Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/28102/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th October 2017	**On 06th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MS E.A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Nnadi, Solicitor
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction is made on the basis that the Appellant has various medical conditions. I consider that it appropriate to make such a direction.

DECISION AND REASONS

1. The Appellant, a citizen of Ghana born 15th January 1965, appeals with permission against the decision of a First-tier Tribunal (Judge Majid) dismissing her appeal

against the Respondent's refusal to grant her application for leave to remain in the UK. The date of the Respondent's decision is 29th July 2015.

2. The Appellant entered the UK in 2000 with leave valid until 2001. She has remained unlawfully thereafter as an overstayer. She has various health problems and is HIV positive.

3. The Respondent refused the Appellant's application to remain because she could not meet the Immigration Rules and it was considered that there were no exceptional circumstances in her case. It was said that her medical conditions could be dealt with and treated adequately in Ghana.

4. The Appellant appealed the Respondent's decision and the appeal came before Judge Majid. The issue before Judge Majid centred on whether the Respondent's decision to refuse the application for leave to remain contravened the Appellant's Article 8, ECHR private life rights. It was also claimed that to refuse her leave would contravene her Article 3 rights on account of a risk of being killed if her condition became known. It was clear therefore that the relevant evidence which the judge would need to consider centred on the medical reports submitted by the Appellant. This included reports from Guy's and St Thomas's Hospital dating back to 2009 through to 2011, together with a report in 2012 showing the Appellant as testing HIV positive. More recent reports dated October 2014 and March 2015 showed appointments at the colposcopy unit at Guy's Hospital.

5. In a short decision, Judge Majid set out the proceedings by simply stating that the Appellant adopted her witness statement of 29th June 2016. He then set out submissions made by the Appellant's representative and in a short paragraph [10] said the following:

> "In the absence of the Presenting Officer, I took into account the reasons of the Respondent in the refusal letter of 29th July 2015 to see whether the refusal could be upheld".

6. He continued in [11]:

> "Mr Nnadi again emphasised the fact that the Appellant cannot get HIV treatment in Ghana – she lacks resources to continue treatment which she has been receiving in the UK. He submitted that she will be killed once her condition is discovered."

He followed this in [12]:

> "Mr Nnadi submitted reports on the health facilities in Ghana. On careful perusal of the reports it became clear that the NHS in the UK certainly has good services for its HIV patients."

At [13] he said:

> "I am unable to help this Appellant because the reports submitted by Mr Nnadi show that if one has the money then they can obtain the required medical

> treatment in Ghana – it should also be remembered that the lack of medical care in that country on its own cannot be easily accepted as a sufficient ground for the grant of an appeal."

7. Following two more short paragraphs of what appears to be comment on the Immigration Rules, Judge Majid then said at [16]:

> "Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, I am persuaded that the Appellant comes within the relevant immigration law, as amended."

He then proceeded to make a Notice of Decision and under which he said, "Appeal dismissed."

8. The Appellant sought permission to appeal. The grounds in summary say that the FtT judge failed:

- to properly assess the medical evidence put before him on behalf of the Appellant; and
- to properly apply Article 8, ECHR with regard to the private life established by the Appellant.

9. Permission having been granted, the matter therefore comes before me to decide whether the decision of Judge Majid discloses an error of law requiring it to be set aside and remade.

Error of Law Hearing

10. Before me Mr Nnadi appeared for the Appellant and Mr Nath for the Respondent. Mr Nnadi's submissions kept to the grounds seeking permission supported by the grant of permission itself. He emphasised that in particular there had been no proper assessment of all the medical evidence put before the FtT and this in turn impacted upon whether a proper and reasoned Article 8, ECHR decision had been made. So far as the challenge mounted on Article 3, Mr Nnadi made no separate submissions on that point but relied simply on the grant of permission.

11. Mr Nath defended the decision to the extent that he submitted that [11], [12] and [13] were sufficient to show that the judge had turned his mind to the medical evidence. He said that although any reasoning could be described as sparse, nevertheless there was just enough in the decision to render it sustainable.

12. At the end of submissions I indicated to the parties that I was satisfied that the decision of Judge Majid contained such error as to require it to be set aside and remade. I now give my reasons for that finding.

13. Despite Mr Nath's spirited attempt to save the decision I find I am satisfied that the judge has failed to engage with the evidence and has made very few and sparse findings of fact. The findings that he did make in [11], [12] and [13] were not fully

explained. The Appellant has medical problems in addition to being HIV positive, although of course the latter could be categorised as the most serious of her problems. It is incumbent upon the trial judge to look at the medical evidence presented as a whole, and to make a finding on whether or not that evidence when looked at cumulatively supports the Appellant's Article 8 claim. This he has failed to do. As the permission grant points out it may well be that the outcome for this Appellant will be the same as the one reached by Judge Majid. Nevertheless the Appellant is entitled to have proper consideration of all the evidence that she has presented, and to receive an adequately reasoned decision based upon a proper appreciation of the relevant law. This Judge Majid has failed to do resulting in unfairness and that is a fundamental error.

14. Having announced my decision to the parties that Judge Majid's decision must be set aside for error, both were of the view that the appropriate course for this appeal would be to return it to the First-tier Tribunal for a fresh hearing. I agree with that course. The decision of Judge Majid will be set aside in its entirety, with nothing preserved.

Notice of Decision

The making of the decision of the First-tier Tribunal involved an error on a point of law. I set aside that decision. The decision is to be remade in the First-tier Tribunal (not Judge Majid).

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed C E Roberts Dated 05 November 2017

Deputy Upper Tribunal Judge Roberts