Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10453/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 August 2021	**On 3 February 2022**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

K M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

Representation:
For the appellant: Ms H. Short, instructed by South West London Law Centre
For the respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

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1. The appellant appealed the respondent's decision dated 23 October 2019 to refuse a protection and human rights claim.

2. First-Tier Tribunal Judge Bowler dismissed the appeal on protection grounds but allowed it on human rights grounds with reference to Article 8 of the European Convention in a decision promulgated on 09 October 2020.

3. The appellant was granted permission to appeal the decision in so far as it related to the protection claim and Article 3 of the European Convention. In the meantime the respondent granted him Discretionary Leave to Remain pursuant to the Article 8 decision made by the First-tier Tribunal. The parties agreed that the decision relating to the protection claim and Article 3 involved the making of errors of law at a hearing held on 12 May 2021 (annexed). Those parts of the decision were set aside and further directions were made as to the scope of remaking given that the appellant had been granted leave to remain. The error of law was summarised as follows:

> '3. The appellant appeals to the Upper Tribunal on the ground that the judge erred in failing to take into account findings of fact made in the course of her consideration of Article 8, which were equally relevant, but absent, from her assessment under the Refugee Convention and Article 3. These included the fact that the appellant's parents died in a car accident in 2012, that the appellant is not in contact with his siblings in Cameroon, that he has no work experience, and that he would have no accommodation in Cameroon. These facts were relevant to whether he would be in a position to access the health services he requires and/or would be at risk as a result of societal discrimination and ill-treatment of those with severe and enduring psychotic illness who are perceived to be 'possessed'.'

4. The appellant applied under section 104(4B) of the Nationality, Immigration and Asylum Act 2002 and rule 17A(3) of The Tribunal Procedure (Upper Tribunal) Rules 2008 to continue the appeal on protection grounds.

Decision and reasons

5. It was agreed that the scope of remaking was confined to Refugee Convention and humanitarian protection grounds. Mr Whitwell accepted that the appellant had been granted leave to remain based on the First-tier Tribunal's finding that there would be 'very significant obstacles' to the appellant's integration in Cameroon because of his mental health and lack of familial or other support. He accepted that there was a reasonable degree of likelihood that the appellant would face societal stigma and discrimination because of his mental health, and that it would be for reasons of his membership of a particular social group, but argued that the ill-treatment would not reached the required level of severity to amount to persecution or serious harm.

6. The extent of the appellant's mental health issues, and much of the factual background, is no longer disputed. The First-tier Tribunal judge

made a series of unchallenged factual findings about the appellant's mental health [27].

(i) The appellant has been diagnosed with undifferentiated schizophrenia and also suffers from Post-Traumatic Stress Disorder (PTSD);

(ii) He is the subject of a Compulsory Treatment Order (CTO) because he had repeatedly failed to take antipsychotic medication;

(iii) He had three admissions under the Mental Health Act 1983 to hospitals in London, displaying disorganised and disinhibited behaviour. Four admissions were required since November 2019 (up until the date of the First-tier Tribunal hearing in October 2020);

(iv) When the appellant is unwell he has reported auditory hallucinations, including commands to kill himself and to attack others. He has presented with emotional lability, unpredictability, sexual disinhibition, aggressive and threatening behaviour;

(v) When well he has been able to attend therapy sessions, group support sessions, language classes and football. He also attends church;

(vi) He is under the care of the Community Recovery Team. A care co-ordinator meets with him every month to monitor his mental state. He has regular psychiatric reviews;

(vii) He lives in a sheltered adult foster placement with a live-in carer;

(viii) He receives depot injections of anti-psychotic medication every two weeks;

(ix) Often he has not sought support in the UK and admissions to hospital have resulted from his carer or a member of the public calling the police. He has had to be detained under the Mental Health Act 1983 on several occasions;

(x) The risk he presents to others can be high when acutely psychotic although the last occasion in which he was recorded as having been threatening to himself or others outside of treatment facilities was in 2015;

(xi) The appellant was sectioned in February 2020 after a reduction in his medication. A member of the public called the police after he was seen acting bizarrely and holding his fists. He assaulted a member of the hospital staff and could not be managed appropriately on the acute ward.

7. In addition to those findings the First-tier Tribunal judge made the following unchallenged findings relating to his personal history and the circumtances he is likely to face if returned to Cameroon

   (i) She accepted that the appellant was born in Duala and speaks French [27];

   (ii) That his parents died in a car accident in Cameroon in 2012;

   (iii) That he has three siblings, but has not been in contact with them for many years;

   (iv) That he has never worked in Cameroon or elsewhere;

   (v) That he has no accommodation in Cameroon;

   (vi) That he went to Ukraine to study in 2010 and learned Russian;

   (vii) That he attended college in the UK and obtained various qualifications [101];

   (viii) That he was 'a man with very significant and enduring mental health conditions who would return to Cameroon with no family support and no work experience' [102];

8. At the date of the hearing the situation relating to the appellant's severe and enduring mental illness had not changed in any material way. The evidence shows that since the First-tier Tribunal hearing in October 2020 the appellant has been admitted to hospital again. A discharge summary dated 26 March 2021 states that he was admitted to hospital in February 2021 after leaving his accommodation and was apparently 'sleeping rough'. He was brought into the accident and emergency department after 'being observed stripping off his clothes, drinking his urine for its healthy properties and presenting as incongruous, hallucinated and bizarre on assessment.' Despite stating that he wanted his own accommodation he was discharged back to supported living with his foster carer. The discharge summary stated that he was assessed, at that time, to present a 'low to moderate' risk to himself, a low risk to others, but there was 'a risk of exploitation if he leaves his supported living arrangement and becomes homeless.'.

9. Up to date correspondence from Dr Baillie, a consultant psychiatrist at the the East London NHS Foundation Trust, dated 10 August 2021 said:

> 'I have considered the list of medications that the Home Office say are available in Cameroon in your email below and write in response to the issue raised by you about what would be the result of an unsupervised transfer to these drugs, after MK had been involuntarily removed to Cameroon.
>
> Firstly, MK has had numerous admissions to psych hospital, even when adherent with medication – he has quite a brittle presentation, in which relatively minor

> triggers can cause quite a significant deterioration in his mental state. From what I know about him, an involutary removal to Cameroon would almost certainly cause such a deterioration in his health regardless of the medication he has access to.
>
> Secondly, we have had to titrate his medication over some time to try to reduce his relapses/readmissions. So, unsupervised access to such medication would not be helpful at all, and would more likely be harmful. Even supervised access, with the best possible resources, in the event of an involutary removal, would be unlikely to prevent relapse – that is partly because of his likely state of mind at the time, and partly because of the difficult process of titrating his medication.
>
> Thirdly, he appears to have responded better to depot medication, rather than oral medication (such as risperidone or olanzapine) – this may be due to the more consistent steady state plasma level that you can achieve with a depot. Depot medication requires trained medical staff to administer.
>
> So there would be no guarantee that he would respond to an alternative antipsychotic.
>
> Fouthly, MK has had to access all sorts of complex interventions in his treatment, from depot, psychology, hearing voices groups, adult placement, and specially designed mental health legislation requiring his enforced hospitalisation. His treatment consists of far more than just medication.
>
> Finally, I understand that one issue in MK's case would be whether or not he would attract adverse attention on account of his mental illness. Although I appreciate the circumstances are difference, I worked in Uganda for over 15 years. In Uganda, patients of ours have been lynched when unwell due to fear/stigma with reference to their eratic behaviour. If the circumstances are similar in Cameroon, MK's presentation when he is unwell would definitely make him vulnerable to attack from others who are not able to make allowances for his acute mental health problems.'

10. The background evidence before the Upper Tribunal relating to the situation in Cameroon for those with enduring mental health issues is fairly limited. There is a CPIN note entitled 'Cameroon: Internal Relocation' (Version 1.0)(December 2020). Section 6 deals with healthcare. At 6.1.1 it states that a World Health Organisation study from 2017 stated that primary health care is provided in Cameroon in line with the health district framework proposed by the WHO entailing 'a nurse-based, doctor-supported infrastructure of State-owned, denominational and private integrated health centres.' A 2016 evaluation found that only 7% of the 189 health districts were serviced. The primary healthcare system performs below expectations when compared with health expenditure 'mostly because of growing privatization and the weak regulatory system and lack of accountability.' The epidemiological profile of the country is marked by a predominance of communicable diseases, but the WHO reported a 'remarkable increase in mortality due to noncommunicable diseases', including mental illnesses. At 6.1.3 an NGO working in the areas affected by conflict in the South West region since the start of the crisis in 2016 reported that the humanitarian situation in those areas was deteriorating, there was no functional health system, and basic health care was unavailable. The CPIN cites the Encyclopaedia Britannica from April 2020, which stated that there was

investment in healthcare after independence. At one time Cameroon had one of the lowest ratios of population to hospital beds in West Africa. However, since the economic crisis the quality of healthcare 'declined significantly following major cutbacks to healthcare spending during the 1990s and the subsequent shortage of health care professionals and medical supplies that continued in the 21st century.'

11. An article from Voice of America entitled 'Cameroon clears abandoned mental health patients from streets' dated 27 May 2021 reported that the Cameroonian authorities were clearing the streets of the capital Yaoundé of more than 300 psychiatric patients whom officials said had been abandoned by family members. The director of mental health at Cameroon's Ministry of Health was reported to have said that 'mentally ill patients should not be removed from the streets as refuse.' She said that local councils in Cameroon have social affairs services that will assist in the treatment of all abandoned mental health patients 'in the company of family members.' The health ministry reported that the number of abandoned psychiatric patients increased from 50 to more than 300 in Yaoundé within two years. At least 2,700 patients were on the streets all over Cameroon with more than 400 in the commercial capital city Douala. Cameroon counted 1,300 patients in 2019.

12. The same article went on to describe societal attitudes towards those with mental health issues. It stated that many Cameroonians believe that mental health crises are 'divine punishment for wrongdoing. Some say witchcraft or spiritual possession are responsible for mental illness.' A health centre worker who was involved in the campaign to remove those with mental illness from the streets said that some patients were escaping from the homes of African traditional healers and Pentecostal pastors 'who abuse them, claiming that they are chasing evil spirits.' The article went on to say:

> '"They should not be beaten. Patients with psychiatric conditions should not be tied up. Some kind of brutal force should not be meted on them," said Fonbe. "We encourage families to avoid taking them to places where they think that they {pastors} will just pray for these patients and they get miracle healing or to traditional healers who will think that they will do some concoctions and these patients will get well. This is our message to all the families and all the communities."
>
> Fonbe said with the arrival of the coronavirus in Cameroon in March 2020, many families have lacked the resources to care for psychiatric patients at home, putting them on the streets.
>
> The health ministry is asking family members to take relatives with mental health problems to hospitals for treatment.'

13. Another article from Voice of America entitled 'Cameroon charity groups protest abuse of mental health patients' dated 01 August 2020 contains similar information about societal attitudes towards those with mental illness. The article refers to traditional healers who consider mental illness as 'divine punishment for wrongdoing.' It stated that the protests were

provoked by the ‘chaining, detention and torture of a person believed to have epilepsy’. A doctor who treats psychiatric patients in Yaoudé said that the burden on households who were finding it difficult to deal with those suffering from mental illness would be lowered if they took them to psychiatric hospitals.

14. The background evidence referred to in the respondent’s decision letter is limited to a reference to a Response to Information Request on Cameroon and mental health dated 16 July 2019. The response cited the US State Department Report on Human Rights Practices for 2018, which noted that the constitution protected the rights of persons with disabilities and a 2010 law provided additional protection to persons with ‘physical, sensory, intellectual, or mental disabilities.’ The law covered ‘access to education and vocational training, employment, health services, information and cultural activities.’ The report went on to state that medical treatment must be provided ‘when possible’ and public assistance ‘when needed’ but the government did not enforce all these provisions effectively. There were no reports of public officials ‘inciting, perpetrating, or condoning violence against persons with disabilities during the reporting period.’

15. The Response to Information Request went on to cite undated online information from Commonwealth Health Online which stated that there is no officially approved mental health plan or policy. Mental health expenditure by the government accounted for 0.3% of the total health budget, and 0.4% of the mental health budget is used as psychiatric hospital expenditure.’

16. Dr Charlotte Walker-Said prepared two expert reports (21/08/17 & 03/08/2020) and one piece of correspondence (23/03/21) in relation to this case. The summary of her credentials states that she is an Assistant Professor at the Department of Africana studies at the John Jay College of Criminal Justice in New York. She obtained a Ph.D in African history. She has specialised in the study of Cameroon. Dr Walker-Said said that she has written two books principally focusing on ‘the history of Cameroon and the history of human rights in sub-saharan Africa’. The first book focused on the history of religion, politics and law in Cameroon and is entitled ‘Faith, Power and Family: Christianity and Social Change in French Cameroon’. The second is entitled ‘Corporate Social Responsibility? Human Rights in the New Global Economy’. The second title is said to relate to social responsibility in Africa but nothing in the title suggests that it focused on Cameroon in any depth. Dr Walker-Said has written chapters in other publications relating to the history of trafficking and slavery of women in colonial Cameroon (1914-1945) and a history of the criminal justice system in Cameroon. She wrote a chapter in a book entitled ‘African Asylum at a Crossroads’, which she said ‘examines mental health issues among asylum seekers from Cameroon’ but the title of the chapter is not included to assess the subject of the piece. However, on the face of this limited information, the publication focussed on the experience of asylum seekers from Cameroon (by definition outside their country of origin) and it

is unclear whether the publication dealt with the provision of professional mental health services in Cameroon.

17. Dr Walker-Said said that she has a long professional history of working with human rights workers in Cameroon including priests and friars of the Jesuit Order as well as Catholic church communities. She has conducted research alongside the Association Humanitaire Men's Club in Douala and the Cameroon Association for the Protection and Education of the Child (CAPEC), 'which provide counseling services and keep statistics on rape, abuse, exploitation, discrimination, and other forms of violence in Cameroon among men, women and children.' In respect of the experience she has to comment on mental health issues in Cameroon, Dr Walker-Said stated that she has conducted extensive research on the role of the Catholic and Protestant Churches in Cameroon, 'which has provided important insights into the role of religious healers in the treatment of mental illness in the country.' She said that 'the majority of mental health treatment I have witnessed in Cameroon has consisted of spiritual counseling, penitential exercise, religious healing rituals, and exorcisms.' She went on to say that 'medical or scientific/diagnostic approaches to mental health treatment are almost entirely nonexistent for the vast majority of the Cameroonian population'. In support of this statement there is a footnote to what appears to be an online article from 2011.

18. Dr Walker-Said said that she has travelled extensively in Cameroon and regularly communicates with colleagues, include a professor of history at the University of Buea. Dr Walker-Said mentioned that her longest visit to Cameroon was in 2006, and indicated that she returned for a year in 2007, that she was living in working in Cameroon in 2014, and that her most recent field trip was in March 2019. This indicates that Dr Walker-Said has spent some lengthy periods of time conducting research in Cameroon although the exact length of time is unclear.

19. The summary of Dr Walker-Said's experience indicates that she is an academic based in New York whose main area of research is African history, with an additional focus on religious, societal, legal and human rights issues in Africa generally, and Cameroon in particular. She has spent some lengthy periods of time on field trips in Cameroon and as a result of that research is likely to have a general understanding of how Cameroonian society works and a detailed understanding of her particular field of research. On the basis of this experience I accept that Dr Walker-Said is in a good position to comment on aspects of Cameroonian history, general issues relating to Cameroonian society, and can outline her knowledge of societal attitudes towards those suffering from mental health issues and the treatment by religious and spiritual leaders that she had witnessed or discussed with Cameroonians during the course of her research.

20. The respondent's decision letter raised a question mark as to whether Dr Walker-Said could properly be said to be an expert in the availability of

professional psychiatric or psychological treatment in Cameroon of the kind required by the appellant. The First-tier Tribunal judge also raised concerns as to whether she had sufficient expertise to comment on this particular issue.

21. The First-tier Tribunal and the Upper Tribunal often consider evidence from a range of sources, including those put forward as experts on the situation in particular countries. The expert evidence of those who have first hand experience of life in that country, detailed research experience on a particular issue (mostly political or societal issues relevant to protection claims), or who have been asked to do particular research on an issue for a specific case, is often important evidence that can assist the tribunal in coming to a decision.

22. It is trite to say that it is the role of the court or tribunal to consider what weight should be placed on evidence. Expert evidence is no different. It is for the tribunal to assess whether a person can properly be said to have expertise on a particular issue based on the information provided by the expert to support their stated expertise. The fact that an expert may have in depth knowledge of a particular area of research, and an overall understanding of the country, does not necessarily mean that they should be acknowledged as an expert in relation to any and all issues relating to that country. Some experts have particular knowledge of the political or social situation in a country, but might not have sufficient specialist knowledge of, for example, the detailed workings of the legal system in order to verify a formal court document produced in support of a protection claim. In such a case the person might properly be acknowledged as an expert in the former but not the latter subject even if they have some common knowledge of the legal system from their general experience of the country. Other country experts may be able to assist by using the connections that they have in the relevant country to provide information about an issue that might go beyond the scope of their expertise.

23. A range of factors might be relevant to assessing what weight can be placed on country expert evidence in the context of a particular case. The qualifications and experience of the expert, the length of time that they have spent in the country, how current their experience is, the nature of their area of specialist research or experience, whether their knowledge is direct or primarily sourced from academic or public resources, whether their sources of information are clearly referenced, the nature of those sources, the overall clarity of the report, and whether the report is well-balanced, might influence the weight given to expert country evidence.

24. The Practice Direction for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal amended by the Senor President of Tribunals on 18 December 2018 gives guidance on the duties of experts and the way in which expert evidence should be prepared and presented. The contents should be well known to those preparing immigration and

asylum cases when commissioning expert reports. The Practice Direction makes clear that the expert's primary duty is to the tribunal, that they should provide an objective, unbiased opinion on matters within their expertise, and should not assume the role of an advocate. An expert should consider all material facts, including those which might detract from their opinion. An expert should also make clear if a question or issue falls outside their expertise or they are unable to reach a definite opinion, for example, because of insufficient information.

25. The Practice Direction echoes what was said by Mr Justice Mostyn in *R (on the application of AB) v SSHD* [2013] EWGC 3453 (Admin) when he reiterated the need for experts to be alive to their duties to the court and the proper scope of their expertise.

> '67. …Experts should be very careful not to go beyond the remit of their expertise. … In my opinion experts would be well advised to keep in mind the vivid metaphor of Thorpe LJ in *Vernon v Bosley (Expert Evidence)* [1998] 1 FLR 297 at 302C:
>
> > "The area of expertise in any case may be likened to a broad street with the plaintiff walking on one pavement and the defendant walking on the opposite one. Somehow the expert must be ever-mindful of the need to walk straight down the middle of the road and to resist the temptation to join the party from whom his instructions come on the pavement."'

26. Dr Walker-Said accepted that she is not a medical or psychiatric professional but said that she is still qualified to comment on the treatment of those suffering from psychiatric illness in Cameroon because she has come into contact with these issues during her research in the community. I accept that she is in a position to provide her observations about the treatment of those who are mentally ill in the community, but there is less information in her reports as to what level of professional psychiatric care is available in Cameroon or the extent to which the state might pay for psychiatric care or support. In this respect, Dr Walker-Said is not a psychiatrist, nor does the description of her research suggest that she may have any expertise in this specialist area which would normally be within the remit of a medical professional. The contacts mentioned by Dr Walker-Said would appear to be within her field of research relating to the history of Cameroon. The parts of her report where she refers to the level of evidence based psychiatric care in Cameroon appear to be drawn from publicly available documents and reports rather than direct knowledge. Although those sources are identified properly in the footnotes, the underlying background evidence has not been produced for the tribunal to consider the full context of that evidence.

27. At the error of law hearing I indicated that it might assist the Upper Tribunal if the appellant's representative could obtain evidence directly from a psychiatric professional in Cameroon as to the level of care that might be available. Dr Walker-Said's research of publicly available documents suggested that there are only seven qualified psychiatrists in Cameroon and that professional psychiatric care is limited. In a letter dated 05 May 2021 the appellant's solicitor explained why he had been

unable to obtain such evidence. In an age when so much information is available on the internet, his description of the steps he took to find an appropriately qualified person to comment is surprising. He limited his searches to refugee law websites providing information on country experts but could find none who were medical experts based in Cameroon. He asked for suggestions on a refugee lawyers forum, and in response, a journalist was suggested. The solicitor then asked Dr Walker-Said if she could ask for recommendations from her contacts, who could only suggest a nurse that someone knew. The solicitor then explained why it had been difficult to speak to the nurse directly.

28. There are obvious reasons why one might be careful about instructing experts who are in the asylum seeker's country of origin when preparing evidence to support a protection claim. A paradigm refugee case might be one involving a fear of persecution for reasons of political opinion. Depending on the country involved, careful thought might be needed before contacting a person on the ground in that country lest it might place them at risk as well. Before the growth of the internet, it was difficult to identify any experts in the relevant country, which is why academics in the UK and elsewhere who specialised in research on those countries, and who might have contacts there, were approached by legal representatives to comment on the situation in order to assist courts and tribunals to determine protection claims. The available information is now so much greater and gives wider scope for enquiry.

29. In this case the question of what psychiatric treatment might be available in Cameroon is without risk. Any approach to an expert in Cameroon need not even mention the appellant. It is reasonable to infer that basic information relating to the few psychiatric hospitals in Cameroon, and the few psychiatrists who may work there, is likely to be available online, yet it seems that no attempt was made to contact a qualified psychiatrist directly. The background evidence produced by the appellant's representatives mentioned several people by name and Dr Walker-Said's second report also referenced an article by Dr Jean Pierre Kamga Olen that specifically related to the treatment of schizophrenia in Cameroon (f.n.12). It is surprising that some of these avenues do not appear to have been explored.

30. Dr Walker-Said made proper reference to the Practice Direction and confirmed that she was aware of her duty to the court. In her second report dated 03 August 2020 Dr Walker-Said summarised her instructions and the issues as follows:

> '12. I have been instructed to provide an update to the issues raised in my earlier report; and to do so with particular regard to the criticisms raised by the Home Office and the evidence referred to by the Home Office – i.e.:
>
> a. That I am not qualified to comment on medical issues including mental health and medical facilities and healthcare within Cameroon.
> b. That I have not provided evidence of any follow up action taken by the authorities.

c. In relation to the evidence referred to at paragraphs 22 and 61 of the Home Office refusal letter, comment on how, if at all, does that evidence change my opinion.

13. On the basis of the documents provided, the issues raised in the letter of instructions, and my own scholarly and personal knowledge of Cameroon, I seek here to illuminate the key facts pertaining to [the appellant's] case including:

a. Whether [the appellant] has a well-founded fear of persecution on return to Cameroon as a vulnerable man who has been diagnosed with Undifferentiated Schizophrenia and Post-traumatic Stress Disorder (PTSD);
b. Whether [the appellant] is at risk of future serious harm because he suffers from acute mental health problems and is heavily dependent on assistance from services in the UK;
c. Whether [the appellant] continues to be at risk on account of his involvement in student demonstrations in the 2009-2019 period;
d. Whether [the appellant] is at additional risk of being targeted by the authorities on account of the Anglophone Crisis and the ongoing persecution of political activists;
e. Threats to [the appellant] as a person who would be returning to Cameroon from abroad after having lived in an Anglophone country;
f. Whether [the appellant] will likely face any stigma or discrimination for his mental health conditions in Cameroon;
g. Availablity and accessibility of mental health support in Cameroon in the current day;
h. Whether [the appellant] would be able to access employment, accommodation; and/or mental health treatment in Cameroon.

14. It was not part of my initial instructions to comment on the Anglophone Crisis. However, this, in my opinion, [is] a relevant risk factor.'

31. No copy of the letter of instruction dated 10 April 2020 appears to be included in the bundle for me to check the accuracy of the summary of issues at [13] of the second report. It is unclear from the phrasing of that paragraph whether the issues Dr Walker-Said identified were put to her in the same way by the appellant's solicitor in his letter of instruction. The mention of a further issue relating to the Anglophone Crisis at [14] leaves it unclear whether the list of issues was an accurate summary of her instructions or was amended by Dr Walker-Said of her own motion. Either way, substantial difficulties arise from the way in which the issues were framed in Dr Walker-Said's second report.

32. Without a copy of the letter of instruction it is not possible to ascertain whether the difficulties arose from (i) the way in which the instructions were framed to the expert by the appellant's solicitor (scenario 1); (ii) the expert deciding to reframe the issues in her own words (scenario 2); or (iii) a mixture of the two (scenario 3). I will comment on each hypothetical scenario in turn.

33. In relation to the first hypothetical scenario, <u>if</u> the solicitor's instructions were framed in the way summarised by Dr Walker-Said, they were not appropriate and may have steered some aspects of her report into an inappropriate tone and direction. A solicitor should not instruct an expert

to comment on a mixed question of fact and law such as: 'whether [the appellant] has a well-founded fear of persecution on return to Cameroon as a vulnerable man who has been diagnosed with Undifferentiated Schizophrenia and Post-Traumatic Stress Disorder (PTSD)'. It is not the role of a country expert to determine whether a person meets the criteria for recognition as a refugee. The answer to that question falls squarely within the jurisdiction of the tribunal.

34. The appellant's solicitor instructed an expert with a view to assisting their client's case, but a legal representative must bear in mind that they also have a professional duty to the tribunal. Questions should be framed in an open and neutral way to elicit the expert's view on particular issues e.g. what professional psychiatric care for schizophrenia is likely to be available in Cameroon, what might happened to a person if they cannot access professional care, how would a person who is unwell and exhibiting psychotic symptoms be treated etc. Leading questions or questions that ask an expert to comment on matters that involve mixed questions of fact and law might steer the response in a certain way and could reduce the weight given to the expert evidence: see *Y and Z (Sri Lanka) v SSHD* [2009] HRLR 22.

35. If the expert was instructed in the form summarised at [13] of Dr Walker-Said's report, she addressed the questions asked in turn, but in doing so may have been misled by those instructions into expressing opinions on some matters that are for the tribunal to evaluate and determine. For example, in answering the first question she analysed what the medical reports said about the appellant's presentation before coming to this conclusion:

> '29. … [the appellant] is thus clearly dependent on medical assistance and resources, and has undergone therapy on numerous occasions, as is indicated by Dr. Chowdhury when he refers to [the appellant's] treatment with the NGO Freedom from Torture. From what I understand about mental health resources in Cameroon, it is clear that the therapy and treatment Dr. Chowdhury suggests can only be provided regularly in the United Kingdom. As this report will also demonstrate, pharmaceutical treatment, critical care, support, and communication assistance and a standard of modern, professional care is nearly completely unavailable in Cameroon. I will comment on the risk upon return for [the appellant] given that he suffers from schizophrenia and PTSD and some medical experts have also diagnosed him with moderate depressive disorder that manifests severe levels of depression and anxiety.'

36. The report went on to say:

> '30. … Such symptoms and behaviors such as auditory hallucinations, frequent nightmares, persistent low mood, poor concentration, disturbed sleep, feelings of hopelessness and helplessness, and transient suicidal thoughts, which are characteristic of [the appellant's] diagnoses of Undiffrentiated Schizophrenia, PTSD, and occasionally moderate depressive disorder, which could be considered "deviant" and could be attempted to be "cured" through a variety of informal processes and remedies. [The appellant's] medical records note that he has also had

> psychotic episodes at various points, which are most commonly associated with spirit possession in Cameroon. The possibility of re-manifestations of psychotic behavior could certainly trigger community-based coercion into rituals or healings designed to "cure" him of his psychosis.'

37. Then went on give the following opinion:

> '32. ... [The appellant] has symptoms that indicate serious mental health problems with risks of harm, which, if exhibited in Cameroon, could lead to him being shunned, harmed, marginalized, persecuted, or other harms. In general, [the appellant's] mental health problems are major risk factors for him should he be forced to return to Cameroon. Serious mental health issues that [the appellant] describes having experienced in the recent past are not only untreatable in Cameroon, they render a person vulnerable to interventions by their kin and neighbors that involve witchcraft or sorcery – a major social phenomenon in Cameroon – and could be deemed a curse, as source of evil, or a social threat.'

38. If Dr Walker-Said's summary of her instructions is accurate, the inappropriate instruction to express an opinion on whether the appellant had 'a well-founded fear of persecution as a vulnerable man who has been diagnosed with Undifferentiated Schizophrenia and Post-Traumatic stress Disorder (PTSD)' required her to evaluate the medical evidence in order to consider what symptoms he might exhibit as a result of the psychiatric diagnosis, and what care he received in the UK, before expressing an opinion on whether the same level of care was likely to be available in Cameroon. In my assessment, it was not within the remit of a country expert who focuses on the history of Cameroon to express a view on the level of treatment the appellant required, to conclude that he would suffer treatment that would amount to 'persecution', or to express a such a clear view that his psychiatric condition is 'untreatable' in Cameroon.

39. It was within Dr Walker-Said's expertise to describe how a person exhibiting certain behaviours might be treated in Cameroon, but it is for the tribunal to evaluate whether such treatment amounts to persecution. It was within Dr Walker-Said's expertise to comment on what she knew of the treatment of people with mental illness in Cameroon, but on the information provided, her expertise does not appear to extend to expert knowledge of what professional treatment is available without further enquiry with a psychiatric professional in Cameroon. In expressing the opinion that professional care is 'nearly completely unavailable', Dr Walker-Said failed to indicate whether she had considered other evidence before her, which included the appellant's witness statement, in which he said that he had received psychiatric treatment in hospital in Cameroon in the past. Nor was there any acknowledgement of the evidence showing that some psychiatric services are likely to be available in Cameroon, albeit the evidence also indicates that they are severely limited. Only a psychiatric professional would be qualified to give an opinion on whether the appellant's condition is likely to be 'untreatable' if the care available in Cameroon is severely limited.

40. Dr Walker-Said's research appears to touch on issues relating to legal systems, but the summary of her credentials does not suggest that she is legally qualified. If her summary of the issues is an accurate reflection of her instructions I would not expect her to analyse the phrasing of those instructions in the way I have done or to realise that they might have been inappropriate. I am conscious of the fact that the approach taken by courts and tribunals is forensic and requires a particular level of rigour that might be different to the approach taken in academic work. This is why it is so important for lawyers, who are expected to understand the forensic nature of legal work, to frame their instructions to an expert carefully. If done properly, appropriately worded instructions will assist an expert to give a well-balanced opinion that does not step too far from the middle of the road or onto the metaphorical toes of a court or tribunal. I do not underestimate the difficulty in finding the correct tone, but when it is achieved, a well-balanced opinion that is within the proper remit of a country expert can be of great assistance to a tribunal in deciding a protection claim.

41. In relation to the second hypothetical scenario, if Dr Walker-Said reframed and reinterpreted some of her instructions and/or added additional issues that she considered relevant without instructions, that would be equally inappropriate and would go well beyond the proper role of an expert witness.

42. In relation to the third hypothetical scenario, if the difficulties arose from a mixture of the two, and some of the instructions were inappropriate and/or were reinterpreted inappropriately, ultimately it is the responsibility of the appellant's solicitor to ensure that instructions were framed and answered in a way that is appropriate and consistent with the Practice Direction on expert evidence. I make clear that without the letter of instruction it is not possible to ascertain where the root of the difficulty with the summary of issues contained in the second expert report might lie, but it seems likely that at least one of these scenarios was the cause of the problem.

43. Dr Walker-Said's evidence describing the treatment of those suffering from severe and enduring mental health problems in the community is of assistance in understanding the risks that the appellant might face if returned to Cameroon. However, for the reasons given above, I approach some of her more emphatic statements about the near complete absence of professional psychiatric care, and the assertion that his condition would be 'untreatable', with some caution. I have also highlighted a lacuna in the evidence as to what treatment might be available for those suffering from enduring conditions such as schizophrenia, and to what extent, if any, the Cameroonian state might provide support to someone who does not have a network of familial support.

44. The evidence shows that the appellant suffers from a severe and enduring mental health condition that requires a complex level of care. Dr Baillie makes clear that his treatment consists of depot medication, psychological

support, and specialist support groups. Even with this treatment, he is unable to live independently and is supported by a carer. The evidence also shows that the appellant finds it difficult to engage with treatment voluntarily. He is the subject of a CTO and has been forcibly hospitalised on several occasions under statutory powers designed to protect him and others. Dr Baillie's evidence makes clear that his treatment consists of far more than just medication. Even if some medication were to be available in Cameroon, Dr Baillie also makes clear that not all medication is suitable. Those treating him in the UK are in a constant process of titrating his medication to control his condition. What is plain from the evidence is that, even with the high level of care and support that the appellant receives in the UK, he still becomes unwell and demonstrates bizarre and unusual behaviours, characteristic of conditions such as schizophrenia, that can cause alarm to others and are often the trigger for enforced hospitalisation. When unwell, the appellant can sometimes behave in an inappropriate or aggressive way that is likely to draw attention to him.

45. The appellant states that he received treatment in hospital in Cameroon in the past. His description of his life in Cameroon suggests that his parents were able to afford to send him to university and to pay for psychiatric in-patient treatment when needed. He also describes how the cost of his ongoing treatment began to become difficult for his parents to afford. This evidence indicates that he relied on family support to obtain treatment and that psychiatric care was not provided by the state.

46. The background evidence suggests that, despite statutory provisions for those who suffer from mental ill-health, the public resources available to treat conditions such as schizophrenia are likely to be miniscule, and that there is a severe shortage of skilled professionals to provide such treatment. The evidence suggests that resources are so stretched that even the provision of primary healthcare has collapsed in some areas of Cameroon due to the ongoing crises. Also due to those crises, the level of need for mental health services has increased and is largely unmet. The background evidence indicates that the public resources allocated for the treatment of mental health issues amounts to only 0.3% of the overall health budget, and of that, only 0.4% is allocated for psychiatric hospital treatment. This evidence suggests that if a person does require treatment, it is unlikely to be provided by the state although some families might be in a position to pay for treatment in one of the few hospitals where a qualified psychiatrist is available.

47. On the preserved facts, the appellant's position if returned to Cameroon would be quite different to before. His parents are no longer alive and he has had no contact with his siblings for many years. The whereabouts and circumstances of any remaining family members who might be in Cameroon are simply unknown. For the purpose of my assessment I proceed on the basis that if he returns to Cameroon he would have no familial support, no accommodation, no work experience, and no recent experience of independent living.

48. In Dr Baillie's professional opinion, the appellant's condition is likely to severely deteriorate as a result of the upheaval of return. In such circumstances, the evidence shows that the appellant is unlikely to be in a position to care for himself. Even if he were in a position to earn an income, which the evidence suggests is unlikely, it is highly unlikely that the appellant would seek treatment. In the UK, he is the subject of a CTO and the evidence shows that he is often hospitalised due to non-compliance or reduction in his medication. I am satisfied that the evidence shows that the appellant's condition is likely to deteriorate if returned to Cameroon and that there is a reasonable degree of likelihood that, without family support, he would not be able to care for himself and is likely to end up on the streets in a deeply unwell state displaying the kind of behaviour that is likely to attract the attention of members of the community or even the police (which has occurred in the UK even with higher levels of care).

49. The reports from Voice of America suggest that many people who are mentally unwell are living on the streets in Cameroon. Although the reports also suggest that the authorities rounded people up, and that families were encouraged to take people to hospital if they could not cope, they are silent as to what level of treatment or support those people received if they were without family support. Dr Walker-Said cites what appears to be an academic publication from Cameroon from 2011, which outlined a similar initiative in 2010. However, it was reported that many of the people who were taken to hospital were not provided with sufficient food and accommodation so many of them were forced back onto the streets. The background evidence suggests that even if the authorities express an intention to assist those with mental illness, either the resources are not there to provide effective support, or the onus is likely to still be on families to provide the support needed to pay for what limited treatment might be available.

50. The background evidence, and the evidence given by Dr Walker-Said, both indicate that people who suffer from mental health conditions such as schizophrenia are likely to be viewed as being possessed by spirits. In the absence of any effective support or treatment by the state, the appellant is likely to be vulnerable to ill-treatment by individuals or groups in the community. Dr Walker-Said describes informal 'treatment' given to those who are mentally unwell by 'community leaders like shamans, self-proclaimed sorcerers, healers, and diviners, or pastors and priests' designed to 'cure' the person or drive out the spirits. This treatment might involve physical abuse and mutilation, 'including beatings, cutting out of the tongue, rape, and forced impregnation.' The Voice of America report citing comments from a mental health worker also suggests that those suffering from mental ill-health are often tied up and beaten. Even if the risk only emanates from non-state actors of persecution within Cameroonian society, the evidence indicates that the authorities often don't enforce laws relating to those with disabilities and are likely to be unable or unwilling to provide effective protection to a person in the

appellant's position. Widespread societal discrimination towards people who suffer from psychotic disorders is likely to extend to many members of the authorities.

51. The key issue in this appeal is whether the treatment that the appellant is likely to face on return to Cameroon is sufficiently serious by its nature or repetition to constitute a severe violation of his basic human rights such that it amounts to persecution for the purpose of the Refugee Convention. I am satisfied that the ongoing risk that he is likely to face as a result of societal attitudes towards people suffering from psychotic disorders, in particular, are sufficiently serious, when taken together, to amount to a risk of persecution or serious harm. The appellant is at risk of physical abuse, but the cumulative effect of ongoing discrimination, ostracism and deep-seated stigmatisation is also capable of amounting to a serious violation of his human rights.

52. The respondent accepts that any ill-treatment would be for reasons of the appellant's membership of a particular social group. No explanation was given for this concession, but it seems likely to have been influenced by the recent decision of the Upper Tribunal in *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 223. In that case the Upper Tribunal followed the *obiter* comments made in the House of Lords decision in *Fornah v SSHD* [2007] 1 AC 412, which interpreted the two elements outlined in Article 10(d) of the Qualification Directive (2004/83/EC) as alternatives in order to comply with international law, despite the conjunctive 'and' used in the wording of the Qualification Directive. At least two decisions of the Court of Justice of the European Union have consistently applied the conjunctive approach albeit those statements of law did not form part of the formal rulings in either case: see *X, Y & Z v Minister voor Immigratie en Asiel* [2014] 2 CMLR 16 [45] and *Ahmedbekova* [2019] 1 CMLR 32 [89] (in the context of the recast Directive, which has the same wording). Although the Upper Tribunal in *DH (Afghanistan)* referred to *X, Y & Z*, and found that it was not binding because the CJEU did not consider the divergence between the Qualification Directive and international law, the continued tension between the approach taken by the CJEU and the interpretation of the Refugee Convention under international law remains a problematic issue. The legal situation would now also need to be viewed through the lens of EU exit and the effect of any retained EU law.

53. For the purpose of this decision I do not need to be drawn into a detailed analysis of the law on the proper interpretation of a 'particular social group' post EU exit because the issue is conceded by the respondent. In any event, I am satisfied that both the 'protected characteristics' and the 'social perception' elements are satisfied on the evidence in this case. The medical evidence shows that the appellant's mental health condition is severe and enduring and is therefore an immutable part of his identity. The background evidence shows that people suffering from psychotic disorders are likely to be viewed as a distinct group of people who are possessed by

spirits by the surrounding society in Cameroon. As a result they are at risk of suffering ill-treatment ranging from stigma and discrimination to physical ill-treatment and other types of serious harm.

54. I find that Ms Short's identification of the social group as 'a person living with [the] disability of mental ill-health' might be too widely framed to be a social group for the purpose of the Refugee Convention. Not all mental ill-health is enduring or forms an immutable part of a person's identity. Many people recover from periods of mental ill-health such as depression. Not all mental health conditions appear to be viewed in the same way as psychotic illness in Cameroon. It is the bizarre behaviour associated with psychotic illness that attracts the belief that a person is possessed by spirits and the subsequent risk of ill-treatment by a range of healers and faith groups. For these reasons I find that the social group is more appropriately framed as 'people suffering from a severe and enduring psychotic disorder'.

55. For the reasons given above, I conclude that the appellant has a well-founded fear of persecution for reasons of his membership of a particular social group. His removal in consequence of the decision would breach the United Kingdom's obligations under the Refugee Convention.

DECISION

The appeal is ALLOWED on Refugee Convention grounds

Signed M. Canavan Date 02 February 2022
Upper Tribunal Judge Canavan

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

Annex

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10453/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House by video conference 12 May 2021

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

K M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(ANONYMITY DIRECTION MADE)

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

Representation:

For the appellant: Ms H. Short, instructed by South West London Law Centre

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For the respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 15 October 2019 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Bowler ('the judge') dismissed the appeal on Refugee Convention, Humanitarian Protection and Article 3 grounds, but allowed the appeal on human rights grounds with reference to Article 8 of the European Convention.

3. The appellant appeals to the Upper Tribunal on the ground that the judge erred in failing to take into account findings of fact made in the course of her consideration of Article 8, which were equally relevant, but absent, from her assessment under the Refugee Convention and Article 3. These included the fact that the appellant's parents died in a car accident in 2012, that the appellant is not in contact with his siblings in Cameroon, that he has no work experience, and that he would have no accommodation in Cameroon. These facts were relevant to whether he would be in a position to access the health services he requires and/or would be at risk as a result of societal discrimination and ill-treatment of those with severe and enduring psychotic illness who are perceived to be 'possessed'.

4. It is not necessary to explain the issues in any detail because the parties agreed that the First-tier Tribunal decision involved the making of errors of law for the reasons identified in the grounds of appeal.

5. It was agreed that it was appropriate for the decision to be remade in the Upper Tribunal. The findings relating to Article 8 are preserved.

DIRECTIONS

6. Ms Everett indicated that the appellant may have been granted Discretionary Leave to Remain for a period of 30 months pursuant to the First-tier Tribunal decision, but the import of this was not discussed at the hearing. On reflection, the Upper Tribunal considers that the issue needs to be resolved in order to ascertain the correct scope of the remaking. This can be done by way of directions.

7. Section 104(4A) of the Nationality, Immigration and Asylum Act 2002 states that an appeal shall be treated as abandoned if an appellant is granted leave to enter or remain in the United Kingdom subject to an application under section 104(4B) to pursue an appeal on protection grounds. Rule 17A(3) of The Tribunal Procedure (Upper Tribunal) Rules 2008 requires an appellant to make the application to pursue the appeal

on protection grounds within 30 days of the date on which the notice of leave to remain was sent. If the appellant has been granted leave to remain, the time limit is extended and amended to the deadlines set out in these directions.

8. The Upper Tribunal's preliminary view is that if the appellant has been granted leave to remain and an application is made to pursue the appeal, the statutory framework would restrict the scope of remaking to asylum and humanitarian protection grounds. If the appellant has not yet been granted leave to remain remaking could also include arguments relating to Article 3.

9. **The respondent** shall confirm within 7 days of the date this decision is sent whether the appellant has been granted Discretionary Leave, and if so, the date he was notified.

10. **The appellant** shall confirm within 14 days of the date this decision is sent whether, if he has been granted Discretionary Leave, he wishes to pursue the appeal on asylum and humanitarian protection grounds.

11. **The parties** may make written submissions on the issue of abandonment or scope of remaking within the same time limits.

If the case proceeds to hearing

12. **The appellant** shall file and serve an agreed consolidated bundle at least 21 days before the hearing.

13. **The appellant** shall file and serve a skeleton argument at least 21 days before the hearing.

14. **The respondent** may file and serve a skeleton argument at least 7 days before the hearing.

15. Liberty to apply.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

Subject to the response to directions, the decision will be remade at a resumed hearing in the Upper Tribunal

Signed M. Canavan Date 13 May 2021
Upper Tribunal Judge Canavan