



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12267/2016

THE IMMIGRATION ACTS

Heard at Field House
On 13 June 2017

Decision & Reasons Promulgated
On 21 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

M K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Turnbull, Counsel.

For the Respondent: Mr D Clarke, Home Office Presenting Officer.

DECISION AND REASONS

1. Whilst no anonymity direction has been made hitherto the intimate and person nature of the evidence in this appeal justifies the making of such a direction.

2. The Appellant is a citizen of the Ivory Coast who initially entered the United Kingdom in 2002 via a visit visa. In 2011 he applied for leave to remain on compassionate grounds. His application was refused and he made further representations. Following an application for Judicial Review permission was refused and he was directed to apply for asylum. This he duly did and on 14 October 2016 a decision was made to refuse his claim and to remove him from the United Kingdom. He appealed that decision on the basis that removal from the United Kingdom would be a breach of the United Kingdom's obligations under the 1951 Geneva Convention and a breach of his protected human rights, specifically Articles 2, 3 and 8 and Article 3 on medical grounds.
3. His appeal was heard by Judge of the First-tier Tribunal Rosemary Bradshaw who in a decision promulgated on 26 January 2017 dismissed it on all grounds.
4. The Appellant sought permission to appeal. On 9 May 2017 Designated Judge McCarthy granted that application. His reasons for so doing were:-
 - "1. The appellant applies in time for permission to appeal to the Upper Tribunal against the decision and reasons statement of FtT Judge R Bradshaw that was issued on 26 January 2017. The judge decided the appellant is not a refugee from Ivory Coast or that he otherwise needs international protection.
 2. The grounds of application allege that the panel erred by: (i) making inconsistent findings by accepting the appellant's evidence but findings he would not be at risk on return; (ii) imposing a burden on the appellant to verify documents which could easily be verified by the respondent, (iii) not giving appropriate weight to the fact the appellant's family had been given refugee status in Ghana, (iv) making a decision contrary to *Paposhvili v Belgium* regarding the appellant's very serious medical condition, and (v) making contradictory findings as to how the appellant might support himself (e.g. by working when the appellant is unable to work, by charity from the local church when the appellant is absent).
 3. All grounds are arguable. There appear to be inconsistent and contradictory findings in the decision and reasons statement. The approach to medical cases has changed because of **Paposhvili** but that is not reflected by the judge's analysis. The other grounds are probably weaker but there is sufficient basis not to exclude them.
 4. As I find there are arguable legal errors, I grant permission to appeal."
5. Thus the appeal came before me today.
6. At the outset I shared with both representatives a letter the Tribunal received from the Solicitors acting for the Appellant dated 26 May 2017 within which it refers to a letter from Dr. Debra Joseph to the Appellant dated 21 March 2017 and which was

described as “new evidence” which the Appellant received post-the decision of Judge Bradshaw. That letter states:

“For the purposes of your immigration appeal, I would like to answer the questions that you have posed:

- 1) What was my genuine life expectancy without the treatment I have been given?

You were diagnosed with high grade prostate cancer that had already spread to your lymph nodes and bone, in February 2016. We commenced androgen deprivation therapy and then chemotherapy. Without any of these your life expectancy would likely have been in the order of months to a year.

- 2) What is my life expectancy now, taking into account the treatment I have received.

You have had androgen deprivation therapy and chemotherapy, which you completed in July 2016. Unfortunately your PSA didn't respond as well as we would have hoped with the docetaxel and so soon after we started enzalutamide. Now your PSA is coming up again and it may be that we have to change treatments soon. Your life expectancy now would be in the order of about 12-18 months.

I hope that his news isn't too upsetting for you.

Yours sincerely,

Debra Josephs”.

7. In the course of her submissions I asked Ms Turnbull what weight she expected me to put on this letter. She appreciated that it had played no part in the decision now under consideration and I conclude the Judge cannot be criticised for not dealing with evidence which was not before her.
8. Ms Turnbull handed up a skeleton argument and the authority of **Paposhvili v Belgium (App No. 4738/10)**. Both have been taken into account by me.
9. Arguing that the Judge had material erred in her decision Ms Turnbull put forward three strands of argument being firstly the making of inconsistent findings, secondly in relation to the Appellant's terminal medical condition and thirdly as to Article 8.
10. From paragraph 46 of her decision she argued that the Judge appeared to accept that “the background evidence confirms that the civil war in 2002 led to widespread ethnic and general violence and killing of civilians. The fighting ended in 2004 with continuing tensions until 2006 with a peace agreement signed in 2007. Fighting resumed in 2011 following the 2010 elections”. Also at paragraph 47 the Judge accepts that “the evidence is consistent with the Appellant's wife and children fleeing Bangolo in 2002. They were safe there from at least 2007 when they re-established

contact with the Appellant but resumed fighting caused them to flee to Ghana in 2011". The Judge states at paragraph 53 of her decision that the Appellant has "produced certificates confirming the status of his wife and the 3 young women as asylum seekers in Ghana whose claims were being examined. I noted that the documentation which the Respondent has had the opportunity but has not checked or verified but which at the very least indicate that they have registered claims and have status in Ghana as asylum seekers". Ms Turnbull then referred me to paragraphs 30 and 31 of the authority of **PJ v SSHD [2014] EWCA Civ 1011**. They State:-

- "30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see *Singh v Belgium* [101] – [105]). I do not consider that there is any material difference in approach between the decisions in *Tanveer Ahmed* and *Singh v Belgium*, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification.
31. In my view, the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not open to her to suggest that the document or documents are forged or otherwise are not authentic."

She submitted that at paragraph 54 of her decision the Judge has stated that she has "no reason to question the authenticity of the documents nor what happened during the 2011 fighting". However, she goes on say "the basis of their flight to Ghana and their claim to asylum is a matter for the appellant to demonstrate to the required standard if this is in support of his asylum claim". Having said at paragraph 54 of her decision that she has no reason to doubt the authenticity of the documents nor what happened during the 2011 fighting the Judge is inconsistent in finding that the Appellant would not be at risk on return as his profile was not such that it would attract attention.

11. She then took me to page 78 of the Appellant's bundle to the First-tier Tribunal and in particular a letter dated 27 October 2016 from Dr. Rachel Bennett. She argued that whilst the Judge refers firstly to this letter and indeed other letters it appears that she has not fully appreciated the Appellant's condition is terminal. He is in receipt of Palliative chemotherapy and medication. Palliative means that the treatment is to alleviate symptoms only (alleviating the pain of symptoms without eliminating the cause). Palliative care is given to patients with terminal illness. Ms Turnbull referred me to paragraph 65 of the Judge's decision where she finds that although the medical

evidence indicates the Appellant is receiving Palliative care the evidence does not in fact address his life expectancy although his cancer has spread and the disease is still active and is significant. Neither does the evidence overall suggest that his illness in itself is at the critical stage such as to trigger Article 3. At paragraph 69 of her decision the Judge refers to **Paposhvili** and states that it is not binding on her but rather that it “is of persuasive value and I note particularly paragraph 183 where the court considered that “other very exceptional cases” within the meaning of the judgment in **N** should be understood to refer to situations involved with the removal of a seriously ill person in which substantial grounds have been shown for believing he, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy”. Then despite having considered this medical evidence the Judge concludes at paragraph 70 of her decision,

“70. That is not what the very extensive and helpful medical evidence in fact indicates in this case”.

This Ms Turnbull submitted is a material error as the Judge has misdirection herself in respect of the case of **Paposhvili**.

12. Finally as to Article 8 it is surprising that the Judge finds that the Appellant would be able to work and support himself upon return to his country of origin notwithstanding the fact that he is suffering from a very serious terminal illness. Alternatively the Judge has made an unsubstantiated finding that his church congregation in the United Kingdom would continue to financially support him should he be required to leave the United Kingdom. There are significant obstacles to this Appellant integrating back into life in the Ivory Coast due to his very terminal disease. The Judge in considering Article 8 outside the Immigration Rules states at paragraph 77 of her decision “it is not on balance clear from the medical evidence that it is inevitable that a difficult early and unpleasant death would follow his return to the Ivory Coast or that the continuity of his current medical treatment is necessary to be viable given that his treatment is not curative but palliative”. Ms Turnbull submits that the Judge has failed to appreciate the seriousness of the Appellant’s condition. He is a man with terminal cancer which will undoubtedly get worse without continuation of the medical treatment he is currently receiving. There is a serious risk that the Appellant will suffer deterioration in his health without treatment and he will suffer a difficult early and unpleasant death if he is removed from the United Kingdom.
13. Mr Clarke urged me to accept that there was no material error of law within the Judge’s decision. In paragraphs 47 to 54 the Judge properly considered the issue of current risk and evidence from the Appellant that was consistent with background material. The Judge was entitled to find at paragraph 48 of her decision that the background evidence regarding any risk to political oppositionists appears to be limited and there was nothing found in the Appellant’s profile to place him within a

risk category. The Judge was equally entitled to find that he would similarly not be at risk consequent upon his ethnicity. At paragraph 92 of the Appellant's bundle is the "GRB Asylum Seekers Certificate" of the Appellant's wife which the Judge deals with at paragraph 53 of her own decision. Contrary to the Appellant's grounds the Judge has not erred in her approach to this certificate in light of the authority of **PJ v SSHD [2014] EWCA Civ 1011**. Paragraph 30 thereof states:-

"30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see *Singh v Belgium* [101] – [105]). I do not consider that there is any material difference in approach between the decisions in *Tanveer Ahmed* and *Singh v Belgium*, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification."

14. The "GRB Asylum Seekers Certificate" does not fall into the type of document **PJ** envisages. It is here no more than a certificate that the Appellant's wife is a national of the Cote d'Ivoire and is an asylum seeker whose claim for refugee status is being examined by the Ghana Refugee Board. Whilst the Respondent concedes that the Judge has erred in her assessment of the medical evidence Mr Clarke submitted that such error was not material. He referred me to paragraph 186 of **Paposhvili** which states:-

"186. In the context of these procedures, it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see, in particular, *Trabelsi v. Belgium*, no. [140/10](#), § 130, ECHR 2014 (extracts))."

I will record here that on my enquiry of Ms Turnbull as to whether any evidence was adduced capable of demonstrating that there are substantial grounds for believing that there was no evidence to support the Appellant's assertion that there was no medical services of the kind the Appellant requires available in his country of origin she responded in the negative. Mr Clarke highlighted the above mentioned letter from Dr. Rachel Bennett which amongst other things states "it is realistic to expect MK to be able to access the kind of expertise and treatments that he has been receiving on the NHS if he returned to Africa". Finally at paragraph 36 of her decision the Judge found that the Appellant is working and also at paragraph 37 where the Judge accepted the evidence of a Mr Loba who confirmed financial

support from the church members who support the Appellant even when he has been too ill to play. The Judge was entitled to come to the conclusions that she did at paragraph 72 of her decision in the overall context of the evidence. Paragraph 72 states:-

“The appellant is still able to work and there is no good reason why the Church and its members would not continue to support the appellant as they have done to a very large financial extent over very many years unless of course he is a mere employee which would undermine what the appellant and Mr Loba said in evidence generally”.

It was open to the Judge to conclude that the members of his church would continue to support the Appellant even if he left the United Kingdom.

15. The first thing to say is that this is an Appellant for whom I have considerable sympathy consequent upon his diagnosed terminal cancer. However, I am not persuaded that the grounds seeking permission to appeal identify material errors. So far as the asylum issue is concerned the Judge was entitled to come to the conclusions that she did. She made findings in relation to the Appellant’s credibility and set those findings into the context of the background evidence. In so doing she was entitled to come to the conclusions that she did in relation to “oppositionists” and ethnic violence and in general the current risk that the Appellant might face were he to be returned to his country or origin as at the time of the Judge hearing the appeal. The Judge has not erred in her approach to the “GRB Asylum Seekers Certificate”. It says no more than that the Appellant’s wife is an asylum seeker whose claim for refugee status is being examined by the Ghana Refugee Board. Any attempt to undertake a process of verification in relation to it would reveal no more than is said on the face of the document which would not be sufficient to override the conclusions that this Judge came to in making her own decision.

16. Paragraph 67 of the Judge’s decision states:-

“The appellant asserts that there is no free health care at all; that there is no proper treatment for him in the Ivory Coast; clinics are few, private and expensive. However, he has produced nothing specific about medical services available whereas the respondent argues that background country evidence indicates that there is a health care system in the Ivory Coast albeit not as good as the UK’s. Better facilities are available in Abidjan but at a high cost”.

It was acknowledged by Ms Turnbull that there was no evidence before the First-tier Judge from the Appellant regarding medical services within Ghana. The burden of producing such evidence rested with the Appellant and accordingly the Judge cannot be criticised for coming to the conclusion that she did. Paragraph 71 of the Judge’s decision is also relevant at this point. It states:

“Mr Sharma submitted that medical facilities are in short supply and traditional methods of healing are relied upon. The health care system is mainly private at a high cost. However as stated above no evidence was produced to corroborate

this. Mr Sharma also submitted that the appellant cannot work sufficiently to pay for medical care and support from the Church is unlikely to continue”.

Even if the Judge has erred, as Mr Clarke seems to accept, at paragraph 63 of her decision where she analyses the authority of N her errors are not material to the outcome of this appeal which would have failed in any event in light of the Appellant’s failure to discharge his burden in relation to the absence of medical services within his home country. On the evidence before her the Judge was entitled to come to the decision that she did in relation to the broader Article 8 issue and the conclusions that she made were open to her on the evidence that fell to be considered.

17. I hope that the Appellant’s position may be resolved by way of either a further application or a reconsideration of it in due course on compassionate grounds. However, on my own analysis of the Judge’s decision there are within it no material errors.

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 him or any member of their 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

Date 20 June 2017

Deputy Upper Tribunal Judge Appleyard