



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-002272**  
On appeal from: HU/54562/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

22<sup>nd</sup> September

2023

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**A M**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms Amrika Nolan, a Senior Home Office Presenting Officer

For the Respondent: In person

**Heard at Field House on 7 August 2023**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials initialshere. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

**Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. The Secretary of State challenged the decision of the First-tier Judge allowing the claimant's appeal against her decision on 8 July 2022 to make a deportation order pursuant to section 32(5) of the UK Borders Act 2007 and to certify her decision pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended).
2. The claimant is a citizen of Jamaica and a foreign criminal as defined in section 32 of the 2007 Act.
3. For the reasons set out in this decision, I have set aside the decision of the First-tier Tribunal and remade it by dismissing the appeal.

### **Procedural matters**

4. **Mode of hearing.** The hearing today took place face to face.
5. **Vulnerable appellant.** The claimant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. He has schizophrenia, depression, and post-traumatic stress disorder, as evidenced by a medico-legal report dated 8 December 2020 by Dr Nuwan Galappathie MBChB MRCPsych MMedSc LLM (Mental Health Law), a consultant forensic psychiatrist.
6. The claimant did not ask for any particular adjustment to the hearing, but he did request that the appeal be determined by me on the papers if I set aside the First-tier Tribunal decision. I have done so.

### **Background**

7. On 20 March 2014, the claimant was convicted on two counts of possession of a Class A drug with intent to supply (heroin and cocaine) and of facilitating acquisition, acquiring or possessing criminal property. He was sentenced to 5 years 9 months imprisonment and is a foreign criminal as defined by section 32 of the 2007 Act.
8. The First-tier Judge dismissed the asylum appeal. Any asserted error in her approach to section 72 is therefore immaterial.
9. The First-tier Judge gave weight to the expert report of Dr Nuwan Galappathie, which she found was clear and unambiguous in diagnosing paranoid schizophrenia, recurrent depressive disorder, and post-traumatic stress disorder. When seen by Dr Galappathie over video link in December 2020, the claimant was taking 15 mg of Olanzapine, and receiving support from the STEP team, in accordance with the NICE Guidelines for schizophrenia.

10. Dr Galappathie considered that the claimant would require community support, regular psychiatrist reviews, and ongoing GP follow up. He was not receiving medication for his depression, as treatment with antidepressants 'can sometimes be overstimulating and cause grandiose mood or relapse in some [schizophrenic] patients'. He also needed psychotherapy for his post-traumatic stress disorder, but 'therapy should only be considered at a stage when he is stable in terms of his mental state and has assurance that he can remain in the UK and does not fear be returned to Jamaica.'

11. Dr Galappathie considered that the current medication regime (Olanzapine 15 mg) was essential to the claimant's health:

"In my opinion, if there was a change in his current medication for example, if he was somewhere where his current treatment was not available, I would be concerned that he will suffer from an acute relapse of his paranoid schizophrenia. It is likely that he would develop psychotic symptoms in the manner which occurred previously, by way of paranoid delusions about food.

He is also likely to develop grandiose delusions and paranoid delusions about other people. I would be concerned that he will stop eating food and start to lose weight, which would place him at risk of weight loss with the potential for serious physical complications, including metabolic disturbances or death secondary to starvation as a result of his paranoid delusions if his paranoia about food continued and olanzapine was not available.

There is also a risk that he will not be able to care for himself given his psychotic mental state and that he will be very vulnerable. It is also likely that if he develops grandiose delusions he may become sexually disinhibited in the manner that occurred when he was acutely unwell in prison. In my opinion there is also a possibility that if he suffers from a further psychotic episode he may be at risk of aggression and violence towards others. It is also possible that if he suffers from a relapse in terms of his psychosis, he may not return to his same level of functioning and that his relapse may become more prolonged and his condition may become treatment resistant."

12. There was no updated medical evidence for the First-tier Tribunal hearing on 21 April 2023. The claimant appeared in person. His oral evidence, which the judge accepted, was that by the date of hearing, he had been moved on to Aripiprazole, which was effective in treating his paranoid schizophrenia. The judge noted that the respondent's CPIN for Jamaica listed medications available for mental illness, but the list did not include Aripiprazole.

13. The First-tier Judge's decision concluded:

"82. As I already said, I will give some weight to Dr Galappathie's report. I have taken into account that Dr Galappathie's assessment was done in December 2020 and he has not seen the appellant since, to do an updated report but I have taken into account what the appellant says about his mental health and the fact he continues to have a care-coordinator, one of

whom attended the hearing with the appellant. I am satisfied that the appellant's diagnosis as stated by Dr Galappathie remains the same. There is no evidence before me that tells me differently.

83. I find if the appellant, due to his mental illness and his vulnerability, does not receive the treatment he needs, as recommended by Dr Galappathie, for his mental health following his deportation to Jamaica, there is a reasonable likelihood that the appellant's mental health will deteriorate and, in those circumstances, I find he would be exposed to cruel or inhumane treatment, that would amount to a breach of his Article 3 rights.

84. Therefore, I find the appellant has established that he meets one of the exceptions to deportation and therefore he succeeds in his appeal."

14. The Secretary of State appealed to the Upper Tribunal.

### **Permission to appeal**

15. First-tier Judge Mills granted permission to appeal on the Secretary of State's second grounds of appeal, which related to the Article 3 ECHR finding:

"3. ... The second ground relates to the Judge's conclusion that the appellant has made out his case to be at risk of a breach of Article 3 ECHR, as a consequence of his serious mental illness and the lack of appropriate treatment in Jamaica.

4. The respondent contends that the Judge has erred because of a failure to reference, still less apply the approach to such cases now set out in *AM (Zimbabwe)* [2020] UKSC 17. The grounds go on to argue that the Judge has erred in basing her conclusions on a psychiatric report that was 2 ½ years old, and had been based on a short video conference without any subsequent follow-up. It is also said that the Judge has given inadequate consideration to the availability of psychiatric treatment in Jamaica, as set out in the decision letter.

5. I find that the second ground does raise arguable errors in the Judge's consideration of the Article 3 claim, for the reasons stated, and so grant permission to appeal."

16. That is the basis on which this appeal came before me today.

### **Upper Tribunal hearing**

17. The claimant represented himself at the hearing before me, as he had done below. I indicated at the hearing that I was minded to set aside the decision of the First-tier Tribunal for error of law. The claimant asked that the decision be remade on the papers.

18. The facts in this appeal are not in dispute. The claimant has a number of mental health conditions, of which only the paranoid schizophrenia is

currently being treated. He is no longer taking Olanzapine but has been moved onto Aripiprazole.

19. I set aside the Article 3 conclusions in the decision of the First-tier Tribunal and now apply the test in *AM (Zimbabwe)*, which considered the decision of the Grand Chamber in *Paposhvili*. The test set out at [183] of *Paposhvili* is this:

“183. The Court considers that the ‘other very exceptional cases’ within the meaning of the judgment in *N v The United Kingdom* (para 43) which may raise an issue under article 3 should be understood to refer to situations involving the removal of a seriously ill person in which *substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy*. The Court points out that these situations correspond to a high threshold for the application of article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.”

[Emphasis added]

20. At [32]-[33] in the opinion of Lord Wilson JSC, with whom Lady Hale, Lady Black, Lady Arden and Lord Kitchin agreed, the Court held that the burden was on the appellant to demonstrate the existence substantial grounds for believing that a very exceptional case with a real risk of inhuman treatment. At [33], Lord Wilson explained that:

“33. In the event that the applicant presents evidence to the standard addressed above, the returning state can seek to challenge or counter it in the manner helpfully outlined in the judgment in the *Paposhvili* case at paras 187 to 191 and summarised at para 23(b) to (e) above. The premise behind the guidance, surely reasonable, is that, while it is for the applicant to adduce evidence about his or her medical condition, current treatment (including the likely suitability of any other treatment) and the effect on him or her of inability to access it, the returning state is better able to collect evidence about the availability and accessibility of suitable treatment in the receiving state. What will most surprise the first-time reader of the Grand Chamber’s judgment is the reference in para 187 to the suggested obligation on the returning state to dispel “any” doubts raised by the applicant’s evidence. But, when the reader reaches para 191 and notes the reference, in precisely the same context, to “serious doubts”, he will realise that “any” doubts in para 187 means any serious doubts. For proof, or in this case disproof, beyond *all* doubt is a concept rightly unknown to the Convention.”

21. Applying that guidance in this appeal, I remind myself that the only medical evidence available is report obtained by video link from Dr Galappathie nearly 2 years ago. There was no updated evidence, and despite Dr Galappathie’s opinion in December 2020, the medication which the claimant was receiving had been changed to Aripiprazole. In the absence of any recent medical evidence, I cannot be satisfied that

Aripiprazole is the only medication which can treat the claimant's psychotic symptoms.

22. The most recent information produced by the UKBA on health issues in Jamaica is *Country Policy and Information Note Jamaica: Medical and healthcare issues*, Version 1, dated March 2020. At section 13, the CPIN report deals with mental health treatment in Jamaica. At 13.2.4 it confirms that there is treatment in Jamaica for mental health issues, including for chronic psychotic patients, for depression, and for post-traumatic stress disorder. At 13.2.5, the report says that sheltered housing is available for chronic psychotic patients.
23. At 13.3.1, the report summarised information obtained by MedCOI in June 2019, to the effect that Olanzapine, which the claimant was taking in December 2020, is available in Jamaica. At 13.3.2, the report confirms that his current medication, Aripiprazole, is not available.
24. I remind myself of the high standard for Article 3 medical cases, and the guidance in *Paposhvili* and *AM (Zimbabwe)*. On the evidence before me, that standard is not reached.
25. I therefore substitute a decision dismissing this appeal.

### **Notice of Decision**

26. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

**Judith A J C Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 20 September 2023**

