



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

Appeal Number: HU/13801/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18th July 2019**

**Decision & Reasons Promulgated
On 14th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**H. C.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lams of Counsel instructed by Oaks Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Monson made following a hearing at Taylor House on 17th January 2019.

Background

2. The appellant is a citizen of Bolivia and is 8 years old. His mother arrived in the UK on 23rd June 2002 with entry clearance as a visitor and overstayed. She met and married another Bolivian citizen in 2008 and on 27th August 2011 gave birth to the appellant. He was born prematurely and remained in hospital for several weeks because he developed chronic

lung disease. He was later found to suffer from autism, developmental delay and Brown's disease of the eye which causes a malfunction of the optic nerves.

3. The judge reviewed the medical evidence and concluded at paragraph 45 as follows:

“Having reviewed the evidence I find that the appellant's autism is mild. I accept that the paediatrician does not apply this gloss to his assessment. But if the appellant's autism was anything more than mild, I would have expected him to have said so. In addition, I consider that all the evidence points to the appellant's autism and learning delay being mild”.

4. The judge recognised that the key issue in the appeal was whether it would be reasonable for the appellant, who has accrued over seven years' residence in the UK, to leave the UK with his mother, although he accepted overall it would be in his best interests to remain here.
5. The appellant sought permission to appeal on the grounds that the judge had reached an irrational conclusion in relation to the appellant's autism given the content of the report from Guy's and St Thomas' NHS Foundation Trust, which said that H has significant problems due to autism especially in the areas of communication and social interaction. The characterisation of his condition as being mild was also at odds with the fact that in addition to the autism he suffers from significant developmental delay and learning difficulty which was recorded in the report as being in the moderate to severe range.
6. Permission to appeal was granted on 21st June 2019 by Judge Saffer.
7. Mr Tufan did not disagree with the points made in the grounds and accepted that the decision would have to be re-made.
8. The decision of Judge Monson is set aside. He erred in law because his conclusion that the appellant suffered from mild autism was not consistent with the medical evidence before him.
9. It was agreed between all parties that the decision could be re-made.

Submissions

10. Mr Tufan accepted that this was a finely balanced case but in his submission the appellant does not cross the required threshold to establish that his removal would be unreasonable. He noted that the appellant was presently in mainstream schooling and that, according to the findings of the Immigration Judge, there was provision in Bolivia for the appellant to continue his education there and that adequate medical facilities would be available albeit at a significant cost.
11. Mr Lams submitted that it would be plainly disproportionate for the appellant to be removed since he suffered from a significant disability.

The appellant was coping in his present school but he had been there since the age of 2 and it was a feature of his condition that change would be difficult for him to cope with. He had never been to Bolivia. He requires a significant number of professionals to assist him and even with all the help that he was receiving, he still was unable to meet the expectations of the educational system here.

Findings and Conclusions

12. The appellant's mother is a long term overstayer having been in the UK for seventeen years, almost all of it unlawfully. This is a serious and substantial argument in favour of her removal and must be given significant weight. She has not established any right to remain other than in relation to the appellant who makes his case on the basis that he satisfies paragraph 117B(6) of the 2002 Act, namely that in cases not involving deportation, the public interest does not require the person's removal where it would not be reasonable to expect a qualifying child to leave the UK. The appellant was born in 2011 and has therefore accrued eight years' residence here.
13. There are a number of medical reports in the papers. The most significant is dated 6th December 2017 from Dr N Chukwurah, a specialist in community paediatrics who in fact has dealt with the appellant for a number of years. He was also the author of a report dated 4th September 2013. In that report Dr Chukwurah said that the appellant has hypotonia, low muscle tone and gross motor delay for which he was under the consultant neurologist and physiotherapist. He also suffers from autism and was under a speech and language therapist for delayed speech and communication skills. In 2013 he was noted to show signs of social communication disorder, not interacting with other children in the playgroup and not engaging with adults except his parents; he preferred to play alone. He became anxious if there were any changes to his routines and things which were familiar. His vocabulary was very limited.
14. Dr Chukwurah said that autism was a lifelong disorder and without intervention he would remain significantly delayed with very poor educational attainment.
15. In December 2017 Dr Chukwurah said that H found it difficult to relate to people especially strangers due to his autism. The implication of this is that in a new environment he would struggle to adapt, which may result in significant distress and disruption of both his and his family's life. He was easily confused by changes and took time to adjust. Dr Chukwurah also said that he had a history of developmental delay translating into a learning difficulty in the moderate to severe range. He is currently functioning at the level of a 4 year old in non-verbal cognitive skills which is very delayed. He needs considerable support in the classroom in the form of a differentiated curriculum to be able to access learning. He also suffers from an eye disease.

16. The conclusion of the report is as follows:

“H was born very prematurely at St Thomas’ Hospital. He has developmental issues as a result of his prematurity. Also, he has autism and an eye disease. He has benefited from consistent monitoring and various therapeutic interventions through several professionals. Withdrawal of these interventions will lead to poor outcome in general and are likely to adversely affect his education, health and social wellbeing. His family come from Bolivia. Bolivian healthcare is one of the worst amongst South American countries and second to the worst in the Western hemisphere after Haiti. Bolivia is unlikely to have the resources, expertise and equipment to manage some of the conditions that he has listed above”.

17. There is also evidence from H’s school. His head teacher in a letter dated 6th October 2018 says that H receives adult support in class as he is working below expectations for a child of his age although he is developing academically and socially and tries to work hard. He has been attending the school from the age of 2 and feels safe within the school environment. The school believes that it will be detrimental to his psychological wellbeing should he be refused leave to remain.

18. I note that one of the appellants in the case of MA and Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2006] EWCA Civ 705 had severe autism. The court held in that case it was not open to the judge to consider that it would be reasonable to expect him to return to his country of nationality “given the overwhelming and permanent harm which would be caused to this child’s way of life if he were to return”. It was recognised that the child in that case was young and, but for the autism, there would be a strong case for saying that it would not be unreasonable to expect him to leave with his parents and younger brother, but the consequences for him would be little short of catastrophic.

19. Whilst H’s autism is less debilitating, it is quite clear that H suffers from a number of medical conditions which taken as a whole mean that he is unable to manage without a significant number of professionals’ involvement, namely community paediatricians, a speech and language therapist at Guy’s and St Thomas’ NHS Community Trust, a consultant ophthalmologist and an extra adult in his classroom. Removal to Bolivia would take him away from everything he has ever known, which in his particular case would have very severe consequences indeed. Moreover Judge Monson accepted that it was unlikely that his parents would be able to afford to provide him with targeted learning support which he needs in Bolivia.

20. In these circumstances it seems to me to be absolutely plain that his best interests lie in remaining in the UK and that his best interests should be followed in this case because he meets the requirements of paragraph 117B(6). It would be plainly unreasonable for him to have to leave the UK.

Decision

21. The judge erred in law. His decision is set aside. It is remade as follows. The appellants appeal is allowed.

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.

Deborah Taylor

Signed

Date 24 July 2019

Deputy Upper Tribunal Judge Taylor