



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13033/2015

THE IMMIGRATION ACTS

Heard at Field House
On 7 December 2017

Decision & Reasons Promulgated
On 18 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS PATTAMA AUSTIN
(ANONYMITY NOT MADE)

Respondent/Claimant

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer

For the Respondent: Mr M Blundell, Counsel instructed by Burlow & Spencer Solicitors

DECISION AND REASONS

1. The Secretary of State appeals from the decision of the First-tier Tribunal (Judge Buckwell sitting at Taylor House on 21 February 2017) allowing the appeal of the claimant, an overstayer, against the decision of the Secretary of State to refuse to grant her leave to remain as the spouse of a British national, who is a pensioner. The Judge found that there would be insurmountable obstacles, as defined in EX.2 of Appendix FM, in the claimant carrying on family life with husband in Thailand, due to his medical condition. The First-tier Tribunal did not make an anonymity

direction, and I do not consider that such a direction is warranted for these proceedings in the Upper Tribunal.

The Application for Permission to Appeal

2. Lawrence Tarlow of the Specialist Appeals Team pleaded the grounds. The Judge had noted, at paragraphs [61]-[62], that the claimant's partner had complex medical issues and was under the care of a consultant at the Royal Free Hospital in London. The Judge had further noted at paragraph [62] that there was no information before him as to whether this treatment was available in Thailand. However, the Judge had gone on to find at paragraph [66] that it was highly unlikely that the level of treatment which might be available in Thailand to the sponsor could be favourably compared with the level of treatment the sponsor received in this country:

It is submitted that this finding, which forms the basis for the finding that the [claimant's] partner comes within the exception of EX.1, is based on speculation, there being no evidence on the point before the First-tier Tribunal.

The Reasons for the Grant of Permission to Appeal

3. On 21 September 2017, First-tier Tribunal Judge Pickup granted permission to appeal for the following reasons:

It is arguable, as pleaded in the grounds, that at [66] the Judge improperly speculated that it was highly unlikely that appropriate medical treatment would be available to the sponsor in Thailand, the Judge having accepted at [61] and [62] that there was no evidence whether specialist treatment would or would not be available to him in Thailand. This finding supported the conclusion that EX.1 was met, and thus it is arguable that the entire decision is flawed by a material error of law.

Discussion

4. The evidence before Judge Buckwell included a witness statement from the sponsor, Mr Rowland Austin, and a medical report from Mr Jason Constantinou, a Consultant Vascular Surgeon, dated 17 February 2017.
5. In his witness statement, Mr Austin, who was born in 1943, said that he was retired and that he lived in a council-owned house with the appellant. Their income was his state pension of £155.60 per week. Since his wife had lodged her appeal, his health had taken a turn for the worst. In spring 2016, he was seen at the Royal Free Hospital as he had problems with his prostate, and was found to have a bladder tumour. In April 2016, he underwent a CT scan, which also revealed several other medical issues including concern over his liver and kidneys, as well as an abdominal aortic aneurysm. He was admitted to hospital on 11 April 2016 to have the tumour cut out and was discharged the following day. While the operation was successful, he continued to be monitored by a Urology Team at Barnet Hospital. He had been referred back to the hospital for an urgent operation at the end of July 2016. Since then, he had undergone regular check-ups at the hospital, and was continued to be monitored on a monthly basis by the Urology Team to assess his bladder.

6. He was also under the care of the Vascular Team at Barnett Hospital, having been diagnosed with 3 separate aneurysms: and abdominal aortic aneurysm and 2 iliac artery aneurysms. He was first seen at the Vascular Surgery Clinic in October 2016, and then seen again at the clinic in January 2017, when he was advised that he would remain in their care to monitor the change in his aneurysms. He understood that once they reached the size of 5.5cm he would need to undergo surgery to repair the blood vessel. Until they reached this size, he had to be regularly reviewed because he could be at risk of them rupturing. If he experienced any unusual pain he was required to go straight to A&E because failure to seek immediate medical help if the aneurysms were to rupture could be fatal.
7. In his medical report, Mr Constantinau said that he had first seen the patient in October 2016. His aortic aneurysm currently measured 47mm, and the protocol in the UK was that these were repaired when they got to 55mm. On close inspection, the patient's aneurysm was complex, as it was just below the kidney vessels, and so it would require a complex operation. The patient also had iliac artery aneurysms which were also currently just below the treatment threshold. These would also require treatment at the time of the repair of his aortic aneurysm, which would add to the complexity of the procedure: *"Such cases are only performed at specialist centres around the world, of which the Royal Free London NHS Foundation Trust is one."*
8. The aneurysms did not currently cause the patient any symptoms. However, they did require *"close surveillance"*. It was likely that the aneurysms would grow and that they would need treatment *"in the near future"*. If they were not monitored closely, he would be at risk of rupture *"with a significant associated mortality"*. He had informed the patient that if he were to develop abdominal/back pain, then he should present as an emergency to Accident and Emergency for assessment.
9. The claimant's bundle of documents for the First-tier Tribunal also contained an information sheet on abdominal aortic aneurysms provided by the NHS. The advice of the NHS included the following:

A ruptured aortic aneurysm is a medical emergency, and it is important to get to hospital as soon as possible. Around 80% of people with a rupture die before they reach hospital or do not survive emergency surgery. This is why the NHS AAA Screening Programme was introduced, so dangerously large aneurysms can be treated before they burst.
10. It is apparent from paragraphs [61] and [62] of Judge Buckwell's subsequent decision that not only was the complexity of Mr Austin's medical issues at the forefront of his reflections on the application of EX.1 to the facts of the case before him, but also the risk of Mr Austin requiring urgent specialist treatment at very short notice, without which he was likely to die.
11. Although the Judge had no specific information one way or the other as to the availability of equivalent expertise or treatment in Thailand, I consider that it was open to the Judge to draw the inference that there would be an increased risk to the health of the sponsor in Thailand, and that he was less likely to survive in Thailand

than he was in the UK, where he could continue to access - for free - care of the highest quality provided by the NHS. He plainly could not afford to be treated privately. As a British national, he was able to access for free the best possible treatment and care for his complex and dangerous condition at the London Royal Free Hospital, a world centre of excellence. Moreover, it was not just the NHS' ability to carry out the complex operation which was of crucial importance, but also the NHS being able to provide constant monitoring and surveillance beforehand to minimise the risk of Mr Austin experiencing a rupture, which, if he did, might well kill him before he could reach the operating table. In short, Mr Austin was at a very delicate stage of his condition - nearly but not yet qualifying for a life-prolonging operation on the NHS - such that it would plainly be very unwise to disrupt his current monitoring regime by relocating abroad. It was open to the Judge to infer that whatever treatment and monitoring would be practically available to Mr Austin in a developing country such as Thailand, it was highly likely to be markedly inferior to that available to Mr Austin in the UK, so as to increase significantly the risk to his health.

12. For the above reasons, I consider that there was a sufficient evidential basis for the Judge's finding that the requirements of EX.1 were met on medical grounds, and I find that no material error of law is made out.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 13 December 2017

Judge Monson
Deputy Upper Tribunal Judge