Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/25674/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 July 2019	**On 15 July 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

OLASUNKANMI AINA FAGBEMI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss P Yong of Counsel instructed by Wimbledon Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of the First-tier Tribunal panel comprising Judges Woodcraft and Gillan promulgated on 17 May 2019 dismissing the appellant's human rights claim.

2. Permission to appeal was granted by Judge Macdonald on 14 June 2016 observing that the grounds include the claim that the panel ignored relevant evidence from Dr Victoria Sarkissian who stated that the appellant was the sole carer of her daughter Adetokunbo. Judge Macdonald found it arguable that these points were not fully considered by the panel.

3. The appellant first arrived in the UK on a visit visa in December 2005. She has made a number of applications to be able to remain, including four EEA residence card applications. After being served with a liability to removal on 17 August 2015 she then applied on form FLR (FP), the ten year parent route. The refusal decision was made on 9 November 2016.

4. In the first instance I had to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal, such that it should be set aside.

5. In preliminary observations Mr Jarvis very fairly indicated that the respondent had taken a view on the matter of the error of law. He first made it clear that the Secretary of State does not accept all the complaints made and indeed on my observation many of the complaints and much of the grounds is little more than a disagreement with the findings of the Tribunal and an attempt to reargue the appeal. Mr Jarvis also asserted that the panel was entitled to conclude that the appellant had not been fully transparent about her family background, even if she had referred to having siblings in her witness statement. Neither, says Mr Jarvis, was there anything wrong on the face of the decision in the Tribunal's findings about the ex-husband, or indeed Dr Stein's report on the basis that Dr Stein was doing little more than reporting what he had been told by the appellant.

6. However, Mr Jarvis accepts that there is more difficulty in the Tribunal's treatment of other medical evidence and in particular that of Dr Victoria Sarkissian which is not addressed at all in the decision. Dr Sarkissian appears to be the GP for the appellant's daughter and at page 17 of the appellant's bundle Dr Sarkissian confirms that the daughter suffers from sickle cell anaemia, an inherited chronic lifelong condition because of which she has three hospital admissions in the last twelve months. She has also been diagnosed with depressive disorder since 2016. She has had difficulties with the anti-depressants because of side effects and ceased taking the medication. She finds that a talking therapy is more effective for her. The letter concludes that the appellant is the sole carer for the daughter at times of sickle cell anaemia crisis, providing physical and moral support. Not only is that evidence not considered in the decision, but at paragraphs 43, 47 and 48 the Tribunal had this to say, "there is no independent confirmation from outside the family of what if anything the appellant actually does for" her daughter. At paragraph 47 of the decision the Tribunal also said:

> "It was reasonable to have expected some medical evidence to support these claims but the only evidence we have is from Doctor Stein and for the reasons we have already given his evidence does not go far enough."

It is true to say that at paragraph 48 the Tribunal panel referred to a substantial amount of GP records which had been produced, but stated at paragraph 48 of the decision "this does not indicate what assistance the appellant was giving since the appellant is barely mentioned at all." The panel appears to have overlooked the letter from Dr Sarkissian which

appears to be independent. I agree with Mr Jarvis's submissions that it would have been open to the Tribunal to question the independence or the extent of knowledge of the GP as to the mother's involvement, however, had it been ignored or missed, the evidence could have made a difference to the overall assessment of the appellant's role in the care of her daughter. That omission or error undermines the other findings so that it would not be safe to retain any of the factual findings of the Tribunal. In all the circumstances I am satisfied that there was an unfortunate error in the decision of the First-tier Tribunal in what was an otherwise careful and comprehensive assessment of the evidence. I am not satisfied that the decision as a whole can stand independently of that error. In the circumstances the decision must be set aside.

7. I canvassed with the parties whether this is a case that could be dealt with immediately in remaking, however it was pointed out that the daughter has had a recent relapse and her medication has changed. It is clear that up-to-date evidence is required. The Tribunal's directions were that the case should be ready to proceed immediately to a remaking, but on the particular facts of this case I agree that significant further evidence will be required than that which is currently available.

8. Miss Yong sought a remittal of this matter to the First-tier Tribunal; Mr Jarvis took a neutral view on the matter. Having considered the matter carefully I find that this is a decision falling within the Senior President's Practice Statement making it appropriate for the appeal to be relisted to be decided afresh in the First-tier Tribunal. The effect of the error has been to deprive the appellant of a fair hearing and the nature or extent of any judicial fact-finding which is necessary for the decision in the appeal to be remade is such that having regard to the overriding objective in Rule 2 to deal with cases fairly and justly, including the avoidance of delay, I find it is appropriate to remit this case to the First-tier Tribunal to determine the appeal afresh.

Decision

9. The making of the decision in the First-tier Tribunal did involve the making of an error of law such as to require it to be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in accordance with the attached directions.

Signed

Upper Tribunal Judge Pickup

Dated 8 July 2019

Consequential Directions

1. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross.
2. The estimated length of hearing is two hours. The appeal may be listed before any First-tier Tribunal Judge with the exception of Judges Woodcraft, Gillan and Macdonald.
3. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated indexed and paginated bundle of all objective and subjective material together with any skeleton argument and copies of all case authorities to be relied upon. The Tribunal is unlikely to accept material submitted on the day of the forthcoming appeal hearing.
4. I was informed that no interpreter will be required.

Anonymity

I have considered whether any parties require protection of any anonymity direction. No submissions were made on the matter. The First-tier Tribunal did not make an anonymity direction. No request for anonymity was made to the Upper Tribunal. In the circumstances I also make no anonymity order.

To the Respondent

Fee Award

In the light of my decision I make no fee award because the outcome of the appeal remains to be decided.

Signed

Upper Tribunal Judge Pickup

Dated 8 July 2019