IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003364

First-tier Tribunal No:
PA/52766/2022
IA/07094/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th June 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MNT
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Ms E Rutherford, instructed by Halliday Reeves Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 13 February 2024

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. 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. I have decided to make an anonymity direction because the importance of facilitating the discharge of the obligations of the United Kingdom ('UK') under the Refugee Convention outweighs the principle of open justice.

INTRODUCTION

1. The appellant is a national of Nigeria. He arrived in the United Kingdom in February 2012 as a student with leave valid until 30 November 2014. In April 2017 he claimed asylum. In summary, the appellant claimed that he had been receiving threats to his life from people in Nigeria since 2013 because he had told his friends and family that he has converted from Islam to Christianity. That claim was refused by the respondent in November 2017 and an appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Fenoughty ("Judge Fenoughty") for reasons set out in a decision promulgated on 1 February 2018. On 16 June 2021, the appellant made further submissions to the respondent. His claim for international protection was again refused by the respondent for reasons set out in a decision dated 24 June 2022. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Thapar ("Judge Thapar") for reasons set out in a decision dated 12 July 2023.

2. The appellant was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Adio on 14 August 2023. The appeal was heard by Deputy Upper Tribunal Judge Skinner and the decision of Judge Thapar was set aside for reasons set out in his decision ("the error of law decision") issued on 11 December 2023. At paragraphs [29] to [32] of the error of law decision, Deputy Upper Tribunal Judge Skinner said:

> "29. I have found that the Judge failed to take into account all of the medical evidence and to explain what she made of various factors relevant to internal relocation. Each of those grounds relates to the reasonableness of the Appellant's relocation to the south of Nigeria by virtue of his personal circumstances, not because of any risk of persecution he may face there. The medical evidence is also relevant to the Appellant's Article 3 medical claim. In those circumstances, I set aside the Judge's decision on asylum, humanitarian protection and Article 3.
>
> 30. However, I preserve the findings that:
>
> > a. the Appellant would not be at risk from Islamic groups, former friends or his family members if he was to relocate to south Nigeria, and
> >
> > b. the medication which the Appellant takes is available in Nigeria, which findings are unaffected by the errors found.
>
> 31. None of the Grounds challenged the Judge's decision in respect of Article 8 ECHR and, in circumstances where it can realistically add nothing (if the Appellant can internally relocate it will on any view be proportionate for him to do so; if he cannot do so, Article 8 is superfluous as his asylum claim succeeds), I do not set aside the FTT Decision in so far as it relates to Article 8.
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> 32. Given the limited extent of the fact-finding required as a result of the above, this is a case which it is appropriate to redetermine in the Upper Tribunal…."

3. In order to put the preserved findings in context it is useful to record that in reaching her decision, Judge Thapar considered the previous findings

made by Judge Fenoughty. The guidelines set out in *Devaseelan v SSHD* [2003] Imm AR 1 were plainly relevant. The decision of Judge Fenoughty stood as an authoritative assessment of the claim that the appellant was making at the time (January 2018). Judge Thapar referred to the previous decision of Judge Fenoughty at paragraphs [9] to [11] of her decision and then addressed the report of Professor Marion Aguilar that was relied upon by the appellant in his further submissions to the respondent. Judge Thapar said, at [13], that the conclusions of Professor Aguilar are based on "considerable speculation", and in ignorance of the findings previously made by Judge Fenoughty. At paragraph [18] of her decision, Judge Thapar said:

> "I find the Appellant has failed to demonstrate to the lower standard that he would be at risk from Islamic groups, former friends or his family members if he was to relocate to south Nigeria…"

THE ISSUES

4. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent dated 24 June 2022 to refuse his claim for asylum and humanitarian protection. The appellant bears the burden of establishing his claim to the lower standard.

5. At the outset of the hearing before me, Ms Rutherford confirmed the issues in this appeal are:

    a. Whether the appellant can internally relocate.

    b. The Article 3 claim on medical grounds

THE EVIDENCE

6. The parties confirmed the evidence relied upon is set out in the appellant's bundle comprising of 44 pages that was previously before the FtT and the respondent's bundle. The appellant has also filed and served a report dated 2 February 2024 prepared by Dr Nuwan Galappathie, a Consultant Forensic Psychiatrist.

7. The appellant adopted his witness statement that is undated but appears at pages 2 to 4 of the appellant's bundle. The appellant claims that although he has said he has family members in other parts of Nigeria, he does not specifically know who those family members are. He has not personally had any contact with them and he could not expect those family members to come to his assistance. In any event, they are unlikely to welcome the appellant. The appellant claims it would not be safe for someone who has a Fatwa in their name to relocate within Nigeria. The fatwa follows the individual wherever they go. The appellant states he lived in Nigeria until the age of 19 but that was in the predominantly Muslim north. He states he has not worked in Nigeria and he would have no family support on return. The appellant fears that he would be found by his family in other parts of Nigeria. He claims his uncle, Ibrahim,

maintains connections to the ruling elite and his father knows people within the immigration services and port authorities.

8. The appellant also refers to his mental health and states he is heavily dependent on medication and that if he does not take the medication, his mental health deteriorates causing him to feel anxious and suicidal. He claims the cost of medication in Nigeria is prohibitive, even if it were available.

9. In cross-examination the appellant confirmed that he takes Venlafaxine twice daily and that he receives counselling from the mental health team. He has spoken to them twice since January 2023. The last time was in about the summer of 2023. The appellant claimed that he would be unable to access medical treatment in Nigeria because he would not know where it is available, and he would need access to healthcare insurance or income from a job to pay for the treatment. The appellant said that he would not have any support network in Nigeria to turn to.

10. In re-examination the appellant said that he would be unable to ask for the support of the church to direct him to relevant treatment because there is a stigma attached to mental health illness in Nigeria. He said that the mental health services in Nigeria are inefficient and expensive. He believes his health will deteriorate and he feels the worst will happen if he is unable to access treatment.

11. In support of the claim that the appellant is at risk upon return to Nigeria, the appellant relies upon the report of Professor Mario I. Aguilar, the Director of the Centre for the Study of Religion and Politics, University of St. Andrews. The report post-dates the decision of Judge Fenoughty and is dated 20 October 2020. The matters that he was instructed to address are set out in paragraph [9] of the report. His conclusions are set out at paragraph [46]:

> "Conclusion 1: Muslim converts to Christianity in Nigeria are persecuted and their lives are at risk at three different levels: in the north where they can be killed by Boko Haram, at family level where because conversion to Christianity constitutes a grave family offence punishable with death, and at the Muslim level where a Fatwa could be uttered by an Imam calling other Muslims to kill such Muslim convert to Christianity because of his grave offence against Allah and the Prophet of Islam. The risk to the life of a Muslim convert to Christianity would need to be assessed on each one of these three levels of risk to his life.
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> Conclusion 2: The appellant fears returning to Nigeria because of his conversion to Islam and indeed his actions are punishable within Sharia law and within the states that have adopted Sharia law in Nigeria. Penalties are not prescribed but are suggested by those in-charge of interpreting Sharia within law tribunals.
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> Conclusion 3: It is most likely that there is fatwa against the appellant in Nigeria uttered by his uncle. Thus, in my opinion there is evidence that the appellant´s life will be at risk if returned to Nigeria."

12. I have been provided with a report dated 2 February 2024 prepared by Dr Nuwan Galappathie. Dr Galappathie completed a mental state examination and an assessment of the appellant's cognitive function on 13 January 2024. The assessment was conducted by "video-call" and lasted 1½ hours without any breaks. Dr Galappathie states the appellant engaged with the assessment process and attempted to answer all the questions that he asked. Dr Galappathie states he was able to conduct a thorough psychiatric assessment of the appellant and form an opinion on his diagnosis of mental disorder. In his opinion, the appellant is suffering from a severe episode of depression and an adjustment disorder which have a significant long-term adverse impact on his ability to function socially and on an interpersonal level. Dr Galappathie states the appellant presents as a highly vulnerable individual. In his opinion, the adjustment disorder makes the appellant feel anxious and fearful of people, which affects his ability to trust others. Additionally, Dr Galappathie states the appellant feels tearful, cries often, hears voices, and has concentration and memory problems, has difficulty sleeping, does not enjoy anything in life, and suffers from low mood. He also has anxiety related symptoms that affect him daily, such as feeling anxious and worried all the time, feeling his heart racing, suffering from shortness of breath, and has panic attacks. In his opinion, the appellant's symptoms will have a long term negative impact on him.

13. Dr Galappathie is of the opinion that the appellant will benefit from follow up by his GP to ensure that his depression is effectively treated, in accordance with the NICE Guidelines for recognition and management of depression. He states the appellant will benefit from continuation of treatment with antidepressant medication in the form of Venlafaxine 300mg per day and from further psychological therapy to fully address his depression and anxiety. The adjustment disorder does not require any specific treatment and is likely to gradually resolve if he has a stable immigration status and does not have to fear being returned to Nigeria. Dr Galappathie is of the opinion that the appellant will also need to have stable accommodation and not fear being removed to Nigeria, in order to meaningfully engage in the therapy that he requires.

14. As far as self-harm is concerned, Dr Galappathie is of the opinion that the appellant presents with a risk of self-harm and suicide, which is currently controlled by his access to support and treatment in the UK. In his opinion, if the appellant was removed to Nigeria or threatened with removal by way of receiving another negative decision regarding his immigration case, it is likely that his depression and adjustment disorder will worsen leading to a high risk of self-harm and suicide occurring. It is said that the appellant's risk of self-harm/suicide is currently controlled by his access to the treatment and support he has in the UK, but he is unable to fully engage in the treatment he requires without a stable immigration status.

SUBMISSIONS

15. The submissions made by Mr Lawson and Miss Rutherford are a matter of record. In summary, Mr Lawson refers to the two preserved findings that

are summarised in paragraph [30] of the error of law decision. He submits the appellant does not receive regular ongoing counselling for his mental health and the medication required is available in Nigeria. The focus of the appellant's appeal appears to be upon the cost of that medication. However the appellant has qualifications and as a young adult male, there is no reason to believe he would be unable to secure employment. Mr Lawson submits that although there has been an attempt at self-harm in the past, there is no ongoing risk of suicide and the evidence simply does not establish an Article 3 claim.

16. In reply, Ms Rutherford adopted the skeleton argument that had previously been prepared by Anthony Brindley in readiness for the appeal before the FtT. She acknowledges that many of the issues identified in that skeleton argument are not in issue before me. Ms Rutherford referred me to the evidence set out in the report of Dr Galappathie. He sets out in paragraph [10] of the report, the documents that he has had access to, which includes "GP Letters". At paragraphs [41] to [47] Dr Galappathie refers to information from the appellant's health records. There is reference to the GP records outlining a diagnosis of depression on 14 February 2018 and then reference to letters dated 19 August 2019, 24 June 2021, 5 August 2022 and 24 January 2024. Save for the letter from Dr Browne that is referred to in paragraph [47] of the report, the other letters are all found either the appellant's or respondent's bundle.

17. Ms Rutherford submits Dr Galappathie acknowledges the criticisms made of him in *CE (Cameroon)* (PA/0112/2020) an unreported decision of the Upper Tribunal in which it was said that no weight can be given to his opinion as to the appellant's mental health. However, that was because he had failed to expressly or implicitly engage with the medical opinion provided by the healthcare team treating the appellant for a significant period of time in prison, and he had provided no reasoning as to why his opinion differs from the GP records. Ms Rutherford submits Dr Galappathie is an expert who remains entitled to practice and that due weight should be attached to his expert opinions. She submits there can be no doubt that the appellant's health will deteriorate and Dr Galappathie is clear if the appellant is returned to Nigeria it is unlikely that he would be in a position to access and engage in mental health treatment, even if this was available for him. Ms Rutherford refers to the respondents 'Country information note: medical treatment and healthcare, Nigeria, December 2021' which confirms in section 22 that fewer than 10 per cent of mentally ill Nigerians have access to the care they need. According to the WHO, the absence of treatment is fuelled by poor funding, stigma and poor knowledge of the disease. She submits that the appellant's evidence is that he has no contact with members of his mother's family in Lagos, and that he has no home or connections to the South of Nigeria that he can return to. Internal relocation would, she submits, be unduly harsh.

DECISION

18. In reaching my decision I have considered all of the evidence presented to me, whether I refer to it specifically in these findings and conclusions or

not. I have also had regard to the submissions made by the representatives both in writing and orally before me although I do not consider it necessary to address everything that is said. I have had in mind throughout, the preserved findings that were referred to in the error of law decision and are set out at paragraph [2].

19. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [2006] UKHL 5, [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:

> "The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

20. Although Ms Rutherford set out the issues in the appeal as being twofold, the question whether it would be unduly harsh to expect the appellant to internally relocate will be informed by the medical evidence before me and the availability of treatment. For the avoidance of any doubt, I have therefore had regard to the appellant's health in reaching my decision throughout, albeit I address the question of 'internal relocation' fist, before addressing the 'suicide risk'.

21. The burden of proof remains on the appellant to prove why internal relocation within Nigeria would be unduly harsh; see *MB (Internal relocation – burden of proof) Albania* [2019] UKUT 00392 (IAC).

22. The appellant's evidence is that he was 19 years old when he arrived in the UK and he had only ever lived in the predominately in the Muslim North. Culturally, he claims, it would be very different to live in another part of the country. He claims he is unable to relocate within Nigeria as relocation would not be safe for someone who has a Fatwa in their name. He is also afraid that his family could locate him in other parts of Nigeria. He claims there is an informal network amongst politicians and the ruling classes in Nigeria so that if he registered somewhere else, it could become easily known. He claims his uncle, who I refer to as [I], may no longer be a Governor but his connections to the ruling elite will still be strong. He claims his father also knows people within the immigration services and port authorities.

23. The report of Professor Mario I. Aguilar that was relied upon by the appellant was addressed by Judge Thapar. She found the conclusions reached by him are based on considerable speculation and fail to have regard to the findings previously made by Judge Fenoughty. She found that Professor Aguilar speculates that the threat issued by the appellant's uncle who I refer to as [B] may be considered a fatwa. She noted there is absolutely no corroborative evidence that a fatwa was issued by the appellant's uncle in his capacity as an Imam. As I have already noted there is a preserved finding that the appellant would not be at risk from Islamic groups, former friends or his family members if he was to relocate to south Nigeria.

24. The appellant also claims it would be unduly harsh to expect him to relocate to southern Nigeria because of his health. He states he is heavily dependent on his medication and if he does not take the medication his mental health deteriorates and he feels very anxious and suicidal. He does not think he can obtain his medication in Nigeria as the cost of it would be prohibitive even if it were available.

25. I have considered the report of Dr Galappathie, and the extent to which the opinions expressed by Dr Galapatthie support the appellant's claim that it is unreasonable to expect the appellant to relocate, as the respondent submits, within Southern Nigeria. I have considered the various letters from the appellant's GP that are to be found in the appellant's or respondent's bundle, albeit they are referred to in paragraphs [44] to [47] of the report. In summary, the appellant is said to be suffering from a severe episode of depression and an adjustment disorder which have a significant long-term adverse impact on his ability to function socially and on an interpersonal level. He is also said to have anxiety related symptoms, that affect him daily, such as feeling anxious and worried all the time, feeling his heart racing, suffering from shortness of breath, and that he has panic attacks. In Dr Galappathie's opinion, the appellant's symptoms will have a long term negative impact on him.

26. The documents relied upon by Dr Galappathie are identified in paragraph [10] of his report. In *HA (Expert Evidence; Mental Health) Sri Lanka* [2022] UKUT 00111 (IAC) the Tribunal stressed that GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Dr Galappathie does not refer to the appellant's GP records as being part of the documents that he has read and considered. However, paragraph [41] has the title "Information from health records", and so it appears that Dr Galappathie has had regard to some health records, but precisely what records, is unclear. At paragraph [43] of his report, Dr Galappathie states, without elaboration, that on 14 February 2018, the appellant's GP records outline a diagnosis of depression "which was an active problem and was ongoing". When that diagnosis was made, the events leading to the diagnosis, and by whom the diagnosis was made, is not set out. At paragraphs [44] to [47] of his report, Dr Galappathie simply summarises the content of letters provided by the appellant's GP.

27. At paragraph [70] of the report Dr Galappathie claims the appellant's GP records support the diagnosis of depression that he has made. He again refers to the information set out in the various letters, without making any reference to entries in the appellant's GP records, if indeed he had sight of them. That is unfortunate because as the Upper Tribunal said in *HA (Expert Evidence; Mental Health) Sri Lanka* " GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal.". Dr Galappathie refers

at paragraph [45] of his report to the letter from Dr T Browne dated 24 June 2021 in which it is aid that the appellant has a history of depression from 2017, without any reference to the appellant's GP records that might have provided a broader picture of the appellant's mental health over a more significant period of time, and crucially here, prior to the decision of Judge Fenoughty promulgated in February 2018. The appellant has lived in the UK for several years prior to his claim for international protection and a proper consideration of his medical would have been useful.

28. In any event, Dr Galappathie expresses the opinion that the adjustment disorder makes the appellant feel anxious and fearful of people which affects his ability to trust others and that his symptoms have a long term negative impact on the appellant. The most recent letter dated 5 August 2022 from the appellant's GP, Dr Browne, confirms that the appellant's medication has been increased to 300mg of Venlafaxine and that the support of the community mental health team is being enlisted to give the appellant additional support. The appellant's evidence before me is that he was "called by the mental health team" twice during 2023. He was last contacted by the community mental health team in summer 2023 and in or about January 2023 prior to that. The support the appellant has received has been limited on any view.

29. The most recent letter from the appellant's GP is dated 24 January 2024 and referred to in paragraph 47 of Dr Galappathie's report. I have not been provided with a copy of that letter and it is not clear from the report who that letter is addressed to. The letter refers to the distress felt by the appellant because of the outcome of his immigration application. There is reference to the appellant having attempted to take a spontaneous overdose by drinking bleach in 2022, but there being no definitive plan to harm himself albeit he has intrusive thoughts focused around worry related to his immigration application. The letter confirms that additional support was enlisted from the Community Mental Health Team in 2023 and following assessment, the appellant has been recommended for referral support from MIND, the mental health charity. Dr Galappathie records that the appellant's GP noted that should the appellant be forced to return to Nigeria, that would have a serious detrimental impact on his mental health and leave him vulnerable to reprisals.

30. I have attached due weight to the opinions that are expressed by Dr Galappathie, which are, in part informed by the information provided to him by the appellant as part of the mental state examination and by the appellant's GP. Dr Galappathie may well be of the opinion that the appellant would benefit from follow up by his GP to ensure that his depression is effectively treated, but that is to ignore the fact that beyond the medication prescribed, the appellant is not currently receiving any other treatment. Dr Galappathie acknowledges that the adjustment disorder does not require any specific treatment and he believes it is likely to gradually resolve if the appellant has a stable immigration status, stable accommodation and does not have to fear being returned to Nigeria. Whilst I accept the appellant is likely to receive some benefit from remining in the UK, the question for me is whether it is reasonable to

expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.

31. Dr Galappathie claims it is unlikely that the appellant would be in a position to access and engage in mental health treatment, even if this was available for him. He expresses the opinion that being returned to a country where the appellant reports having no support, and fears being persecuted due to him being a Christian, would be highly distressing and traumatising, making it unlikely the appellant would see out or engage with treatment. Although the appellant may have a subjective fear, the evidence of Professor Aguilar is that "conversion by itself does not constitute risk as Christian and Muslim have coexisted in Nigeria over centuries and the Nigerian constitution allows for freedom of religion within federal law". The background material relied upon by the respondent; Information request, Nigeria: Religion, dated 2 October 2020 also confirms "the constitution stipulates neither the federal nor state governments shall establish a state religion and prohibits discrimination on religious grounds". The report states Christians and Muslims reside in approximately equal numbers in the North Central and South States, including Lagos.

32. I have also had regard to the background material set out in the Country Information Note, Nigeria: Medical treatment and healthcare, published in December 2021. At paragraph [22.2.5], it is noted that there are eight federal neuropsychiatric hospitals in Nigeria (totalling around 4000 beds), as well as three state-run hospitals in Port Harcourt, Ondo and Anambra. The latter three areas are all in Southern Nigeria. I note that at [22.2.10] it is noted that there are psychiatrists, psychologists, psychiatric nurses and management of psychiatric crisis intervention. That paragraph also lists the state government hospitals where treatment is available in the event of attempted suicide that include hospitals in Southern Nigeria, including, the Psychiatric Hospital, Rumuigbo, Port Harcourt.

33. Although the appellant reported a number of ongoing difficulties regarding his mental health to Dr Galappathie including low mood, difficulty sleeping, poor appetite and hearing voices in his head, having heard the evidence appellant, I find that the appellant's mental health is managed by the medication that he is prescribed, with very limited input from community mental health services. The evidence before me is that the input during 2023 took the form of two telephone calls to the appellant. There has been no input this year. There is a preserved finding that the medication that the appellant takes is available in Nigeria.

34. The Upper Tribunal observed in *AM (Zimbabwe)* that in considering whether a person would face an Article 3 risk on return to their country of nationality arising from the absence of medical treatment that, generally speaking, whilst medical experts based in the United Kingdom may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of

or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful.

35. Dr Galappathie is not a country expert, and there is no evidence relied upon by the appellant or any analysis by Dr Galappathie of what other treatment or support may be available to the appellant in Southern Nigeria, nor any reasons given as to why such treatment would not be effective. Equally there is no evidence before me of the costs of the medication that the appellant requires to support his claim and I reject his claim that even if the medication that he requires is available, the cost is prohibitive. Having heard the appellant give evidence, I find that he has been managing his mental health and that he knows what he must do, and how to secure the help that he requires.

36. The final strand of the appellant's claim is that it would be unduly harsh to expect him to relocate because he would have no familial support. He claims that although he had said he has family in other parts of Nigeria, he does not know specifically who these family members are. He was only told by his family that there other family members in other parts of the country. He does not know them personally and he claims he does not have any contact with them. He does not even know if they are alive and in any event, as his family have disowned him, they are unlikely to welcome him as it would cause a rift in the family. This aspect of the appellant's claim was considered by Judge Thapar too. She noted the appellant received financial support in the UK from a cousin in Nigeria and from friends in the UK. She also noted the appellant was supported by friends in the UK for several years. She found the appellant has failed to demonstrate that he would not be able to obtain support even for a short duration until he establishes himself in Nigeria. There is nothing in the evidence before me that undermines that finding and I too find the appellant has the ability to secure some support from friends and family whilst he establishes himself in Nigeria.

37. The appellant has wider familial connections in Nigeria and I reject the appellant's claim that he would be unable to turn to them for support. At paragraph [71] of her decision, Judge Fenoughty refers to the appellants claim that whilst his immediate family ostracised him, they did not wish to kill him. There is, I find, no reason in the circumstances to believe that other members of his family who live away from his immediate family, would not provide him with some support, albeit that may be limited.

38. I find that the appellant has failed to establish that that the medication he requires to manage his mental health would not be affordable. I have no doubt the appellant's friends and family will provide him with some support, financial and emotional, whilst he re-establishes himself in Southern Nigeria as they have whilst he has been in the UK. As Mr Lawson submits, the appellant has some qualifications. He arrived in the UK as a student and there is no reason to believe that he will not be able to secure

gainful employment in Nigeria. Standing back and looking at the evidence before me cumulatively, I reject the appellant's claim that he cannot internally relocate to Southern Nigeria. I do not accept, even to the lower standard, that it would be unduly harsh to expect the appellant to internally relocate.

SUICIDE RISK

39. The appellant claims a decision to remove him to Nigeria would violate his Article 3 rights. As I have already said, the appellant has been diagnosed as suffering from a severe episode of depression and an adjustment disorder. Dr Galappathie reports that the appellant presents with a risk of self-harm and suicide, as he reports of self harm and suicide ideations, and there are a high number of risk factors for self-harm and suicide. It is claimed that the appellant's removal to Nigeria creates a real risk that the appellant would suffer a serious, rapid and irreversible decline causing intense suffering or a significant reduction in life expectancy.

40. As far as the risk of suicide is concerned, it is now well established that what is required is an assessment of the risk at three stages, prior to anticipated removal, during removal, and on arrival. I have carefully considered whether the suicide risk is such that a removal of the appellant to Nigeria would be in breach of Article 3 by reference to the test set out in *J v SSHD* [2005] EWCA Civ 629 as clarified in *Y and Z (Sri Lanka) v SSHD* [2009] EWCA Civ 362, noting in particular that giving the judgment of the court in Y and Z (Sri Lanka), Sedley LJ said:

> "16. One can accordingly add to the fifth principle in J that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return."

41. I give due weight to the opinions expressed by Dr Galappathie, however, in the end, I do not consider the medical evidence, taken at its highest, demonstrates a real risk that the appellant would commit suicide in the UK. Dr Galappathie refers to the letter from Dr Browne dated 24 January 2024 in which it is recorded that the appellant attempted to take a spontaneous overdose by drinking bleach in 2022 and was saved by a friend at the last minute. There is, as I have already said, no detailed consideration by Dr Galappathie of the appellant's health records and he relies simply upon that which was set out by Dr Browne in that letter. Dr Galappathie however records that the appellant said he had no definitive plans to harm himself but he continued to have intrusive thoughts focused around worry related to the outcome of the application.

42. The appellant is receiving support and cooperates with the medical authorities in the UK. When precautionary steps have had to be taken, those steps have been taken and I find that any risk upon the appellant learning of any decision to remove him would be adequately managed in the UK by the relevant authorities. Any risk that manifests itself during removal, is capable of being managed by the respondent.

43. I therefore approach my assessment on the basis that it would be possible for the respondent to return the appellant to Nigeria without him coming to harm, but once there, she would be in the hands of the mental health services in Nigeria. The risk here, results from a naturally occurring illness. I acknowledge that an Article 3 claim, can in principle succeed, in a suicide case.

44. The fear that the appellant has of his family on return to Nigeria is not objectively well-founded. However, I must consider whether a genuinely held fear is such that it creates a risk of suicide if the appellant is returned to Nigeria. I have already referred to the background material set out in the Country Information Note, Nigeria: Medical treatment and healthcare, published in December 2021. Having considered all the evidence in the round, I am quite satisfied that medical treatment and assistance would be available to the appellant in Nigeria, albeit not to the standard available in the UK and that the appellant has every incentive to engage with the services available, as he has in the UK.

45. The appellant does not have a fear of those involved in the provision of healthcare. The Nigerian authorities will provide the appellant sufficient protection in Southern Nigeria. I reject the opinion expressed by Dr Galappathie that the appellant would be unlikely to seek out treatment and engage with treatment. He has sought treatment in the UK and claims he would prefer to continue receiving treatment in the UK. There are findings that the appellant would not be at risk from Islamic groups, former friends or his family if he was to relocate to South Nigeria and the medication he requires is available. There is in my judgment no reason for the appellant to not engage with the wider mental health treatment available. Considering all the evidence in the round, giving due weight to the opinions expressed by Dr Galappathie, I do not accept that the genuine subjective fear held by the appellant, is such that it creates a risk of suicide on return to Nigeria.

46. In the end I am not satisfied that the appellant has established that there are substantial grounds for believing that he would face a real risk of being exposed to either a serious, rapid and irreversible decline in the state of his mental health resulting in intense suffering or the significant reduction in life expectancy as a result of either the absence of treatment or lack of access to such treatment. The ‘suicide risk’ is not in my judgement such that the removal of the appellant to Nigeria would be in breach of Article 3.

47. It follows that I dismiss the appeal.

NOTICE OF DECISION

48. The appeal is dismissed on asylum, humanitarian protection and Article 3 grounds.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 May 2024