



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/48740/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2 September 2014**

**Determination
promulgated
on 4 September 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AYODEJI SEGUN DIRE-ODUKALE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Molyneux, of Global Immigration Solutions
For the Respondent: Mr K Young, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Morrison, promulgated on 9 April 2014, dismissing his appeal against refusal of leave to remain outside the requirements of the Rules

under Articles 3 and 8 of the ECHR, based on health treatment he receives in the UK, the equivalent of which he may not receive in Nigeria.

2. The appellant's first ground is that the judge did not address *KK and Others* [2014] EWCA Civ 415, distinguishing the appellants in *D* and *N* as "health tourists", which this appellant is not, and suggesting that there is scope for clarification of the criterion of exceptionality. The ground further says that the judge's consideration of the threshold in *N* is "fairly cursory" and that in light of the grant of permission in *KK* any further decision should be deferred until clarification is available.
3. The second ground is failure to give proper consideration or adequate weight to relevant matters, in particular evidence of high risk of further stroke if regular transfusions are stopped. The ground further says that the judge thus failed to realise that anything less than optimal treatment would be ineffective for the appellant and so the conclusion that other forms of treatment are unavailable in Nigeria has no basis in evidence.
4. Further to the grounds, Mr Molyneux said that the judge's findings were to the effect that the appellant is not a health tourist. Although he had his sickle-cell diagnosis before coming to the UK, it is his subsequent stroke which takes him out of the "normal run" of sickle-cell cases. The judge made only cursory findings on Article 3. His finding of good reason to look outside the Rules on Article 8 showed lack of proper consideration at the earlier stage. On Article 3, the determination should be set aside and the case remitted to the First-tier Tribunal for hearing after the Court of Appeal decides *KK*. (Mr Molyneux has made some enquiries but has been unable to find out when it is to be heard.)
5. Turning to the second ground and to Article 8, Mr Molyneux said that although the judge purported to carry out a proportionality assessment, his conclusions were brief and inadequate. The judge appeared to think that even on the worst outcome for the appellant, an entire absence of treatment in Nigeria, that was outweighed by considerations of immigration control and expense to the UK. That failed to give due weight to the evidence for the appellant, as cited in the grounds, so the determination was flawed.
6. Mr Young said that *KK* had not been before the judge, so there was no error of not taking it into account. In any case, it was not authority for finding error of law in the determination. Article 3 was properly decided at paragraph 28 on the ruling cases, and the judge needed to say nothing more. As to Article 8, far from failing to consider the relevant medical evidence, the judge set out all its salient terms at paragraphs 24 - 27. Having found there to be a good arguable case for looking outside the Rules, he correctly and crucially found at paragraph 42 that while treatments available in Nigeria were said to be sub-optimal they

were not said to be ineffective. The determination was detailed and thorough, reached a conclusion properly open to the judge, and disclosed no error of law.

7. I reserved my determination.
8. On Article 3, I do not think that applying the cases to which he was referred, and which remain authoritative, the judge made any error. Further, I doubt whether he could properly, in line with authority, have come to any other conclusion.
9. The judge was not referred to *KK*, decided shortly before the hearing. As a grant of permission, it could not go very far to move him to another decision. It is not surprising that the appellant now prays it in aid, it may herald some change of direction, and the outcome is awaited, but I think it is over-optimistic to read into the terms of the grant that the tests for entitlement to remain for better medical treatment are likely to be clarified so as to benefit a case like this.
10. The Presenting Officer's point about the judge's conclusions from the medical evidence was well taken. While on the factual findings this case has sympathetic features, it does not disclose a drastic difference of likely medical outcome. Paragraphs 42 and 43 are to the effect that the balance is therefore clearly against the appellant, an impeccable and decisive conclusion, but that *alternatively* even at worst the balance is against him - a more finely balanced issue, but on which the outcome is also not shown to be wrong in law.
11. The appellant's case has been pressed as strongly as it properly could be, both in the First-tier Tribunal and in the Upper Tribunal, but in the end it is now only disagreement with conclusions properly reached.
12. The determination of the First-tier Tribunal shall stand.



2 September 2014
Judge of the Upper Tribunal