IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001269
First-tier Tribunal No:
HU/50247/2021
IA/00879/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 April 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MANISH KESHAV ODEDRA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Johal, Counsel, instructed by Jasvir Jutla & Co Solicitors
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 21 February 2023

DECISION AND REASONS

1. The appellant is a national of Tanzania. He arrived in the United Kingdom as a visitor on 24 June 2004. He remained in the UK unlawfully when his visitor visa expired. On 20 December 2012 the appellant applied for leave to remain on private and family life grounds. The application was refused by the respondent for reasons set out in a decision dated 20 November 2013. The respondent remained in the United Kingdom unlawfully. On 30 July 2020 the appellant again applied for leave to remain on family and private life grounds. The appellant's claim was twofold. First, he cannot return to Tanzania as his parents and your siblings are in the UK and they

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support him financially. Second, the appellant is receiving treatment for blood cancer, and suffers with type 2 diabetes, heart failure and high blood pressure.

2. The application was refused by the respondent for reasons set out in a decision dated 26 January 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Mehta for reasons set out in a decision dated 23 August 2021.

3. The appellant claims Judge Mehta erred in three material respects. First, he erred in his assessment of the availability of medical treatment in Tanzania. Second, he erred in assessment as to whether the appellant would in fact be able to access medical treatment in Tanzania and third, he failed to adequately weigh the impact of the appellant's removal to Tanzania on his parents.

4. Permission to appeal was granted by First-tier Tribunal Judge Swaney on 28 October 2021. Judge Swaney said:

> "It is arguable that the judge does not consider the impact of removal on the appellant's parents. Having found that there is family life between them, the judge was required to assess whether the appellant's removal would give rise to unjustifiably harsh consequences for the appellant or any other family member. The judge refers solely to the appellant's parents not having made enquiries of social services about alternative carers, but does not consider the impact on them of the appellant's removal."

5. Before me, Mr Johal submits the appellant suffers from a number of health conditions, and in particular, he suffers from essential thrombocythemia (leukaemia) for which he is required to take Hydroxycarbamide. That was accepted by Judge Mehta at paragraph [34] of his decision. Mr Johal accepts there is cancer treatment available in Tanzania. He submits the issue is whether there is treatment available in Tanzania for the specific cancer the appellant has, and whether the medication required by the appellant would be available to him. Mr Johal referred me to the evidence that was before the First-tier Tribunal in that respect.

a. The respondent relied upon a 'Response to an Information Request Tanzania: Essential thrombocythemia' dated 14 May 2021. That response said:

> "1.1.1 Macmillan Cancer Support, noted on its website, dated 8 November 2019: 'Essential thrombocythaemia (ET) is a slow-growing blood cancer. It is where the bone marrow makes too many blood

clotting cells, called platelets. This means there are more platelets than normal in the blood. ET usually develops very slowly. In most people, it does not shorten their lives. ET is more common in people aged over 50, but it can affect people at any age.'

…

1.2.1 At the time of compiling this response, CPIT was not able to find specific information on the availability of treatment specific to Essential thrombocythemia in the sources consulted (see Bibliography). However, an absence of information does not necessarily mean that treatment is not available.

…

5.1.1 At the time of compiling this response, CPIT was not able to find specific information on the availability of Aspirin, Atorvastatin or Hydroxycarbamide in the sources consulted (see Bibliography). However, an absence of information does not necessarily mean that the medication is not available"

b. The appellant relied upon an email from Natalie Murray, Regional Support Pharmacist, dated 7 April 2021 (*Page 32 of the appellant's bundle)* which confirms she was not able to find a Hydroxycarbamide product listed as available in Tanzania. She too confirmed that does not mean it is unavailable there. She states she has followed up with the manufacturer and the Tanzania High Commission in the UK, and that once she receives their replies, she will provide an update.

6. Mr Johal accepts that when the appeal was heard in August 2021, despite the passage of time there was no further information from Natalie Murray. Mr Johal submits that although the evidence was considered by Judge Mehta at paragraph [43] of his decision, the Judge did not attach appropriate weight to the two pieces of evidence.

7. As far as the Article 8 claim is concerned, Mr Johal submits Judge Mehta deals very briefly with the appellant's parents at paragraph [66] of the decision and in reaching his decision, the Judge failed to carry out any proper assessment of the impact the appellant's removal would have on his parents. Mr Johal drew my attention to the evidence that was before the First-tier Tribunal as set out in the witness statements of the appellant, his mother and his father, which all refer to the support they provide each other. Mr Johal accepts it was open to the Judge to find, as he did at paragraph [60], that the appellant has not established that there would be very significant obstacles to his integration in Tanzania.

8. Having heard from Mr Johal, I did not ask Mr Williams to respond. I informed the parties that in my judgment there is no material error of law

in the decision of Judge Mehta and the appeal is dismissed. I briefly summarised my reasons.

9. There is no merit whatsoever to the claim that the Judge erred in his analysis and assessment of the Article 3 claim. It is uncontroversial that Judge Mehta properly directed himself as to the legal framework for the assessment of an Article 3 claim at paragraphs [20] and [21] of his decision. Judge Mehta records at paragraph [34] of his decision that there was no dispute that the appellant suffers from the illnesses of which he claims. He notes there was a plethora of evidence before the respondent and the Tribunal from medical practitioners outlining the appellant's illnesses. He referred to the evidence before him from Dr Sarah Wharin, at paragraph [35], which was to the effect that the appellant's platelet count is very well maintained on his current dose of Hydroxycarbamide. At paragraph [36], the Judge refers to the email from Natalie Murray and at paragraph [38] he refers to the claim made by the appellant that without his Hydroxycarbamide tablets/treatment he would suffer a serious, rapid and irreversible decline in his health resulting in intense suffering or a significant reduction in life expectancy. At paragraphs [39] to [42] the Judge refers to the evidence that was relied upon by the respondent.

10. Judge Mehta noted, at [43], that the central issue in the Article 3 ECHR appeal is whether or not the appellant has proved that there is a real likelihood that Hydroxycarbamide is not available in Tanzania. He again referred to the evidence before the Tribunal and said:

> "…I found the evidence in relation to the non availability of Hydroxycarbamide in Tanzania to be vague and lacking in detail. There was no evidence provided from the high commission nor the manufacturer of Hydroxycarbamide as to its nonavailability. I find that the appellant has not discharged the burden placed upon him to show that there is a real likelihood that Hydroxycarbamide is not available in Tanzania."

11. It is in my judgment abundantly clear that Judge Mehta did consider whether there is treatment available in Tanzania for the specific cancer the appellant has, and whether the medication required by the appellant would be available to him. The implication in the grounds of appeal and the submissions made by Mr Johal before me is that the evidence was considered by the judge, but not to the extent or in the way desired by the author of the grounds and the appellant. The appellant simply disagrees with the findings and conclusions that were open to Judge Mehta. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence.

12. Judge Mehta went to consider the other evidence before the Tribunal and found, at [44], that there is an effective healthcare system for cancer patients in Tanzania provided by Ocean Road which helps to ensure that Tanzanians and people from the rest of East Africa are able to access an affordable integrated cancer healthcare system. Mr Johal accepts there is cancer treatment available in Tanzania and the finding made by Judge Mehta was one that was open to him on the evidence before the Tribunal. It was undoubtedly open to Judge Mehta to conclude that he was not satisfied that the appellant has demonstrated that he meets the test set out in AM Zimbabwe for the reasons set out in his decision.

13. As far as the Article 8 claim is concerned, Judge Mehta found the appellant has established a family life with his mother and father. He was satisfied that on the evidence before the Tribunal, the appellant has established that there are more than the normal emotional ties which exist between a parent and an adult child. He was also satisfied the appellant has established a private life in the UK. However, judge Mehta found the appellant cannot meet the requirements of paragraph 276ADE of the immigration rules because he was not satisfied that there would be "very significant obstacles" to the appellant's reintegration in Tanzania. That finding is not challenged.

14. The issue in the appeal was whether the respondent's decision to refuse the appellant leave to remain is disproportionate. Judge Mehta quite properly had regard to the relevant public interest considerations as set out in s117B of the Nationality, Immigration and Asylum Act 2002, noting in particular that the appellant's stay in the UK after his visit visa expired was unlawful. Contrary to what is said on behalf of the appellant, the Judge did consider the evidence before him regarding the care provided by the appellant to his parents. Judge Mehta said:

> "66. The Appellant's parent's choice of carer as the Appellant is out of choice as opposed to necessity or exceptionality. The Appellant nor his parents have made any enquiries with social services as to what help would be available to them if the appellant was to return to Tanzania. The Appellant's mother stated in her evidence that she has more trust in her son looking after her and she does not want to be looked after by social services."

15. At paragraph [69] Judge Mehta went on to say:

> "Balancing all the factors and the considerations I have outlined above I consider that the "pros" are not cumulatively sufficient to outweigh the public interest engaged. Taken together they cannot properly be described as "very strong" and "compelling". I find that it would not be

> unjustifiably harsh upon the appellants to return the appellant to Tanzania. It was clear to me when the appellant and his mother gave evidence that they cared very much for each other and that the appellant's parents are elderly and enjoy the support and care of the appellant. Whilst I have a degree of sympathy for the Appellant's and his parents wishes I do not find that it outweighs the public interest in immigration control. I am not satisfied that, taking the evidence cumulatively and at it's highest, there are exceptional circumstances in this case."

16. When paragraph [69] is read as a whole, it is clear that the word "parents" is missing in the fourth line after the word "appellants". It is clear that Judge Mehta found that it would not be unjustifiably harsh upon the appellants parents to return the appellant to Tanzania.

17. The assessment of an article 8 claim such as this is inherently fact sensitive and the First-tier Tribunal must carry out the assessment on the evidence before it. In reaching his decision Judge Mehta plainly had regard to the evidence of the appellant and his parents and the factors that weigh in favour of the appellant and those that way against him. Judge Mehta considered all relevant matters holistically with the required degree of anxious scrutiny. Although the appellant may wish to remain in the UK to be with his parents and his parents may wish the appellant to be able to remain in the UK so that they can continue to provide mutual support to each other, Article 8 does not give a person the right to choose where they wish to live. In this case the Judge gives proper and adequate reasons to support the conclusions he reached. The decision reached was one that was open to the Judge. Again the appellant simply disagrees with the findings and conclusions that were open to Judge Mehta in respect of the Article 8 claim.

18. It follows that I reject the criticisms made of the decision of the First-tier Tribunal and dismiss the appeal.

Notice of Decision

19. The appeal is dismissed and the decision of First-tier Tribunal Judge Mehta stands.

V. Mandalia

Judge of the Upper Tribunal

Immigration and Asylum Chamber

22 February 2023