



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

Appeal Number: IA/34781/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and  
Promulgated**

**Reasons**

**On 19 January 2018**

**On 22 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**ANGEL LAURIAN RITTI  
(ANONYMITY HAS NOT BEEN DIRECTED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No representative

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Tanzania born on 17 August 1979. She appealed against the decision of the respondent dated 19 November 2015 refusing her leave to remain in the United Kingdom on health issues and deciding to remove her to Tanzania.
2. The appeal was heard by Judge of the First-Tier Tribunal Rozanski on 4 April 2017. The appeal was dismissed under the Immigration Rules and also outside the Rules in a decision promulgated on 24 April 2017.
3. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Hollingworth on 27 November 2017. The permission states that the Judge has considered whether there would be a breach of Article 8 outside the Rules. At paragraph 75 of his decision the Judge assumes that the appellant has a private life in the UK and that removal would be an interference. The permission states that it is arguable that the Judge has set out no, or an insufficient, analysis of the

medical condition of the appellant when carrying out his proportionality exercise for Article 8.

4. Previously in the decision the Judge found that the threshold required for Article 3 of ECHR to be engaged had not been reached and the permission states that although the Judge has referred at paragraph 72 to the case of ***Akhalu (Nigeria) [2013] UKUT 00400 (IAC)*** it is arguable that he has not considered in sufficient detail the issue of whether there would be a breach of the physical and moral integrity limb of Article 8 when carrying out the proportionality exercise.
5. At paragraph 71 of the decision the Judge states that it was not clear whether the appellant's Article 8 private life rights were engaged or not but nonetheless he proceeds to consider whether there would be a breach of Article 8 outside the Rules and he goes on to refer to Section 117 of Part 5A of the 2002 Act and deals with proportionality. At paragraph 77 the Judge refers to other factors which must be taken into account when Section 117 is considered. When the Judge does this he concludes that the appellant's private life should be given little weight and that it would be proportionate to remove the appellant from the United Kingdom. The permission states that it is arguable that the Judge has insufficiently delineated the relationship between the appellant's medical condition, the availability of care, the accessibility of care and the distinction between the Article 3 threshold and the issue of "breach of physical and moral integrity" pursuant to Article 8 when considering whether there would be a breach of Article 8 outside the Rules.
6. At paragraph 73 the Judge refers to Article 8 not being automatically excluded by a failure to meet the full rigours of Article 3 but he states that the correct approach is to have regard to every aspect of the appellant's private life and the consequences for her health on removal. The permission states that it is arguable that the Judge has insufficiently dealt with the question of the consequences to the appellant's health on removal in the context of the physical and moral integrity limb of Article 8.
7. There is a Rule 24 response on file which states that the First-Tier Judge directed himself appropriately. The Judge directed himself to the case law relevant to health cases, stating that there could be a rare case, where a case which could not succeed under Article 3 might succeed under Article 8 but he found that the appellant's circumstances did not meet this stringent test. The correct case law is referred to. The response goes on to state that the UK has not accepted responsibility for the appellant's health care and the Judge has found this. The response goes on to state that in relation to the argument in the grounds of appeal that the appellant may not be able to obtain medical treatment in a remote part of Tanzania, the First-Tier Judge fully considered the possibility of the appellant living with her sister on return to Tanzania, having lived with her for three years prior to coming to the UK in 2014. The judge also noted that no documentary evidence had been provided to show that the appellant would not be able to obtain the medication she requires in Tanzania. The response states that the First-Tier Judge made findings

open to him on the evidence and that there is no error of law in the decision.

8. On the day before the hearing an adjournment request was made by Ukimas Consultancy Limited, 53 Ladens Road, West Croydon. This letter is from Mr Okech and he was the representative at the First-Tier hearing. In spite of this he states that he was only instructed on 18 January 2018 to represent the appellant in this matter and so has not had time to prepare the case. He goes on to state that the appellant is very sick and is unable to attend the court hearing. No medical evidence was provided with the adjournment request to show this. HMCTS replied to this adjournment request stating that the request arrived too late to be placed before a Judge for a decision and that the adjournment request would be considered at the hearing.
9. In spite of this no one from Ukimas Consultancy Limited appeared for the hearing of this appeal and the appellant did not appear.

### **The Hearing**

10. The adjournment request was considered at the hearing and was discussed by me and the Presenting Officer. It was decided to refuse the adjournment request as Mr Okech had already appeared on behalf of the appellant, had produced no medical evidence relating to the appellant's health on the day and should have appeared for the hearing of this appeal after receiving the aforesaid Tribunal letter.
11. The Presenting Officer submitted that this claim cannot succeed under Article 8 within the Rules and is an appeal purely on Article 8 outside the Rules. He submitted that this is an appellant who has received NHS medical treatment in breach of her visa terms and although she has a private life in the United Kingdom she is not financially independent. There is no evidence of her paying any tax, her position in the United Kingdom is precarious and she is receiving regular NHS treatment.
12. The Presenting Officer submitted that at paragraph 72 of the decision the Judge has referred to the case of ***Akhalu*** and considers whether there would be a breach of the physical and moral integrity limb of Article 8 when he carries out the proportionality exercise. She submitted that the United Kingdom has not accepted responsibility for this appellant's health and no evidence has been produced to show that she will be unable to obtain the appropriate medication and treatment if she returns to Tanzania.

### **Decision and Reasons**

13. The Judge has given a thorough decision referring to the relevant case law and making reference to Section 117B. He notes that at the date of the First-Tier hearing the appellant had spent less than three years in the United Kingdom and had spent most of her life in Tanzania, apart from a period of time when she lived in Canada. Her son lives in Canada. Her evidence before the First-tier Judge was that before she came to the

United Kingdom she did not suffer from psychosis but the first medical letter produced refers to her relapse in 2014. It is clear that she suffered from psychosis when she was in Canada and then returned to Tanzania where her condition stabilised and she lived and worked there without requiring medication. The Judge does not believe that she has not been working in the United Kingdom and she actually admitted to working as a nanny for a period.

14. The Judge has considered the objective evidence on Tanzania and the health care there and notes that in Tanzania free medical treatment for mental health conditions is generally available. He finds that she does not require to go to live with her mother in a remote area. She has previously resided with her sister and can remain with her in an area of Tanzania which is not remote. The Judge makes reference to the case of ***Benaïd v UK*** (2001) 33 EHRR 205 and the fact that health care in Tanzania is not as good as in the United Kingdom but states that this is not decisive from the point of view of Article 3. At paragraph 69 he finds that the appellant does not meet the strict requirements that apply to Article 3. She does not have a terminal illness. She will have access to medication in Tanzania and she has family who can help there. The Judge also points out that her health is stable when she takes her medication.
15. The Judge refers to the sparse evidence about her private life in the United Kingdom. He argues that the fact that she is in receipt of NHS treatment in the United Kingdom cannot be said to be an assumption of responsibility for ongoing medical treatment. He therefore finds that the high threshold required by Article 8 of ECHR, relating to her health has not been reached. The Judge also refers to the said case of ***Akhalu*** and considers her situation in the United Kingdom, which he finds is not exceptional.
16. The Judge considers all aspects of the appellant's private life when assessing proportionality and applies the criteria referred to in Section 117B of the Nationality, Immigration and Asylum Act 2002. He finds that removal is lawful in this case as there is nothing before him to indicate that she came to the United Kingdom as a health migrant. He notes that she is not financially independent, has not produced evidence of having paid taxes in the UK and has been receiving regular medical treatment on the NHS to which she was not lawfully entitled. He refers to her friendships and relationships in the United Kingdom and her precarious status here which means that little weight can be given to the appellant's private life.
17. The Judge therefore finds that the appeal cannot succeed under Article 8 outside the Rules. He has given proper reasons for his findings and based on what was before him he was entitled to reach this decision.
18. There is no material error of law in the Judge's decision.

### **Notice of Decision**

As there is no material error of law in the Judge's decision his decision promulgated on 24 April 2017 must stand.

Anonymity has not been directed.

Signed

Date 16 February 2018

Deputy Upper Tribunal Judge Murray