



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

Appeal Number: HU/08479/2019 (P)

THE IMMIGRATION ACTS

**Decision Under Rule 34 Without a
Hearing
On 1st October 2020**

**Decision & Reasons
Promulgated
On 6th October 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**EJOYE [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to directions sent on 21 July 2020 indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside without a hearing; the parties did not raise any objections and the Respondent made written submissions on the issues raised in the appeal, upon which there was agreement by the Appellant.
2. In circumstances where no objections were made to the issues being determined without a hearing and where the parties have made written submissions; with agreement that there was an error of law in the decision

of the First-tier Tribunal; it is in the interests of justice to proceed to determine the error of law issues on the papers in light of the written submission available and the full appeal file.

3. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Beg promulgated on 4 November 2019, in which the Appellant's appeal against the decision to refuse her human rights claim dated 26 April 2019 was dismissed on Article 3 grounds and allowed on Article 8 grounds.
4. The Appellant is a national of Nigeria, born on 11 September 1948 who first arrived in the United Kingdom on 24 December 2015 with entry clearance as a visitor to 10 April 2018. She made a previous application for leave to remain on compassionate and medical grounds which was refused on 11 May 2017 and most recently made a further application for leave to remain on human rights grounds on 13 July 2017. It is the refusal of that application which is the subject of this appeal.
5. Judge Beg allowed the appeal on Article 8 grounds on the basis that the Appellant met the requirement in paragraph 276ADE(1)(vi) of the Immigration Rules that she would face very significant obstacles to reintegration on return to Nigeria, primarily because of her poor mental health and the withdrawal of family support available in the United Kingdom.
6. Judge Beg dismissed the appeal on Article 3 grounds on the basis that the Appellant's medical condition did not meet the high threshold of Article 3 and that whilst it was accepted that she had a serious mental illness, her condition had not reached such a critical stage that it would be inhuman to deprive her of the treatment that she is currently receiving and send her home to an early death. However, in paragraph 32 of the decision, the following is stated:

"... In conclusion, I find that even if the appellant is able to access accommodation and medical treatment in Nigeria, in the absence of a stable family environment, she will be at risk of being exposed to a serious, rapid and irreversible decline in her state of health which may result in intense suffering. I find that whilst she has relatives in Nigeria; there is no credible evidence before me that any of them would be prepared to look after her. Her only child is in the United Kingdom. Consequently I find that any interference in the appellant's Article 8 rights will be disproportionate. I find that the interference will result in unjustifiably harsh consequences for the appellant."

The appeal

7. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal materially erred in law in failing to consider the risk of suicide in accordance with Articles 3 and 8 of the European Convention on Human Rights. Secondly, that the First-tier Tribunal materially erred in law in

failing to give adequate reasons as to the findings on the threshold of Article 3 in light of the decision in Paposhvili v Belgium [2017] Imm AR 867.

8. Further to the directions of the Upper Tribunal sent on 21 July 2020, written submissions were received on behalf of the Respondent indicating that the appeal was not opposed. The Respondent accepts that the First-tier Tribunal erred in law in dismissing the Appellant's claim under Article 3 of the European Convention on Human Rights given the finding in paragraph 32 that the Appellant was at risk of being exposed to a serious, rapid and irreversible decline in her health which may result in intense suffering. In light of this finding, the Respondent invites the Upper Tribunal to set aside the decision of the First-tier Tribunal in relation to Article 3 and to remake the decision to allow the appeal on this additional ground.
9. In light of the Respondent's written submissions, no further detailed written submissions were made on behalf of the Appellant; who is entirely in agreement with the Respondent's position.

Findings and reasons

10. The Respondent's concession in this appeal on both the error of law by the First-tier Tribunal and as to the re-making of this appeal on Article 3 grounds is entirely appropriate on the findings of fact made by the First-tier Tribunal. As the Supreme Court have confirmed in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17, the decision in Paposhvili should be followed and the findings in paragraph 32 of the First-tier Tribunal's decision follow almost identically the formulation set out in that case. On this finding, the Appellant has established that her removal to Nigeria would be a breach of Article 3 of the European Convention on Human Rights. The First-tier Tribunal erred in law dismissing the appeal on this basis such that that part of the decision must be set aside and for the same reasons, the decision on appeal is remade to allow it on Article 3 grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law in relation to Article 3 of the European Convention on Human Rights. As such it is necessary to set aside the decision dismissing the appeal on Article 3 grounds.

I set aside the decision of the First-tier Tribunal on Article 3 grounds and substitute it with the following:

The appeal is allowed on Article 3 grounds.

The decision allowing the appeal on Article 8 grounds is unchallenged and stands.

No anonymity direction is made.

Signed G Jackson
October 2020

Date 1st

Upper Tribunal Judge Jackson