IAC-FH-CK-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49343/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 October 2014	**On 4 November 2014**
Prepared 27 October 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MRS BEATRICE OHANUMMA OBEGORO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hay, Counsel instructed by Samuel Louis Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 13 February 1952, appealed against the Respondent's decision dated 5 November 2013 to make removal directions under Section 47 of the Immigration, Asylum and

Nationality Act 2006 and to refuse to vary leave to remain as a visitor for the purposes of private medical treatment.

2. The appeal came before First-tier Tribunal Judge R G Walters (the judge) who on 14 July 2014 dismissed the appeal with reference to paragraphs it would seem certainly 52 and 54 of the Immigration Rules HC 395 (as amended).

3. The grounds to the First-tier Tribunal had included a claim, albeit briefly stated, with reference to Article 8 of the ECHR being a basis to remain in the alternative.

4. The judge dealt with removal directions and dealt with the appeal under paragraph 54 of the Immigration Rules. The judge did not deal with any Article 8 ECHR claim albeit it had been raised as I have said in the grounds to the First-tier Tribunal.

5. An examination of the Record of Proceedings of 24 June 2014, at which Mr Hay did not appear but a Mr Ukonu, legal representative of Samuel Lewis Solicitors, showed submissions but it is clear that those addressed the factual issues relating to the immigration decision on the intended arrangement for treatment to continue for the Appellant in the United Kingdom. There is nothing to indicate in the carefully noted Record of Proceedings any other submissions being advanced other than under the Rules.

6. I can find nothing to indicate any submissions made by either the Appellant's or the Respondent's representatives addressing Article 8 of the ECHR. The judge, concluded that the Appellant had failed to produce the necessary evidence to meet the requirements of paragraph 54(ii)(d) in adducing full details of the probable duration of the Appellant's treatment and the judge so found at paragraph 23 of the determination.

7. Whilst Mr Hay sought to persuade me that two, possibly three e-letters, when read together, ought to deliver the conclusion as to the probable duration of the treatment. I disagree with him insofar as that the correspondence indicates that there are aspects of treatment either which can no longer be effective at all, in which case there is no duration of treatment, and other elements which involved eye drops and assessment which are ongoing. The relevant medical evidence never sought to address probable duration and it is simply not enough to infer that there was none because there was no stated end to the duration of treatment: In those circumstances it would quite simply have been perfectly easy to have set that out in correspondence. An abiding omission in this case is in fact the lack of correspondence from the qualified medical consultant involved setting out what the probable duration of treatment was for each complaint as required under the Rules and at least some assessment of the costs of treatment if that was to continue.

8. I do not accept, as Mr Hay argued, that there was evidence that showed compliance with the Rules. As was highlighted in Mr Jarvis' submissions the thrust of the arguments now being put by the Appellant are essentially that the Appellant should permanently remain in the United Kingdom rather than remain for the purposes of finishing treatment and then going back to Nigeria. Be that as it may and that being at odds with paragraph 51 of the Rules I do not need to resolve that matter now.

9. I find no error of law in the way the judge addressed paragraph 54 of the Rules or indeed Removal Directions under Section 47 of the 2006 Act.

10. It is correct that the judge did fail to refer to the correct gender of a witness who gave evidence: Who was not, as he said, the Appellant's daughter-in-law but rather the Appellant's son-in-law. Similarly his summary of the evidence of the son-in-law, to this extent in paragraph 20 of the determination, again illustrates that the judge has confused, not I think the person involved, but the gender of the witness. The errors are

not acceptable but I do not find they makes any material difference to the assessment of compliance with paragraphs 52 and 54 of the Rules and outcome relating to the probable duration of the treatment being omitted.

11. The next point taken by Mr Hay, who did not settle the grounds of appeal, was that Article 8 ECHR had not been properly addressed, indeed it is fair to say the judge makes no reference to it whatsoever as a ground of appeal.

12. It is clear that if a party has raised grounds and indicates they are all pursued then the First-tier Tribunal Judge is obliged to deal with those grounds whatever their merits may be. However, it is apparent in this case that Mr Ukonu, the legal representative, did not pursue that matter nor is there evidence from him in the usual way to be expected by way of a witness statement confirming that he raised the matters in issue. It is not said by reference to a notebook or contemporaneous note that Article 8 ECHR was pursued before the judge.

13. In these circumstances I am left with the position that Article 8 did not fall to be considered. It seemed to me the case of Sarkar [2014] EWCA Civ 195 was of assistance because it points out that if a matter is not pursued or if such reasonable inference can be drawn from the presentation of the appeal then it does not fall upon a judge as a matter of approach to necessarily deal with it. No doubt it would be better if the judge included in a determination that a matter was no longer pursued or that confirmation had been given from the Appellant's representative of those matters: This would plainly be a safe and better course to follow but it does not mean that there has been an error of law simply through the judge failed to deal with the Article 8 issue as originally raised when as a fact it was not pursued.

14. Whilst there may have been matters that could have been argued, I make no judgment upon them I find that the judge made no arguable error of

law in failing to deal with the Article 8 claim as it had been raised in the original grounds to the First-tier Tribunal. In reaching that conclusion I have of course carefully considered the implications of the case of R (Iran) [2005] EWCA Civ 982 and E & R [2004] QB 1044 CA and as it applies the case of Karanakaran [2007] (reference to be checked). Insofar as that indicates what is expected of an Immigration Judge in determining the live issues before the Tribunal.

15. It is plain from the arguments and the evidence before the judge that the Appellant was not relying upon family life protected rights within Article 8 of the ECHR. Similarly it is not it seems to me being asserted that the Appellant was exercising any fundamental rights, which Article 8 was intended to address in terms of the rights they wish to exercise here. Rather they were simply a manifestation of the broader fact that the Appellant has had a private life of her own in the United Kingdom. It is of course right to say she only came to the UK on the basis and expectation of a limited stay for the purposes of treatment: She had with the intention to return home at the conclusion of that treatment. The treatment now seems to have extended itself because of particular needs but I do not find that is any sense of enlarged private life rights nor does she have a right to remain here nor a right to treatment here.

16. I fully take into account that the Appellant has not had free treatment. I am prepared to assume she would not have or seek free treatment but that is almost immaterial to the issue of whether or not the Respondent's decision, on the basis upon which application was made, is disproportionate. Quite simply nothing in the argument even gets close to identifying the public interest or the importance to be ascribed to it nor in the statements of the Appellant and her son-in-law does that matter get addressed as it needed to be if there was to be shown on a balance of probabilities that Article 8(1) rights were engaged and that the Respondent's decision amounted to a significant interference with those rights.

17. I do not express any view on the availability of treatment or the quality of treatment to be found outside the United Kingdom. Whilst I have sympathy for the Appellant's situation the fact of the matter is that the proper application of Article 8 ECHR is not done on a 'near miss' or 'sympathetic' basis but is done so long as those rights are properly engaged and the questions posed in Razgar [2004] UKHL 27 and Huang [2007] UKHL 27 are addressed. This similarly begs the question of whether or not there are the circumstances which would engage with Article 8 outside of the Rules: Which has not been an issue canvassed before me. Upon the face of it it does not appear to me that the Appellant gets close to identifying a material matter not covered by the rules or the kind of compelling circumstances expected to look at Article 8 outside of the Rules. In those circumstances I conclude that the omission of reference to Article 8 ECHR was not a material error of law.

18. The appeals on immigration grounds, under Section 47 of the 2006 Act and in relation to Article 8 ECHR stand dismissed.

ANONYMITY ORDER

No anonymity order was made and none is necessary, appropriate or sought.

Signed Date: 30 October 2014

Deputy Upper Tribunal Judge Davey