



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08973/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8 June 2018

Decision & Reasons Promulgated
On 30 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS LUCY MABEL KOMBE KAJUE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss S Kiss, Home Office Presenting Officer.
For the Respondent: Mr M Iqbal, Legal Representative.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of State referred to as “the Respondent” and Miss Kajue as “the Appellant”.
2. The Appellant is a citizen of Sierra Leone who appealed against the decision of the Respondent dated 15 March 2016 refusing her a grant of leave to remain in the United Kingdom. She appealed and following a hearing at Hatton Cross, and in a decision dated 29 August 2017, Judge of the First-tier Tribunal Adio allowed her appeal. In so doing, at paragraph 12 of his decision, he recorded,

“12. The appeal is allowed on human rights grounds (Article 8 within the Rules)”

3. The Respondent sought permission to appeal which was initially refused but a renewed application to the Upper Tribunal was granted by Upper Tribunal Judge Hanson in a decision dated 25 April 2018. He reasons for so doing were: -

“On 29 August 2017 First-tier Tribunal Judge Adio (the Judge) allowed the appellant’s appeal on human rights grounds. Permission to appeal was refused by another Judge of the First-tier Tribunal and has been renewed to the Upper Tribunal.

It is not disputed the appeal was allowed pursuant to paragraph 276ADE1(vi) but without, arguably, properly considering that it will only be in exceptional circumstances where medical conditions do not meet the severity of article 3 that they will lead to a potential grant under article 8 outside the Immigration Rules or under the Rules in respect of 276ADE.

The Judge records a number of medical conditions suffered by the appellant in addition to the situation said to exist in Sierra Leone. The Judge found under 276ADE(1)(vi) that there will be very significant obstacles to the appellant’s integration into her home country on the basis the appellant does not have family or relatives back in Sierra Leone and no home to return to. It was noted the Appellant has not lived in her home state for about thirteen years. Her medical conditions form part of her private life in relation to which she needs the support of her family members around her. The Judge finds in light of the family life in the UK and the support she needs to carry on, on a daily basis, there are significant obstacles to integration.

The original grounds assert the Judge failed to adequately assess the decision in GS and EO (Article 3-Health cases) India [2012] UKUT 000397 and that whilst the appellant does suffer from a variety of medical conditions none of those remotely reach the threshold of severity identified in the case law. It is arguable when considering whether medical issues are sufficient to support a finding of significant obstacles to integration that it was necessary for the Judge to recognise it was only in exceptional circumstances where the medical condition did not meet the severity of article 3 that they could lead to a potential grant under article 8 outside the rules; which is a matter not explore (sic) by the Judge in the decision under challenge.

The respondent’s submission that the factors relied upon are not of an exceptional nature is, on the face of it, arguable.

The determination, whilst referring to the need for support and care, contains no references to the level of care which may be required by the appellant. The Judge was also arguably required to give reasons for why family life recognised by article 8 existed between adult dependent relative and why the relationships are

beyond the normal levels of affection. It is also arguable the Judge gave inappropriate weight to the fact the appellant does not have any close family members back in Sierra Leone without analysing why that satisfied the definition of article 8 family life exceptional circumstances.

The grounds also assert the Judge has erred by failing to consider why the appellant's family who attended the hearing to give evidence will be unwilling or unable to provide the appellant with financial and emotional assistance she may need in order to reintegrate into Sierra Leone, a country she has spent the vast majority of her life in, and which may enable her to purchase assistance or care if the same is required.

The grounds of appeal are limited to human rights grounds. The Judge allowed the appeal under the immigration rules. Whilst that forms part of the respondent's assessment of how article 8 matters should be properly considered, there is still a requirement to examine and make findings upon all relevant aspects of the evidence which arguably has not occurred at this stage of these proceedings.

It cannot be said the error is not material for unless there has been a proper analysis of the evidence it cannot be said the decision made by the Judge is the only decision likely to be made in this case.

Permission granted."

4. Thus, the appeal came before me today.
5. Ms Kiss argued that the Judge had appeared to allow the appeal under the Immigration Rules – paragraph 276ADE 1(vi) but the same provisions that govern a consideration of Article 8 outside of the Immigration Rules were applicable to this case.

"i.e. That it would only be in exceptional circumstances when medical conditions did not meet the severity of Article 3, that this can lead to a potential grant under Article 8 outside of the Immigration Rules or Rules in respect of 276ADE".

Further the Judge has failed to take into account and adjudicate upon many elements of the Respondent's case. She argued that this was an appeal where the facts did not reach the very high threshold as envisaged in **AM (Zimbabwe) and Anor v SSHD [2018] EWCA Civ 64**.

6. For his part Mr Iqbal, argued that Judge Hanson's grounds for granting permission to appeal were "misconceived" and that the Judge had dealt with all issues and come to a conclusion at paragraph 10 of his decision that there were at least nine significant obstacles to this particular Appellant returning to her country of origin. The Respondent had not challenged the findings under paragraph 276ADE of the Immigration Rules and this was not just a "medical case" but one where the medical issues were only a part of the factual matrix. If the Appellant met Article 8 within the

Immigration Rules, which amounts to the Respondent's position thereon, then the Judge was right to allow the appeal.

7. I do not accept Mr Iqbal's submissions. This appeal has been decided without properly considering that it will only be in exceptional circumstances where medical conditions do not meet the severity of Article 3 that they will lead to a potential grant under Article 8 outside of the Immigration Rules or under the Rules in respect of paragraph 276ADE. Here the Judge has found that in light of the family life in the United Kingdom and the support that the Appellant needs to function on a daily basis there are significant obstacles to integration. I find that it is necessary for the Judge, in considering whether the medical issues raised are sufficient to support a finding of significant obstacles to integration for the Judge to recognise that it would only be in exceptional circumstances where the medical condition did not meet the severity of Article 3 that they could then lead to the appeal being allowed on Article 8 grounds outside of the Immigration Rules. The Judge has not considered this. The evidence suggests that there is nothing exceptional in the Appellant's medical condition. Further the Judge has failed to make findings and give reasons as to why the Appellant's family life has existed between adult dependent relatives and why those relationships are beyond the normal levels of affection. The Judge has given inappropriate weight to the fact that the Appellant does not have any close family members in her country of origin without analysing why that satisfied the definition of Article 8 family life exceptional circumstances. Further there has been no finding in relation to why the Appellant's family would be unwilling or unable to provide the Appellant with financial and emotional assistance and to enable her to reintegrate into Sierra Leone. The Judge appears to have allowed the appeal under the Immigration Rules which he was not entitled to do. Looking at the decision in the round the Judge has failed to make findings upon all relevant aspects of the evidence in a decision that is not adequately reasoned.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Adio.

No anonymity direction is made.

Signed

Date 23 July 2018.

Deputy Upper Tribunal Judge Appleyard