



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

Appeal Number: VA/01655/2014

THE IMMIGRATION ACTS

Heard at Field House
On 25 November 2014
Decision remade 10 March 2015

Decision & Reasons Promulgated
On 18 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS AIDA BOLIS
(ANONYMITY DIRECTION NOT MADE)**

Claimant

DECISION TO REMAKE

1. This matter came before me on 25 November 2014 as an error of law hearing. In a decision dated 2 December 2014 I found a material error of law and set aside the decision of the First-tier Tribunal. I further directed that within fourteen days of the date of issue of the decision (and in any event no later than 1 January 2015) the Secretary of State prepare and serve written submissions on the impact of the medical evidence that was before the First-tier Tribunal under Article 8 ECHR. At the end of December I was forwarded an email sent by the Home Office Presenting Officer on 18 December 2014 confirming that due to time constraints and annual leave, it would not be possible for the submissions to be forwarded until after 5

January 2015. I have received no further correspondence from the Secretary of State. I propose now to remake the decision.

2. The facts are set out in paragraph 2 of my previous decision. In short, the claimant applied for entry clearance to the UK to visit her daughter for a period of four weeks in order to support her through the birth and immediate care of her third child. As this was an appeal against refusal of a visit visa there was a limited right of appeal under section 84 (1)(C) of the 2002 act, on the grounds of breach of human rights.
3. Having regard to the evidence that was before the First-tier Tribunal, I am satisfied that there is family life in the context of visits, as established between the appellant and her sponsor who is her mother (**Shamin Box [2002] UKIAT 02212**). There was evidence to show that in the context of the short visit there was a dependency above and beyond the normal family ties following the case of **Kugathas v SSHD [2003] INLR 170** as confirmed in **JB (India) [2009] EWCA Civ 234**. The evidence before the First-tier Tribunal included the application form, details of financial evidence, a letter from a midwife and various medical reports. The evidence detailed severe depression suffered by the sponsor during the latter stages of her pregnancy and postnatal depression. There was evidence to support her claim that in the absence of her mother's presence to help her with the birth of her new baby and family (as was their custom in Sudan), her mental health would deteriorate. Further of significance was the fact that her mother had been available to provide help with the births of previous children. The report from the perinatal specialist dated 19 March 2014 found that she was suffering from depression which was having a detrimental effect on the older children and bonding with the new baby. I find that there is an interference with the family life as the claimant will not be able to provide her daughter with support during and after the birth nor be available to help with the other children. The interference is of sufficient gravity to engage Article 8. The decision made under the rules was lawful. The determinative issue is proportionality. I am satisfied that the decision made was not in the best interest of the claimant's grandchildren including the new baby. It was evident that all family members would suffer from the sponsor's depressive illness and that support from the Claimant would be needed.
4. Under the Immigration Rules the application was refused because the Claimant failed to produce evidence of the source considerable funds and it was considered that she failed to show an intention to return to Sudan. I am satisfied that she adduced evidence of the existence of those funds before the Tribunal and that there was no other issue taken which would count against her immigration history. On the evidence before the Tribunal I find that the Claimant was genuinely seeking entry as a visitor and that she intended to return at the end of the visit. It is necessary to assess the evidence to see if the merits of the substantive rules are met and which illuminate the proportionality decision (**Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 IAC**). I also have regard to Section 117 of the Nationality, Immigration and Asylum Act, as amended, as regards public interest. I find no factors capable of outweighing the interests of the sponsor, her grandchildren and the Claimant for this

short visit for the purposes of supporting the sponsor during the birth of her third child.

Notice of Decision

I have remade that decision and I allow the appeal under Article 8 ECHR.

No anonymity direction is made.

Signed

Date 16.3.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make to make a reduced fee award of £50 . The Secretary of State failed to consider all evidence and issues fully.

Signed

Date 16.3.2015

Deputy Upper Tribunal Judge G A Black