Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/07439/2014**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision & Reasons Promulgated**
On 17 August 2015	**On 27 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

TSL
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Johnrose Solicitor for the Ellen Court Partnership
For the Respondent: Ms C Johnson Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. ~~I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.~~

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bruce promulgated on 16 March 2015 which dismissed the Appellant's appeal

against the Respondent's decision dated 8 April 2014 to refuse to grant him entry clearance as an adult dependent relative.

Background

3. The Appellant was born on 5 November 1993 and is a national of Zimbabwe. He is the son of PL a recognized refugee who has lived in the UK since 2000 and is the sponsor in the application made for entry clearance dated 24 February 2014.

4. On 8 April 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons: the Appellant did not meet the relationship requirements of E-ECDR.2.4, the personal care requirements, as an adult dependent relative.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bruce ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :

(a) It was conceded before her that the Appellant could not meet the requirements of the Rules as an adult dependent relative and relied solely on Article 8 outside the Rules.

(b) The Sponsor left Zimbabwe when the Appellant was 7 years old leaving him in the care of relatives but they have maintained contact by telephone, email and online social messaging.

(c) The Appellant was at the time of hearing 21 years old, attending college and 'no doubt able to care for himself'.

(d) PL is a refugee and cannot return to Zimbabwe and fears she will not see her son again unless he comes to live with her.

(e) She remarked that although there was no medical evidence she accepted that PL was HIV positive and was receiving treatment although she accepted that she had been very sick between 2002 - 2004.

(f) She has been working as a carer but has been off work due to suffering epileptic seizures. They were managing her medication and once they had the balance right she would return to work.

(g) By reference to Article 8 she accepted that there was a subsisting family life between the Sponsor and her son and the decision to refuse entry clearance would interfere with it. The legitimate purpose of the refusal was the protection of the economy.

(h) The Appellant did not meet any of the requirements of the Rules that would allow him entry clearance.

(i) She had sympathy for the Appellant and the sponsor as they would like to be together.

(j) However she found that she could only allow the appeal on Article 8 grounds if she found some compelling reason, not adequately reflected in the Rules, to do so.

(k) She found that there had been no disadvantage to the Appellant in the way that the Sponsor's refugee claim had been dealt with by the Respondent as the delay was largely that of the Sponsor.

(l) The Judge considered whether the situation of a woman with a life threatening illness was a reason why her son should be allowed to join her but found that the medical evidence submitted in support of the application said nothing about the sponsor's current state of health or how she might benefit from her son joining her. She commented that it did not even confirm that she was HIV+ although she accepted that to be the case for the purpose of the appeal.

(m) She concluded that there was no humanitarian reason why entry clearance should be granted.

6. Grounds of appeal were lodged arguing that the Judge had erred in her assessment of the humanitarian reasons for allowing the appeal having accepted that the sponsor was HIV+; the medical evidence did state that the sponsor was HIV+ contrary to what the Judge said; there was evidence of the sponsors current medical condition in her witness statement; those factors in s.117B that the Judge had to consider would all be answered favourably.

7. On 16 June 2015 First-tier Tribunal Judge Hollingworth gave permission to appeal.

8. At the hearing I heard submissions from Ms Johnrose on behalf of the Appellant that:

(a) She accepted that the Rules were not met and this appeal could only ever have succeeded under Article 8 outside the Rules.

(b) The judge had been referred to page 6 of the Appellant's bundle, the letter from the Doctor dated 28 January 2015 and this letter confirmed that the Sponsor was HIV+ and had chronic health problems and recommended that she lived with another individual.

(c) The Judge indicated that if she had that evidence she would have allowed the appeal.

9. On behalf of the Respondent, Ms Johnson submitted that :

(a) There was no indication by the Judge in paragraph 16 that she would have allowed the appeal if there had been other medical evidence.

(b) The medical evidence does not support the argument that there are compelling reasons to allow entry clearance.

(c) The evidence was not before the Judge that the Sponsor needed a carer and the Appellant was the only carer that would do.

Legal Framework

10. It is now generally accepted that Immigration Rules do not provide in advance for every nuance in the application of Article 8 in individual cases. At para 30 of Nagre, Sales J said:

> "30. … if, after the process of applying the new rules and finding that the claim for leave to remain under them fails, the relevant official or tribunal judge considers it

> is clear that the consideration under the Rules has fully addressed any family life or private life issues arising under Article 8, it would be sufficient simply to say that; they would not have to go on, in addition, to consider the case separately from the Rules. If there is no arguable case that there may be good grounds for granting leave to remain outside the Rules by reference to Article 8, there would be no point in introducing full separate consideration of Article 8 again after having reached a decision on application of the Rules."

11. This was also endorsed by the Court of Appeal in Singh and Khalid where Underhill LJ said (at para 64):

> "64. … there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rules."

12. More recently the Court of Appeal in SS Congo [2015] EWCA Civ 387 stated in paragraph 33:

> "In our judgment, even though a test of exceptionality does not apply in every case falling within the scope of Appendix FM, it is accurate to say that the general position outside the sorts of special contexts referred to above is that compelling circumstances would need to be identified to support a claim for grant of LTR outside the new Rules in Appendix FM. In our view, that is a formulation which is not as strict as a test of exceptionality or a requirement of "very compelling reasons" (as referred to in MF (Nigeria) in the context of the Rules applicable to foreign criminals), but which gives appropriate weight to the focused consideration of public interest factors as finds expression in the Secretary of State's formulation of the new Rules in Appendix FM. It also reflects the formulation in Nagre at para. [29], which has been tested and has survived scrutiny in this court: see, e.g., Haleemudeen at [44], per Beatson LJ. "

Finding on Material Error

13. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law based on the evidence before the Tribunal at the date of hearing.

14. It was conceded quite properly by Ms Johnrose who appeared in the First-tier that the Appellant's appeal could only ever succeed under Article 8 outside the Rules as he could not meet any of the provisions that would allow entry clearance under the Rules.

15. It was argued that the Judge erred in law in failing to take account of the medical evidence at page 6 of the bundle in her assessment of the argument that in this case there were compelling reasons to grant leave outside the Rules. I am satisfied that it cannot be argued that the Judge did not take into account the medical evidence as she specifically referred to it at paragraph 16 of her decision. What is clear from a reading of the decision is that the Judge concluded that the medical evidence (an 8 line letter from her GP Dr Kamutasa) did not sustain the argument that Ms Johnrose sought to make.

16. I am satisfied that the Judge had before her both a witness statement and the Sponsor's oral evidence (paragraph 7) in which the sponsor stated:

> "She has been working as a carer but at the moment is off work due to having suffered some epileptic seizures. They are managing her medication and once they have the balance right she will return to work."

17. The Judge was factually correct to state that the brief letter from Dr Kamutasa did not confirm she was HIV+ as it does not: it uses the term 'immunodeficiency from a chronic retroviral infection' but the Judge accepts that for the purpose of the appeal she is HIV+. There was nothing before the Judge to suggest that the fact of being HIV+ alone and under the care of specialists who were managing her condition without more was sufficient to find compelling reasons for allowing the appeal.

18. The Appellant relies on the final comment of Dr Kamara which is :

> "With her medical conditions it is recommended that she lives with at least another individual who may offer help in the event that help is urgently needed."

19. The Judge however carefully focussed on the principal issue of the relevance of the medical evidence to the issue she has to assess where she concluded that the :

> "... medical evidence that she has says nothing about her current state of health, or how she might benefit from having her son join her."

20. I am satisfied that this was a finding open to her: the medical evidence stated that she had chronic ,that is enduring conditions and listed epilepsy , dermatitis and reflux in addition to being HIV+ and she was being treated by specialists. There was nothing in the report to make clear in what way the presence of her son would benefit her. I also note that this was against a background of clear oral evidence that her medications were being 'balanced' and she then anticipated returning to work as the problems that had caused her to stop, the epileptic seizures, would stop.

21. Paragraph 7 of the grounds argue that the Judge failed to take into s 117B of the Nationality Immigration and Asylum Act 2002 and that is correct. However I am satisfied that this was not a material error as the significance of these factors is hat where they are not present the public interest is fortified. They do not give positive rights.

22. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

23. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

24. The appeal is dismissed.

Signed Date 26.8.2015

Deputy Upper Tribunal Judge Birrell