



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/16902/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 22 March 2018

**Decision & Reasons
Promulgated
On 10 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Miss Barton, instructed by Sabz Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, PA, is a female citizen of Chile who was born in 1975. She entered the United Kingdom as a visitor in June 2015 and in August 2015 married her British partner, JW. The appellant applied for leave to remain as the spouse of JW who is a British citizen. Her application was refused by a decision of the respondent dated 31 March 2016. She appealed to the First-tier Tribunal (Judge Turnock) which, in a decision promulgated on 10 July 2017, allowed the appeal on human rights grounds (Article 8

ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge accepted that the appellant and JW had formed a relationship at a time when JW's immigration status was precarious. However, JW suffers from schizophrenia. He is unable to work. He receives a war disablement pension and Personal Independence Payment (PIP). The judge accepted that the appellant and JW would be able to live together in the United Kingdom without recourse to public funds. The parties accept that the human rights appeal turned on the question of insurmountable obstacles. The Secretary of State had submitted to the First-tier Tribunal that JW, upon arrival in Chile, would be able to rely on private health insurance and that there would be adequate healthcare facilities available for him. The judge accepted [45] that there was, "no evidence produced by the appellant with regard to healthcare provision in Chile nor with regard to the availability of the medication he is currently receiving. I find that although it would be possible for him to obtain insurance, it is unlikely that there would be adequate support in respect of the pre-existing condition which Mr Walker would have to declare in seeking insurance". The judge went on at [48] to make the following finding:

"I conclude that, there would be insurmountable obstacle to the couple continuing their married life in Chile. I am satisfied, on the basis of the medical evidence produced by the appellant that Mr Walker is likely to face very significant difficulties in regard to his health in the event that he was obliged to relocate to Chile. He cannot speak Spanish and would not be able to look for or find work. He would lose continuity of care and he has a history of serious mental health issues. I am satisfied that the consequences would be a serious adverse impact on his mental health. I conclude, therefore, that he does meet the requirements of the [Immigration] Rules."

3. The judge acknowledged [49] that the appeal was not under the Immigration Rules but in respect of Article 8 ECHR. He went on to set out at length the various relevant legal provisions including Section 117B of the 2002 Act (as amended). He also cited *Agyarko* [2017] UKSC 11 [59].
4. There was discussion at the Upper Tribunal hearing as to whether or not there had been evidence which might indicate that the particular medication which JW receives is available in Chile. That investigation appears to me to be pointless. The medical evidence does not address the question of the availability of what appeared to be standard schizophrenia medicines in Chile nor has the Secretary of State produced any evidence although an assertion is made in the refusal letter [page 3 of 8] that the medicine would be available. I have to say that I consider it highly unlikely that such medication would not be available in Chile albeit that JW would have to pay for it. There is, however, no contradiction in the judge's findings at [45] and [48]. The judge correctly observed at [45] that there was no evidence regarding the availability of the medication but that was not the basis upon which he founded his decision that there would be insurmountable obstacles to prevent the couple continuing their married

life in Chile. Rather, the judge refers at [38] to the “loss of continuity of care” and to the evidence (which was before him from JW’s doctor) that there would be a serious impact on the mental health of a person who has suffered serious mental health issues for some time.

5. I find that the finding which I have identified above was open to the judge on the evidence. It was clear from the medical evidence that there had been problems with JW taking the necessary medication in the past and, whilst I find that the appellant has not proved that the medication would not be available in Chile, it is clear from the medical evidence that the mere fact of relocating to an entirely foreign jurisdiction would, in the view of the medical professionals assisting JW in the United Kingdom, be likely to have a serious and adverse effect upon his mental health. I am satisfied that it was open to the judge, on the evidence, to reach his finding at [48]. I do not say that that finding was inevitable; indeed, another judge, on the same facts, may have reached a different conclusion. However, that is not the point. The judge’s finding cannot be described as perverse whilst the judge has reached that finding by considering the relevant evidence and applying relevant jurisprudence. The judge has not given excessive or inadequate weight to particular items of evidence; indeed, I find his analysis in general to be even-handed and thorough. It is not the role of the Upper Tribunal to interfere with findings of the First-tier Tribunal, which has had the advantage of hearing the evidence and considering it in considerable depth. The availability or lack of availability of particular medication is, as I have stated above, not a relevant feature in this case whilst the medical evidence does support the judge’s findings. In consequence, I dismiss the Secretary of State’s appeal.

Notice of Decision

6. This appeal is dismissed.

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 1 April 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 April 2018

Upper Tribunal Judge Lane