



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

Appeal Number: HU/06585/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2018**

**Decision & Reasons
Promulgated
On 24 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MRS RITA DARPOH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals the decision of the First-tier Tribunal promulgated on 27 June 2018 to dismiss her appeal against the respondent's decision to refuse a humanitarian protection claim under Article 8 of the European Convention on Human Rights.
2. The background to this application is that the appellant entered the UK with entry clearance as a working holidaymaker in 2005 and has been given various extensions of her leave since as a visitor and subsequently she applied for leave to remain as a spouse on 10 August 2012 but this

was refused. Her appeal rights were exhausted as long ago as 11 October 2013. Finally, she applied for leave to remain on the basis of her family or private life, but this was refused on 27 June 2016. Her human rights application was subsequently certified as being unfounded but by consent the Upper Tribunal allowed the respondent to withdraw that decision. The respondent subsequently judge me decision also refusing the appellant's human rights claim it would seem on 11 May 2017.

3. The appeal which was before the First-tier Tribunal at the hearing which took place at Hatton Cross 22 May 2018 was the appellant's appeal against the refusal of leave to remain on human rights grounds and that was on the specific basis that she had become the carer for one Mr Lamprey, who, sadly, suffered from a debilitating form of illness, a neurological condition which necessitated care by the appellant on a more or less daily basis, or at least that was her case.
4. The judge who heard her appeal, Mr Rhys-Davies, considered that the appellant had not established that she would qualify under the Immigration Rules, having had regard to the guidance issued by the respondent, in particular, the IDI guidance. He regarded the equivalent care as being available to the appellant under the local authority's care requirements or obligations, if not from local Social Services. A suitable level of care would be provided by the National Health Service and, therefore, the Immigration Judge was not satisfied that the appellant qualified under Article 8. Having found that the Article was engaged, he did not consider that the balance came down in favour of the appellant on the facts of the case.
5. The appellant appealed that decision by applying first for permission to appeal to the First-tier Tribunal for permission to appeal to the Upper Tribunal but that initial application was refused by Judge Alis on 4 August 2018. However, she renewed her application to the Upper Tribunal and application that came before Deputy Upper Tribunal Judge Shaerf, who gave permission to appeal on the basis that in his view, paragraph 17.5 of the IDI guidance had not been fully considered by the judge and that placed an obligation on the respondent to ascertain the care arrangements that would be in place for Mr Lamprey if the appellant was removed from the UK. This affected the proportionality assessment and there was an arguable error of law.
6. At the hearing before the Upper Tribunal, Mr Kotas has placed before me a fax received on 5 December 2018 at the Presenting Officers' Unit in Central London. Unfortunately, the fax was not received by the Courts & Tribunals Service but I have had an opportunity to read its contents. It states that the solicitors who were instructed on behalf of the appellant, a firm of solicitors called M A Consultants of Whitechapel Road, London, E1, would not be attending the Tribunal but Upper Tribunal was invited to determine the appeal "on the papers", drawing attention to the fact that, sadly, Mr Lamprey, the appellant's uncle, had, sadly, passed away. A

medical certificate is supplied, confirming that that gentleman had died of a heart condition, myocardial infarction, as certified by the doctor as long ago as 29 July 2018. It is somewhat unfortunate that the information was not relayed to the Tribunal until recently.

7. In the light of that important piece of information, Mr Kotas invites me to dismiss the appeal, pointing out there is in fact no error of law in the decision of the First-tier Tribunal. It would seem academic to consider whether the decision of the First-tier Tribunal was made following a material error of law. Even if it was, it is not material to the outcome of the case because, ultimately, any Tribunal remaking the decision based on the facts as they are known today conclude that the appellant is no longer a long-term carer for Mr Lamprey. In the circumstances, having fully taken into account the grounds of appeal and the basis for this appeal, I find there to be no material error of law in the decision of the First-tier Tribunal. Accordingly, that decision stands.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal to dismiss the appeal against the respondent's refusal to grant further leave to remain on human rights grounds stands.

No anonymity direction is made.

Signed

Date 11 January 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 11 January 2019

Deputy Upper Tribunal Judge Hanbury