



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003096
First-tier Tribunal No:
PA/52242/2021
IA/05513/2021

THE IMMIGRATION ACTS

Heard at Field House
On 11 January 2023

Decision & Reasons Promulgated
On the 01 February 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Ms Gilmour, Senior Home Office Presenting Officer

For the respondent: Ms Chapman, Counsel instructed by Turpin Miller

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original

appellants or their family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. This is an appeal against the decision issued on 3 March 2022 of First-tier Tribunal Judge Ford which allowed OS's appeal on Article 3 medical grounds but refused a protection claim.
2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to OS as the appellant, reflecting their positions before the First-tier Tribunal.
3. The appellant is a national of Gambia and was born on 10 April 1965.
4. The appellant came to the UK in 2011. Her husband claimed asylum in 2015 with the appellant as his dependent. That claim was refused and the appeal was dismissed in 2016. The appellant claimed asylum on 5 May 2017 with her husband as her dependent. That claim was refused on 2 November 2017. The appeal against the refusal was dismissed on 5 April 2019. The appellant made a fresh claim on 28 August 2020. The respondent did not find that the new materials showed that she was in need of protection but afforded her a further right of appeal. That decision led to these proceedings as the appellant lodged a further appeal before the First-tier Tribunal.
5. The appeal before First-tier Tribunal Ford was brought on the basis of a protection claim, an Article 3 medical claim and an Article 8 private life and medical claim. Judge Ford did not find that the protection claim was made out. She found that the appellant would face a breach of Article 3 ECHR on medical grounds, specifically the appellant's mental health, if she were returned to Gambia. The judge did not make findings under Article 8 ECHR where the appeal had been allowed under Article 3 ECHR.
6. The appellant challenged the refusal of the protection claim and absence of findings under Article 8 ECHR but was refused permission by the First-tier Tribunal on 6 April 2022. In the same permission decision the First-tier Tribunal granted permission to the respondent to challenge the findings on the Article 3 medical claim. The respondent maintained that the First-tier Tribunal had failed to show how the facts of the appellant's case met the test set out in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17AM Zimbabwe and also failed to take into account the country evidence relied on by the respondent on the medical treatment available in Gambia.
7. The parties before me were in agreement that the decision of the First-tier Tribunal disclosed the errors put forward by the respondent and that it should be set aside to be remade in the First-tier Tribunal. Given the agreement, which accorded with my own view of the case, I set aside the decision of the First-tier Tribunal on the Article 3 ECHR medical claim. As Ms Chapman indicated for the appellant, there is no decision on the Article

8 ECHR claim which now needs to be addressed by the First-tier Tribunal. The appellant accepts that there are no live protection issues.

Notice of Decision

8. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade afresh in the First-tier Tribunal on Article 3 and Article 8 ECHR grounds only.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 11 January 2023