



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004616

First-tier Tribunal Nos: HU/60643/2023  
LH/01108/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 7<sup>th</sup> of January 2025

**Before**

**UPPER TRIBUNAL JUDGE KHAN**

**Between**

**AGN  
DUD (minor)  
(ANONYMITY ORDERS MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Chakmakjian, Counsel, instructed by Leonards Solicitors  
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

**Heard at Field House on 10 December 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. This is an oral decision delivered in the appeal against a decision of First-tier Tribunal Judge Aldridge ('the judge') dated 29 August 2024, dismissing the appellant's appeal against the respondent's refusal to grant her leave to remain ('LTR').
2. During submissions, Mr Parvar, on behalf of Secretary of State conceded the appeal. In light his concession my reasons will be brief.
3. The appellant is a citizen of Nigeria. She came to the United Kingdom with her minor son on 4 November 2021 with entry clearance as a student valid from 25 October 2021 until 28 January 2023. The appellant made an application for leave to remain based on Article 3 of the European Convention on Human Rights on 25 January 2023.
4. The respondent refused the application on 23 August 2023 on the basis that the appellant had no family in the UK to engage the Immigration Rules relating to family life. In respect of her private life, the appellant had been in the UK for one year and two months and had not lived in the UK continuously for twenty years but had spent 44 years of her life in Nigeria. As such, there were not very significant obstacles to her reintegration into Nigeria. Further, there were no exceptional circumstances to warrant a grant of leave outside the Rules.
5. Although the appellant had been diagnosed with cancer for which she was receiving treatment, the respondent concluded that her removal would not breach her Article 8 rights under the European Convention on Human Rights (ECHR). She was not receiving urgent treatment and there was no reason why she could not travel. In this context, her child's best interests would be to return with her to Nigeria where he could access education. In respect of Article 3 (health issue), the respondent identified a wide range of drugs available for the treatment of breast cancer in Nigeria including those recommended to the appellant. Overall, the respondent states that the appellant failed to demonstrate that she would be unable to access treatment or that her condition would seriously and rapidly deteriorate upon removal from the UK resulting in intense suffering. The appellant appealed to the First-tier Tribunal.
6. The appellant maintains that she cannot be removed to Nigeria because she would not be able to access suitable medical treatment in Nigeria and as a single mother in Nigeria it would be extremely difficult for her to reintegrate back into life as a cancer survivor making it impossible for her to pay for her medication and further treatment.

### **Relevant Law**

7. The case turns on whether the judge correctly approached Article 3 considerations in relation to health and the relevant case law, namely, AM (Zimbabwe) [2020]\_UKSC 17. That case decided that the protection of Article 3 ECHR extends to cases where 'substantial grounds have been shown for believing that the applicant, although not at imminent risk of dying would face a real risk on account of the absence of appropriate treatment in the receiving country or lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy [183]. The court explained 'This means cases where the applicant faces a real risk of rapidly experiencing intense

suffering (i.e, to the Article 3 standard) in the receiving state because of their illness and the non-availability there of treatment which is available to them in the removing state or faces a real risk of death within a short time in the receiving state for the same reason’.

### **First-tier Tribunal Decision**

8. Before the First-tier Tribunal the appellant gave evidence. The judge refused the appeal on all grounds. The key findings on Article 3 relied on in this appeal are found at [27], [28] and [31]. At [27] the judge stated ‘I have carefully considered all of the aspects of the reports ... I am not satisfied that the appellant has demonstrated that she would be at risk of a serious, rapid and irreversible decline in her state of health resulting in intense suffering or a significant reduction in life expectancy. I do not accept that appropriate treatment required would be absent and I do not accept that the appellant would be unable to access such treatment. Whilst I do note that the appellant may have to pay for her treatment, I am not satisfied that it has been demonstrated that she will be unable to do so. A high threshold is required for the appellant’s difficulties to amount to a breach of Article 3. This threshold has not been met’.
9. At [28] the judge stated, ‘I do accept that there would be a period of adjustment as the appellant and her son reintegrated into society in Nigeria and the appellant found employment, accommodation in Lagos and suitable arrangements for the education of her son”.
10. At [31] the judge stated ‘Her current state of health appears to restrict her ability to engage and support herself. However, her prognosis would appear to be satisfactory’.

### **Grounds of Appeal**

11. Permission to appeal on all four grounds was granted on 7 October 2024 by First-tier Judge Boyes.

Ground 1, failure to consider material evidence, in particular the updated Social Services report was conceded at the outset by the Secretary of State’s representative, Mr Parvar.

Ground 2, failure to give adequate reasons was conceded at the outset by the Secretary of State’s representative Mr Parvar.

Ground 3, failure to take into account a material consideration, namely, the applicant’s circumstances immediately upon return as opposed to their ability to cope and reintegrate in the longer term, the argument being that the judge recognised there would be a period of adjustment and acknowledged that the appellant’s current state of health appeared to restrict her ability to engage and support herself. The ground argues that it was incumbent on the judge to make findings about Articles 8 and 3 from the point of arrival in Nigeria and not in the fullness of time, the issue being whether the appellant would suffer a breach of Article 3 and 8 in the meantime. This ground was conceded by the Secretary of State’s representative, Mr Parvar during submissions.

Ground 4, failure to consider material, objective evidence/give adequate reasons relating to CPINs on medical treatment and healthcare. This ground asserts that

it is not clear if the judge applied the relevant CPINs to the findings and to give reasons for the same. This ground was conceded by the Secretary of State's representative, Mr Parvar during submissions.

### **Discussion**

12. In light of the early concessions made in respect of grounds 1 and 2, the discussion focussed mainly on grounds 3 and 4, and paragraphs [28] and [31] of the judge's decision which stated "I do accept that there would be a period of adjustment as the appellant and her son reintegrated into society in Nigeria and the appellant found employment, accommodation in Lagos and suitable arrangements for the education of her son" and further, "Her current state of health appears to restrict her ability to engage and support herself. However, her prognosis would appear to be satisfactory".
13. Mr Parvar initially challenged ground 3 as 'hypercritical' on the basis there was no requirement to show that reintegration would be effective on arrival, noting that reintegration often takes some time of readjustment as stated by the judge. As such, there was no error of law.
14. On further reflection, however, Mr Parvar conceded the submission made by the appellant's counsel that the judge had failed to consider how the appellant would look after her minor child on arrival given that he had accepted that her current state of health appeared to restrict her ability to engage and support herself. The judge had clearly failed on the face of the decision to take into account the primary needs of the child on arrival, while the appellant was still unable to look after herself or her child.
15. In light of the judge's failure to address how the appellant would be able between arrival to reintegration to address the primary needs of her child, Mr Parvar accepted that the decision involved the making of a material error of law and conceded ground 3 of the appeal.
16. Turning to ground 4; which deals with the judge's failure to consider material objective evidence and, in particular, to give adequate reasons regarding the application of the CPINs on medical treatment and healthcare, it was conceded by Mr Parvar that even though the judge at [29] did refer to the CPINs, it remained unclear if he had applied it to his findings and, in particular, the issue of accessibility of medication for cancer treatment. In light of the apparent inadequate reasoning, Mr Parvar conceded ground 4, in the context of **MK (Pakistan) [2013] UKUT 00641 (IAC)**.
17. For the reasons indicated, I allow the appeal and set aside the decision of the First-tier Tribunal Judge Aldridge.

### **Notice of Application**

18. The decision of the First-tier Tribunal Judge involved the making of several material errors of law and is set aside. Having heard submissions from the parties, I agree the case should be remitted to the First-tier Tribunal to be heard afresh with no preserved findings.

### **Anonymity**

19. Upon further submissions from counsel for the appellant, I make an anonymity order in respect of the appellant (and her minor child) on account of the

sensitivity of the health issues involved in this case, also bearing in mind that there is a very young child who is also involved in the case. I direct that the appellant be known as AGN and her minor child as DUD (minor) in relation to all further references. Accordingly, an anonymity direction is put in force immediately.

**K.A Khan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

23 December 2024