



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

Appeal Number: HU/01354/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 7 June 2019**

**Decision & Reasons Promulgated
On 17 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**CARLISLE ALGERNON COULSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, of Counsel instructed by Messrs Jein Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal M A Khan who, in a determination promulgated on 8 October 2018 dismissed the appellant's appeal against a decision of the Secretary of State to refuse him leave to remain on human rights grounds.
2. The appellant is a citizen of Jamaica born on 4 April 1954. He entered Britain as a visitor in October 2015 with a visa valid until 15 April 2016. Before that date he made a human rights application for leave to remain on human rights grounds. His application was refused and the matter came before Judge Khan on 12 September 2018.

3. At the beginning of the hearing the appellant's Counsel made an application for an adjournment on the basis that when she had met the appellant that morning she had gained the impression that the appellant's physical and mental health had deteriorated. He had been diagnosed with type 2 diabetes and high blood pressure. The situation, she stated, had become worse since his father's death in April 2018. She applied for an adjournment on the basis that a psychological report could be obtained. The judge refused that application on the ground that the appellant's representatives "have had more than sufficient evidence (*sic*) to obtain any medical or other evidence necessary with regard to the appellant's medical condition". The judge went on to hear oral evidence from the appellant, his daughter, three sisters and brother-in-law, and submissions. The judge considered the provisions of paragraph 276ADE of the Rules and found that the appellant could not meet those provisions. He then considered the rights of the appellant outside the Immigration Rules and having placed weight on the fact that the appellant had relatively recently entered as a visitor, that he did have a child in Jamaica, although he had stated that he was estranged from that child, and having noted that the appellant was likely to receive some money from his parents' estate once probate had been obtained, considered that there was no basis on which this appellant would be entitled to remain on human rights grounds.
4. The grounds of appeal argued that it was unfair that the judge had not granted the adjournment request to obtain a psychiatric/psychological report and had therefore misdirected himself in law. It was acknowledged that no further medical evidence had been produced, but it was argued that the fact that as the adjournment had not been granted the decisions in relation to paragraph 276ADE(1) and Article 8 outside the Rules were unsafe. A third ground - that the judge had failed to consider the best interests of the minor grandchildren of the appellant was also set out, although it was not relied on before me.
5. Permission to appeal having been granted, the hearing was listed before Deputy Upper Tribunal Judge Peart on 14 December 2018. Judge Peart, having noted that there was no medical evidence, adjourned the appeal to be relisted before himself on 15 March 2019. On 7 January 2019 Judge Peart ordered:-

"Ms Miszkiel do no later than 4 March 2019 file and serve the appellant's bundle and skeleton hardcopies to Ms Kiss, Field House and also by e-mail to Designated Judge Peart".

On 15 March there was no Presenting Officer. Judge Peart again adjourned because he considered that there had been a failure to comply with directions, although the reality was that a report from Dr Dhumad had been served on 9 March 2019 but did however not appear to have been before Judge Peart. He stated, in court, that cause should be shown as to why there should not be a wasted cause order. Judge Peart again reserved the case to himself, however the appeal was then relisted before me on 7 June 2019. It was clear that the appeal was not part-heard and therefore a transfer order was not required. Although there was some


discussion as to whether or not Judge Peart had actually set aside the determination of the judge, I found that he had not done so. There is no decision on the file indicating that the determination was set aside and indeed Mr Gajjar confirmed with his client that that had not been ordered at the hearing. I therefore heard submissions from both parties.

6. I made it clear that the issue before me was whether or not there was any material error of law in the determination of the First-tier Judge. The report from Dr Dhumad was not before the First-tier Judge and none of the various witness statements which had been prepared by the appellant's solicitors, nor the skeleton argument prepared by Counsel for that hearing had mentioned the requirement for a medical report. No application for an adjournment had been made before the hearing.
7. I find that there was no error of law in the determination of the Judge in the First-tier. It was his duty to deal with the appeal before him on the basis of the evidence that there was before him. The assertions of the appellant's Counsel, who has no medical qualifications were not an appropriate basis on which to adjourn the appeal, particularly given that there had been no prior application for an adjournment before the hearing nor indeed had there been any medical evidence whatsoever placed before the Tribunal. I consider that the judge's decision not to adjourn the appeal was fully open to him. There was nothing unfair in the decision.
8. Moreover, the judge properly went on to consider all the relevant factors as they were before him, and was entitled to take into account that the appellant had only lived in Britain for a short period of time, that he had a son in Jamaica and that he had some means. I find that he made no error in his assessment of the rights of the appellant under Article 8 of the ECHR. I have read the medical report and it is a report which the respondent may wish to take into consideration if further submissions are made but that does not alter the facts as they were before the judge. I would add that the judge did properly consider the rights of all members of the appellant's family and there was nothing to indicate that the Article 8 rights under Section 55 of the appellant's grandchildren would be infringed by the decision. For the avoidance of doubt I would confirm that I do not consider it appropriate to make a wasted costs order and do not do so.
9. Accordingly I find there is no material error of law in the determination of the judge in the First-tier Tribunal and that his decision shall stand.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed: 
2019

Date: 12 June

Deputy Upper Tribunal Judge McGeachy

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge McGeachy