



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

Appeal Number: HU/04591/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 September 2022**

**Decision & Reasons Promulgated  
On 22 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**BENJAMIN OLALEKAN OYEBAMIJI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Chakmakjian, instructed by Reiss Edwards Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Nigeria. He appealed to the First-tier Tribunal against the Secretary of State's decision of 10 March 2020 refusing his application for leave to remain in the United Kingdom.
2. There had been an earlier unsuccessful appeal in 2015. A subsequent appeal was dismissed following a hearing on 23 June 2021. Subsequently a panel of the Upper Tribunal consisting of Upper Tribunal Judge Allen and Deputy Upper Tribunal Judge Monson concluded that the judge had erred in law with regard to the Article 3 findings, but concluded that there was no error of law in respect of Article 8. It was consequently directed that the appeal under Article 3 would be reheard and the decision re-made by the Upper Tribunal.
3. At the hearing before me on 6 September 2022 Ms Everett noted the finding of the judge in 2015 that there would be a substantial adverse effect on the appellant's health, quality of life and expectation of life if he

were to be returned to Nigeria. It had been found that cessation of treatment would lead to serious adverse effects and shorten his life by ten years. In the more recent appeal in the First-tier Tribunal the judge had found that return remained likely to produce a substantial adverse effect on the appellant's health and quality of life and his life expectancy.

4. In light of the medical evidence, which was accepted, Ms Everett stated that her remaining concerns were around not so much the availability of medication, which it was clear was a possibility in Nigeria, but rather the ability of the appellant to access it in light of the cost of medication. However, she considered that some clarification was needed as to what his circumstances would be in Nigeria.
5. In light of this very helpful statement of the respondent's position, it seemed clear that the issues had narrowed to the question of whether the appellant would be able to access the medication he needed in Nigeria in order to avoid suffering in circumstances which would mean that the facts of his case fell within the guidance in AM (Zimbabwe) [2021] UKSC 17 and give rise to a breach of his Article 3 rights.
6. The appellant gave evidence and adopted the statement to be found in the bundle. He made one minor correction as to his ability to shower, in that it was not the case that he could only shower with the help of a carer but he had grab rails to help.
7. When cross-examined by Ms Everett the appellant confirmed that he had relatives in the United Kingdom. As to whether they supported him financially they did something for him but it was not enough. With regard to the reference in the Southwark Council Care and Support Plan Review, at page 25 of the bundle, it was said that his immigration matter had been ongoing since 2010 and it had cost him thousands of pounds in legal fees, he said that it had come from relatives. He used to work a bit also when he was initially in the United Kingdom. If he had to go back to Nigeria the medication was too expensive for them to be able to help him financially. They had provided £1,000 or £2,000 but they could not help with the medication.
8. As regards the relatives who had helped him this was his mother's brother and also his pastor. He did not know if the pastor had any connections with churches in Nigeria. The pastor knew that the appellant had immigration problems.
9. He was asked whether it was right that he had some contact with his son in Nigeria and he said he had not spoken to him for a long time. When he worked he used to support them but he could not do that now and the boy's mother was married to another man now. He had no other family in Nigeria. His uncle in the United Kingdom used to visit Nigeria. As to whether his uncle could help him if he returned to Nigeria and find him somewhere to live he said his uncle did not have a home in Nigeria.

10. On re-examination the witness was referred to paragraph 13 of his statement where he said he had no connection or relation with anyone in Nigeria and had lost his parents and had no contact with his son or mother. He said that he could no longer contact his son as his former wife had a new partner and there was no network around where they were and his wife had said she was not to be responsible for the children and he had supported them when he was working with school fees and then she got married and she had still asked him to be responsible but due to his condition he had stopped working. He had lost contact and she was with her new husband. He was thinking he might come back to her and they fought a lot and he did not want them to be fighting. The second husband thought that the appellant had money here and would send it to feed them and it all cost and the money was too much for him.
11. In her submissions Ms Everett said that most of the evidence was uncontroversial. It could be said that the appellant's description of his circumstances including his financial circumstances was slightly vague though she accepted that was not a major credibility challenge. He had some support. It was fair that the picture he painted as regards to life in Nigeria was slightly obscured and was perhaps an attempt to assist his position. It was however the case that the findings of the judge in 2015 that there would be a significant reduction in his life expectancy and suffering on return were largely undisturbed, and more recently the First-tier Judge had come to similar findings. The Tribunal might find in the circumstances that the claim came within AM (Zimbabwe). There was the question of whether the appellant could avail himself of the medication. If it was found he could not then the Tribunal was likely to find a breach of Article 3. The claim under Article 8 was likely to stand or fall with Article 3.
12. Mr Chakmakjian sought and was granted permission to call the evidence of Ms Rebecca Lyons who is the appellant's support worker. She adopted the contents of her letter of 9 June 2022. She was not aware of any other family of the appellant in the United Kingdom than his uncle. As regards how he had funded his medication she thought she recalled that the appellant had used money he had saved when working and received donations from the church congregation and the pastor of the church. The current proceedings were being funded by Southwark Council.
13. On the point of whether the appellant could realistically access the medication he needed in Nigeria, Mr Chakmakjian argued that bearing in mind the level of support he required, both financial and physical as set out in the report including occupational therapist for adjustments, showering, in the kitchen, etc., and the cost factors, the matter was such as to make it entirely impossible for the appellant. It was clear from the report of the Nigerian expert that the cost of medication was very considerable. It far outstripped the costs of any immigration appeal. There were daily high costs and he required a lot of other medication and also care costs and accommodation and travel. Even if the appellant had a kind uncle in the United Kingdom or a willing congregation there was no way they would be able to fund the sort of income that he needed for the

rest of his life. There would be catastrophic consequence if there were a lack of access to the necessary medication. The evidence was plausible as to the lack of support and the loss of contact in Nigeria.

14. I stated that the appeal would be allowed under Article 3 and that I would provide my reasons subsequently, which I now do.
15. Mr Chakmakjian has provided a helpful note which summarises the appellant's current health conditions which include osteoarthritis, hypothyroidism, hypopituitarism, hypertension, hepatitis B, diabetes and acromegaly. The medical evidence explains that without growth hormone control his various complications will worsen and his life expectancy if acromegaly is uncontrolled will be shortened. Pituitary replacement medication is described as essential and he requires periodic assessment by an experienced endocrinologist. The pegvisomant which he takes is used to prevent the residual growth hormone excess. Hydrocortisone is also described as being particularly essential.
16. Occupational Therapy Equipment have installed adaptations in the appellant's home to assist him to use the bathroom, shower and kitchen and he moves around with the aid of a walking stick. His health is at high risk of declining if his conditions are not managed and he is at high risk of falls and injuries and social isolation.
17. Pegvisomant is not available through public health in Nigeria and must be purchased privately. It can be seen from the letter from Professor Olamoyegun that the cost of Pegvisomant in Nigeria is the equivalent of £680 for a 5mg injection (the appellant requires 20mgs a day) and around 50 pence to £1.20 for hydrocortisone injections.
18. Though I agree with Ms Everett that there is some vagueness in the appellant's evidence, it is sufficiently clear from the medical evidence that without these necessary medications the appellant will decline into a situation which clearly falls within the guidance set out in AM (Zimbabwe) as amounting to Article 3 risk. If his financial situation were different then the position on risk on return might well be different. But the very high cost of the pegvisomant, which is clearly essential, and the absence of any material financial support is such as to lead me to conclude that the appellant would be entirely unable to finance these medications, in particular the pegvisomant, and also be unable to finance the degree of support, accommodation and travel that he would require to enable him to avoid the degree of threat to life which is envisaged in the AM (Zimbabwe) test.
19. Accordingly I find that the appellant has made out his claim on Article 3 health grounds and the appeal is allowed on that basis. In the circumstances there is no need to consider the Article 8 claim.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 15<sup>th</sup> September 2022

Upper Tribunal Judge Allen