



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03307/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2nd August 2018

Decision & Reasons Promulgated
On 24th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR KB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Celia Record, Chambers of Celia Record
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant a citizen of Ghana appealed to the First-tier Tribunal against a decision of the Secretary of State dated 15th July 2015 refusing his application for leave to remain in the UK on the basis of Articles 3 and 8 of the European Convention on Human Rights.
2. First-tier Tribunal Judge Swaniker dismissed the Appellant's appeal in a decision promulgated on 10th July 2017. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Andrew on 4th June 2018.
3. The background to this appeal is that the Appellant entered the UK on 10th November 2004 on a working holidaymaker visa. His subsequent application for leave to remain

as a student was refused and he was removed from the UK on 12th September 2006. However he was admitted to hospital in the UK on 4th April 2008 with an intra-cerebral brain haemorrhage. He was discharged from hospital on 9th May 2008. On 13th June 2014 he made an application for leave to remain outside the Immigration Rules, that application was refused on 28th August 2014. The Appellant submitted a Statement of Additional Grounds of appeal on 14th May 2015 leading to the decision under appeal.

4. When the Appellant's hearing of his appeal in the First-tier Tribunal was first listed the hearing was adjourned following a request from the Appellant's representative, Ms Record, as she was without instructions. The Appellant failed to attend the re-scheduled hearing on 26th May 2017. The First-tier Tribunal Judge was satisfied that the Appellant had been notified of the hearing and decided to proceed with the hearing in the Appellant's absence.
5. The First-tier Tribunal Judge concluded that the Appellant had not presented any credible evidence to point to his meeting the requirements of the Immigration Rules for leave to remain on the basis of his private life and/or to demonstrate such exceptional circumstances as would warrant the consideration of the grant of leave to remain outside the Immigration Rules in line with any obligations under Articles 3 or 8 of the ECHR. The appeal was dismissed.

Grounds of appeal

6. The Appellant appealed against that decision out of time. It is contended in the grounds of appeal that the Appellant was unaware of the date of hearing of the First-tier Tribunal due to his circumstances. It is claimed that he suffered a brain haemorrhage in 2008 and still has ongoing health issues. In particular it is asserted that he suffers from dysphasia which is a condition affecting his communication. It is claimed that he lost touch with his direct access counsel before the listed hearing on 12th December 2016 and counsel was without instructions and unable to represent the Appellant. It is accepted that, although the appeal was adjourned, the Appellant did not attend the hearing heard on 26th May 2017. The grounds contend that communication with the Appellant is slow and painstaking and that it appears that the Appellant was moved by NASS to alternative accommodation and that he struggled to cope with the move and did not attend the relisted hearing and lost touch with counsel until early 2018. It is contended that the case is worthy of close attention as the Appellant is a vulnerable man with particular health difficulties caused by a brain haemorrhage.
7. The grounds of appeal argue that the Appellant has difficulties in speaking and understanding and that information was provided with the Grounds of Appeal. It is contended that, if returned to Ghana, the Appellant would be unable to integrate or engage with the community and would be unable to access healthcare and that Rule 276ADE of the Immigration Rules is therefore engaged.
8. It is asserted that the Appellant has lived in the UK for less than twenty years having entered the UK on 10th November 2004. It is contended that his medical condition was not considered by a First-tier Tribunal Judge. It is contended that, if returned to Ghana, the Appellant has no one to go to, no home and no support network and that the judge

erred by failing to determine the appeal in accordance with the Appellant's grounds and all of the evidence.

9. It is contended that the judge failed to make findings of fact and to consider the case in accordance with Rule 276ADE and Articles 3 and 8. It is further contended that the case engages the decision of **Paposhvilli v Belgium (application number 41738/10) ECHR 13 December 2016**. It is further contended that there is a duty on the UK to obtain assurances that the patient will be treated in his home country.

Error of law

10. At the hearing Miss Record did not point to any procedural error on the judge's part. The judge considered the circumstances and the background to the hearing at paragraph 9. The judge noted that the Appellant had failed to attend the rescheduled hearing, that the notice of hearing was served on him at the last known address and that no explanation had been given for his absence.
11. In these circumstances it was open to the judge to proceed with the hearing in the Appellant's absence. Although it is asserted that the Appellant is particularly vulnerable and that he had been moved by NASS, there is no medical evidence before me as to how the Appellant's circumstances would have contributed to his failure to attend the hearing. There is no evidence as to his change of address and as to how that would have impacted on his failure to attend the hearing.
12. Miss Record submitted that the First-tier Tribunal Judge failed to consider the medical evidence contained in the Home Office bundle which was before her. She referred in particular to the letter from Eversley Medical Centre dated 30th April 2015 which states

“[The Appellant] had a left cerebral haemorrhage in 2008. This left him with receptive and expressive dysphasia and dysgraphia and secondary epilepsy which at present is well controlled ... He attended the local A&E department on 12th August 2014 when he was admitted after being found in bed with reduced consciousness by his carer. I understand he tends to have seizure every three months due to epilepsy, which is a complication of his cerebral haemorrhage”.
13. I also note that the letter from the medical practice of 15th July 2011 which states that the Appellant has had a stroke;

“From which he has made a good recovery although he has some remedial weakness. He also has epilepsy which is well controlled although he may still have an occasional convulsion. He has well controlled hypertension. None of these conditions exclude him from undertaking an appropriate exercise programme which takes account of his medical condition”.
14. There is a letter from Croydon Council which also refers to the stroke suffered by the Appellant in 2008, which it states has “severely impaired his speech, memory and he has some lesser impairments on his mobility”. The Respondent's bundle contains a report from A&E of 12th August 2014. There is also a report from Croydon Social

Services in relation to a review on 19th August 2014. Miss Record contended that the judge did not properly consider this medical evidence.

15. The judge considered the Appellant's case at paragraph 12 where she said;

"I find that the Respondent's reasons for decision letter demonstrates a very careful and considered assessment and consideration of the Appellant's application, taking into account in particular the Appellant's medical/health issues and his overall circumstances, such progress in his medical condition as per the local Authority assessment dated 19th August 2014, as well as the medical facilities/treatment available in Ghana. I find that the Respondent's analyses, deliberations and conclusions are well reasoned and supportable, and I find that the Appellant has failed to provide any or any credible evidence to undermine the efficacy of these conclusions".

16. The judge went on to find

"I do not consider that the Appellant has presented before me any credible evidence to point to his meeting the requirements of the Immigration Rules for leave to remain on the basis of his private life and/or to demonstrate such exceptional circumstances as would warrant the consideration of the grant of leave to remain outside the requirements of the Immigration Rules in line with any obligations under Articles 3 or 8 of the ECHR."

17. The judge's approach was to start by referring back to the reasons for refusal letter. There the Secretary of State considered all of the medical evidence submitted by the Appellant and the effects that the Appellant's health condition have had upon him.
18. It would perhaps have been better had the judge not phrased paragraph 12 in terms of a review of the Secretary of State's reasons. However it is tolerably clear to me that the judge took the reasons for refusal letter as the starting point for consideration of the evidence before the decision maker. It is clear that the evidence before the judge, which was the same as that before the decision maker, was at least two years before the date of the appeal. In my view, the nature of that evidence was general in nature and was not capable of leading the judge to reach any other conclusion other than that reached. The judge's reasoning, whilst brief, is sufficient to show that she did not consider that the medical evidence before her showed that the Appellant could meet the Immigration Rules or that his return to Ghana would breach Articles 3 or 8.
19. The judge cannot be criticised for proceeding to determine the appeal on the basis of the evidence before her and reaching a decision open to her on the basis of that evidence. In these circumstances I find that the judge made no material error of law.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law.

The decision of the First-tier Tribunal will stand.

An anonymity direction is made.

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: 17th August 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there is no fee award.

Signed

Date: 17th August 2018

Deputy Upper Tribunal Judge Grimes