



IAC-AH-CJ-V2

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

Appeal Number: AA/06153/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**[M B]**

**~~(NO ANONYMITY DIRECTION MADE)~~**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss O Wybraniec (Counsel)

For the Respondent: Mr E Tufan (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The Appellant is a citizen of Sierra Leone born on 2<sup>nd</sup> September 1942. The Appellant's immigration history is that the Appellant applied for a multientry visit visa to the United Kingdom in 2001. There is a difference between the dates recorded by the Secretary of State, who contends that that visit visa expired on 10<sup>th</sup> November 2001, and that of the Appellant, who through her Counsel states that it expired on 7<sup>th</sup> December 2001. There is some small amount of relevance in those variations of dates but on 3<sup>rd</sup> December 2001 an application was made by the Appellant for leave to remain as a carer of her pregnant niece and the Appellant was granted

further leave to remain until March 2003. If the Appellant's dates are correct then the application was made in time. If they were not then it was made when she was an overstayer. I anticipate it makes little difference to the current application.

2. On 10<sup>th</sup> March 2003 the Appellant made a further application for leave to remain which was refused on 23<sup>rd</sup> June 2003. Thereafter the Appellant became an overstayer. On 17<sup>th</sup> September 2013 the Appellant claimed asylum in the UK on the basis that there was no-one to care for her in Sierra Leone and she feared that if she returned to Sierra Leone she would face persecution due to refusing to join the Bondo Society as a Digba upon inheriting the position from her deceased sister. In that role the Appellant would be required to perform FGM on girls, a practice to which she is opposed.
3. On 21<sup>st</sup> March 2015 the Appellant's appeal was refused by Notice of Refusal issued by the Home Office. The Appellant lodged Grounds of Appeal to the First-tier Tribunal and the appeal came before First-tier Tribunal Judge Swinnerton sitting at Hatton Cross on 18<sup>th</sup> September 2015. In a determination promulgated on 7<sup>th</sup> October 2015 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
4. On 19<sup>th</sup> October 2015 the Appellant lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended *inter alia*:-
  - (i) that the First-tier Tribunal Judge had misapplied the standard of proof;
  - (ii) that the judge had misapplied the test for reintegration;
  - (iii) had failed to give adequate reasons for findings on material matters; and
  - (iv) had failed to take into consideration material matters, namely the Appellant's medical and care needs
5. On 4<sup>th</sup> November 2015 First-tier Tribunal Judge Grimmett found that the first ground showed no arguable error as the standard referred to is from Directive 2002/83/EC, and that the second ground showed no error as the judge was not satisfied there were obstacles to reintegration. However the judge did find that it was arguable that the judge had erred in failing to say why it was not credible that the Appellant had no family members in Sierra Leone. The Secretary of State responded to the Grounds of Appeal by way of a Rule 24 reply on 12<sup>th</sup> November 2015.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Miss Wybraniec. Miss Wybraniec is extremely familiar with this matter. She appeared before the First-tier Tribunal, she is the author of the Grounds of Appeal and she has also prepared for this hearing a skeleton argument. The Secretary of State proceeds by her Home Office Presenting Officer Mr Tufan.

## **The Issues**

7. I have recited above the decision of 4<sup>th</sup> November 2015 when First-tier Tribunal Judge Grimmett gave permission to appeal on the basis that it was arguable that the First-tier Tribunal Judge in hearing the appeal had failed to say why it was not credible that the Appellant had no family members in Sierra Leone under Ground 3 of the appeal. I note that the reasons for decision are silent as to the further reasons for Ground 3 and that no reference is made whatsoever pursuant to Ground 4 in its entirety. I acknowledge and accept the submission made by Miss Wybraniec which is not opposed by Mr Tufan, namely that following the guidance given in *Nixon (Permission to appeal: grounds) [2014] UKUT 3618* that irrespective of whether permission to appeal is granted on all of the grounds advanced or some thereof only, a reasoned decision is always required in respect of each and every ground which reinforces the necessity of considering all grounds with scrupulous care. I consequently note and accept that in the absence of a reasoned decision, either granted or refusing permission to appeal on other matters under Grounds 3 and 4, that the Appellant is entitled to proceed on the basis that permission is granted in respect of those grounds also.
8. Consequently the position before me relates to an appeal pursuant to Article 3 and Article 8 of the European Convention of Human Rights. It is noted, and I record, that there is not an extant appeal before me on asylum or humanitarian protection grounds.

### **The Appellant's Health**

9. The Appellant appears in person with the support of two ladies who advised me that they are her nieces. One is her niece [MS], who is the author of a witness statement and gave evidence before the First-tier Tribunal. I am also aware of a medical report dated 1<sup>st</sup> September 2015 from Dr Bethany West of the Cognitive Impairment and Dementia Service West London Mental NHS Trust which concludes that after discussion with her senior registrar it appears that the Appellant has a severe cognitive impairment which fits a vascular dementia F018. A care plan thereafter is recited. That report was before the First-tier Tribunal.
10. I have had the benefit of observing the Appellant. Clearly I have no medical training. However on two occasions during the course of the hearing the Appellant became agitated and had to be restrained by her attending nieces (both of whom spoke English) from getting up and wandering around the court. It was clear that the Appellant did not understand the process and was unable to communicate. I made no evaluation but it was agreed that that was no reason for the hearing not proceeding on the error of law. However, it is relevant so far as directions given herein and on the Appellant's ability to participate in any rehearing. Mr Tufan on behalf of the Secretary of State noted and acknowledged the position.

### **Submissions/Discussion**

11. I am gratefully assisted in this matter by the intervention of Mr Tufan who acknowledges that Article 8 has been inadequately considered in the

opinion of the Secretary of State by the First-tier Tribunal Judge. He accepts that the Appellant has some family life and therefore Article 8 could be engaged. He also concedes that in such circumstances it would also be appropriate to remit the appeal under Article 3 albeit it is the Secretary of State's belief that such appeal could not succeed.

12. Miss Wybraniec acknowledges this position and is grateful for the concession made by the Secretary of State. She makes no concession however with regard to the claim pursuant to Article 3. She refers me in some detail to paragraphs 20 to 39 of her skeleton argument and relies upon these as being the basis upon which there are material errors of law in the decision of the First-tier Tribunal Judge.

## **The Law**

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

15. I agree with the submissions of both legal representatives in this matter. The consideration of Article 8 is covered in five very short paragraphs and is completely inadequate. The judge has failed to give due consideration to the observations made in *GS (India) and Others v SSHD [2015] 1 WLR 3312* where Laws J affirmed that in medical cases if an Article 3 claim fails:  
"Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm - the capacity to form and enjoy relationships or a state of affairs having some affinity with this paradigm."

I consequently note the submission made by Miss Wybraniec on the Appellant's behalf that even if the Appellant's claim were to fail under Article 3 her close relationship with her nieces and their families in the UK requires leave to be granted on the basis of Article 8. To that extent and the failure to consider Articles 3 and 8 fully and properly in the light of the testimony by the First-tier Tribunal Judge, must constitute material errors of law and I consequently set aside the decision and remit the matter to the First-tier Tribunal giving appropriate directions which are set out herein in the decision paragraph.

### **Notice of Decision**

- (1) The decision of the First-tier Tribunal contains material errors of law and is set aside. The basis upon which the appeal is set aside and the issues outstanding relate solely to the Appellant's appeals pursuant to Article 3 and Article 8 of the European Convention of Human Rights.
- (2) That the appeal is remitted to the First-tier Tribunal at Hatton Cross to be relisted on the first available date after 1<sup>st</sup> July 2016 with an ELH of two hours before any judge other than Immigration Judge Swinnerton.
- (3) That the Appellant's solicitors obtain a medical report from a nominated consultant setting out the extent of the Appellant's vascular dementia, her current and forthcoming care needs and her life expectancy.
- (4) It is ordered that such report to be prepared, filed at the Tribunal and served upon the Secretary of State by 1<sup>st</sup> June 2016.
- (5) That there be leave to the Appellant's solicitors to file and serve up-to-date witness statements from the Appellant's nieces in support of the Appellant's appeal, such witness statement evidence to be filed and served at least fourteen days prior to the restored hearing.
- (6) That a Temne interpreter is required. In the event that the medical evidence shows that the Appellant will not be able to understand any testimony nor to provide any testimony, then there be leave to the Appellant's representatives to make application to excuse the personal attendance of the Appellant at the restored hearing. If such application is made and is granted then the Appellant's solicitors should advise the Tribunal as to whether the witnesses who will be attending on her behalf require a Temne interpreter or not.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris