



IAC-FH-NL-V1

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

Appeal Number: IA/32937/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2015**

**Decision & Reasons Promulgated
On 31 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR EMMANUEL OMOBUDE ADAGBON
(ANONYMITY DIRECTION NOT MADE)**

Claimant

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Claimant: Mr M Rashid, Counsel instructed by David A Grand Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State. For the sake of convenience I shall refer to the parties as the "Secretary of State" who is the appellant and to Mr Adagbon as the Claimant.
2. The Claimant whose date of birth is 13 November 1980 is a citizen of Nigeria. He is aged 35 years and is single. He relied on medical grounds as he suffers from severe epilepsy and is highly dependent on his family.

3. In a Decision and Reasons promulgated on 28th January 2015 First-tier Tribunal (Judge Griffith) (FtT) allowed the Claimant's appeal under Article 8 ECHR outside of the Rules.

FtT Determination

4. The FtT found that the Claimant did not meet the Immigration Rules and that Article 3 ECHR was not engaged as the medical circumstances did not meet the high threshold [30-31]. The Claimant did not give evidence at the hearing.
5. The FtT took into account that the medical treatment was available in Nigeria and that the Claimant had close family there [34], although there was no evidence to show that his sister in Nigeria could provide the required level of care. The FtT found that there was family life above and beyond the normal family ties based on the high level of dependency by the Claimant on members of the family [36]. The FtT followed the **Razgar** stages and referred to Article 8 health cases [35-38]. In assessing proportionality the FtT found contributory factors of an eight year delay by the Secretary of State in failing to deal with the Claimant's asylum claim and that the Claimant was a vulnerable person [37]. The medical evidence before the FtT consisted of a letter from the GP and a 2013 report from a Consultant neurologist in which reference was made to the continuing risk of further seizures together with complications which include SUDEP (sudden unexpected death in epilepsy) [39]. The FtT found that the Claimant suffered from an unpredictable and distressing condition, there was a risk of SUDEP, a need for prompting managing and monitoring of his medication, a risk of seizures despite compliance with medication and a high level of dependency on his parents and siblings.
6. The FtT expressed the view that the assessment under Article 8 was "finely balanced" and that more medical evidence would have been helpful. There was no evidence to show that "Keppra" which was not available in Nigeria, was the only drug suitable for the Claimant and further there was no independent medical assessment of the Claimant's mental/psychological state of health. The FtT heard oral evidence from the Claimant's father that the Claimant was mentally impaired and forgetful [34].

Grounds of application

7. The Secretary of State contended that the FtT failed to give adequate reasons for finding that this was one of those "very rare cases" under Article 8 given that there was limited medical evidence before the Tribunal.
8. Further, the Secretary of State submitted that there was comparable medical treatment available in Nigeria and the Tribunal had failed to make clear findings as to whether the claimant's sister in Nigeria could help.

Permission to appeal

9. Permission was granted by First-tier Tribunal Judge Astle who commented:
- “Given that the judge himself lamented the lack of detailed medical evidence, it is arguable that there was insufficient evidence to support his conclusion that there was a disproportionate interference with the appellant’s physical and moral integrity. At paragraph 40 he commented that the medical evidence ‘could have been better’. In paragraph 10 of Razgar [2004] UKHL 27 Lord Bingham foresaw that Article 8 could be relied on when removal did not violate Article 3 ‘if the facts relied on by the appellant are sufficiently strong’. It is arguable that the judge erred in failing to give adequate reasons for his conclusion that this was one of those ‘very rare cases’. Permission is therefore granted.”

Error of law hearing

10. I heard submission from both representatives. Mr Whitwell indicated that the grounds of application were predicated on the fact that the Claimant’s parents could return to Nigeria on a temporary basis. I took the view that this was not specifically raised in the grounds and in any event it overlooked the findings made in support of the decision that the Claimant needed a high level of supervision and care that was provided by his family members. It is inferred that that it could not be satisfied by short term measures in Nigeria.
11. I am satisfied that the decision was carefully considered and reasoned, and which took into account cumulative factors under Article 8. The FtT found that taken as a whole there was a disproportionate interference with Article 8. The FtT found that there was strong family life (over and above the normal level of dependency) as between the adult Claimant and his British Citizen family members by reason of his serious medical condition, and in assessing private life the potential risks brought about by seizures, and the necessary high level of dependency. It also took into account other factors, that the Claimant was regarded as a vulnerable person and the excessive delay of 8 years by the Secretary of State. The reasoning given by the FtT is clear and adequate and the approach is consistent with Laws LJ Razgar at 23 and GS India [23]. The FtT considered the medical evidence and other factors which themselves engaged Article 8 in reaching its conclusion. This was not a case where it was found that there was no available treatment/ care in Nigeria. The FtT expressed the unqualified view that further medical evidence would have been helpful, but did not find the medical evidence to be insufficient. I am satisfied that the medical evidence before the FtT was certainly capable of supporting the decision made. Further there was no challenge to the findings as to treatment and level of care. This was a case where the level of dependence on parents and siblings was high and necessary in order for the Claimant to be kept well and safe. The Claimant required supervision and monitoring together with management of his medication and further assistance was required to deal with the physical and emotional aftermath post-seizure. The Claimant was resident in the UK for a considerable

period of time, albeit as an over stayer since 2004 although the 8 years delay in also a significant factor and the majority of his family members were British citizens settled in the UK. This “finely balanced” decision was carefully and fully considered by the FtT and there is nothing that discloses any material error of law.

Notice of Decision

12. I find no material error of law in the decision which shall stand.

No anonymity direction is made.

Signed

Date 30.7.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 30.7.2015

Deputy Upper Tribunal Judge G A Black