JR-2023-LON-001273

In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

The King on the application of
Noah Okecho

Applicant

versus

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge Rimington

UPON hearing Mr P Nathan of counsel, instructed by Sutovic and Hartigan Solicitors, for the applicant and Ms J Anderson of counsel, instructed by GLD, for the respondent at a hearing on 21st February 2024

IT IS ORDERED THAT:

(1) The application for judicial review is refused for the reasons given in the attached judgment.

(2) The respondent is to pay the applicant's reasonable costs to be assessed if not agreed.

Permission to appeal to the Court of Appeal is refused.

(3) Ground 1 is a challenge to the order of UTJ Gill which was promulgated on 16th October 202. The weight to be given to the evidence including expert opinions is a factual evaluation for the decision maker and the UT is well able to consider what is required on appeal and the demanding threshold for Article 3. It was open to the decisionmaker to conclude that the applicant had not taken any treatment for medication whilst in the UK. This is a reiteration of the 'merits' submissions and not a sound basis on which to rest perversity.

(4) Ground 2 is a disagreement with the Upper Tribunal on the justification for delay.

(5) Both grounds are case specific and have no realistic prospect of success on appeal.

(6) In terms of ground 3 the applicant was legally represented at all times, the legal point raised was a poor point and no justification for deviation from the principle that costs should follow the event and further see [26]–[29] of the judgment which

addressed the ground notwithstanding any belated raising of a defence.

Signed: H Rimington

Upper Tribunal Judge Rimington

Dated: **1st May 2024**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 01/05/2024

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2023-LON-001273

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

Before:

UPPER TRIBUNAL JUDGE RIMINGTON

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Between:

THE KING
on the application of

NOAH OKECHO

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- - - - - - - - - - - - - - - - - - - -

Mr P Nathan
(instructed by Sutovic & Hartigan Solicitors), for the applicant

Ms J Anderson
(instructed by the Government Legal Department) for the respondent

Hearing date: 21st February 2014

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J U D G M E N T

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Judge Rimington:

1. The applicant is a national of Uganda born on 23rd November 1973. He arrived in the UK in 2000 and claimed asylum on 29th April 2008

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on the basis that he had been forcibly recruited as a child solder into the Lord's Resistance Army (LRA) and feared detention and serious ill treatment if returned to Uganda. His asylum claim was certified pursuant to Article 1(F) of the 1951 Refugee Convention. His appeal to the FtT was dismissed in July 2011 and that decision was appealed but upheld in the Upper Tribunal on 16th November 2011. Further representations were made in 2013 with further medical evidence supporting an Article 3/Article 8 claim but those representations were rejected on 23rd July 2017. Reconsideration was requested in the light of the delay and in the light of the lack of mental health care in Uganda. When that was refused the applicant filed a judicial review (JR/8862/17) and the respondent agreed to reconsider. A further medical report from Dr Mehrotra was forwarded to the respondent on 10th August 2018. Finally a decision was made on 8th March 2021 but that was further challenged by way of JR/820/21. This was granted permission in relation to Article 3, failure to engage with the applicant's serious mental health issues, the background material and reliance on an unsourced MedCOI response dated 20th April 2018 as well as the 7 year delay. Again the application for judicial review was settled by consent but on 20th April 2023 (the Decision) the respondent again refused to treat the submissions as a fresh claim. It is this decision which generates this fresh challenge.

2. The grounds of application for judicial review were as follows:

   1) The respondent had previously noted the 2014 articles on mental health but made no reference at all to the content and relied on an unsourced MedCOI report from 2018 which confirmed that there were psychiatrists in Uganda. The Decision made no reference to the applicant's reports and merely criticised the conclusions of Dr Mehrotra. The applicant maintained that there was insufficient provision in Uganda. Albeit in 2018 he was not receiving treatment, if returned to Uganda the applicant would have that stressor, and the loss of social support in the UK which would lead to his mental health 'likely' deteriorating significantly thereby requiring treatment to reduce the consequent heightened risk of suicide. The question was whether he would access treatment.

      (a) the Respondent erred by failing to have regard to the objective evidence of the inadequacy of mental health treatment.

      (b) failed to consider what treatment the applicant would access.

      (c) failed to consider the widespread abuse of human rights in mental health facilities.

(d) reached an irrational conclusion that there was no realistic prospect of a judge would find a breach of Article 3.

2) The respondent erred by failing to address the Article 8 claim adequately**.** **T**he applicant in this regard also relied on Ground 3. The respondent relied on **GS (India) [2015] EWCA Civ 40** such that an Article 8 claim could not prosper without some separate or additional factual element which brings the case with the Article 8 paradigm. There was a very clear additional element namely **the respondent's woeful delays in addressing the fresh claim**.
The applicant had been in the UK for over 20 years by the date of the decision and almost 10 years as a result of the respondent's delay in making a decision. Reliance was placed on **EB (Kosovo) v SSHD [2008] UKHL 41**. During that period he had developed a degree of stability in his mental health. The objective and medical evidence was clear that (i) his mental health was likely to deteriorate (ii) he was unlikely to receive adequate mental health care in Uganda (iii) human rights abuses were widespread and (iv) he was likely to be excluded on account of his mental illness and previous life as a child soldier. The respondent did not engage with the question in the light of these circumstances.

3) The respondent failed to address adequately the submissions in relation to **KA (Afghanistan) v SSHD [2012] EWCA Civ 1014**. The previous Tribunals had determined that whilst the applicant had been forcibly conscripted at the age of 14 his failure to desert at 18 instead of 21 rendered his activities between the ages of 18 and 21 unlawful. That failed to engage adequately with the fundamental submissions in the light of **KA**, which confirmed that there was no bright line. It was necessary to reassess those findings by the earlier Tribunals. The decision failed to take into account the World Bank report. Many child soldiers may not know their age and were deprived of the normal skill development and moral socialisation skills. The sole basis for refusing the Article 8 claim under the Rules was the same exclusion from the Refugee Convention by application of S-LTR.1.8(a).

Permission for Judicial Review

3. On 10th October 2023 UTJ Gill granted permission on grounds 2 and 3 only. Permission for judicial review on ground 1 was refused.

4. From [3] onwards she stated as follows:

"3. I have noted that the JFtT and the UT said, inter alia, as follows:

The JFtT's decision:

> *'… I find that the appellant would have been able to escape at the very least at the time that he turned 18 and that it is in respect of that period that he cannot successfully raise a defence of compulsion. He held the rank of captain at age 17'.*

The UT's decision:

> *'The Immigration Judge accepted that the appellant had been recruited at the age of fourteen and that it was arguable that he was not responsible for his actions or assisting the LRA as a child due to the threat of death or serious harm if he discovered. The Judge accepted that he was acting under duress at that time.*
>
> *The Immigration Judge found thereafter that the appellants [sic] actions were voluntary. The appellant attained the age of eighteen which under the International Criminal Law standards is the age of majority at which point he became an adult'.*

4. In view of the way in which the JFtT and the UT expressed themselves taken together with the fact that the Tribunals did not have the benefit of the judgments of the Court of Appeal in KA (Afghanistan) v SSHD [2012] EWCA Civ 1014 and EU (Afghanistan) & Others v SSHD [2013] EWCA Civ 32 which were delivered on 25 July 2012 and 31 January 2013 respectively, it is at least arguable that the JFtT and the UT may have applied a 'bright line' in their assessment of the applicant's involvement with the LRA after he reached the age of 18 years and that the respondent erred in law in concluding otherwise, as contended in ground 3.

5. Ground 2 raises two issues. The first is that, if ground 3 is established, that means that the respondent also erred in law in concluding that the applicant could not succeed under para 276ADE(1) in an appeal because he could not satisfy the suitability requirement in para 276ADE(1)(i). The second is that, if ground 3 is established, then the respondent also erred in law in assessing the Article 8 claim outside the Immigration Rules."

5. I agree that ground 2 is linked to the success of ground 3, for the reasons given above.

> *"7. Accordingly, I grant permission on grounds 2 and 3. I simply cannot say that the threshold for refusing permission (s.16(3C) of the TCEA 2007, i.e. that it is highly likely that the outcome would not have been substantially different) is reached in this case in relation to grounds 2 and 3."*

6. Ground 1 was refused on the basis that the respondent reasoned that the evidence did not establish that the applicant is a seriously ill person. UTJ Gill stated that the evidence of Dr Mehrotra at paras 97 - 105 did not arguably show a realistic prospect of establishing that he would be a seriously ill person on return to Uganda and the respondent did not arguably err in refusing the further submissions. After the hearing was concluded and permission on ground 1 refused, Mr Nathan emailed the UTJ directly asking her, in effect, to reconsider and referring her to further sections of Dr Mahotra's report. The UTJ commented that Mr Nathan's approach was 'highly irregular' but she nonetheless considered the point but did not amend her grant of permission.

The Grounds of Defence

7. The respondent advanced that in relation to harm occurring in Uganda on return this was unarguably addressed in the previous FtT and UT decisions and the Secretary of State was unarguably entitled to rely on **Devaseelan v The Secretary of State for the Home Department [2002] UTIAC 00702**. The applicant had been unable to overturn this decision.

8. The Decision addressed the issue of the **KA** decision and the necessity to reassess those findings and the representation that the earlier Tribunals had erred by treating the reaching of a majority at 18 as amounting to a 'bright line' at [33] to [37], in some detail.

9. In relation to ground 2 the reasons for refusal in reference to Article 8 were considered in detail [42] to [46] of the Decision. The applicant was considered to have been lawfully rationally and reasonably excluded from protection under Article 1F(a) on suitability grounds. The SSHD went on to consider whether any exceptional circumstances apply to the applicant's case and lawfully exercised the discretion to maintain the decision of the 16th November 2011. It was clear that the SSHD had considered the applicant's fresh claims in light of the applicable law.

10. Detailed grounds of defence denied that the submission that the delay represented a 'separate or additional factual element' that is relevant to and engages Article 8. Moreover as set out in [59] of the Decision it was denied there was unreasonable delay in determining the applicant's claim by 10 years or at all. Decisions were made by the respondent in regard of the claim in July 2017 and March 2021.

The decision making process was extended in part by the applicant for judicial review and the submission of additional material in August 2017 and August 2018. Even so the delay was not a relevant separate or factual element for the purposes of a 'medical claim' made under Article 8.

11. Additionally the respondent was not bound to accept the medical evidence in particular that of Dr Mehrotra dated 2nd August 2018. The respondent rationally refused the fresh claim based on this evidence because of the information in the MedCOI report dated 20th April 2018 which confirmed there are psychiatrists and mental health facilities in Uganda. Dr Mehrotra did not provide the source of his conclusion the applicant would be unable to access the appropriate mental health care. Nor did Dr Mehrotra have any first hand knowledge of the Ugandan mental health system to enable him to reach the conclusions that the applicant is highly unlikely to receive adequate mental healthcare in Uganda. Absent sufficient relevant and probative evidence that the Applicant would be unable to access mental health care the respondent was entitled rationally to conclude that the applicant's return to Uganda would not interfere disproportionately with the relevant part of the governing paradigm of Article 8 ECHR (i.e. capacity to form and enjoy relationships). On the basis of the evidence the respondent was entitled to conclude removal would not be likely to cause a deterioration in health required under Article 3 (serious rapid and irreversible decline in health/intense suffering by reason of the absence of any or any adequate healthcare).

12. The applicant failed to establish relevant and probative medical grounds to justify a finding his return would harm his capacity to form and enjoy relationships, failed to establish a legally relevant separate or additional factual element for his Article 8 claim and failed to adduce evidence of exceptional circumstances to cause unjustifiably harsh consequences.

13. In relation to ground (3) although the applicant had argued that the FtT and UT adopted an over simplistic and legally objectionable approach such that the quality of the applicant's conduct should be assessed by reference solely to his chronological age rather than his apparent or assumed age, further to **KA (Afghanistan)**, the respondent was entitled to rely on the previous decisions of the FtT and UT.

14. The respondent recognised that the Tribunal treated the applicant's reaching majority as determinative but his conduct was assessed by the Tribunals using and by reference to a range of matters which related to the question of his consciousness of and responsibility for those actions.

15. The respondent had expressly addressed the question of Tribunal's and SSHD's assessment of the applicant's conduct and whether the period after the applicant reached majority and became legally an adult, overlapped with a consciousness of the nature of that conduct which reflected his apparent age and concluded it did; that is the applicant consciously chose to become involved in atrocities and continued to do so. This was consistent with **KA** and the antithesis of treating this age of majority as a bright line. The Decision carefully and expressly eschewed a bright line in order to exclude the applicant from protection. This still did not exclude the possibility that the Secretary of State can consider him unsuitable under the Immigration Rules. The applicant failed to adduce any or any adequate evidence that at all material times his conduct in Uganda acting as an officer of the LRA was involuntary and the consequence of his being suborned by others.

The Legal Framework

16. Whether further submissions constitute a fresh claim on asylum or human rights grounds is a matter for the Secretary of State. A decision as to whether a fresh claim arises can only be challenged by way of judicial review. It can only be reviewed on Wednesbury unreasonableness grounds further to **R v Secretary of State for the Home Department, ex parte Onibiyo [1996] QB 768, 785D**.

17. In **WM (DRC) v Secretary of State for the Home Department and Secretary of State for the Home Department v AR (Afghanistan) [2006] EWCA Civ 1495** and in relation to fresh submissions, the question for the Secretary of State is whether there is a realistic prospect of success in an application before an immigration judge. The issue in this application, therefore, is whether the respondent's view that the further submissions, taken together with the previously considered material, did not create a realistic prospect of the Applicant succeeding before an Immigration Judge was irrational/Wednesbury unreasonable bearing in mind the needs of anxious scrutiny (i.e. the need to give proper weight to the issues and to consider the evidence in the round).

Submissions

18. At the hearing, Mr Nathan emphasised that he relied on ground 2 and particularly in relation to the medical evidence and the objective evidence which, he submitted, had not been adequately engaged with. I was taken to the letter of instruction to the medical expert Dr Mahrotra and the contents in relation to the objective medical evidence on Uganda. This Mr Nathan noted underlined the lack of psychiatrists in Uganda. The report of Dr Mehrotra referred to the diagnosis of Post Traumatic Stress Disorder and severe depression.

19. Mr Nathan referenced the delay and in relation to which UTJ Frances had granted permission. Mr Nathan submitted there was no engagement with the medical reports cited in the three sets of previous representations and the MEDCOI on which the Secretary of State relied had not been disclosed although he did submit that this added little to the evidence already provided. The delay should be seen in the context of the previous decisions compromised by the Secretary of State which implicitly acknowledged the flawed nature of the decision making. Almost 10 years after the first submission the decision under challenge had been issued. The Secretary of State needed to carry out a proper assessment of the evidence as to whether this claim could succeed before an immigration judge. The factors included that as a former child soldier the applicant would be marginalised in Uganda.

20. In relation to ground (iii) the Secretary of State was now saying that it should have been appealed to the Court of Appeal but this was responding to the claim in a different way. Nonetheless Mr Nathan conceded that **TN (Vietnam) [2018] EWHC 2838** was good law and that could not be ignored.

21. Ms Anderson merely submitted that ground (iii) in the light of **TN (Vietnam)** was not a fresh claim point. Apart from the fact that exclusion related to international criminal law, the challenge to the UT decision lacked foundation because the previous decisions of the FtT and the UT did look at the facts and the ‘bright line’ point.

22. In relation to ground (ii) Ms Anderson submitted that any decision maker would have to follow the codified approach under the Immigration Rules and the Nationality Immigration and Asylum Act 2002. Article 8 was not a lesser form of Article 3 (on which permission had not been granted) but a wholly different concept which had different dimensions.

23. It was simply wrong to contest that the Secretary of State failed to look at the medical evidence. The weight to be given to the evidence was a matter for the decision maker within the confines of Wednesbury reasonableness. Dr Mehrotra was an expert on mental health but not an expert in cultural attitudes or health care in Uganda and he was merely relying on what he was given in his instructions. Looking at the report there appeared to be little by way of neutrality. Any criticism of lack of disclosure was undermined by the concession that the MedCOI did not say anything different or new. I was referred to **Bensaid v UK [2001] INLR 325** particularly [48]. The Secretary of State was entitled, within the Article 8 framework, as implemented in the UK to strike a balance between the competing interests and the applicant had not put forward the positives in his case and that had been identified in the decision. It was highly relevant, as highlighted in MS (India), albeit referring to restrictive leave, that the

UK was not seen as a haven for those who commit crime and exclusion was relevant. That was underpinned by international law. This authority confirmed that it was for the Secretary of State to strike the balance in that instance. At its highest, simply the medical evidence did not show a basis on which the matter could succeed before an Immigration judge. Paragraph [30] of the Decision was critical. The applicant had no family life, he had no leave to remain, and there were no exceptional circumstances. The decision maker properly directed himself and correctly identified the interaction between Article 3 and Article 8.

24. The argument on delay was arid. It was important to look at the facts at the time. Delay itself cannot generate a remedy although it can be a factor in relation to Article 8 but in this case the applicant had never expected to remain. The delay was disputed and not overlooked. It was incorrect to characterise the circumstances as delay merely because the applicant persistently challenged the decisions.

25. Mr Nathan rejoindered that The Secretary of State had not engaged with the matters she acknowledges before her at [6] of the Decision. The criticism of Dr Mahrotra engaging in medical advocacy was unfair. He was required to look at what would happen to the applicant on return to Uganda. The situation was drastic and serious. The Secretary of State had not fairly engaged with the paragraph 353 process. Delay was not considered by the Secretary of State in the context of Article 8.

Conclusions

26. At the hearing Mr Nathan effectively confirmed that ground (3) was not relied upon. I consider that to be a sensible concession. Although he remonstrated that **TN (Vietnam)** had not been raised previously, he accepted that it was good law such that the proposal that in a fresh claim decision the SSHD could go behind an extant judicial ruling on the basis of an allegation that the judicial ruling was materially flawed by fundamental unfairness. Albeit the precise point that the applicant could have challenged the UT decision in a court of competent jurisdiction at the time, the applicant, in my view had indeed had the advantage of an independent judicial consideration of the merits at the time.

27. In **KA Afghanistan** in which Kay LJ referred to the ‘bright line principle’, he noted that much would turn on the specific facts. The case from which he quoted at [18], **LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005**, in fact predated the decision in this applicant’s appeal in both the FtT and the UT . It is not arguable that the UT, as a specialist tribunal would

not be familiar with **LQ** which is well known, and it is from **LQ** that the bright line principle emanates.

28. That said, the UT fully engaged with the 'bright-line' submission and that 'the fact he was eighteen meant nothing in the situation the applicant found himself both physically and as a person who had been abducted as a child without education'. That submission was rejected in detail. At [26] of the UT decision states:

> *"in paragraph 19 of the determination the IJ found that there were serious reasons for considering that the appellant voluntarily contributed in a significant way to the commission of crimes against humanity and in paragraph 20 that his exclusion under Article 1 F (a) was lawful."*

29. This was not the Secretary of State failing to apply a policy to a minor resulting in abuse of process but careful judicial consideration given to the position of the applicant as a minor and after reaching the age of majority. The respondent was unarguably entitled to rely on the UT decision

30. For completeness, the World Bank report cited is dated May 2002 some 10 years prior to the applicant's claim. There was no indication that this was evidence placed before the FtT or the UT and the two lines of the report such that child soldiers will have spent their developing years as a soldier does not undermine the reasoning given in the FtT and UT decision.

31. In relation to ground (2), as the Secretary of State identified in his Decision, the July 2013 further representations invited the respondent to reconsider the claim on the basis of two substantive points that is the medical evidence of Dr Hopkins, Dr Ahmed and Ms Parveneh D Davoudi and the objective evidence, and secondly the bright line point in relation to **KA (Afghanistan)**. The Secretary of State also identified the further evidence under cover of the letter dated 17th August 2017 that being the reports from the Mental Disability Advocacy Centre and Mental health Uganda on mental health and human rights in Uganda and its psychiatric hospitals, the respondents COI reports and Operational Guidance Notes on Uganda. (undated) and additionally the psychiatric report of Dr Mahrotra. The point on delay was acknowledged.

32. In brief the Secretary of State lawfully relied on the decision of the UT and the FtT. What followed in the Decision was a detailed assessment of the various medical reports and various reports predated 2013 and were dated. It cannot be said these reports were not properly considered. Evidently the most recent and relevant report was that of Dr Mehrotra in 2018. It was noted that the applicant experienced PTSD and depression and that 'therapeutic

engagement' would be more challenging in Uganda. At various points in the report Dr Mehrotra referred to Nigeria rather than Uganda but the Secretary of State was unarguably entitled when lawfully applying, as he did, **AM (Zimbabwe) [2020] UKSC 17** to find that the applicant did not fulfil the requirements in terms of Article 3. Indeed that was in line with the refusal of the grant of permission.

33. At [27] the decision reasoned that the Dr Mehrotra observed that the applicant 'had not received any of the treatment recommended by experts in the field since 2013'. Even in relation to suicidal behaviour the decision lawfully reasoned at [28] that the applicant had not adopted appropriate interventions. Specific consideration, as stated at [29] was given to the risk of self harm on return to Uganda and critically at [30] the decision stated ' [Dr Mehrotra] is not and did not give his opinion as, an expert in Ugandan health provision nor as an expert in Ugandan medical sociology.' That was an accurate statement. The information used by Dr Mehrotra in the report was as a result of citations from a Ugandan COI dated 2011 and supplied to him by the instructing solicitors. The Decision unarguably rationally continued at [30] 'Dr Mehrotra refers to being provided information on the lack of treatment available in Uganda which has not been sourced in his report in consideration of the ill treatment and medical treatment available in Uganda. That greatly reduces the weight that may be attached to his prognosis of self harm upon your return to Uganda'. That conclusion was lawfully open to the Secretary of State and within the range of reasonable responses.

34. Although Mr Nathan criticised the lack of disclosure of the MedCOI report as he conceded, it said nothing new. Crucially however the decision maker concluded that 'the weight attached to the availability and accessibility of mental health services and treatments in Uganda is diminished by your apparent unwillingness or perceived lack of need to engage with medical services in the manner envisaged by Dr Mehrotra(sic)'. Again that conclusion was lawfully open to the Secretary of State. Albeit it was contended that there was a limited supply of psychiatrists and health care facilities, the applicant had not even used such services in the UK apparently since at least 2013. That would include the recommendations in relation to suicidal behaviour.

35. The Decision specifically and reasonably stated at [28] 'since you have provide no compelling evidence that you have sought to access and avail yourself of medical intervention in this country, it is not accepted that even if (which is not the case) adequate treatment facilities are not available and accessible in Uganda your return to that country would breach the threshold criteria in **AM (Zimbabwe)**'. The approach of the Secretary of State was lawfully within the range

of rational and reasonable responses and he properly applied the relevant legal authorities.

36. It was open to the Secretary of State to consider that a *possibility* that his mental health would decline in the face of removal as cited by Dr Mehrotra was undermined by the lack of actual access the applicant had made to treatment and separately the lack of expertise that Dr Mahrotra had in the mental health facilities of Uganda. It was clear that the expert relied on the instructions from the solicitors for his knowledge of country conditions and it was open, on this basis, to the Secretary of State to afford little weight to the report as to the position of the applicant once in Uganda. For these reasons at [32] the Secretary of State, albeit taking on board the issue of stigma of mental health did not accept, for cogent reasons that the applicant would be at risk of severe ill treatment. It was noted from the previous Tribunal decisions that there was no risk to former members of the **LRA and PN (Uganda) CG [2006] UKAIT 00022** was properly applied. It was not accepted for rational reasons at [37] that the applicant would be at risk of mistreatment as a result of his former role in the **LRA**.

37. The Secretary of State returned to the issue of suicidal behaviour at [38] and again engaged with the report of Dr Mehrotra, pointing out that despite the assertion that the risk would be minimised by treatment and maintaining a support network, the applicant was not in receipt of any treatment so recommended, and further that the applicant had family members in Uganda who could provide a supportive network and that there were facilities in Uganda with which he could engage if the applicant so wished. The respondent addressed from [39] to [41] the various stages as identified by **J v Home Secretary [2005] EWCA Civ 629**. In sum owing to the lack of medical treatment accessed in the UK, it was rationally considered that there were, albeit limited, adequate facilities in Uganda. That conclusion was wholly rational and open to the Secretary of State.

38. The observation that the applicant had not to date availed himself of any treatment in the UK (save writing which he could undertake in Uganda) was also relevant, as stated in the Decision, to considerations under Article 8. Although it was asserted that not all evidence had been properly considered, that is not evident from the Decision on careful reading and **Zoumbas v SSHD [2013] UKSC 74** confirms not every piece of information needs to be referred to and the decision should be read as a whole.

39. The Secretary of State specifically cited **GS (India)** and when that authority is read from [111] onwards it is clear that it was properly applied.

111. *It is that question which this Court addressed in MM (Zimbabwe). Moses LJ, with whom the other members of the Court agreed, held that the 'no obligation to treat' principle must apply equally in the context of article 8: see paras. 17-18 of his judgment, which Laws LJ sets out at para. 89 above. He then sought to identify what role that left for article 8. He acknowledged that 'despite that clear-cut principle, the courts in the United Kingdom have declined to say that Article 8 can never be engaged by the health consequences of removal from the United Kingdom', referring to Razgar and also to AJ (Liberia) v Secretary of State for the Home Department [2006] EWCA Civ 1736 (another mental health case); but* ***he drew attention to statements in both cases emphasising how exceptional the circumstances would have to be before a breach were established****. In particular, he set out, at para. 20, a passage to that effect from the opinion of Lady Hale in Razgar which starts with the observation that 'it is not easy to think of a foreign health care case which would fail under Article 3 but succeed under Article 8'. He concluded, at para. 23 with a passage which Laws LJ has already quoted but which for ease of reference I will set out again:*

> *'The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighed in the balance, with other factors which by themselves engage Article 8. Suppose, in this case, the appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding would not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the appellant is to be deported.'*

There are possibly some ambiguities in the details of the reasoning in that passage, but I think it is clear that two essential points are being made. First, the absence or inadequacy of medical treatment, even life-preserving treatment, in the country of return, cannot be relied on at all as a factor engaging article 8: if that is all there is, the claim must fail. Secondly, where article 8 is engaged by

other factors, the fact that the appis receiving medical treatment in this country which may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the 'no obligation to treat' principle.

114. As for PL, if one leaves aside the issue of the unlikelihood of his receiving access to proper treatment in Jamaica, his claim under article 8 is hopeless. It is true that he has been in the United Kingdom since 2001 and has formed friendships here, principally through his church. It was apparently on that basis that the Judge in the First-tier Tribunal, addressing the first two of the conventional 'Razgar questions', held that his removal would interfere with his right to respect for his private life, and to a degree which potentially engaged article 8. But for almost all of that period he has been here illegally: he was given leave to enter only as a visitor and has been unlawfully over-staying since November 2002. He made an asylum claim for the first time in 2012 which the Judge found to have no merit. He has no family ties in this country. The Judge rightly held that his friendships were formed in the knowledge that he had no right to remain and that they could not have significant weight in the balance against the legitimate interests of immigration control. In those circumstances, to strike the article 8 balance in his favour only because of the consequences for his health if he were removed, however grave, would be in substance to impose an obligation to treat.

40. The Decision proceeded to conclude that the applicant could not succeed under the Immigration Rules and indeed Mr Nathan in his submissions accepted that the applicant could not succeed under the rules. So what is left? Mr Nathan submitted that delay on the part of the respondent was relevant and not factored into considerations of Article 8 as per **EB Kosovo**. I accept the arguments of Ms Anderson on this issue. Simply there was nothing put forward by the applicant to merit a grant of leave under Article 8 in line with **Agyarko [2017] UKSC 11**. This is an Article 8 claim with, as the decision effectively made clear, no relevant additional factor.

41. The respondent addressed but did not accept that there had been significant delay. Although Mr Nathan submitted that the respondent had made a series of unlawful decisions, I find granting permission on the arguability of the lawfulness of a decision does not equate with a decision actually being found to be unlawful. As Ms Anderson submitted delay per se does not afford a remedy and the Secretary of State was entitled within the Article 8 framework as implemented in

the UK to strike a balance. In this case the applicant had remained unlawfully, had never expected to remain, the applicant himself made further submissions after 2013 and challenges by way of judicial review and the Decision acknowledged those submissions of 2013 but as noted further decisions were made in 2017 and 2021. The applicant's initial claim for asylum had been rejected and a full appeal granted which was refused. Merely because the applicant persistently challenged the decisions does not necessarily mean there was delay on the part of the respondent. It is not arguable that the Secretary of State failed to apply properly, for example, **EB (Kosovo) [2008] UKHL 41**. The applicant had had an asylum claim refused, he had repeatedly had further submissions refused, had not developed any relationships with a partner or family and lastly any delay (which is not accepted) was not shown to be a result of a dysfunctional system. The Secretary of State considered the point on delay at [54] under compassionate circumstances stating that there was no significant delay. That Decision was open to the respondent.

42. In relation to Article 8 the applicant had not disclosed any partner or child and gave consideration to his private life. The Secretary of State was also entitled to refuse the application on the basis of suitability. Not only was the applicant refused under S-LTR.1.6 but also under SLTR.1.8 of the Immigration Rules and on the basis of the UT decision that was entirely open to the Secretary of State. This applicant was unlawfully in the UK and had at all times been in the UK unlawfully. This was not an applicant who was shown to be without medical facilities in Uganda or family.

43. The medical reports were unarguably addressed in a detailed and comprehensive decision. Specifically the report of Dr Mehrotra dated 2nd August 2018 albeit old, was dealt with . The full gamut of the applicant's mental health issues was considered. Dr Mehrotra recommended various treatments [26] but it was noted at [27] that he based his view of the lack of treatment available in Uganda, and identified that the applicant had not received any of the recommended treatments since 2013. There was no evidence of any medication [35] and since 2018 there was no evidence that since the report he had been referred to a psychiatrist for further evaluation and Dr Mehrotra's report was five years old. It was entirely open to the Secretary of State to find that there was availability of mental health support in Uganda and she did so at [40]. The applicant was not receiving treatment here and would not receive less adequate treatment should he return to Uganda. That was a cogent deduction.

44. Exceptional circumstances were considered but having rejected the claim in relation to **KA**, finding no breach of Article 3 on health grounds having applied **AM (Zimbabwe)**, finding suitable health provision in Uganda, and considering the health issues in the Article 8 analysis and lawfully applying **GS (India)** particularly in relation to

suicidal ideation at [49], there was no additional factual element. That was properly reasoned. The Secretary of State applied her discretion and considered any compassionate circumstances.

45. The Secretary of State asked herself the correct question under [353] and, for the reasons fully and properly given by the respondent, cogently concluded that the further submissions and new evidence, when taken together with the evidence previously considered, did not give rise to a realistic prospect of success before an immigration judge, **WM (DRC) v SSHD** [2006] EWCA Civ 1495.

46. None of the grounds is made out and the application is refused.

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