IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/03333/2020
(UI-2021-000416)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 April 2022	**On 10 June 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

G D L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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 their 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.

Representation:
For the Appellant: Ms C Record, Counsel, Direct Access
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Vietnam born in 1976. He seeks to challenge the decision of First-tier Tribunal Judge Bunting ("the judge"), promulgated on 2 June 2021. By that decision the judge dismissed the Appellant's appeal against the Respondent's refusal of his protection and human rights claims.

2. In essence the Appellant's claims had been based on the fact that he suffers from paranoid schizophrenia. It was said that as a result of this he would face persecution on return to Vietnam and/or would be subjected to treatment contrary to Article 3 ECHR and/or that his removal would be disproportionate under Article 8 ECHR.

3. The Respondent rejected the claims on all bases, concluding that there was no evidence to show that people with mental health conditions would be subject to persecution in Vietnam and that there was appropriate treatment in that country for individuals with the Appellant's condition.

The decision of the First-tier Tribunal

4. The judge's decision is thorough. Having set out in some detail the procedural background and the summary of the evidence, the judge noted the Respondent's acceptance that individuals with mental health conditions could form part of a particular social group with reference to the Refugee Convention and that the Appellant and his brother were credible witnesses: [26]. The judge directed himself to the judgment of the Supreme Court in AM (Zimbabwe) [2020] Imm AR 1167 and that of the Fourth Chamber of the European Court of Human Rights in Savran [2019] ECHR 651. The judge confirmed at [53] that the Appellant's and brother's evidence was accepted. He then listed the relevant medical evidence.

5. The Refugee Convention claim was dealt with at [71] – [78]. The judge acknowledged this aspect of the Appellant's case and accepted that those with mental health conditions could suffer from discrimination and stigmatisation. However, on the evidence before him, the judge concluded that this would not cross the threshold of persecution.

6. Moving on to the Article 3 medical claim, the judge referred to country information on the provision of mental health treatment in Vietnam as well as the United Kingdom – based on evidence provided by the Appellant. At [91] the judge stated that:

> "91. I then have to ask whether the evidence provided by the appellant is capable of demonstrating that there are substantial grounds for believing that removal would expose him to a real risk of article 3 treatment".

7. This was in effect a self-direction to the prima facie test set out in AM (Zimbabwe). Paragraph [93] of the judge's decision reads as follows:

> "93. The appellant has not adduced evidence as to whether his current treatment would be available, what the effect of different treatments would be, whether a different anti-psychotic could be taken, how long the depo medication would last, what oral anti-psychotics he would (or could) be given prior to removal, and so forth."

8. As a result of this, the judge concluded that the prima facie case had not been made out and it was unnecessary to consider the country evidence and submissions put forward by the Respondent.

9. Article 8 is then addressed, both within and without the context of the Immigration Rules. The judge concluded that removal would not be disproportionate. This aspect of his decision has not been challenged and plays no further part in my consideration of this appeal.

The grounds of appeal

10. Two grounds of appeal were put forward (drafted by Ms Record, who had not appeared below). The first of these relates to the Refugee Convention claim and asserted that the judge had failed to consider this issue adequately or at all and that relevant country information had been overlooked. The second ground essentially related to the Article 3 medical claim and asserted that there had been an inadequate consideration of the Appellant's circumstances were he to be returned to Vietnam.

11. Permission was granted on both grounds.

The hearing

12. At the hearing Ms Record expanded on her two grounds of appeal. She submitted that the judge's consideration of a Refugee Convention claim had been "a bit short" and that he had been "rather hasty" in reaching his negative conclusion. She referred to the 2020 US State Department Report on Human Rights, which had been before the judge. This referred to discrimination and stigmatisation in Vietnam of those with mental health problems. Ms Record submitted that this had not been taken into account by the judge and that it was capable of demonstrating a risk of persecution.

13. In respect of the second ground, Ms Record submitted that the Appellant would struggle with support were he to return to Vietnam. She acknowledged that the evidence provided by both parties before the judge did not confirm whether or not depot injections were available in that country and accepted that the medical professionals who had provided

written evidence in the United Kingdom were not experts on the provision of the treatment in Vietnam.

14. Mr Lindsay submitted that the first ground of appeal was not made out. The judge had addressed the issue and relevant country information. The US State Department Report added nothing to the Appellant's case. In respect of the second ground Mr Lindsay referred me to paragraphs 32 and 33 of AM (Zimbabwe). Establishing the prima facie case represented a difficult task for any appellant and in the present case it was submitted that the evidence had not adequately addressed the issues of alternative medication and/or methods of administration of medication and/or the consequences of a change of regime for the Appellant's mental health. In this regard, it was submitted that the Appellant's challenge fell at the first hurdle.

15. Mr Lindsay also submitted that in any event, the evidence provided by the Appellant failed to show that any deterioration in mental health would (a) be rapid and (b) be irreversible. None of the evidence from the UK clinicians stated that an absence of appropriate medication would result in a rapid decline in health and none stated that the Appellant would continue to suffer from a very serious deterioration in mental health, even if alternative medication were available in Vietnam.

16. At the end of the hearing I reserved my decision.

Discussion and conclusions

17. Having considered the grounds on the submissions made and evidence before the judge with care, I conclude that there are no material errors in the decision under challenge.

18. In respect of the first ground, it is clear that the judge addressed his mind to the Refugee Convention issue, noting that it had not been "forcibly pursued" by Counsel at the time. The judge referred to two sources of country information which confirmed that those suffering from mental health conditions could face discrimination and stigmatisation. Thus, the judge recognised that sufferers could face problems, at least to an extent. There is a clear conclusion that notwithstanding these difficulties, the threshold of persecution was not, in the judge's view, satisfied. On the face of it, this conclusion was clearly open to the judge.

19. It is right that the judge makes no specific reference to the United States' State Department Report at this section of his decision. Could this have made any material difference to the overall conclusion? In my judgment the answer to this must be no.

20. That report did make reference to discrimination and stigmatisation in Vietnam, yet this is a state of affairs already recognised by the judge. An additional reference to the report simply could not have made any

material difference to the conclusion reached. It follows that the first ground must fail.

21. The essence of the second ground was that the judge failed to have regard to the Appellant's overall circumstances were he to be returned to Vietnam. It is right that the judge found the evidence of the Appellant and his brother to be credible and this evidence made reference to a belief that there would not be meaningful familial support on return. However, to make good the Article 3 medical claim, the Appellant had to satisfy the very demanding test set out in AM (Zimbabwe). In respect of this, the Appellant had established the existence of a significant mental health condition and the nature of the treatment currently received in the United Kingdom.

22. The additional important element of the prima facie case test included the evidence adduced by the Appellant in respect of possible alternative medication and/or methods of administration and/or consequences of any changes: see paragraph 33 of AM (Zimbabwe). This was evidence which was obtainable in the United Kingdom and did not simply relate to country information on Vietnam, which might have been the subject of analysis if the prima facie case had been made out. Having looked at the medical evidence that was before the judge for myself I cannot see any clear consideration of alternative medication and/or alternative methods of administration of medication and/or consequences of a change in the current regime.

23. I note the 2021 letter from Dr Hukin, which referred to a possible relapse in the mental state if the Appellant were no longer able to have his "regular medication" but that same letter goes on to state that alternative medication "would be tried" if the Appellant were for some reason unresponsive to previous medication (with the implication that that initial medication was no longer available). There is no specific reference to whether administration by depot injection was the only way in which appropriate medication could be taken on a reliable basis.

24. It follows from this that the judge's analysis and conclusion at [93] was open to him (leaving to one side what medication might be available in Vietnam itself, which was not within the remit of the United Kingdom based medical professionals). With paragraph 33 of AM (Zimbabwe) in mind, I conclude that it was open to the judge to find that the Appellant had not established a prima facie case in respect of the Article 3 medical claim. On that basis the second ground must also fail.

25. For the sake of completeness, I see merit in Mr Lindsay's additional submissions that in any event, the evidence provided by the Appellant did not address the issue of whether a deterioration in mental health would be either "rapid" or "irreversible". There is perhaps a question mark as to the second of these requirements, given that paranoid schizophrenia is a condition which is liable to improvement or stabilisation through medication and the possibility of relapse. Mr Lindsay's response was that

an Appellant would have to provide evidence which indicated that an initial deterioration in the mental health would be likely to continue for at least a significant period of time. Even if this specific argument were to be rejected, his first point on the temporal link is meritorious and would go to defeat the Appellant's second ground of appeal in any event.

26. The judge's conclusions on Article 8 have not been challenged and I need say no more about them.

27. Whilst one certainly has sympathy for the Appellant, my task is to determine whether the judge made material errors of law. Having regard to the need to show appropriate restraint before interfering with decisions of the First-tier Tribunal in light of observations from the Court of Appeal in cases such as Lowe, UT (Sri Lanka) and MI (Pakistan). No such errors have been identified and therefore the Appellant's appeal must be dismissed.

Anonymity

28. This case involves a protection claim and the Appellant suffers from a part mental health condition in respect of which his identification could have a serious impact. These considerations outweigh the important principle of open justice.

Notice of decision

29. The First-tier Tribunal did not error in law and its decision shall stand.

30. The Appellant's appeal to the Upper Tribunal is dismissed.

Signed H Norton-Taylor Date: 19 April 2022

Upper Tribunal Judge Norton-Taylor