



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

Appeal Number: HU/01807/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2018**

**Decision & Reasons
Promulgated
On 10th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DORA [O]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr D Coleman, instructed by Paul John & Co Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Manyarara made following a hearing at Hatton Cross on 5th February 2018.

Background

2. The claimant is a citizen of Nigeria born on 7th May 1963. She appealed against the decision of the Secretary of State dated 13th January 2017 refusing her application for leave to remain in the UK on human rights grounds.

3. The claimant says that she arrived in the UK in 1992 and has remained here since then. She initially lived with one sister and then started living with another sister from 2005. She has a number of medical conditions, having been diagnosed with depression, microprolactinoma and mixed hyperprolactinaemia which is affecting her brain. She also suffers from interstitial lung disease which is a long-term condition.
4. The judge, in a lengthy determination, started her considerations by reviewing how long the claimant had actually been in the UK. She said that she had been here since 1992. In 2008 she had submitted an application for leave to remain on long residence grounds which was refused by the Secretary of State and the subsequent appeal dismissed by Judge Horvath. Judge Horvath concluded that he was not satisfied that the claimant was living in the UK from 1992 but was prepared to find that she was here from 1995 to April 1999. He was also satisfied that she was in the UK from 2004 to the present date.
5. Judge Manyarara concluded that the claimant could not show that she had resided in the UK from 2000 to 2001 until 2003 to 2004. She rejected a document from British Gas which the claimant had produced as reliable evidence to establish that she had been in the UK between those dates.
6. The judge considered whether the claimant could succeed under paragraph 276ADE(1) and whether there were very significant obstacles to her integration into society in Nigeria. She concluded that no such obstacles could be shown. It was not accurate to describe her as facing potential destitution if she were returned to Nigeria where she had linguistic and cultural attachments and had lived for many years. Neither did the judge accept that she could not be treated for her medical conditions there. Accordingly she was not able to succeed within the Immigration Rules.
7. The judge then conducted a review of the relevant case law. She did not accept that the claimant enjoyed a family life with her sisters in the UK and if the appeal were to succeed it would have to be on the basis of private life.
8. The judge placed significant weight upon the claimant's health conditions and concluded at paragraph 78 as follows:

"I accept that the mental health input the appellant is receiving forms part of her private life in the UK. Given the fact that the appellant is actively engaged in treatment I find that the respondent's decision would interfere with her private life. I find that to prematurely disrupt the appellant's current treatment is likely to give rise to a conflict and may trigger a deterioration. I find that the appellant would benefit from completing her current treatment regime by the grant of a short period of leave in order to facilitate this. There has been an improvement in the appellant's mental health in the past as seen by the earlier medical evidence."

The judge concluded that there were compelling circumstances in this case and that the claimant's removal at this stage would be disproportionate.

The Grounds of Application

9. The Secretary of State sought permission to appeal on the grounds that the decision was irrational. The claimant had been found to be suffering from depression and the evidence did not demonstrate that treatment would not be available in Nigeria. It was clear that the judge had given significant weight to the claimant's private life established whilst her presence in the UK was precarious despite directing herself to Section 117B of the 2002 Act. The only factor relied upon in finding the claimant's removal would be disproportionate is that it would interfere with her NHS treatment for a condition that was in no way life threatening; there was no basis in law for such a finding.
10. Permission to appeal was granted by Judge Holmes on 30th July 2018 for the reasons stated in the grounds.

Submissions

11. Mr Tarlow relied on his grounds and submitted that the decision was perverse.
12. Mr Coleman submitted that the Secretary of State had not met the high threshold required to set aside a decision on the basis of irrationality. This was an application for long residence based on Articles 3 and 8 which could have been certified as clearly unfounded. The fact that it had not been certified, and the claimant had been given a right of appeal, was an acknowledgement that an Immigration Judge was not bound to dismiss it. This was an exceptionally long and comprehensive determination. The judge had accurately recorded the factual matrix and had anxiously scrutinised all of the evidence. Indeed she had found against the claimant on a number of issues. Every facet of the case had been examined in considerable detail. It was open to the judge to find that there are compelling circumstances in this case and that a short period of leave was appropriate to enable her to complete her treatment.

Findings and Conclusions

13. This is a meticulous determination. The judge carefully considered all of the relevant evidence and the law to be applied. She concluded that the claimant could not meet the requirements of the Immigration Rules but then properly went on to consider whether there were any compelling circumstances in this case which would require the grant of leave on Article 8 grounds.
14. The claimant says that she has been in the UK for 26 years. She has been unable to substantiate her claim to have arrived in 1992 but it is accepted that she arrived in 1995 and has been here since then aside from a period

between 2001 and 2004. She suffers from a number of medical conditions. They fall well short of the Article 3 threshold but nevertheless were sufficient for the judge to give a ruling that she would be applying the joint presidential guidance in relation to vulnerable adults.

15. She recorded the treatment which the claimant was receiving for depression, which was described as severe and psychotic and concluded that a short period of leave in order to facilitate her present treatment was the proportionate outcome.
16. The judge set out, as acknowledged by the grounds, the correct law and was fully aware that the claimant's status in the UK had always been precarious and therefore her private life ought to be given little weight. Little weight is not of course no weight and on any view she has been here for a very long period of time.
17. The judge had evidence before her, unchallenged by the Secretary of State, that the claimant was in the middle of treatment and in her view, a short period of leave in order to allow her to complete her current treatment was the proper course. In fact the claimant has been in the UK for a further eight months pursuing her appeal.
18. I cannot see that this is an irrational decision. I take Mr Coleman's point, that the fact that the Secretary of State chose not to certify this appeal was an acceptance by him that it would be open to a judge to allow the appeal. However, that in itself is not a complete answer to the irrationality challenge. The Secretary of State quite properly allowed the opportunity of an appeal in order to permit the claimant, for example, to put forward further evidence both in relation to her stay in the UK and her medical conditions. Nevertheless, it is an acknowledgment on the Secretary of State's part that this is an appeal which could potentially have succeeded.
19. In these circumstances I am not satisfied that the irrationality challenge is made out.

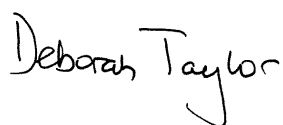
Notice of Decision

The original judge did not err in law and the decision stands.

No anonymity direction is made.

Signed

Date 2 October 2018



Deputy Upper Tribunal Judge Taylor