



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

Appeal Number: HU/11278/2019 (V)

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 17 December 2020**

**Decision & Reasons
Promulgated
On 7 January 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

BONNAVENTURE [N]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Ivory Coast who was born on 16 November 1978. He entered the United Kingdom on 2 July 2014 as a Tier 5 Migrant with leave valid until 20 May 2015. He overstayed and on 7 June 2016 he was served with RED.0001.
2. On 12 June 2016, the appellant made an asylum claim. That claim was refused on 9 December 2016. He appealed to the First-tier Tribunal and,

on 26 April 2017, his appeal was dismissed. He became appeals rights exhausted on 1 August 2017.

3. On 19 March 2019, the appellant made a human rights claim based upon his relationship with his partner, Sharron Horn who is a British citizen.
4. On 17 June 2019, the Secretary of State refused the appellant's claims under the Immigration Rules and Art 8 of the ECHR.
5. The appellant again appealed to the First-tier Tribunal. In a determination sent on 12 November 2019, Judge Lever dismissed the appellant's appeal under Art 8. The Judge was not satisfied that: (1) the appellant met the requirements of the Rules as a 'partner' under Appendix FM (in particular, para EX.1) and under para 276ADE(1) (in particular sub-paragraph (vi)); and (2) the appellant's removal would breach Art 8 outside the Rules.
6. The appellant was granted permission to appeal to the Upper Tribunal by the First-tier Tribunal (Judge Bird) on 17 April 2020, in particular on the ground that it was arguable that the judge had erred in law by failing to take into account the medical evidence concerning the mental health issues of the appellant and of his partner, Ms Horn.
7. The appeal was listed for a remote hearing by Skype for Business on 17 December 2020 at the Cardiff Civil Justice Centre. I was based in court and the appellant and Mr Howells, who represented the Secretary of State, attended via Skype for Business.
8. At the outset of the hearing, I explained to the appellant the procedure and the purpose of the error of law hearing. The appellant then made submissions based upon the grounds of appeal which he had drafted, including that the judge had failed to have regard to the medical evidence of his mental health and the impact upon him of returning to the Ivory Coast.
9. Having heard the appellant's submissions, Mr Howells accepted that counsel (who had represented the appellant at the First-tier Tribunal hearing) had, in her skeleton argument, relied upon medical evidence about the appellant's mental health: a letter from the appellant's GP dated 26 February 2019 (B9 of the bundle) and a therapist's letter dated 2 September 2019 (D6 of the bundle). Mr Howells accepted that the judge had made no reference to this evidence and, as a result, had not considered the impact upon the appellant's mental health if he returned to the Ivory Coast. He conceded that was a material error of law and that the judge's decision should be set aside and the decision be remade by remittal to the First-tier Tribunal.
10. I agree with Mr Howells' concession that the judge material erred in law by failing to take into account (and reach findings upon) the medical evidence concerning the appellant's mental health and the impact upon that if he

were removed to the Ivory Coast in reaching findings under the Rules and Art 8 outside the Rules.

Decision

11. For the above reasons, the judge's decision to dismiss the appellant's appeal under Article 8 involved the making of a material error of law. That decision cannot stand and is set aside.
12. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit to the First-tier Tribunal for a *de novo* re-hearing in respect of Article 8. The appeal to be heard by a judge other than Judge Lever.

Signed

Andrew Grubb

Judge of the Upper Tribunal
17 December 2020