



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/05336/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2022
Extempore**

**Decision & Reasons Promulgated
On 18 March 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**F M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Muzira, AurexLegal Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Mills promulgated on 8 June 2021 dismissing his appeal against a decision of the Secretary of State to refuse him leave on human rights grounds. That refusal was made on 9 January 2020.
2. The appellant is a citizen of Zimbabwe who is HIV positive and is currently in receipt of several different drugs in respect of his condition. His case is that he would be at risk on return to Zimbabwe on account of his medical condition, the lack of treatment for that available to him in Zimbabwe and the difficulties he would face on account of the current situation in Zimbabwe which would impact on his ability to live there, to re-integrate into life there and properly to access the treatment he needs to stay alive. The Secretary of State was not satisfied that he met the requirements of the Immigration Rules or that his removal would be in breach of the United Kingdom's obligations pursuant to Article 3 of the Human Rights

Convention or that his removal would be in breach of Article 8 of the Human Rights Convention.

3. The appellant had previously been represented but when the appeal came before the First-tier Tribunal he was unrepresented.
4. Two matters should be highlighted. First, that this was a hearing which was conducted remotely and second, that this is a case in which directions specific to the circumstances where an appellant is unrepresented. A number of directions were made in this setting out a timetable for which material should be exchanged and pointing out at 8 that late material ought to be dealt with by the judge as a preliminary issue. The grounds state:

“8. Late Material

- 8.1 Any material provided to the Tribunal outside the time limits provided for in paragraph 7 may not be relied upon without permission from the Tribunal.
 - 8.2 Where any material is provided after five working days prior to the hearing, including on the day of the hearing, the judge must deal with the admissibility of that material at the hearing of the appeal as a preliminary matter.”
5. The hearing proceeded without the appellant requesting any adjournment despite, contrary to those directions, the Secretary of State serving at the hearing an updated Country Policy and Information Note (“ CPIN”) dealing with the provision of treatment for those with HIV in Zimbabwe amongst other health matters. It also deals with the availability of specific drugs. The judge found broadly that the appellant’s medical condition was not such that he would be unable to get treatment and thus his removal would not be in breach of Article 3 of the Human Rights Convention. The judge also considered that the appellant’s removal would not be in breach of his Article 8 rights nor indeed could it be shown that he met the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.
 6. The appellant challenges that decision on three grounds, the first two of which are interrelated:
 - (i) The appellant ought to have been treated as a vulnerable witness, given his domestic circumstances as evidenced in the material produced to the Tribunal;
 - (ii) in fairness to the appellant, the appeal should have been adjourned, given the late service of a document which was central to the appeal and which as an unrepresented litigant and also as a vulnerable litigant should have required the judge of his own motion to adjourn the appeal;
 - (iii) the judge erred in concluding in the approach to Devaseelan with respect to the appellant’s relationship with RW, his former partner, who resides in Zimbabwe.

7. I deal with the issues in turn.

8. Ms Muzira for the appellant accepted that there was in this case nothing said to the judge directly whether the appellant is a vulnerable person. It is not suggested in this case that he suffers from any mental incapacity or other mental ill health problems which would lead to him being a vulnerable person or being unable properly to deal with his appeal. Although the appellant is HIV positive it is not suggested that that or any other physical illness inhibited him from taking a full part in the proceedings. Rather, it is argued that it is his domestic circumstances which should have led the judge to conclude that the appellant was a vulnerable individual, specifically being argued that the overwhelming thrust of the material before the judge related to the appellant's domestic circumstances in the United Kingdom, his estrangement from his former partner here and estrangement from his children here. This, it is submitted, should have put the judge on notice that the appellant was vulnerable by means of his domestic circumstances and was indicative that he was not focussing on the issues in the appeal.
9. I have difficulty in finding that on the facts of this case the appellant is a vulnerable person by means of his domestic circumstances such that the judge should have treated him as a vulnerable person for the purposes of the relevant policy. I do not consider that the "domestic circumstances" in the relevant policy could be applied in this sense. It would apply, for example, to somebody who is separated from a partner, is in distress as a result or in threat of domestic violence, is homeless or some similar matter. It does not, in my view, extend to the circumstances here where the appellant was estranged from former family. I do, however, consider that there was some indicator in the paperwork that the appellant was not focussing on the issues in the appeal, as is often the case with an unrepresented litigant.
10. Turning then to the second ground, I consider that, as Ms Muzira submits, this is an appeal to which Nwaigwe applies and that the overall consideration is whether the hearing was unfair or not.
11. Unusually, this is a case in which the appellant did not himself request an adjournment but there are a number of factors which I consider do militate in favour of the appellant. First, the CPIN served on the day of the hearing was central to the appeal. Second, it was produced late and directly contrary to the directions issued. Third, the judge does not appear to have dealt with this document in the manner prescribed by the directions to which I have already referred. Further, the appellant was not served with the document but was rather given a link to it and was expected whilst maintaining a CVP connection to the Tribunal to deal with that and to access it and it appears he was given only a matter of minutes to look at it.
12. I accept, as Mr Walker submitted, the appellant was given time to look at it and I do note that he was directed to specific passages, but I bear in mind that there is a reason why directions are given.

13. Directions are given for service of documents before a specific date is to allow the other party time properly to understand them, to be able to formulate a response and to make submissions. The CPIN is lengthy, detailed and in addition to the list of drugs available, it makes mention that some are available privately and others through the state medical system. The document in question also refers to the difficulties that are generally with medical supplies in Zimbabwe. A professional representative may have been able to formulate a response to that, drawing attention to the issue of the drugs being available only privately, the wider difficulties that are in accessing drugs, but it is highly unlikely that a lay person might not have been able to do so on the day, they may well have been able to deal with it given adequate time.
14. The appellant did, I accept, indicate to the judge that he was happy to proceed. But I accept his evidence that he felt under pressure to do so, and I consider his consent was not fully informed.
15. In the circumstances I am satisfied that what happened did lead to unfairness, albeit that the judge might not have been fully aware of the difficulties in proceeding in this case. Given the combination of the difficulties with the document, its size and the circumstances in which the appellant was given access to it, I am satisfied that the hearing in this case was unfair for the reasons given and that accordingly the decision of the First-tier Tribunal ought to be set aside.
16. As the appeal falls to be set aside on the basis of ground 2, it is unnecessary for me to consider whether the appeal should also be set aside on the terms of ground 3.
17. Given that I have concluded that this is a decision which ought to be set aside on the grounds of procedural failing in that the appellant did not receive a fair hearing, I conclude that the only fair way of disposing of the appeal is to remit it to the First-tier Tribunal for a fresh hearing on all matters; none of the findings of the First-tier Tribunal are preserved.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues. For the avoidance of doubt none of the findings made are preserved.

Signed

Date: 26 January 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul