

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER



Case No: UI-2022-004958
UI-2022-004959

tier Tribunal No HU/08207/2020
HU/08208/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st November 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

**MRS OLGA MEINYK
MR SERVICII VOITOVYCH**

(anonymity order not made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr .S Jaisr, Counsel, instructed by Arlington Crown Solicitors
For the Respondent: Mr Avery, Senior Home Office Presenting Officer.

Heard at Field House on 11th August 2023

DECISION AND REASONS

Introduction

1. The appellants are married to each other and born respectively on 25 July 1984 and 25 August 1985. The second appellant relies upon his wife's claim which is based upon her health.
2. Both are nationals of Ukraine. They came to the United Kingdom on 1 July 2014 on a transit visa, valid for 24 hours. They have remained ever since without permission.
3. On 12 February 2020 application for permission to remain was made based upon the first appellant's health. She had been unwell and following investigations a diagnoses was made in 2019 of liver disease and associated complications. Their applications were refused on 12 October 2020.

4. Their appeals were heard by First-tier Tribunal Judge Bonavero at Hatton Cross on 5 May 2021. The appellants were represented by counsel and there was a presenting officer in attendance. Their appeals were dismissed. The focus in the appeal was on the first appellant's health and her article 3 and 8 rights
5. The appeal papers included evidence about the first appellant's health. There was reference in the medical reports to the possibility of a liver transplant. The evidence indicated she would require lifelong monitoring. There was an expert report from a Dr Rano Turaeva about the healthcare system in Ukraine. The expert said liver transplants occur but there is a long waiting list. Medication was available.
6. First-tier Tribunal Judge Bonavero found the appellant could not meet the immigration rules. Regarding paragraph 276 ADE 1 (vi), the judge found there would not be significant obstacles to the appellants reintegration into life in the Ukraine.
7. The judge acknowledged the first appellant had significant ill-health and that liver transplants in Ukraine were rarely available. The judge concluded there was a real risk that she would not have timely access to a transplant. However, the medical evidence indicated that for now she did not need one, at least for the present. She had made lifestyle changes which had improved her condition. The evidence indicated the first appellant was overweight and had been binge drinking. Since at least October 2020 she had been abstinent of alcohol and there had been a marginal improvement. Doctors in the United Kingdom concluded her condition was at too early a stage to consider transplantation.
8. First-tier Tribunal Judge Bonavero indicated that realistically if the appellant returned to Ukraine her condition would not be monitored as required.
9. Paragraph 21 of the judgement stated these factors were likely to limit her life expectancy but the judge felt unable to state by how much. The judge concluded that removing the appellant would not breach her article 3 or 8 rights. The judge referred to the public interest factors in section 117 B and the cost the appellant would be upon the public purse for medical treatment.

The Upper Tribunal

10. Permission to appeal was granted by Upper Tribunal Judge C Lane on 9 January 2023. He referred to the events in Ukraine since February 2022 created a rare instance of intervening events which may have rendered the decision unsafe.
11. The respondent made a rule 24 response opposing the appeal. There had been an issue about the timeliness of the appeal but at hearing Mr Avery was not taking the point. The respondent's position however was that if there had been a material change in circumstances since the first-tier Tribunal decision then the appropriate step would be for the appellant to consider making a fresh application.

12. This was repeated at hearing by Mr Avery. He added that there was no evidence that her medical condition would restrict her integration into life in her home country. The appellant's representative indicated a further application had been submitted.

Consideration

13. The grant of permission related to the changed country conditions. However, the judge had to deal with the appeal on the evidence and the facts at the time. The decision of First-tier Tribunal Judge Bonavero is clear and concise. The issues were clearly set out. The relevant evidence was cited. The judge applied the relevant case law, notably, AM Zimbabwe [2020]UKSC 17.

14. The judge concluded that the first appellant's situation did not fall within the extreme and exceptional category which would engage article 3 in respect of a medical claim. At the outset of the judge's findings it was stated whilst the first appellant deserved every sympathy the judge had to evaluate this against the high threshold set out in the case law.

15. The judge correctly considered whether she would face a real risk on account of the absence of appropriate treatment of being exposed to a serious, rapid and irreversible decline resulting in intense suffering or significant reduction in life expectancy. The judge appreciated that liver transplants are rarely available in Ukraine.

16. At that early stage the judge had an appreciation of the conflict with Russia, stating this had placed the health system as a whole under considerable strain. The judge accepted because of this there was a real risk she would not have timely access to a liver transplant in Ukraine. The judge correctly pointed out that as matters stood she was not scheduled to have a liver transplant. Rather, her condition was being monitored and she was given medication which was either available or for which there were alternatives in the Ukraine.

17. The judge acknowledged that there was a real risk she would not benefit from the type of monitoring she is receiving in the United Kingdom. That, combined with the unavailability of a timely transplant was likely to limit the appellant's life expectancy. However, the judge could not state with any certainty by how much.

18. It is clear the judge clearly addressed the issues arising and made appropriate findings. The evidence did not indicate to the judge a real risk of an imminent decline on return. An unquantified risk in the circumstances did not satisfy the test set out in the case law.

19. The judge correctly identified the issues and addressed them. The relevant evidence was identified and the judge reached clear conclusions. I can find no material error of law in the decision. I agree with the respondent's suggestion that the proper recourse for the appellants is to make a fresh

application. Such an application will be able to address the first appellant's state of health and the situation in her home country .

Decision

No material error in the decision of First-tier Tribunal Judge Bonavero has been demonstrated. That decision, dismissing the appeals, shall stand .

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber.