



IAC-FH-AR-V1

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

Appeal Number: AA/07092/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 November 2015**

**Decision & Reasons Promulgated  
On 13 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**S S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Symes, Counsel, instructed by Lawrence Lupin Solicitors

For the Respondent: Miss E Savage, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from a decision of First-tier Tribunal Judge S L Farmer which was promulgated on 24 April 2015. The appeal is brought pursuant to permission granted on 23 July 2015 by Upper Tribunal Judge Canavan. The appellant is a citizen of the Republic of Congo whose appeal was refused on asylum grounds and in relation to Article 8 and the interference with private and family life.

2. The decision of the judge is lengthy and detailed but the first ground of appeal which was the primary basis upon which permission was granted relates to a specific question of medical evidence and the mental health condition of the appellant at the time of the hearing. There was evidence in documentary form from Dr Alzbeta Karlikova in a letter dated 6 January 2015. That letter gave a diagnosis of dementia, code reference ICD10 F03. Dr Alzbeta referred to the appellant having difficulties comprehending tasks and some of the questions asked. Comment is also made that the appellant was disoriented in time and place.
3. The decision makes reference to that letter and it was clearly in the Judge's mind at the time. In paragraph 23, the judge said the following:

“The appellant's witness statement running to 9 pages is signed as true on 31 March 2013. I was told that this was the result of two lengthy and detailed meetings and in a less pressured environment than a courtroom. However, given that she was able to give those detailed instructions and sign the statement as correct less than three weeks I assume prior to the hearing I am not persuaded that any dementia she may be suffering from would have precluded her from giving evidence.”
4. This finding is one which present a reviewing Tribunal with some difficulties. First, it is not clear what weight, if any, the Judge intended to give to the written evidence of the appellant and, secondly, it is not clear the basis upon which the Judge appeared to reject, or at least question, the specific diagnosis of dementia given in the opening part of the letter.
5. Regard should be given to the **Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance** which should be followed when considering the evidence of vulnerable witnesses. There is no reference to it at all in the decision. It seems therefore that no consideration was given to the fact that this appellant may have been, and in all probability, was vulnerable within the meaning of that Guidance Note. In the particular circumstances of this case the failure to address that matter is significant because it has an effect on all that follows. In my judgment the manner in which the Judge dealt with the medical evidence and the written witness statement of the appellant amounts to an error of law. Further, the decision itself is unclear as to what specific findings the Judge actually made in relation to those issues of dementia upon which weight was placed.
6. In particular I have regard to paragraph 48 of the decision which reads as follows:

“The appellant relies on her age and dementia when arguing that her case is exceptional. I accept that the appellant is elderly but I do not accept that she can rely on a clear diagnosis of dementia nor that the extent of any dementia that she has makes her case exceptional.”
7. The difficult balancing exercise which requires proportionality and an assessment of whether a refusal would have unjustifiably harsh consequences for an individual is a complex exercise which needs to be

undertaken after clear findings of fact have been made. In these circumstances, the Article 8 assessment was in my view flawed and the first ground of appeal relating to the assessment of medical evidence is properly made out.

8. It is argued by Mr Symes and conceded by Miss Savage on the Home Secretary's behalf that if I am with the appellant on the first ground then the second ground becomes redundant and the appropriate course is to remit this matter to a First-tier Tribunal to look at afresh and for a proper consideration to be given to the medical evidence and to what conclusions can properly be drawn, as is possible, the appellant is a vulnerable witness who may not be in a position to give oral testimony.
9. That exercise was not undertaken by the Judge and in the circumstances I agree with both representatives that the appropriate course is to remit this matter to a First-tier Tribunal. In the circumstances I should refrain from expressing any view on the Article 8 assessment. That will be carried out *de novo* by another First-tier Tribunal Judge. However, I record for the sake of transparency that it may very well be that a First-tier Tribunal Judge, properly directing him or herself, may very well come to precisely the same conclusion as the Judge did in this instance.

### **Notice of Decision**

Appeal allowed. Matter remitted to First-tier Tribunal.

### **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 *Mark Hill*

Date 11 December 2015

Deputy Upper Tribunal Judge Hill QC

### **TO THE RESPONDENT FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed *Mark Hill*

Date 11 December 2015

Deputy Upper Tribunal Judge Hill QC