



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00233/2017

THE IMMIGRATION ACTS

Heard at Liverpool Civil & Family Court
On 27th June 2018

Decision & Reasons Promulgated
On 08th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

FUALEFAC [N]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Khaliq Sayed (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Knowles, promulgated on 10th January 2018, following a hearing at Manchester on 15th December 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Cameroon and was born 3rd October 1988. She appealed against the decision of the Respondent dated 12th December 2017 refusing her application for leave to remain in the United Kingdom on the basis of her medical condition. The Appellant had entered the UK on 15th February 2013, as a student. She had after her arrival in the UK, been diagnosed with systemic lupus erythematosus and patent ductus arteriosus. She claimed that she was unable for this reason to return to Cameroon for risk of exacerbating her symptoms.

The Appellant's Claim

3. The essence of the Appellant's claim was acknowledged by the Respondent Secretary of State when she considered the claim on the basis of Article 3 ECHR. She noted that "the Appellant had provided NHS documents in support of the claim", and that "the Appellant's prognosis is uncertain as she risks flare ups, infection and other complications arising from her illness". Moreover, the Respondent also noted that, "the Appellant is under the care of a rheumatologist, haematologist, and cardiologist" (paragraph 6).

The Judge's Findings

4. The judge, who considered the appeal, at a time when the Appellant had fallen pregnant, concluded that given the absence of any independent medical evidence of the Appellant's pregnancy, there would be no real risk of inhuman treatment contrary to Article 8 ECHR, but had such evidence been produced, he would have found the case proven on behalf of the Appellant on this basis (paragraph 64).

Grounds of Application

5. The grounds of application state that the judge erred in this respect because independent medical evidence did exist, and in fact was referred to by the judge expressly at paragraph 56 when he drew attention to the fact that "the Appellant produced a letter dated 8 December 2017 from Dr Kamnath, consultant rheumatologist", and this specifically referred to the fact of a "urgent appointment in view of recently confirmed pregnancy". He goes on to say that, "we feel we will need to manage her with corticosteroids and hydroxychloroquine" (paragraph 56). Indeed, the judge further went on to state that "the Appellant also produced the referral letter from Dr Kamnath to the lupus in pregnancy clinic in Manchester, of even date" (paragraph 57).
6. On 9th February 2018 permission to appeal was granted on the basis of this inconsistency in the judge's findings.
7. On 13th March 2018, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the letter from Dr Kamnath does not confirm the pregnancy but merely mentions that the Appellant told him that she was pregnant. Accordingly, the judge was correct in finding that there was no medical evidence. In fact, the judge

found at paragraph 62 that there were facilities available in Cameroon that could treat the Appellant for her medical condition and there was family support there. A closer examination of Dr Kamnath's letter of 8th December 2017 also does not confirm that the foetus would be at risk on return to Cameroon.

Submissions

8. At the hearing before me on 27th June 2018, Mr Sayed, appearing on behalf of the Appellant, relied upon his grounds of application. He submitted that the Appellant was a person who required complex management of her situation, and Dr Kamnath's letter addressed precisely that issue. Given that the judge had stated that had there been independent medical evidence confirming her pregnancy, the Appellant's appeal would have been allowed, it was incongruous of him then to have dismissed it on this basis.
9. For her part, Ms Aboni relied upon the Rule 24 response.
10. In reply, Mr Sayed submitted that there was no getting away from the fact that the judge had stated at paragraph 56 that he would allow the appeal had there been independent evidence. Such evidence existed. In fact, subsequent to the letter from Dr Kamnath further evidence was provided. It might have been otherwise if the judge had not stated that he would allow the appeal. However, given that he had done so, and independent evidence existed, this appeal should have been allowed, and the judge fell into error in not doing so.

Error of Law

11. I am satisfied that the making of the decision by the judge involved in the making of an error on a point of law (see Section 12((1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
12. First, there is no question that the Appellant suffers from the condition that she does. This is set out by the judge and is accepted by the Respondent (see paragraph 6).
13. Second, the medication that the Appellant is on, is one with respect to which, the judge found that "there is no evidence" that it is available in Sierra Leone, although it is very much also the case that, "the Appellant had not shown that she would be unable to be treated with alternative" forms of treatment (paragraph 8).
14. Third, it is the case that, "the Respondent noted that the Appellant had shown that her condition is incurable and that even in the UK she would remain under medical treatment with the risk of infection and other complications" (paragraph 10).
15. Fourth, none of this, is, of course, to suggest that this in itself means that the Appellant would not be able to receive treatment for a condition in Cameroon, as the judge stated at paragraph 62 of the determination.
16. Fifth, however, the issue here was whether, given that the Appellant had reported a development in her pregnancy, there was independent evidence to this effect. The

judge had in great detail set out the independent evidence at paragraph 56, referring to Dr Kamnath. The medical practitioner's note does refer to "recently confirmed pregnancy", and the doctor does state that, "I would hope that foetus will be fine" (paragraph 56). In the light of this, the judge erred in stating that "had the Appellant produced independent medical evidence that she is pregnant ... then I would have concluded that there is a real risk of inhuman treatment to the Appellant" (paragraph 64).

Re-Making the Decision

17. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions I have heard today. I am allowing this appeal to be extent that it is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Knowles, on the basis of Practice Statement 7.2(a). It would still be open to a judge to find that the Appellant's condition could be catered for in Sierra Leone. That, however, must be a matter for the Tribunal of inquiry once the issue is considered again.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Knowles.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd August 2018