



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/50219/2013**

THE IMMIGRATION ACTS

Heard at Field House

On 24 August 2015

Decision and Reasons

Promulgated

On 27 August 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr C S O

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Khan, Counsel (instructed by CTM Immigration & Welfare Legal Centre)

For the Respondent: Ms A Fijwala, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed to the Upper Tribunal with permission granted by Deputy Upper Tribunal Judge Saini on 29 May 2015 against the decision and reasons of First-tier Tribunal Judge Foulkes-Jones who had dismissed the Appellant's appeal against the refusal on 25 September 2014 of his application for further leave to remain outside the Immigration Rules on human rights grounds (Articles 3 and 8

ECHR). The decision and reasons was promulgated on 29 October 2014.

2. The Appellant is a national of Nigeria, born on 20 November 1970 and so is now 44 years of age. The Appellant had entered the United Kingdom as a student, and had most recently been granted DLR until 14 October 2013 to complete his PhD at the University of Sussex. He had sought further leave to remain on health grounds, namely his Hepatitis B. The judge found that the Appellant had not lost his ties to Nigeria and could not meet paragraph 276ADE. Medical treatment was available in Nigeria, the Appellant was able to care for himself and there were no exceptional circumstances. The Article 3 ECHR threshold was by no means reached. The interference with the respect due to his private life pursuant to Article 8 ECHR was proportionate.
3. Permission to appeal was granted by Deputy Upper Tribunal Judge Saini of his own motion and “reluctantly” because he considered that there was a R v the Secretary of State for the Home Department, ex p Robinson [1997] 3 WLR 1162 point that there may have been insufficient consideration of the evidence concerning the availability of medical treatment in Nigeria. GS (India) and Others [2015] EWCA Civ 40, promulgated after the First-tier Tribunal judge’s decision, required consideration against the Article 8 ECHR analysis, given that this was a health case.
4. Standard directions were made by the tribunal. A rule 24 notice in the form of a letter dated 15 June 2015 had been filed on the Respondent’s behalf opposing the onwards appeal.

Submissions

5. Mr Khan for the Appellant relied on the grant of permission to appeal by the Upper Tribunal. He submitted that [111] of GS (India) and Others (above) was relevant, in that the continuity of treatment was important for the Appellant’s health. There would be complications arising from the change of regime and there were issues about the availability of drugs in Nigeria, not to mention the quality of the drugs supplied. This would have a negative effect on the Appellant’s health and would disrupt treatment which had been effective. The determination had not sufficiently addressed that issue in an Article 8 ECHR context.
6. Ms Fijwala for the Respondent relied on the rule 24 notice. She submitted that there was no error of law and the determination should stand. The COIS showed that treatment was available in Nigeria, as the judge had found. The judge had considered and addressed continuity of treatment. The judge had been correct to find that there was no exceptionality. The onwards appeal should be dismissed.

7. In reply, Mr Khan submitted that the judge had insufficiently considered the exercise of discretion by the Secretary of State.
8. The tribunal indicated at the conclusion of submissions that it reserved its determination, which now follows.

No error of law finding

9. The tribunal is bound to say that it has had some difficulty in understanding why the Deputy Upper Tribunal Judge encouraged the onwards appeal. The points taken by the Deputy Upper Tribunal Judge had not been raised in the grounds, and seem unfortunately to the tribunal to be clutching at straws and promoting false hopes. In the tribunal's view, the refusal of permission to appeal by First-tier Tribunal Judge Cox on 16 December 2014 was entirely right: "I fail to see how the judge arguably erred, materially and in law, in any of the respects advanced. Treatment for Hepatitis B is available in Nigeria – it is unfortunately a common condition there – and the judge was right to have regard to N v SSHD [2005] UKHL 31. Her assessment under Article 8 ECHR, within and without the Rules, was in my view impeccable and her conclusion, I would have thought, inevitable".
10. Mr Khan for the Appellant thus had a distinctly uphill struggle, and it was hard for him to avoid re-arguing aspects of the appeal which had already been fully and properly determined. The determination is comprehensive and logically rigorous. The paragraph numbering is in sections and does not follow the practice of the IAC, which is continuous and sequential. But that does not amount to an error of reasoning. Mr Khan drew attention to a typographical error at [5.5], where the judge cited the relevant part of a letter from Dr Sumita Verma, one of the Appellant's consultants. The correct date of Dr Verma's letter is 14 September 2013, not 12 September 2013. But nothing turns on that minor slip.
11. The letter itself was an important piece of evidence, as the judge recognised by citing it and also a later letter from Dr Verma dated 12 May 2014 which stated that the Appellant was asymptomatic and remains stable from a liver perspective. Six monthly surveillance was recommended. Quite plainly the judge had in mind the continuity of treatment issue. She addressed the point in the Article 3 ECHR context at [5.14] and in the Article 8 ECHR context at [5.19(ii)] and [5.19(vi) to (ix)]. Thus the judge had evaluated this element of the Appellant's case in accordance with [111] of GS (India) and Others (above), effectively anticipating the reasoning of the Court of Appeal.
12. The evidence before the judge concerning the availability of health care in Nigeria for Hepatitis B sufferers was adequate. The 14 June 2013 COIS was in the Appellant's bundle and was also referred to in the reasons for refusal letter. The judge plainly took that evidence into account. It is relevant that the judge found that the Appellant

would be likely to be in a position to afford private health care. It is also relevant that the Appellant's condition is unfortunately common in Nigeria, because that means that medical practitioners will be familiar with it, i.e., it is not a rare condition with no medical literature or treatment options. That such treatment might be inferior to that available in the United Kingdom was not in issue in the light of N (above).

13. The tribunal accordingly holds that there was no error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell