OUTER HOUSE, COURT OF SESSION

[2018] CSOH 62

P1088/17

OPINION OF LADY WOLFFE

In the cause

BJ (Nigeria)

Petitioner

for

Judicial Review

Respondent

Petitioner: Haddow; Drummond Miller LLP
Respondent: MacIver; Office of the Advocate General

12 June 2018

Background

[1] In this judicial review, the petitioner challenges the decision of the Secretary of State for the Home Department ("the Secretary of State") dated 31 July 2017 ("the Decision") refusing to accept the petitioner's further submissions on 11 July 2017 as a fresh claim for the purposes of rule 353 of the Immigration Rules.

Asylum claim and FTT determination

[2] The Applicant is a national of Nigeria and is a convert from Islam to Christianity. The Petitioner claims to have entered the UK in December 2006. She came to the attention of the authorities in the UK in January 2014.

[3] The Petitioner claimed asylum at that time, based on her fear of persecution at the hands of her family and on account of her religion. Her claim for asylum was refused by the Secretary of State on 15 January 2015. The Petitioner appealed to the First-tier Tribunal ("FTT").

[4] At her FTT hearing, the Petitioner also claimed that her poor mental health, including a risk of self-harm or suicide, meant that return to Nigeria would be a breach of the Petitioner's convention rights under Articles 3 and 8 of the ECHR. The petitioner produced a medical report and a GP report, which noted the Petitioner's deteriorating mental health and risk of self-harm.

[5] The FTT did not believe the Petitioner's account of the risk she faced on account of her family's hostility or her conversion to Christianity. It held that, in any event, internal relocation would be feasible.

[6] The FTT concluded that the petitioner's mental health difficulties were "significantly exaggerated", not least because it appeared to it that the Petitioner evidently coped without recourse to mental health services in the 7 years she was living illegally in the UK. It held there was no risk of suicide if returned to Nigeria. The FTT also held that there were sufficient facilities and medication available in Nigeria that the high threshold for Article 3 medical cases was not met.

Material relied on in support of a fresh claim: Dr Tagg's Reports

[7] In her submission in support of her fresh claim, the petitioner relied in particular on two psychological assessments made by Dr Tagg concerning the petitioner's mental health, dated 5 May 2016 ("Dr Tagg's First Report") and dated 6 March 2017 ("Dr Tagg's Second Report", and collectively "Dr Tagg's Reports"). Dr Tagg's First Report was equivocal in its assessment, in large measure because of an insufficient opportunity for Dr Tagg to reach a concluded view. After further sessions with the petitioner, Dr Tagg was able to form a concluded view about the petitioner's mental health and to express her opinion about the petitioner's mental state and as to the petitioner's suicide risk. She departed from the views expressed in her First Report. She formed the view that the petitioner's unreliability as a witness was explained by Post-traumatic Stress Disorder ("PTSD") and dissociation.

[8] In Dr Tagg's Second report she expressed the following opinions:

(1) That the petitioner is affected by an Emotionally Unstable Personality Disorder which correlates to a "significantly higher level" of completed suicide than the general population (para 56);
(2) That the petitioner's levels of depression were significant with suicidal ideation and that the petitioner should remain under regular medical supervision and her levels of suicidal ideation should be "regularly monitored" for the foreseeable future (para 63);
(3) That the petitioner will require "considerable input" from mental health services for the foreseeable future, and that she will always be psychologically fragile and prone to relapse (para 70);
(4) That the petitioner has an already enhanced risk of suicide. This will be "exponentially increased" if she is told she cannot remain in the UK (para 71);
(5) That Dr Tagg considered it "highly unlikely that [the petitioner] would survive a return to her native country" and that her well-established difficulties will require "careful monitoring now and in the future" (para 72); and

(6) That the petitioner requires an ongoing programme of support and help including CBT and a three-stage trauma recovery programme (para 73).

Rejection and refusal of further submissions

[9] The Secretary of State considered the further submissions in terms of Paragraph 353 of the Immigration Rules. The Secretary of State acknowledged that Dr Tagg's Reports were submissions that had not previously been considered. Nonetheless, she rejected this material, taken together with the previous material, as constituting a fresh claim. Her conclusions were as follows:

> "1) There were no 'very significant obstacles' to the petitioner's integration if returned to Nigeria and that she therefore did not satisfy Paragraph 276ADE(1)(vi) of the Immigration Rules.
>
> 2) That, while 'medical facilities in Albania [*sic*] may not be as well developed as those in the UK' the Petitioner had 'not shown [she] will be denied treatment upon return to Nigeria'. She relied on the findings of the FTT judge in relation to the availability of health care in Nigeria and also on the country guidance information about medical treatment in Nigeria, before concluding 'it has therefore been shown that there is suitable care and treatment available to you in Nigeria and you have not provided any evidence to show that you would be denied this treatment'. The Refusal Decision also stated 'you have not shown you would be denied any medical treatment by all units in Nigeria' and that 'you have not shown that death is virtually certain were you to be removed from the UK'. The Secretary of State then finds that 'it is likely that [a FTT judge] would take this view".

While in the Decision the Secretary of State also considers other material contained in the further submissions, unrelated to the petitioner's mental health claim, no challenge was made to the Secretary of State's treatment of this other material.

Outline of principal grounds of challenge

[10] The petitioner's challenge was advanced on two fronts:

1) First, that there was a want of anxious scrutiny in that nowhere in the Decision did the Secretary of State engage with the terms of Dr Tagg's Reports. Reference was made to *AK (Failure to access witnesses' evidence) Turkey* [2004] UKIAT 230 ("*AK*") as an example of a similar failure by an adjudicator to carry out any assessment of psychiatric or medical evidence and a consequent failure to provide "proper, intelligible and adequate reasons" (*per* para 14 of *AK*). Reference was also made to the recognised authorities in this area as to the obligation of anxious scrutiny, and which I quote in paragraphs [12] to [14], below.
2) Second, even if the Secretary of State had undertaken anxious scrutiny, it was incumbent upon her to give "proper, intelligible and adequate reasons" for her conclusions on the evidence. She had failed to do so. Reference was made to the well-known cases of *South Buckinghamshire District Council* v *Porter (No 2)* [2004] 1 WLR 1953 as well as to *AK*, just noted.

The law

[11] There is no dispute as to the legal test for anxious scrutiny or that the Secretary of State required to apply anxious scrutiny to the further submissions, in particular to Dr Tagg's Reports, and which may be summarised as follows.

The approach by the court in fresh claim cases

[12] The proper approach to be taken by the court in considering challenges based on a failure to comply with Immigration Rule 353, has been authoritatively stated for this court by the Inner House in the case of *Dangol* v *SSHD* 2011 SC 560. In *Dangol*, an Extra Division

of the Inner House, after considering the divergent views expressed in several first instance cases (referred to paragraphs [6] in its decision), confirmed the guidance given by the Second Division the previous year in *FO* v *SSHD* 2010 SLT 1087 ("*FO*") as to the proper approach to be taken by judges sitting at first instance. In particular, at paragraph 7 in *Dangol*, the court quoted the following from *FO* (which contains an observation by Buxton LJ in the case of *WM (Democratic Republic of Congo)* v *SSHD* [2006] EWCA Civ 1495 ("*WM*") (who in the passage quoted by *FO* was himself commenting on *R* v *SSHD ex p Onibiyo* [1996] QB 768 and *Cakabay* v *SSHD* [1999] Imm AR 176)):

> "As far as the role of the court is concerned, guidance is to be found in the judgment of Buxton LJ in WM (DRC). […]:
>
> > '[10] … Whilst, therefore, the decision remains that of the Secretary of State, and the test is one of irrationality, a decision will be irrational if it is not taken on the basis of anxious scrutiny. Accordingly, a court when reviewing a decision of the Secretary of State as to whether a fresh claim exists must address the following matters.
> >
> > [11] First, has the Secretary of State asked himself the correct question? The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant will be exposed to a real risk of persecution on return: … The Secretary of State of course can, and no doubt logically should, treat his own view of the merits as a starting-point for that enquiry; but it is only a starting-point in the consideration of a question that is distinctly different from the exercise of the Secretary of State making up his own mind. Second, in addressing that question, both in respect of the evaluation of the facts and in respect of the legal conclusion to be drawn from those facts, has the Secretary of State satisfied the requirement of anxious scrutiny? If the court cannot be satisfied that the answer to both of those questions is in the affirmative it will have to grant an application for review of the Secretary of State's decision.'
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> That is a clear and binding statement of the procedure that generally ought to be followed".

[13] Accordingly, a decision by the Secretary of State to refuse to treat further submissions as a fresh claim is challengeable only on *Wednesbury* grounds: *Dangol*

(following *FO,* following *WM*). A failure by her to exercise anxious scrutiny would take the decision outwith the range of reasonable decisions. Such a decision would be *Wednesbury* unreasonable.

Anxious scrutiny

[14] In relation to "anxious scrutiny", the observations of Lord Carnwath in *MN* v *SSHD* 2014 SC (UKSC) 183 at 194 are frequently quoted as providing the proper understanding of what this entails. In *MN*, after setting out the context in which such decisions are taken (at paragraphs 22 to 30), Lord Carnwath said this in relation to "anxious scrutiny" (at paragraph 31):

> "The higher courts have emphasised the special responsibility carried by the tribunals in the context of asylum appeals. It is customary in this context to speak of the need for 'anxious scrutiny' (following *Bugdaycay* v *Secretary of State for the Home Department*, per Lord Bridge of Harwich, p 531). As a concept this is not without its difficulties, but I repeat what I said in *R (YH)* v *Secretary of State for the Home Department* (para 24):
>
> > '[T]he expression [anxious scrutiny] in itself is uninformative. Read literally, the words are descriptive not of a legal principle but of a state of mind: indeed, one which might be thought an 'axiomatic' part of any judicial process, whether or not involving asylum or human rights. However, it has by usage acquired special significance as underlining the very special human context in which such cases are brought, **and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account.** I would add, however, echoing Lord Hope in *R (BA Nigeria)* v *SSHD* [2010] 1 AC 444, para 32], that there is a balance to be struck. Anxious scrutiny may work both ways. The cause of genuine asylum seekers will not be helped by undue credulity towards those advancing stories which are manifestly contrived or riddled with inconsistencies." (Emphasis added.)

[15] If the court finds that there has been anxious scrutiny, then that is the end of the matter and the challenge fails. If, however, the court finds that there has been a failure to exercise anxious scrutiny on the part of the Secretary of State, it is then incumbent upon the

court to consider the materiality of any failure to exercise anxious scrutiny. That is the import of the observations of the Inner House in *Ashiq*, *Petitioner*, 2015 SLT 306, [2015] CSIH 31, *per* Lady Smith at paragraph 23 (commenting on the failure of the Lord Ordinary in that case to go on to consider materiality). For the purposes of that consideration, the court makes its assessment on the basis of the material before the decision-taker. It does not do so by substituting its own opinion. It does not decide for itself whether there are reasonable prospects of success. It considers whether the error identified is material (ie it gives rise to a realistic prospect of success) or it is immaterial (ie because, having regard to other factors the case would be bound to fail before an immigration judge).

The Decision

[16] The Decision is detailed and follows the usual format of setting out *inter alia* the petitioner's immigration and procedural history, the new material submitted, the submissions previously considered, the FTT determination thereof, Country Guidance information on the country of origin (in this case, Nigeria), and the consideration of the submissions in the light of the petitioner's family and private life claims based on Article 8 of the ECHR, a consideration of these submissions outside the Immigration Rules (ie under exceptional circumstances) and the petitioner's non-protection based submissions (under Article 3 of the ECHR). Having regard to the nature of the petitioner's challenges, it will be necessary to set out parts of the Decision at length. I do so in the following paragraphs.

Conclusions of the FTT

[17] The passages from the prior decision of the FTT quoted were as follows:

"'All the medical evidence for the appellant postdates her claim for asylum. I gave consideration to the fact that the appellant claimed that she had been physically and sexually abused in Nigeria until she left in 2006 yet from 2006 for a period of over seven years until she claimed asylum she apparently did not require the assistance of the medical services including the mental health services or any other such resources in the UK.' (Paragraph 141)

'It seems to me that if the appellant's medical condition is as severe as claimed by her there must be a significant question mark as to how she survived in the UK a period of over seven years without any input from the relative services' (Paragraph 142)

'I do accept that any mental health condition which the appellant had could be exacerbated by the asylum process and by the rejection of an asylum claim. I further accept that the said asylum process and the rejection of an asylum claim could on their own possibly initiate an adverse mental health condition in an individual' (Paragraph 143)

'It seemed to me that the appellant's activities within the UK and her involvement within the community as referred to in the letters referred to above are inconsistent along with the claimed severe mental health issues. As indicated I have looked at all the evidence in the round and weighed up all the evidence in one balancing exercise and have come to the conclusion that the appellants account of her claimed difficulties in Nigeria have been fabricated. Taking into account the lack of input to the appellant from the mental health services in the UK prior to her claiming asylum and taking account of the appellant's acknowledged involvement within the community in the UK it seems reasonable for me to conclude that the appellants adverse mental health condition has been significantly exaggerated by the appellant to the said medical care providers involved particularly when I take into consideration my conclusion that the reason for such trauma never happened, and the appellant never encountered in Nigeria the claimed adverse experiences from her family in particular her father or brother.' (Paragraph 158)

'It is my view that if the appellant should return to Nigeria there are healthcare services available to treat her mental health condition and that the relative medication prescribed to her in the UK is available for the appellant in Nigeria.' (Paragraph 174)'"

Paragraph 276ADE(vi) (very significant obstacles to integration)

[18] The consideration of the petitioner's claim under paragraph 276AED (vi) of the Immigration Rules was as follows:

> "**Private Life**
>
> […]
>
> The requirements of Paragraph 276ADE(vi) states that subject to sub-paragraph (2), an applicant ages 18 years or above, who has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK. You do not meet the criteria of this paragraph as you were born in Nigeria in 1972 and lived there until you were 34 years old. Your initial claim was refused and the decision was upheld by the Immigration Judge at your appeal determination heard on 22nd June 2015 which shows it was not founded that you face real risk of persecution on return to Nigeria. You would not face very significant obstacles on return as you have lived there for over half of your life. You were born and raised there so you understand the culture and the customs. It is noted that you speak English which is a language spoken in Nigeria and as considered by the Immigration Judge in your appeal your husband and children still reside in Nigeria along with extended members of your family who you will be able to return to. It is noted that you are extremely resourceful and that you were able to travel thousands of miles to reach the UK which is a skill you will be able to utilise on return to Nigeria and during your reintegration. Although you may have made friends and established ties in the UK these have not shown to extend beyond normal emotional ties you will be able to continue these friendships by means of modern communication. Consideration has been given as to what could reasonably be expected from you in light of all the circumstances in this case and it has been concluded that it is not disproportionate to expect you to return to Nigeria."

Accordingly, the petitioner's claim under Article 8 was refused. The petitioner founds on the fact that there is no express consideration in this passage of the petitioner's mental health issues or of Dr Tagg's Reports.

The consideration of "Exceptional Circumstances"

[19] It was next necessary to consider the petitioner's submissions outside the Immigration Rules, ie whether exceptional circumstances nonetheless justified grant of her claim. The relative passage of the Decision is as follows:

> **"Exceptional Circumstances**
>
> It has also been considered whether your application raises any exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant

a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules.

You claim that you suffer from mental health issues which you are receiving treatment for and that you rely on the support unit in the UK that you have built up. You claim that you would not be able to receive this level of support in Nigeria.

The mere fact that you may have been treated in the UK and continue to receive treatment does not warrant a grant of leave. You have provided various pieces of evidence from recognised health professionals of your ongoing medical issues but in any case, although it is acknowledged that the medical facilities in Albania may not be as well-developed as those in the United Kingdom, in the case law of **N [2005] UKHL 31,** Lord Hope of Craighead noted that with regard to such differences:-

'This is because a comparison between the health benefits and other forms of assistance which are available in the expelling state with those in the receiving country does not in itself give rise to an entitlement to remain in the territory of the expelling state.' **N [2005] UKHL 31 - para.33**

You have not shown that you will be denied treatment upon return to Nigeria.

It has therefore been decided that there are no exceptional circumstances in your case. Consequently your application does not fall for a grant of leave outside the Rules." (Emphasis by underlining added.)

The parties were agreed that the reference to "Albania" was inept and this should have been a reference to Nigeria.

The petitioner's submissions considered under Article 3 of the ECHR

[20] The petitioner also advanced a claim based on Article 3 of the ECHR (medical grounds), which were addressed in the following passage of the Decision:

"Non-protection based Submissions: Other ECHR articles

Below is a **consideration** of your non-protection based submissions that have not previously been considered, but that taken together with the previously considered material, do not create a realistic prospect of success before an Immigration Judge:

- You also maintain that you have mental health problems and have been diagnosed with depression, anxiety and unstable personality disorder which you are in receipt of treatment in the UK. You attend regular counselling session and have been prescribed weekly medication. You claim that rely on the support you receive in the UK and this level of support would not be available in Nigeria.

It was previously considered by the Immigration Judge in your appeal determination whether there is sufficient treatment and support available to you on return to Nigeria. The findings of the appeal determination are set out at the beginning of this letter and it was found that although you may have mental health issues it was found that there must be a significant question mark as to how you survived in the UK over a period of more than seven years without any input from the relative services. The Immigration Judge concluded that you would be able to return to Nigeria and will be able to receive the relevant healthcare and medication.

Although this claim has been previously considered you have provided further up to date evidence;

- A Psychological Assessment by Dr Mairead Tagg dated 6th March 2017
- A Psychological Assessment by Dr Mairead Tagg dated 5th May 2016
- A letter from Dr Semple at Cardonald Medical Centre dated 13th April 2017
- A letter from Rape Crisis Centre dated 24th April 2016
- A letter from Life Link dated 21st April 2017

The Country Information Response Nigeria - medical issues - mental health treatment (11Nov2016) states;

Response: Information obtained from MedCOI sources in December 2015 indicated the availability of in and out patient treatment and follow up by psychiatrists from public facilities in Lagos. The same source indicated the availability of paliperidone palmitate depot injection.

Nigeria country information and guidance: Medical and healthcare - May 2015 states;

Treatment
The following are available:

- *Outpatient treatment and follow up by a Psychiatrist;*
- *In patient treatment by a Psychiatrist;*
- *Long term inpatient treatment in a Psychiatric hospital49;*
- *Outpatient treatment and follow up by a Psychologist (including psychotherapy for sexual problems);*
- *Treatment for PTSD (Post Traumatic Stress Disorder) by means of EMDR (Eye Movement Desensitisation and Reprocessing)50*
- *Electro Convulsive Therapy (ECT) is available 'unmodified' at some of the larger psychiatric hospitals - for example the Department of Mental Health, QAU Teaching Hospital Complex, Ile-ife51*
- *Forced admittance;*
- *Crisis intervention directly after forced admittance;*
- *Outpatient treatment and follow up by a general practitioner;*
- *In patient treatment by a general practitioner52*
- *Psychiatric day care and / or protected living are not available53*
- *2.5.4 There are adult psychiatrists at the Federal neuro-psychiatrist hospital, Lagos, and in most tertiary centres, the National Hospital, Abuja and a few in private practice around the country. (2.5.3)*

> It has therefore been shown that there is suitable care and treatment available to you in Nigeria and you have not provided any evidence to show that you would be denied this treatment. It is noted that you have been prescribed Citalpram and have occasionally had Diazepam in short terms courses, both of which are available courses of medication in Nigeria.
>
> Your case has been considered in line with Article 3 (medical) of the European Convention on Human Rights.
>
> You have not shown that you would be denied any medical treatment by all units in Nigeria.
>
> The House of Lords case **N V SSHD (2005)** set out some important principles to be applied when Article 3 is raised in relation to medical claims. The case of **N** established that the removal of an individual with a serious medical condition could only amount to inhuman or degrading treatment in the most exceptional and extreme circumstances. The House of Lords found that in order to meet the Article 3 threshold it must be shown that the applicant's medical condition has reached such a critical state that there are compelling humanitarian grounds for not removing him or her to a place which lacks the medical and social services which he or she would need to prevent acute suffering. Article 3 will only be engaged were the applicant's illness has reached such a critical stage (i.e. he/she is dying) and that it would amount to inhuman treatment to deprive him/her of the care they are currently receiving and send him/her to an early death unless there is care available to enable him/her to meet the fate with dignity.
>
> You have not shown that death is virtually certain were you to be removed from the UK. In light of the above case law, which sets an extremely high threshold for Article 3 medical claims, it is likely that an IJ would take this view." (Emphasis by underlining added.)

After extensive quotation from the cases of *N* v *SSHD* UKHL 31 and *Bensaid* v *The United Kingdom* (*Application no 44599/98) (mental health-complete lack of treatment)*, the Decision concluded that there would be no breach of the petitioner's rights under *inter alia* Article 3 if she were returned to Nigeria.

Discussion

Precis of parties' submissions

[21] There was no dispute as to the applicable law. The principal issues in this case are, first, whether the Secretary of State engaged sufficiently with the terms of Dr Tagg's Reports such as to satisfy the requirement to exercise anxious scrutiny, and secondly, whether she gave adequate reasons for the Decision. Mr Haddow, for the petitioner, went through the Decision in detail for the purpose of showing that there was no, or insufficient, engagement with Dr Tagg's Reports and, in particular, the conclusions she reached in her Second Report (set out above, at para [8]). For his part, Mr McIver, who appeared for the Secretary of State, went through the Decision to emphasize those passages that dealt with the material on the petitioner's mental health. I mean no disrespect to the very able submissions I have heard, if I do not set these out in detail. To the extent not encompassed in the foregoing summary, the salient features will become clear from the following discussion. There was a subsidiary argument as to whether the Secretary of State had also erred in law in her consideration of the petitioner's claim under Article 3. Reference was made to the cases of *J* v *SSHD* [2005] EWCA Civ 629 and that of *N* v *SSHD*, in the House of Lords, *cit. supra*, and before the Strasbourg Court (*sub. nom N* v *UK*, *cit supra*). In this context, Mr Haddow also cited the more recent case of *Paposhvili* v *Belgium (Application no 41738/10)*, dated 13 December 2016. This argument focused on certain *dicta* in *J* v *SSHD*, in particular, whether the expelling state required to consider whether the receiving state has "effective mechanisms to reduce the risk of suicide" (*per* Dyson LJ, as he then was, at para 31), relied upon by Mr Haddow, and in *N* v *SSHD* (in the House of Lords), relied upon by Mr McIver, to the effect that it needed to be shown in Article 3 medical cases that the applicant's medical condition had reached such a critical stage that there were compelling humanitarian grounds not to remove to

prevent acute suffering while the applicant was dying. (This passage was cited with approval by the Strasbourg Court, at para 17 of its judgment).

The challenge on the basis that there was a want of anxious scrutiny

[22] Mr Haddow argued that there was a failure on the part of the Secretary of State to exercise anxious scrutiny, as the Decision demonstrably did not engage with the critical findings, which were as to quite specific risks, and not just mental health issues for which treatment was required. Mr McIver submitted that the Decision had to be read as a whole and not in a compartmentalised fashion. In other words, the fact that there was no reference to the new medical evidence in one section (eg that dealing with para 276AED(1)(vi)), was not necessarily fatal, if there was reference to it in a different section (eg that dealing with exceptional circumstances outwith the Immigration Rules) and was such as to demonstrate that the material was known to and in the mind of the decision-taker. As a generality, I accept that submission.

[23] Turning to the Decision, in my view the treatment of Dr Tagg's evidence in the Decision is notably sparse. Apart from two references to Dr Tagg's Reports, listing the additional material submitted (at unnumbered page 3) and as material considered under the heading "Other ECHR Claims" (at unnumbered page 11), there are no other references either to Dr Tagg or to her reports in terms. I do not accept the contention, articulated in answer 7.4, that one may necessarily conclude that the decision-taker "was thus evidently aware of" Dr Tagg's reports "and their contents" simply on the basis that they have been listed at pages 3 and 11 of the Decision, at least in relation to material that is so obviously critical to the petitioner's fresh claim.

[24] The most significant of the findings in Dr Tagg's Second Report, in my view, were her conclusions that the suicide risk of the petitioner would be "exponentially increased" if she were told of a decision to deport her (at para 71), and that it was "highly unlikely" that the petitioner "would survive a return to her native country" (at para 72). These are very serious factors but these are not addressed at any point in the Decision. They are not even identified. Mr McIver accepted that there was no reference at all to the petitioner's mental health issues or assessed suicide risk in that part of the letter, quoted at paragraph [18] above, dealing with the question of integration in paragraph 276AED(1)(vi) of the Immigration Rules. Mr McIver relies on the passages under the headings of "exceptional circumstances" and the "Other ECHR articles", which are highlighted (by underlining) and quoted in paragraphs [19] and [20], above. The problem with this approach, on the facts of this case, is that there is nothing to demonstrate any consideration of, much less engagement with, the additional material from Dr Tagg and her far more concerning conclusions.

[25] In relation to the discussion under the heading "Exceptional Circumstances", the first part of the passage is framed in somewhat sceptical language: "you *claim that you suffer from mental health issues… ".* In the second paragraph, it is acknowledged that the petitioner has "provided various pieces of evidence from recognised health professionals of your ongoing medical issues….". On a generous reading, this is habile to include Dr Tagg. At best, however, these references to "mental health issues" and evidence from recognised health professionals are ambiguous. As noted above, the petitioner had also relied on mental health issues before the FTT and had produced medical information (including GP's letters about prescribed medication). Indeed, these are quoted at an earlier point in the Decision (see para [17], above). In my view, there is nothing in the Decision to demonstrate that the

decision-taker moved beyond reiteration of, and reliance on, the FTT's determination of the medical evidence, and which Dr Tagg's more serious conclusions had superseded.

[26] In the section of the Decision addressing "Exceptional Circumstances", there is a general reference to the petitioner's "depression, anxiety and unstable personality disorder". It is striking, however, that Dr Tagg's two critical conclusions were not even identified, much less addressed, in the Decision. The bland references in the Decision to depression, anxiety and a personality disorder, from which it may be inferred that the decision-taker was broadly aware of some features of Dr Tagg's Reports, are in my view not sufficient to address Mr Haddow's criticism that the treatment of private life and the question of integration under paragraph 276ADE(vi) of the Immigration Rules was without any regard to Dr Tagg's two critical conclusions. If Dr Tagg's conclusions are correct, the petitioner may commit suicide before she reaches Nigeria or shortly thereafter, ie before any question of integration would realistically arise. This is nowhere addressed in the Decision. I accept his submission that this section of the Decision was uninformed by any consideration of the petitioner's mental health issues and how those might affect the question of integration.

[27] While there is reference to the petitioner's "depression, anxiety and unstable personality disorder", in the section dealing with "Exceptional Circumstances", again, however, there is simply no mention of Dr Tagg's two critical conclusions. There is a singular failure to address these. They are simply ignored. The tenor of the reasoning was to rely, essentially, on the earlier determination of the petitioner's mental health issues by the FTT. Otherwise, the focus of the discussion of exceptional circumstances was to identify the treatment available to the petitioner in the UK for the purposes of applying *N* v *SSHD*, to the effect that a comparison of the medical treatment available in the expelling state and the receiving state does not itself give rise to an entitlement to remain in the expelling state.

After quoting a short passage from *N,* the Decision concluded that the petitioner had not shown that she would be denied treatment upon return to Nigeria. In other words, the focus was not on the suicide risk identified by Dr Tagg, either as it might be triggered in the UK (by notification to her of a decision to deport) or as it presented in Nigeria (if the petitioner were to arrive there). After the citation of the kind of psychiatric treatment known to be available, the Decision concluded that there is suitable care and treatment available. In my view, this misses the point. The focus on the inability to found on a difference in the medical services available in the UK versus Nigeria wholly fails to address the first risk Dr Tagg identified, and which would arise before the petitioner reaches Nigeria.

[28] However, the very particular facts at the heart of this case were Dr Tagg's very serious conclusions that the petitioner's "already enhanced" risk of suicide would be "exponentially increased if she were told that she cannot remain in the UK" and her further conclusion that it was "highly unlikely that [the petitioner] would survive a return to her native country". In the light of these findings, it seems to me that the decision-taker must address these very serious and specific risks. Having regard to the first risk of suicide (upon being advised of any decision to deport), identified by Dr Tagg at paragraph 71 of Dr Tagg's Second Report, it is not sufficient to focus on the picture in Nigeria and the petitioner's failure (it is said) to show that treatment would be denied her.

[29] The approach of the Secretary of State just identified, is also reflected in the section of the Decision addressing the petitioner's Article 3 claim. In my view, this suffers from the same deficiencies identified in those parts of the Decision already discussed. In short, nowhere in the Decision is there any acknowledgement of Dr Tagg's two critical conclusions and any engagement with the qualitatively more serious mental health risks she identified

in relation to the petitioner, arising on deportation or in Nigeria. The detailed recitation of, and reliance on, the general information about medical and mental health services in Nigeria (characterised by Mr Haddow as "generic" information) is in my view, again, wholly inadequate by reason of a like failure to address the anterior problem of the risk posed *prior to or upon the petitioner's* deportation. Put bluntly, even assuming there are adequate mental health services in Nigeria, there was no consideration of whether the petitioner would survive to access these. By contrast, for example, there was consideration of managing a suicide risk during the process of deportation, such as was referred to at paragraph 61 of *J*, but there is no like consideration in this case. The failure to identify and address these two critical conclusions from Dr Tagg's Second Report are glaring omissions in the Decision. It follows that I accept Mr Haddow's submission that there has been a failure to exercise anxious scrutiny. This is so, particularly in respect of the key findings of Dr Tagg's Second Report.

The challenge on the grounds of inadequate reasons

[30] Mr Haddow's challenge on the ground of inadequate reasons was closely allied to his first challenge. In my view, even taking all of the passages founded upon by Mr McIver together, and applying a benign interpretation, the Decision does not meet the test of providing "proper, adequate or intelligible reasons" (*per AK*) to explain what the Secretary of State made of Dr Tagg's Reports or why her conclusions were (in effect) rejected, because they were ignored.

[31] It follows that the petitioner's challenge succeeds and that the Decision falls to be reduced. In the light of my decision, I do not express any view on the interesting ancillary argument about whether, separately, there was also an error of law on the part of the

Secretary of State in her consideration of the petitioner's claim under Article 3 of the ECHR and the cases of *J* and *N*.

[32] For reasons given above I will sustain the second plea in law for the petitioner and reduce the decision of 31 July 2017. I will reserve meantime the question of expenses.