IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002093
UI-2024-001771
First-tier Tribunal No: HU/01890/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

WJJ/JWJ
(ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Osman of Counsel, instructed by Turpin Miller LLP
For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 2 August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Liberia born on 13 October 1988. He arrived in the United Kingdom in April 2005 and claimed asylum on 12 April 2005. This application was refused on 31 May 2005 and his appeal was dismissed on 29 July 2005.

2. The Appellant then made further submissions on 10 September 2009, but these were withdrawn on 12 October 2010 on the basis that he was granted indefinite leave to remain under the legacy casework exercise. Subsequently, on 29 April 2019, the Appellant was convicted of burglary and sentenced to a 14 month suspended sentence. He was then, on 8 August 2019 convicted of a robbery, in respect of which he was given a 12 month sentence, plus the 14 month suspended sentence was aggregated so that he was given a two and a half year sentence.

3. On 12 November 2021, the Appellant was convicted of robbery and given a 19 month prison sentence. As a consequence, on 20 May 2022 the Appellant was served with a deportation order. He made a human rights application but this was refused in a decision dated 23 September 2022. He appealed against that decision and his appeal came before the First-tier Tribunal for hearing in March 2024. In a decision and reasons promulgated on 13 March 2024, the decision was promulgated dismissing his appeal. An application for permission to appeal was made on 26 March 2024 and granted in part on the 9 April 2024. A renewed application was made on 23 April 2024, which was granted on the remaining grounds by Upper Tribunal Judge Blundell on 28 May 2024.

4. There are four grounds of appeal. Ground 1 is that the judge erred in her assessment of the medical report of Dr Isaacs and in failing to have regard to a concession made by the Respondent in relation to Dr Isaacs' diagnosis, as a consequence of which the judge erred in her assessment of Article 3 on medical grounds. Ground 2 asserted that the judge's conclusions regarding the likelihood of the Appellant receiving financial support from his brother and extended family in Liberia is not supported by the evidence and is irrational. Ground 3 asserted that the judge erred in concluding that the Appellant was at high risk of reoffending and thus in her assessment of the deportation provisions, in light of the OASys report, which found that the Appellant was at medium risk of offending. Ground 4 asserted that the judge failed to take account of material considerations, including those set out in ground 1 when assessing the Appellant's Article 8 claim and his mental health as part of Section 117C(6) NIAA 2002 and whether there are very compelling circumstances.

5. Mr Osman also produced a helpful skeleton argument where he set out the grounds of appeal in further detail. He made submissions in line with the grounds of appeal in the skeleton argument, in particular, drawing attention to the concession at [19], which provides:

> *"Mr Ojo stated that the Respondent accepted the fact of Dr Isaacs' diagnosis, and history of self-harm in detention, and this was therefore common ground before me. The Appellant's evidence before me was that he is in receipt of prescriptions for medication namely Quetiapine 150mg and Sertraline 100 mg."*

6. Mr Osman submitted that the judge had gone behind this concession which was contrary to the judgment in *Ganidagli* [2001] EWHC 70 (Admin) at [21] to [23] where Elias J approved the dicta in the case of *Carcabuk and Bla v Secretary of State for the Home Department (00TH01426)*. The judge had listed reasons why

she was unwilling to place weight on Dr Isaacs' conclusions, contrary to the Respondent's concession. Mr Osman took me through the relevant aspects of Dr Isaacs' reports in relation to the second limb. One of the reasons provided by the judge for rejecting the medical diagnosis was her assertion that the doctor had failed to take account of the fact that the Appellant took illicit substances. However, at page 210 at [59] Dr Isaacs noted: *"Mr X does take illicit substances, however, has not taken any substances for several months."* And at [76]: *"Based on my assessment, he is also experiencing psychotic symptoms, which may be a combination of his illicit substance use and traumatic history."* And at [81]: *"In my opinion, Mr X presents as a vulnerable man who is significantly disabled by his symptoms of PTSD and depression. The added complication is his deteriorating mental health which might be related to illicit substance use, which places him at an increased risk of exploitation by others."* Mr Osman submitted that the judge failed to take account of the fact that the assessment was in November 2022, at which point the Appellant stated that he had taken illicit substances, whereas Dr Isaacs' report was much later in May 2023.

7. In relation to the fact that Dr Isaacs found there would be an increase in a risk of suicide set out at [74], [84] to [86] and [134] of her report, this is based on the Appellant's fear of persecution in Liberia, which Dr Isaacs found to be a real fear from the Appellant's subjective point of view. Mr Osman relied on the same submissions in relation to the judge's Article 8 assessment, at ground 4. In relation to ground 3, the judge concluded the Appellant was at high risk of reoffending, but Mr Osman submitted that this is unsupported by the evidence in that the OASys Report which found that he was at a medium risk of reoffending. Further, the Appellant had not reoffended since the time that report was prepared. Mr Osman also took issue with the judge's findings in relation to the Appellant's history of convictions and denied that they had worsened over time, in fact there was a gap between the second and third offences and a lesser sentence in relation to the third offence.

8. In her submissions Ms Lecointe opposed the grounds of appeal. She submitted that the judge made no material errors of law. Ms Lecointe submitted that the judge had not erred in failing to follow the concession, however, upon consideration of the judgment in *Ganidagli,* Ms Lecointe withdrew her argument that the judge could depart from the concession. However, she submitted that the concession was on a very narrow ground and that was in relation to the risk of suicide whilst the Appellant was in detention.

9. Ms Lecointe submitted that the judge was entitled to depart from Dr Isaacs' assessment and gave reasons for so doing at [19] to [23], in particular at [22]. She also sought to rely on the Rule 24 response before the First-tier Tribunal dated 13 June 2024, in particular at [5], where the Respondent had taken account of the medical evidence but submitted that the Article 3 threshold was not met, even taking account of that evidence.

10. In relation to ground 3, Ms Lecointe submitted the judge had correctly directed herself; that she had gone into detail and had given reasons. The Appellant had committed a number of offences and weight needed to be attached to that history of convictions and the ability to stay within the Rules. When one conducted an overall assessment of the public interest the judge was entitled to find the Appellant had not overcome the public interest consideration set out in section 117C NIAA 2002. Ms Lecointe also sought to rely on the Rule 24 response and submitted that the judge had given adequate reasons and in terms of

Section 117C(6) NIAA 2002 there was little to balance against the history of convictions, so there was no evidence, as the judge recorded at [46] of integration in the UK or dedication in terms of employment, other than the letter from the Christian Life Centre and no evidence of employment, although the birth certificates of his children recorded in respect of one child that he was a dry liner and in respect of another that he was an electrical engineer.

11. Ms Lecointe concluded by submitting that there were no errors of law in the decision and reasons of the First-tier Tribunal Judge.

12. In his reply Mr Osman submitted that, in relation to Mr Ojo's concession on behalf of the Respondent, this was not limited to detention and the Appellant's mental health. He submitted what the judge should have done is to make a finding as to whether or not the Appellant is a seriously ill person in light of the acceptance of Dr Isaacs' diagnosis and so that conclusion at [24] was flawed following her rejection of Dr Isaacs' diagnosis at [23]. No other Article 3 assessment was carried out and that was also a material error of law.

13. In relation to the Article 8 assessment, Mr Osman submitted that it had not been conducted fairly. The judge set out the public interest considerations, including financial support from family members and other factors of family life in the UK, but the fundamental error the judge made is that she did not go into sufficient detail in light of what the Appellant would be likely to face in Liberia and the level of destitution there, bearing in mind the country expert report and the evidence therein. The judge did not properly have regard to the evidence before her on this point and failed to make necessary findings on Articles 3 and 8 ECHR.

14. I reserve my decision, which I now give with my reasons.

Decision and reasons

15. I find material errors of law in the decision and reasons of the First tier Tribunal Judge.

16. Ground 1 asserts that the judge erred in her assessment of the medical report of Dr Isaacs. At [21] of the decision and reasons the judge found that Dr Isaacs failed to provide a comprehensive assessment of the Appellant's mental health taking into account all relevant considerations, including those matters raised by the Appellant's medical records. There is no assessment of the relationship between the Appellant taking illicit drugs, whether historical or otherwise and his mental illness. The remainder of that paragraph is primarily concerned with the Appellant's drug abuse. However, it is simply not the case that Dr Isaacs failed to assess the interaction between the Appellant's drug abuse and his mental health, given that she makes express reference to this at [76] where she states: "*he is also experiencing psychotic symptoms, which may be a combination of his illicit substance use and traumatic history;"* [81] *The added complication is his deteriorating mental health which might be related to illicit substance use, which places him at an increased risk of exploitation by others"* and [104] "*Mr White is currently supported by his local CMHT to ensure that his symptoms of psychosis (which might be substance induced) is appropriately treated."* In light of the judge's finding in this respect I find that she erroneously minimised the weight to be attached to the report of Dr Isaacs.

17. Ground 1 further asserts that the judge failed to have regard to a concession made by the Respondent in relation to Dr Isaacs' diagnosis, as a consequence of which the judge erred in her assessment of Article 3 on medical grounds. The concession was in the following terms at [19] of the decision and reasons: *"Mr Ojo stated that the Respondent accepted the fact of Dr Isaacs' diagnosis, and history of self-harm in detention, and this was therefore common ground before me."* Dr Isaacs' diagnosis was that the Appellant is suffering from a major depressive episode with moderately severe symptoms as well as psychotic symptoms, PTSD and severe symptoms of anxiety. Ms Lecointe accepted on reflection that the judge had gone behind this concession but argued it was limited to the risk of suicide. However, I find that the concession went further than that and that Mr Ojo, the PO at the hearing before the FtT expressly accepted the diagnosis as well as the history of self-harm in detention.

18. Mr Osman raised three further minor criticisms of the judge's treatment of the psychological report of Dr Isaacs but they do not take the matter any further.

19. At [23] of the decision and reasons the judge held that in all the circumstances: *" I cannot place any weight on Dr Isaacs' diagnosis, assessment or conclusions*." I find in light of the analysis at [17] and [18] above that this is an erroneous conclusion and that Ground 1 of the grounds of appeal is made out.

20. Ground 2 asserted that the judge's conclusions regarding the likelihood of the Appellant receiving financial support from his brother and extended family in Liberia is not supported by the evidence and is irrational. At [46] of the decision and reasons the judge, noting that the Appellant's brother was expected to attend court but had not appeared and that there was no letter or witness statement from him, accepted that there is contact between them but could not attach significant weight to the Appellant's evidence that they are close. At [47] the judge found that the Appellant and his brother were likely to remain in contact to any similar degree as they are in contact with one another now. However, at [49] the judge found that the Appellant's brother would be likely to provide him with material financial assistance. I accept Ms Osman's submission that there is some inconsistency in these findings and that there was no or no proper evidential basis upon which the judge could find that the Appellant's brother would provide him with material financial assistance if he were to be deported to Liberia. I find the judge's treatment of this issue amounts to a material error of law.

21. Ground 3 asserted that the judge erred in concluding that the Appellant was at high risk of reoffending and thus in her assessment of the deportation provisions, in light of the OASys report, which found that the Appellant was at medium risk of offending. At [51] of her decision and reasons the judge records that the OASys report of 6.4.22 concludes that the Appellant presents a medium risk of re-offending. She further notes that the offending indicated a deterioration or step up given that a very similar offence was repeated in a short space of time and although there is no evidence of further offending since his release in October 2022 she then goes on to find that the evidence indicates that as at the date of hearing the Appellant is facing ongoing substance misuse issues including alcohol and drugs and has limited engagement with support agencies as well as difficult social circumstances and in the circumstances he presents a high risk of re-offending.

22. Mr Osman submits that this is an irrational finding given that the sentence imposed in respect of the last offence was 18 months which was a lesser

sentence than the previous conviction in 2019 in respect of which he was given 30 months imprisonment. This is not, in fact, correct, given that the sentence in 2019 was for 12 months but aggregated with the previous suspended sentence amounting to 30 months altogether. Therefore, in real terms there is a slight increase in severity. Nor am I persuaded that the judge erred materially in finding there was a short gap when it was 2 years but I do not think anything turns on this. However, I find that the judge erred in relying upon current substance abuse issues when the most recent evidence of drug misuse was 15 months before the hearing [EASL assessment of 17.11.22] and there was no evidence of ongoing abuse. I find in light of the OASys assessment of a medium risk of re-offending and the absence of any further offending since the conviction and sentence in 2021 that there was no evidential basis upon which the judge could properly find that the risk had increased from medium to a high risk of re-offending. This is a material error of law.

23. Ground 4 asserted that the judge failed to take account of material considerations, including those set out in ground 1 when assessing the Appellant's Article 8 claim and his mental health as part of Section 117C(6) NIAA 2002 and whether there are very compelling circumstances. This ground of challenge is, in part, predicated upon Ground 1 and the judge's rejection of Dr Isaacs' diagnoses which meant that the Appellant's mental health did not form part of the factual and evidential matrix upon which the judge based her findings regarding article 8 and section 117C(6) NIAA 2002. It is further clear from the judge's findings at [53] that her previous, flawed finding that the Appellant would receive financial support from his brother (and family members in the US) formed part of her reasoning. Similarly at [54] the judge reiterated her erroneous finding that the Appellant presents a high risk of re-offending. Given that I have found that the judge materially erred in these findings, it follows that her conclusions with regard to article 8 and section 117C(6) NIAA 2002 are similarly flawed. It is further apparent and I accept Mr Osman's submission that the judge failed in her assessment to take into consideration the findings of the country expert, Dr Thornhill.

24. For the reasons set out above I find that the decision and reasons is vitiated by error of law. I set that decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal, given that the extensive fact finding that will need to carried out at the remitted appeal hearing.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 September 2024