IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005105

First-tier Tribunal Nos: PA/55014/2021
PA/01111/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of May 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

AF
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Robinson, Counsel instructed by Coram Children's Legal Centre
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on 22 April 2024

Order Regarding Anonymity

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.

DECISION AND REASONS

Background

1. The appellant is a citizen of Morocco born in 2002. He claims to face a risk of being killed in Morocco by the family of a young woman who became pregnant following a relationship with him. He also claims that removing him to Morocco would breach Articles 3 and 8 ECHR. His Article 3 case is based on his mental health and the risk he will commit suicide. His Article 8 claim relies on a range of considerations including that his stepfather has disowned him and stripped him of his name.

2. Following the respondent's refusal of the application, the appellant appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Hosie ("the judge"). In a decision promulgated on 5 September 2023 the judge dismissed the appeal. The appellant now appeals against this decision.

The First-tier Tribunal Decision

3. The appellant was represented on a pro bono (direct access) basis by Mr Fripp. A preliminary issue arose as to whether the appeal should be adjourned in order for the appellant to obtain a psychiatric report. The judge decided to not adjourn the hearing. The reasons given were that:

   (a) it was the appellant's wish to proceed;

   (b) the appellant lacked the means to obtain a psychiatric report and therefore it was unclear what purpose an adjournment would serve;

   (c) there was no guarantee of further representation for the appellant if the appeal was adjourned;

   (d) GP records had been adduced and these provided information about the appellant's mental health.

4. The judge concluded that it was in the interests of justice to minimise delay and to proceed.

5. The judge began his assessment of the appellant's claim by noting that the appellant was 17 when the application was made. The judge stated in paragraph 18 that:

> "A child sensitive application of the lower standard of proof may need to be given to persons if they are recounting relevant events that took place at a time when they were minors. I note that at the time he claims to have left Morocco and when he was interviewed for his asylum claim he was 17".

6. The judge did not believe that the appellant had given a truthful account of events in Morocco. The reasons given include:

   (a) No witness statement was provided by the appellant's aunt, even though she lives in the UK. The judge noted in paragraph 22 that the appellant's evidence was that his aunt is in contact with his family and that she "is therefore obviously aware of the situation the Appellant claims to have been in and he ought not to have been prevented from asking her to provide supportive evidence".

(b) The appellant failed to provide evidence showing that the father of the young woman he had a relationship with was, as claimed, a colonel in the Moroccan Army or that he had influence in Morocco.

(c) The appellant left Morocco using his own passport and identity document and no evidence was provided of his claim to be on a "police search list".

(d) The appellant claims that his mother received three threatening letters but none of these have been provided.

(e) The appellant claims to have no contact with his mother but in his GP records there is a record of him stating that he has family in Morocco who he contacts twice a month, and that he has contact with his mother.

(f) There is an inconsistency between the appellant's account and his medical records where he is recorded as saying that he left Morocco due to a conflict regarding religion.

(g) The appellant claims that he was told by a security guard at his flat in Morocco that the young woman's father came to look for his mother but he has not sought to obtain any written evidence to confirm this by the security guard.

(h) The appellant's claim to fear Islamic organisations is not supported by identifying any specific individual or organisation or explaining why there would be a basis to have a well-founded fear from any such organisation.

7. The judge considered the appellant's claim to have mental health problems and to be a suicide risk in considerable detail. The judge, in paragraph 31, noted that the appellant has previously attempted suicide and received treatment. He stated:

> "It is not disputed that the Appellant attended A&E due to having drank half a cup of bleach in a suicide attempt. It is also not disputed that he has been prescribed an antidepressant in the form of Sertraline together with sedative medication in the form of Promethazine. He has received counselling. He also attended A&E in December 2021 having consumed a large quantity of alcohol".

8. In paragraph 33 the judge referred to up to date evidence from the appellant's GP confirming that he is diagnosed with anxiety and depression, and attends therapy once a fortnight.

9. However, the judge found, in paragraph 35, that there was no evidence that the appellant had accessed Crisis Support; and, in paragraph 36, that some of the evidence regarding self-harming was inconsistent. Paragraph 36 states:

> "In relation to the Appellant's claims to have self-harmed both in Morocco and again in the UK I find this to be inconsistent with his medical records. In the 100-page bundle at page 65 of 100 it states that there is no evidence of nonaccidental injury. This was based on an examination by Dr Nagy Awadalia on 15 December 2019. At 63 of 100 the Appellant is said to be in contact with his mother. There are no problems. He does not feel stressed or depressed. At 68 of 100 it states that the Appellant left Morocco due to conflict regarding religion. At 56 of 100 it states that the Appellant's foster carer has no concerns, that the Appellant is making friends and that he wants to be a professional footballer. At page 24 of 100 I note that the Appellant was assessed on 29 October 2021 and that he had no suicidal plan or

> intent. He was averse to medication and he had not managed to engage in therapy. This resulted in him being discharged from therapy".

10. The judge went on to find in paragraph 37:

> "I note further that the Appellant requested an ADHD assessment on 10 January 2023 and that he declined Talking Therapies. Dr Tam, the Appellant's GP, states in his letter of 21 February 2023 that the Appellant attends regular follow-ups at the surgery and that he is under a therapist. If the Appellant remained an active suicide risk or risk of self-harm then it is reasonable to expect that the GP would have commented on this. The GP would also have been obliged to have referred the Appellant to a Psychiatrist. I note that the Appellant was referred to CAMHS and that he was provided with Crisis Team contact details though he does not appear to have required to make use of Crisis Team support".

11. The judge rejected the argument that there is a risk of the appellant committing suicide on return to Morocco that reaches the threshold of Article 3 ECHR. In paragraph 44 it is stated that "*insufficient evidence has been provided to substantiate a current significant risk of suicide or self-harm*". It is stated in paragraph 43 that "*the appellant has not raised a prima facie case*". The judge also found that there would be adequate treatment available to the appellant in Morocco. In paragraph 38 the judge states "*The appellant does not dispute that medication for mental health is available in Morocco and I note the objective evidence in relation to the availability of mental health treatment in Morocco*". In paragraph 42 the judge states again "*The appellant does not dispute that medical treatment is available in Morocco*".

12. With respect to the appellant's claim to face a risk arising from his relationship with a young woman, the judge did not find the appellant's account credible. However, irrespective of the credibility findings, the judge rejected the appellant's claim to be at risk on the basis that the appellant, if his account is true, could avail himself of state protection and/or relocate internally. Paragraph 51 states:

> "I do not find that even taking the Appellant's claim at its highest, he would be at real risk of serious harm on return to Morocco. To the extent that he fears [the young woman's] father then he can avail himself of the protection of the police and he can internally relocate with the support of friends and family if required".

13. In paragraph 58 the judge stated that internal relocation would not be unduly harsh.

14. The judge's assessment of Article 8 ECHR is relatively brief. It is set out in paragraph 60, where the judge stated:

> "In relation to Article 8 ECHR and his private life claims under paragraph 276 ADE (1) (vi) of the Immigration Rules I do not find that there would be very significant obstacles to the Appellant's reintegration to Morocco where he has friends and family, where he was born and spent his childhood and was educated and where he knows the language and culture. According to his medical notes he maintains regular contact with his friends in Morocco and ought to be able to resume this contact in person on return. He is in contact with his grandmother who ought to be able to continue to provide some level of emotional support at least. I do not accept that he is not in contact with his mother because he has provided inconsistent evidence in relation to this and his oral evidence contradicts what is contained in his medical records".

Grounds of Appeal

15. Ground 1(i) argues that the judge's credibility assessment is undermined by a failure to have regard to a letter by the appellant's specialist mental health therapist Sandra Forrester dated 28 June 2023 (it was common ground that the letter had been incorrectly dated 28 June 2022). Prior to the hearing there had been a dispute as to whether this document was before the First-tier Tribunal, but it is now accepted by Mr Parvar that it was.

16. The appellant argues that Ms Forrester's letter undermines the judge's finding that the appellant has not been in close contact with Crisis Team services and is not considered a suicide risk. In her letter, Ms Forrester states:

> "He presented with low mood, feelings of hopelessness, insomnia, and noticeable weight loss. His risk to self was assessed as medium, due to his history of chronic low mood, not engaging with mental health support, a previous suicide attempt, historic self-harm and past impulsive actions. His risk is being reviewed regularly and is currently assessed as low due to an improvement in his social engagements with peers and ability to priories his self-care
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> ...
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> As a young person seeking international protection, [the appellant] faces unique risk factors to his psychological well-being. My concern is that the physiological and emotional symptoms he is struggling with, increase his susceptibility to poor mental and physical health outcomes. In my view, it is imperative that he remain in the UK within his current system of support. This is not only for safeguarding reasons but also because the specialised treatment he is receiving and needs will not be available to him outside of the UK".

17. Ground 1(ii) submits that the judge's assessment of the appellant's credibility is flawed because of a failure to take into account his vulnerable mental health, as highlighted in Ms Forrester's letter.

18. Ground 2 submits that the judge strayed into undertaking his own medical examination/assessment of the appellant and thereby went beyond his permitted role.

19. Ground 3 submits that the judge's assessment of very significant obstacles to integration under Article 8 ECHR was legally erroneous because of a failure to have regard to the impact of return on the appellant's mental health.

20. Ground 4 submits that the First-tier Tribunal acted in a procedurally unfair way by not adjourning the hearing. It is stated that the appellant did not have legal representation to assist in preparing the appeal and it is submitted it was unfair to proceed with the hearing, particularly as adverse inferences were drawn from lack of evidence.

Submissions

21. Both Ms Robinson and Mr Parvar made clear and succinct submissions. I have not set these out, but I have reflected on them carefully and they are incorporated into my evaluation of the grounds.

Ground 1(i): failing to have regard to Ms Forrester's letter

22. Ms Forrester's letter is not mentioned in the decision. Mr Parvar submitted that the judge did not need to mention every item of evidence and that the absence of a reference to the letter does not mean that it was not considered. Whilst as a matter of general principle I agree with Mr Parvar that a judge does not need to refer to all the evidence, it seems to me, from reading the decision as a whole, that it is likely – indeed, very likely – that the letter was overlooked. This is because the judge undertook a thorough analysis of the evidence relating to the appellant's mental health where, apart from Ms Forrester's letter, all of the evidence that was potentially material was referred to and explicitly considered. Given that Ms Forrester's letter was the most up to date evidence before the judge about the appellant's mental health, the absence of a reference to it is striking. My view that it is likely the judge overlooked the letter is reinforced by considering the way the appellant's case was presented, with evidence submitted in a disorganised way at a late stage. For these reasons, I accept the appellant's argument that the judge failed to consider Ms Forrester's letter. I also accept that this is an error of law.

23. However, the error is not material. Ms Forrester's letter does not significantly add to the evidence that the judge considered about the appellant's mental health. The judge took into account a GP letter dated 21 February 2023 (referred to in paragraph 33 of the decision) stating that the appellant was diagnosed with anxiety and depression, and was attending therapy once per fortnight. The judge also had regard to the appellant's medical history which included a documented suicide attempt (discussed in paragraph 31). Ms Forrester's letter referred to the appellant undertaking biweekly one-to-one therapy and suffering from depression and anxiety (which is consistent with the GP letter). Ms Forrester's letter also states that the appellant has previously attempted suicide but is currently assessed as a low risk. This, too, is consistent with the evidential picture that emerges from the other evidence that was before the judge. In my view, consideration of Ms Forrester's letter could not, on any legitimate view, have resulted in the judge reaching a different conclusion as to the appellant's mental health and suicide risk.

24. Even if the above analysis of materiality is wrong, there is a further – more fundamental - reason why failing to consider Ms Forrester's letter was immaterial, which is that it could not have made a difference to the overall conclusion on either article 3 or article 8 ECHR.

25. In order to succeed in an article 3 claim based on risk arising from his mental health and suicide risk, the appellant needed to adduce evidence capable of demonstrating an absence of appropriate treatment in Morocco. See paragraph 1(2)(i) of *AM (Art 3; health cases) Zimbabwe* [2022] UKUT 00131 (IAC). No such evidence was adduced and in fact the appellant's evidence was that appropriate treatment is available in Morocco: see paragraphs 38 and 42 decision. Ms Forrester stated in her letter that treatment the appellant is receiving and needs "will not be available to him outside the UK". Ms Robinson sought to rely on this to support an argument that the appellant would not be in a position to access treatment in Morocco. However, Ms Forrester was not said to be an expert (or even to have any knowledge at all) on mental health provision in Morocco. Nor has she explained why she believes the treatment the appellant is currently receiving (described as biweekly one-to-one therapy) would not be available to (or accessible by) him outside the UK. Ms Forrester's opinion on treatment outside the UK could not, on any view, have been given any weight by the judge. Accordingly, failing to consider her letter is immaterial to the appellant's article 3

claim, which could not succeed because of the absence of evidence indicating any lack of appropriate treatment and provision in Morocco.

26. For similar reasons, Ms Forrester's opinion is immaterial to the assessment of whether there would be very significant obstacles to the appellant's integration into Morocco, which was the critical question in respect of article 8 ECHR. The obstacles the appellant might face in Morocco as a result of his mental health condition depend on the availability of treatment and support in Morocco. The difficulty for the appellant is that (a) his evidence was that this is available; (b) no objective or expert evidence was adduced to suggest otherwise; and (c) Ms Forrester does not have the expertise or knowledge to express a view on mental health provision in Morocco.

Ground 1(ii): failing to consider the appellant's vulnerability

27. The appellant argues that the judge fell into error by not treating him as a vulnerable witness. I find this argument unpersuasive. As Ms Robinson acknowledged, there is no evidence that the appellant's counsel in the First-tier Tribunal raised with the judge that the appellant needed to be treated as a vulnerable witness. Nor does there appear to be any evidence before the First-tier Tribunal demonstrating a need for the appellant to be treated as a vulnerable witness. There was evidence that the appellant suffers from anxiety and depression and is a low risk of suicide; but it does not necessarily follow from this that he is, or needs to be treated as, a vulnerable witness. In the absence of vulnerability being raised, I do not accept that the judge erred by not considering the issue.

28. In any event, treating the appellant is a vulnerable witness could not, in my view, have made any difference to the outcome. Ms Robinson argued that, had the appellant's vulnerability been appreciated, greater latitude might have been given to him in the credibility assessment. I accept that this might have been the case. However, the judge rejected the appellant's protection claim not merely because his account was not believed but because, even if everything he said was true, he still did not face a serious risk of harm because there is sufficient state protection and those he claims to fear could be avoided by internal relocation.

Ground 2: judge erroneously undertaking his own assessment of the appellant's medical condition

29. The evidence before the judge provided a reasonably clear picture of the appellant's current mental health and the judge considered this evidence (apart from Ms Forrester's letter) in considerable detail. For reasons that are clearly explained, whilst the judge accepted that the appellant suffers from anxiety and depression, as described by his GP, and that he has previously attempted suicide, the judge did not accept that there was an "ongoing active significant risk of suicide or self-harm". This conclusion is based on the judge's evaluation of the evidence that was before him, as set out in the decision; it is not the result of the judge making his own medical assessment. There is therefore no merit to this ground.

Ground 3: flawed approach to article 8 ECHR

30. The judge's article 8 assessment is brief: the entirety of it is set out in paragraph 60 (which is set out in full above). In this paragraph, the judge identified that the relevant question, in accordance with paragraph 276ADE(1)(vi) of the Immigration Rules, is whether the appellant would face very significant obstacles reintegrating in Morocco. The judge then identified factors (notably, the appellant's familiarity with the language and culture in Morocco and the evidence of his contact with family and friends) which meant that he was satisfied that there would not be very significant obstacles integrating.

31. Ms Robinson submitted that the judge's analysis is deficient because an important consideration – the appellant's mental health – was not considered. It is true that the appellant's mental health is not mentioned in the Article 8 assessment. However, in my view, there was no need for it to be mentioned and therefore no error of law arises. This is because there was no evidence before the judge indicating that the appellant would face any difficulty accessing appropriate treatment in Morocco or that the treatment he needs is unavailable in Morocco. In fact, the appellant's own evidence, as discussed above, was that medication would be available in Morocco. In the absence of a finding that the appellant would face difficulties accessing appropriate treatment in Morocco, there was no basis to find that the appellant's mental health difficulties meant that he would face significant obstacles integrating.

Ground 4: procedural unfairness of not adjourning

32. The appellant did not seek an adjournment in the First-tier Tribunal but now argues that the judge acted unfairly by not adjourning the hearing. I reject this argument for two reasons. First, the appellant had the benefit of representation at the hearing and, having had the opportunity to take advice, decided to not seek an adjournment: in paragraph 10 the judge records that the appellant wished to proceed. In circumstances where the appellant did not seek an adjournment, he is in significant difficulty in arguing that the judge erred by not adjourning the hearing.

33. Second, the question of whether the case should have been adjourned in order to enable a psychiatric report to be obtained was considered by the judge, who gave clear reasons (as summarised above in paragraph 3) for deciding to not adjourn the hearing. The judge's reasoning demonstrates that he had regard to the relevant principles and applicable case law. For the reasons given by the judge, it was entirely appropriate – and not procedurally unfair – to, in accordance with the appellant's wishes, proceed with the hearing.

Notice of Decision

34. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 May 2024