Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/21009/2015
IA/21016/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 May 2017	**On 26 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

R B (FIRST APPELLANT)
J R (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Bobb, a legal representative
For the Respondent: Mr Armstrong, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The first appellant, RB, appeals to the Upper Tribunal with permission from Upper Tribunal Judge Pitt on 30 March 2017. When she considered the decision of the First-tier Tribunal, Judge Pitt thought that there may have been a material error of law in

relation to the assessment of the medical evidence. The First-tier Tribunal had heard evidence in relation to the condition of the second appellant, J R, who very sadly suffered from a form of lymphoma which required chemotherapy and subsequent ongoing treatment. Judge Pitt thought that it may have been at least arguable that it was a "compelling case" acknowledging though that in medical cases, even those involving children, there was a very high threshold for appellants to surmount before they would be able to show that Article 3 of the European Convention on Human Rights (ECHR) would be engaged.

2. The first appellant's immigration history is as follows. She first came to the UK as a visitor in 2002. She had various forms of leave, including as a student until 2009, but she has since remained in the UK unlawfully without having applied to regularise her status until recently. Indeed, I was told that she had been here for up to eight years before any attempt to regularise her status was made. During that time, she had given birth to the second appellant, J R. That application was refused on 19 May 2015. The appellant appealed that refusal to the First-tier Tribunal. The First-tier Tribunal decided that the refusal of leave to remain was justified. Accordingly, the appeal was dismissed, both under Articles 3 and 8 of the European Convention on Human Rights. There was no application under the Immigration Rules for them to stay.

3. Submissions were made by both representatives to the Upper Tribunal. Mr Bobb, on behalf of the appellants, maintained that the appeal ought to have succeeded under Article 3 or Article 8 of the ECHR. He said there was evidence before the Tribunal that the child appellant, J R, would develop adverse side-effects if he did not receive proper follow-up treatment. He referred me to page 25 of the bundle of documents before the First-tier Tribunal which was a letter from the Department of Haematology and Oncology at Great Ormond Street Hospital for Children which indicated that if James did not receive the relevant five yearly ECGs to detect any adverse consequences, he remained at a moderate risk of long-term "cardiomyopathy". Mr Bobb pointed out that although the Immigration Judge had dealt with this issue in his decision he had linked it to the economic circumstances of the first appellant. Specifically, he had suggested that the first appellant could find the sums of money that would be required to pay for the ongoing treatment for her child and he made findings about the cost of that treatment in Jamaica. He said that it would cost approximately £4,765 to £13,700. Unfortunately, the first appellant does not work now, although she has worked in the UK in the past, legally, and, according to Mr Bobb, paid her taxes. He says there would be no realistic expectation that she would be able to save such sums of money, which are very substantial sums by the standards of Jamaica, and he says that the reality of the situation was that this would represent a real risk to the health and welfare of this young child. Mr Bobb realistically and quite properly accepted that medical treatment was available within Jamaica, but he did say that it could not be divorced from its practical situation, which is that in fact the first appellant would not be in the position to afford such treatment. He referred me to the case of **GS [2015] EWCA Civ 40**. Having pointed out that the gravity of what would befall the second

appellant, James, if he returned to Jamaica, he said that the UK should be held responsible for the potentially grave consequences that might befall him. It mattered not, he said, that the first appellant was here, effectively, overstaying unlawfully. He said that although he acknowledged the threshold for Article 3 was a high one, as indeed did Judge Pitt, he said it would be inhumane not to permit the family, that is both appellants, to remain in the UK for the child appellant to continue to receive treatment, presumably under the National Health Service. Mr Bobb went on to deal with Article 8 and said that although he accepts that a balancing exercise was necessary and that the Immigration Judge had referred to many of the balancing factors, this was a case which crossed that threshold. Indeed, the moral and physical integrity of the second appellant was threatened by his return to Jamaica. That being so, he said the Immigration Judge had not adequately grappled with the wider context in which the appeal had to be decided. It was not simply a case of considering the fact that the second appellant's life with his mother could continue in Jamaica, it was necessary to look at the wider context in which the case had to be decided, and in particular the ongoing need for medical treatment. This, he said was a highly relevant factor in this case. He also referred to the case of **EV (Philippines)** and other recent case law and stated that in conclusion it was a case where the Immigration Judge had reached a reasonable conclusion.

4. In response Mr Armstrong on behalf of the respondent referred me to the specific findings in relation to the medical evidence, for example at paragraphs 18 to 23 of the decision, pointing out that the Immigration Judge had indeed grappled with the medical evidence in some detail, had made appropriate findings which were open to him on that evidence, including findings in relation to the cost of such treatment in Jamaica. He said that the leading case under article 3 remained N **v The Secretary of State [2005] 2 A C 296**, which is referred to in the decision of the First-tier Tribunal. That reached all the levels of the appellate process, including the House of Lords and the European Court of Human Rights, reported at **[2008] 25 BHRC 258**. He said that in those cases the applicant had a medical condition, which provided the reason for seeking Article 3 protection in the UK. It was held that the Secretary of State was not required to address the economic disparities between different systems of healthcare across the world. I suggested in argument that James was fortunate to have been given treatment by one of the most noted hospitals for this type of treatment. Unfortunately, access to such facilities is limited by economic resources. Mr Armstrong invited me to conclude that the First-tier Tribunal had reached a decision that was open to it on the evidence having regard to the fact that the first appellant had been in the UK without leave for some considerable time before regularising her position there were strong balancing factors under Article 8 which tipped the balance in favour of the respondent. The Tribunal below had applied the correct test under Article 8 and reached the proper conclusions that were open to it. He also said the case did not cross the threshold for engaging Article 3 rights.

5. Mr Bobb briefly responded to say that he did not accept that the health service in Jamaica was sufficiently robust, and certainly not as robust as the Secretary of State had portrayed it as being. The economic disparity between the UK and Jamaica was a

relevant factor to consider. He accepted that his client had been in the UK illegally for some time but he did not accept that she had never contributed to the UK economy. Indeed, he pointed out that she had in fact paid taxes for a significant period before subsequently remaining here illegally.

Reasons for my Decision

6. I should begin by saying that cases involving the need for ongoing medical treatment, especially where they concern the health of a young child, are some of the most difficult that this Tribunal has to deal with. If I may say so, it is accepted that the first appellant has had her son's best interests at heart at all stages. Anybody in her position would have taken the steps which she has taken to try and ensure that she can remain in the UK to ensure the best possible treatment for her son, as well, no doubt, as securing the best economic circumstances for her family. However, as Judge Pitt acknowledged, the threshold in relation to Article 3, is a high one, even in a case involving a child. The case had to be a compelling one before the appeal could be allowed on that basis.

7. In this case, as the Immigration Judge acknowledged, and I understand both sides accepted, by the date of the hearing James had received appropriate medical treatment, and indeed was effectively free of debilitating illness. His medical history, treatment and prognosis were fully considered by the First-tier Tribunal. The Immigration Judges decision dealt fully with the need for ongoing treatment in the form of ECG analysis on a periodic basis. The Immigration Judge pointed out, at paragraph 68, that James had been most likely to have been cured and that the critical period was one day from the end of treatment and that on 23 August that he had survived for 23 months following the end of his cause of treatment. The significance of that was that the hearing took place in early September 2016 shortly after that 23-month period. Mr Bobb has criticised the Immigration Judge for not engaging with the medical evidence, but I find that the Immigration Judge fully engaged with that evidence to the extent necessary and reached appropriate conclusions. In particular, I would draw attention to paragraphs 62 onwards, where he deals specifically with medical evidence in the context of Article 3 of the ECHR.

8. It was also suggested the Immigration Judge had not fully engaged with Article 8 and the moral and physical integrity requirements of Article 8(1), as defined by the case law including the leading case of **Razgar**. The criticisms of the Immigration Judge's decision in relation to the moral and physical integrity aspects Article 8 were less pronounced than those under Article 3. The Immigration Judge considered the balancing exercise undertaken by the Secretary of State fully. The public interest considerations, set out by Parliament in the section 117 of the Nationality, Immigration and Asylum Act 2002, include the need for persons who seek to remain in the UK to be financially independent and not a burden on taxpayers. Furthermore, respondent is required to pursue a policy of balanced immigration in accordance with the economic interests of the UK. Unfortunately, the first appellant was in the UK without any form of leave for a long period of time and has taken advantage of

public services during that time. There appear to have been strong grounds under Article 8 (2) of the E C H R for refusing the appellant's application for leave to remain in this case.

Decision

9. I have concluded that the Immigration Judge reached appropriate conclusions, in relation to both the Articles of the ECHR relied upon. Those conclusions were based on the evidence placed before him. He was entitled to come to the decision he came to and I can find no material error of law in the decision of the First-tier Tribunal.

10. Accordingly, the appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The First-tier Tribunal made an anonymity direction and I continue that direction. In particular, I direct that unless and until a tribunal or court directs otherwise, the Appellants be granted anonymity. No report of these proceedings shall directly or indirectly identify then or any member of their family. This direction applies both to the appellants and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 26 September 2017

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 26 September 2017

Deputy Upper Tribunal Judge Hanbury