



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

Appeal Number: HU/18055/2016

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 5 October 2018**

**Decision & Reasons
Promulgated
On 5 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**KASSAM ALARAKHIA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mian of Counsel instructed by Jasvir Jutla & Co.

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Grimmett promulgated on 19 June 2017 in which he dismissed the appeal of the Appellant against a decision of the Respondent dated 11 July 2016 refusing leave to remain in the UK.
2. The Appellant is a citizen of Tanzania born on 3 August 1935. He entered the UK on 12 June 2000 pursuant to a visit visa and was granted leave to

enter until 12 December 2000. He overstayed the duration of his leave to enter. On 3 July 2001 the Appellant applied for leave to remain for medical treatment: his application was refused on 26 April 2002. The Appellant continued to remain in the UK without leave. On 3 October 2007 the Appellant purported to make a claim based on ancestry, but the appropriate fee was not received. On 11 October 2007 the Appellant applied for leave to remain outside the Immigration Rules. The application was refused on 20 September 2008. The Appellant appealed to the IAC (ref IA/16897/2008): his appeal was dismissed under the Immigration Rules and on human rights grounds for reasons set out in the Decision of Immigration Judge Freer promulgated on 24 November 2008. Thereafter, again the Appellant remained in the UK without leave.

3. I pause to note that Judge Freer also considered on the same occasion a linked appeal brought by the Appellant's daughter Ms [MKA] (ref IA/16900/2008), which was also dismissed. Judge Freer found "*that the Appellant's daughter is willing and able to take care of the Appellant no matter which country they live in*" (paragraph 51).
4. On 17 June 2014 the Appellant made a further application for leave to remain pleading Article 8 of the ECHR. The application was refused on 18 August 2014. In due course judicial review proceedings were commenced: documents on file show an 'issue' date of 18 November 2014 (ref JR/14086/2014). The judicial review was eventually settled by way of a Consent Order with the Respondent undertaking to reconsider the Appellant's application. The application of 17 June 2014 was again refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 11 July 2016. It is this latter decision that is the subject of the present proceedings.
5. In the decision of 11 July 2016 the Respondent considered 'family life' with reference to Appendix FM of the Immigration Rules, but found that in the absence of any claim to have a partner or any dependent children under the age of 18 in the UK the Appellant did not meet the requirements of either the so-called 10 year 'partner route' or the 'parent route'. The Respondent gave consideration to 'private life' with reference to paragraph 276ADE(1) of the Rules: the Appellant did not satisfy the 'age' and 'time' requirements of the subparagraphs (iii), (iv), and (v); in respect of paragraph 276ADE(1)(vi) the Respondent did not accept that there would be very significant obstacles to the Appellant's integration into Tanzania if he were required to leave the UK "*because you had spent 64 years of your life living in your home country prior to entering the UK in 2000*".

6. The Respondent also gave consideration to private and family life under Article 8 of the ECHR outside the Immigration Rules, and also Article 3 of the ECHR. In this context it was noted that the Appellant had stated in his application that he was *“suffering from disability due to the stroke which you had in 1999. It is further claimed that you are suffering from cerebrovascular disease, non-insulin-dependent diabetes, peripheral neuropathy due to diabetes, bladder outflow obstruction, iron deficiency anaemia, and impaired vision and CKD stage 3”*.
7. The Respondent did not consider that such matters engaged Article 3 of the ECHR. The RFRL states:

“None of the conditions you claim to be suffering from are in themselves life-threatening. ...

You also state that you have no ties to your home country, with no family support, and would not have anybody to look after your day-to-day needs. In support of your application you have provided a letter dated 16 May 2014 from Dr Arolker which states that you are “not in a good state to stay independently outside of the UK”. However, it is noted that your daughter [MKA] is currently in the UK unlawfully and therefore it is expected she will be returning to Tanzania where she will be able to help care for you.

You have not provided any evidence to suggest that you are currently receiving treatment for an end-of-life illness, and that you will be deprived of care you are currently receiving or that you will be sent home to an early death. Therefore it is not considered returning you to Tanzania with these medical circumstances will deprive you of your rights under Article 3.

Whilst treatment and support for your conditions may not be at the same level as found in the UK, the Secretary of State is satisfied that you will not be disadvantaged more than other Tanzanian nationals in a similar position medically and age-wise. Our previous correspondence has outlined the medical help available to you in Tanzania.”

8. The Appellant appealed to the IAC.
9. The appeal was dismissed for the reasons set out in the ‘Decision and Reasons’ of Judge Grimmett.
10. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by Designated First-tier Tribunal Judge Peart on 28 November

2017. In material part the grant of permission to appeal is in the following terms:

“The grounds claim the Judge failed to consider the evidence with regard to the appellant’s medical and care needs. In particular the Judge failed to consider various medical reports.

The appellant’s bundle included copies of judicial review proceedings which included various medical reports which the Judge appeared to overlook. He says at [8] that the only evidence before him with regard to medical matters was the letter from Manor Park Medical Practice dated 5 June 2017.

*It is arguable that the Judge failed to carry out a complete analysis of the appellant’s circumstances against the appropriate case law **Paposhvili (Application No.41738/10)** and its application bearing in mind **EA (Article 3 medical cases - Paposhvili not applicable) [2017] UKUT 45 (IAC)** and the earlier Article 3 health cases such as **N** and **D.**”*

11. It does indeed appear to be the case that the First-tier Tribunal Judge overlooked the medical evidence that was included in the judicial review bundle. The judicial review bundle was incorporated into the Appellant’s appeal bundle before the First-tier Tribunal. At paragraph 8 the Judge states *“The only evidence before me was a letter from Manor Park Medical Practice dated 5 June 2017”*. There was additional medical evidence in the judicial review documents – see further below.
12. Ms Aboni on behalf of the Respondent accepted that the Judge had seemingly overlooked these documents. However, the Respondent submits that such oversight was immaterial.
13. In the circumstances I explored with Mr Mian the medical documents that had been included in the judicial review bundle, in particular inviting him to comment on what might have been gleaned from such documents by the Judge that was not evident in the letter of 5 June 2017.
14. The letter of 5 June 2017 is a matter of record on file, and accordingly I do not reproduce its contents here. It is in two parts: it initially reproduces information provided in August 2016, and then provides an update as of 5 June 2017. The First-tier Tribunal Judge referred to the contents of the letter at paragraphs 8-10 in the following terms:

“8. ... It says that the letter provides information given to the appellant in August 2016 when it was said that he suffered/suffers

from CVA, subsequent weakness and tremor, impaired vision, chronic kidney disease, pain and balance problems and subsequent falls resulting in a fractured hip, memory loss, speech difficulties as a result of CVA, diabetes type 2 and hypertension. He needed constant 24-hour care. He was unable to walk needed to be mobilised in an attended wheelchair. He suffered with urinary and faecal incontinence and needed assisting with all toileting needs and hygiene. All bathing and toileting needs were carried out by his daughter-in-law. He had difficulty feeding himself due to his tremor and vision impairment. Memory loss and loss of cognitive functions resulted in him not being able to function on a daily basis. He is a weak and frail and elderly man requiring the full input of his family to address his care needs. If he were required to leave the UK it would have a catastrophic impact on his health. The catastrophic effect was not explained.

9. The updated information dated 5 June 2017 was that the appellant is now suffering a severe deterioration of his physical and mental health. He suffered from severe depression and was not eating and drinking and was showing signs of dehydration. An urgent referral to elderly mental health services had been made and antidepressants recommended. He was being treated for a UTI. Blood tests indicated heart failure and an urgent echocardiogram had been requested he was not considered physically fit to travel and his mental state was causing him an inability to communicate.

10. The letter does not appear to have been signed by any of the doctors in the practice. There was no information as to when the appellant was last seen by the practice, what treatment he was receiving or what if any needs there were apart from the care needs referred to. No reason was given for his inability to travel. Whilst it is clear that he has many medical problems the letter does not indicate that he is near to the end of his life or that if he were to return to Tanzania it would reduce his life expectancy or that he is at the end of his life. ..."

15. I invited Mr Mian to address me on whether or not there were any inaccuracies in the Judge's summary of the letter of 5 June 2017. The only matter that he raised was to criticise the Judge's observation "*No reason was given for his inability to travel*". Mr Mian suggested that the reason was readily apparent from the various diagnoses and symptoms described, even if no particular factor was articulated in the letter. In my judgement it does not follow as a matter of course that a person with the conditions and symptoms described would be unable to travel, depending on the journey and/or any particular arrangements that might be made to make the journey more comfortable. In any event such a suggested criticism does not in reality undermine what is plainly a full and accurate paraphrasing by the Judge of the contents of the letter.

16. For completeness in this context, with reference to the Judge's observation that the letter did not appear to have been signed by any of the doctors in the practice, I note that the signatory to the letter is not one of the named practitioners on the letterhead, and does not identify him or herself as a doctor. The letters 'ANP' and 'BSc (Hons)' appear after the name; the latter is a degree award, the former - although not explained in terms - may possibly be an abbreviation for 'adult nurse practitioner'.
17. Accordingly, in the premises, it seems to me that it cannot be - and is not with any real substance - suggested that the Judge has misunderstood or misrepresented the letter of 5 June 2017 either in respect of the references to the Appellant's diagnoses and symptoms at the date of the letter, or the history summarised by reference to the information provided in August 2016.
18. I invited Mr Mian to take me through the medical evidence contained in the judicial review bundle overlooked by the First-tier Tribunal with a view to exploring what might be different in such materials from the background and information given in the letter of 5 June 2017.
19. The relevant documents are at pages 87-91 of the Appellant's bundle before the First-tier Tribunal. They comprise a GPs letter dated 16 May 2014, an accompanying patient record, a Discharge Summary in respect of an eye operation in April 2014, and a follow-up letter from a locum consultant in ophthalmology based on a clinic date of 29 April 2014.
20. Mr Mian fairly acknowledged - albeit it seems to me inevitably he had to - that there was not anything of substance contained in such documents that was different in respect of the Appellant's medical conditions. However, he emphasised that the letter of 16 May 2014 was clearly signed by a GP at the practice, and to this extent any concern that the letter of 5 June 2017 had not been signed by a GP could be disregarded. I note, however, that although the Judge has commented at paragraph 10 that the letter did not appear to be signed by any of the doctors at the practice, it is not apparent from the rest of the Judge's decision that this factor made any material difference to the overall evaluation of the contents of the letter. For example, the Judge does not in the event doubt the underlying diagnoses or the symptoms described. The only possible issues of areas of departure from the contents of the letter are in respect of opinions as to consequences of the diagnoses and symptoms when the writer of the letter has not offered any supporting explanation.

21. Mr Mian also identified that the patient record included information as to the various medications that the Appellant has received (page 89). However, the date of the document is 14 May 2014 and does not refer to any medication/prescription issued after May 2014. Necessarily this is of only very limited value in addressing the fact that the letter of 5 June 2017 did not provide information as to treatment current at the time of the letter. In any event it seems to me that this matter is ultimately immaterial in circumstances where the Judge went on to find that “*there would be treatment available for [the Appellant] in Tanzania*” (paragraph 10); see also “*The documents show that there is treatment available for very many conditions in Tanzania and it appears that the appellant would be able to access treatment for the illnesses and conditions that he suffers*” (paragraph 14).
22. Mr Mian also directed my attention to the document at page 92 of the Appellant’s bundle, which is headed ‘Daily routine’. However he accepted that this was part of the testimony of the Appellant and his witnesses and did not form any part of the available medical evidence.
23. For her part Ms Aboni emphasised the respective dates of the evidence. She argued that the letter of 5 June 2017 represented the most up-to-date medical evidence in the documents, post-dating the materials from the judicial review by more than 3 years, and as such provided the current picture irrespective of the contents of the earlier evidence. Moreover the letter of 5 June 2017 encompassed a rehearsal of the previous history.
24. In all such circumstances I agree with Ms Aboni’s submission. Although the Judge seemingly overlooked the earlier medical evidence, there was nothing in such evidence that could have made any material difference to the Judge’s considerations. The evidence was comparatively old, and was in any event encompassed by the evidence that the Judge did look at. Indeed ultimately Mr Mian struggled to identify anything of material significance that was omitted from the Judge’s consideration by a failure to refer to the documents at pages 87-91 of the Appellant’s bundle.
25. I also bear in mind, and have given consideration to, the context of the challenge in respect of consideration of all available medical evidence. As identified in the grant of permission to appeal it was primarily against the framework of the case law relating to Article 3 medical cases, and in particular any ‘development’ of the scope of Article 3 further to **Paposhvili**.
26. Currently the most authoritative dictum in the domestic courts as to the impact of **Paposhvili** on Article 3 medical cases is that of Lord Justice

Sales giving the judgement of the court in **AM (Zimbabwe) [2018] EWCA Civ 64** (which post-dates the hearing before, and decision of, the First-tier Tribunal herein). I note in particular the following:

“37. I turn, therefore, to consider the extent of the change in the law applicable under the Convention which is produced by the judgment in Paposhvili, as compared with the judgments in D v United Kingdom and N v United Kingdom. In my view, it is clear both that para. [183] of Paposhvili, set out above, relaxes the test for violation of Article 3 in the case of removal of a foreign national with a medical condition and also that it does so only to a very modest extent.

38. So far as the ECtHR and the Convention are concerned, the protection of Article 3 against removal in medical cases is now not confined to deathbed cases where death is already imminent when the applicant is in the removing country. It extends to cases where “substantial grounds have been shown for believing that [the applicant], although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy” (para. [183]). This means cases where the applicant faces a real risk of rapidly experiencing intense suffering (i.e. to the Article 3 standard) in the receiving state because of their illness and the non-availability there of treatment which is available to them in the removing state or faces a real risk of death within a short time in the receiving state for the same reason. In other words, the boundary of Article 3 protection has been shifted from being defined by imminence of death in the removing state (even with the treatment available there) to being defined by the imminence (i.e. likely “rapid” experience) of intense suffering or death in the receiving state, which may only occur because of the non-availability in that state of the treatment which had previously been available in the removing state.”

27. Mr Mian submitted that the First-tier Tribunal Judge had failed to mention the cases of **D** and **N**, and had not otherwise set out a self-direction in respect of Article 3. However, when asked directly he accepted that nothing in the concluding passages of paragraph 10 offended against the guidance and principles in **D** and **N**:

“... Whilst it is clear that he has many medical problems the letter does not indicate that he is near to the end of his life or that if he were to return to Tanzania it would reduce his life expectancy or that he is at the end of his life. In those circumstances, I was not satisfied he had shown that he would be at risk under article 3 on return of imminent death I was also satisfied that there would be treatment

available for him in Tanzania, to which I refer below, and, therefore, he would not be returning to a country where he could receive no treatment for his various ailments”.

28. As regards the development in the jurisprudence identified in **AM (Zimbabwe)** it seems to me that there was nothing in the evidence before the First-tier Tribunal, or the Judge’s findings based on that evidence, that meant the Appellant could avail himself of the ‘modest’ relaxation of the test for violation of Article 3. Not only was the state of the available medical evidence such that nothing was articulated as to the nature or extent of the claimed ‘catastrophic impact’ of leaving the UK, the Judge found – sustainably and unchallenged – that treatment was available to the Appellant in Tanzania. In this context certain of the Judge’s findings in respect of Article 8 are also pertinent. The Judge found that there was no medical evidence to suggest that the Appellant needed more than one carer (paragraph 13); found that he would have access to housing (paragraph 16); and was *“satisfied that he depends upon his daughter for practical support and that appears to have been the position since he arrived in the United Kingdom [which] can continue in Tanzania as his daughter can return with him, she having no right to be in the UK”* (paragraph 17).
29. In all such circumstances I find that the submissions to the effect that the First-tier Tribunal Judge did not direct himself in accordance with domestic jurisprudence as it stood at the time of the hearing and decision, and that otherwise the Judge did not have regard to the development in Article 3 jurisprudence in light of **Paposhvili**, are essentially empty submissions when considered in the context of the particular facts of this case.
30. Even now the latest medical evidence – which is not formally admitted in to evidence in the context of error of law, but to which I now refer for completeness – does not raise relevant issues or concerns that might avail the Appellant pursuant to **Paposhvili** and **AM (Zimbabwe)**. The latest evidence is in the form of a further letter from the Appellant’s GP dated 25 September 2018 (signed by a doctor): it repeats the substance of the medical history, and additionally refers to a femur fracture and hip replacement in September 2016 (to which the Judge made reference at paragraph 21), and refers to poor mobility, the appearance of frailty, distress over the pending immigration proceedings, and low mood and depression (in respect of which a low dose of antidepressant had been started). An opinion is again expressed as to the *“catastrophic impact on his health if he is deported”* without further identification or explanation. This letter does not establish a likely level of suffering such as to engage Article 3 in accordance with the dictum set out above from **AM (Zimbabwe)**.

31. The Appellant's grounds of appeal and Skeleton Argument also raise challenge in respect of Article 8. The grant of permission to appeal focussed on the challenge in respect of Article 3; no particular view was expressed in respect of Article 8, but the grant of permission did not limit the grounds that could be argued - "*All grounds are arguable*".
32. In my judgement the challenge to Article 8 is in substance an expression of disagreement with the decision. For example, it is emphasised that the test for family life involves a low threshold (Grounds at paragraph 9), and in his submissions Mr Mian urged that the appeal "*could have been allowed on compassionate grounds*" (see similarly paragraph 7.1 of the Skeleton Argument).
33. It is manifest that the Judge gave consideration to the interrelationships between the Appellant and his adult children (and their families), the level of support provided to the Appellant, and the nature of the interference inherent in the Appellant's removal. In this latter regard the Judge considered and made findings as to the Appellant's probable circumstances if returned to Tanzania, and the availability of continuing support from his daughter. The Judge considered the proportionality of the interference with the Appellant's family and private life in such circumstances, having due and appropriate regard to the public interest.
34. A significant aspect of the complaint in the Grounds is the submission that the Judge failed to characterise the relationship between the Appellant and his adult children as amounting to family life: e.g. see Grounds at paragraphs 10 and 11; this is echoed at paragraph 6.2 of the Skeleton Argument where it is pleaded "*The Judge did not consider the family life between appellant and his sons [and their families]*". This line of argument is not reconcilable with the Judge's analysis at paragraph 20 which starts with a reference to the family life between the Appellant and his daughter, and includes "*The interference with the family life between the appellant and his sons is in my view entirely proportionate*".
35. In all such circumstances I can identify no error of law in the challenge to the First-tier Tribunal's decision in respect of Article 8, but only disagreement.

Notice of Decision

36. The decision of the First-tier Tribunal did not contain a material error of law and accordingly stands.

37. The Appellant's appeal remains dismissed.

Signed:

Date: **17 January 2019**

Deputy Upper Tribunal Judge I A Lewis