at highest, falls short of the threshold for medical grounds.

Ground 2 discloses no error. The Judge did not "fail to consider" the article 8 case. There is no foundation for saying that relevant factors were listed but "not taken into account at all". That is no more than insistence that they should have led the Judge to the opposite conclusion. He was plainly entitled to come down on the side he did. He is not shown to have left anything out of account in doing so.

20. The decision of the FtT shall stand.

21. No anonymity direction has been requested or made.

H Macleman

16 September 2022
UT Judge Macleman

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.