IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006274
First-tier Tribunal No:
HU/53296/2021
IA/09141/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 July 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SIMEON OLUWAFEMI ALALADE
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr A Chakmakjian, of counsel, instructed by Reiss Edwards Solicitors

Heard at Field House on 20 June 2023

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Nigeria born on 19th January 1973. He arrived in the UK as a visitor on 10th August 2014, left, and then re-entered the UK again on 24th December 2014. Unexpectedly the claimant suffered a stroke, with bleeding on the left side of his brain and had to undergo a craniotomy at Kings College Hospital in September 2015. He was gravely ill in a coma for several months, but was eventually discharged to supported accommodation in January 2016, but needed subsequent surgery.

2. The claimant applied to vary his leave to remain to stay as a spouse in September 2016. The application was refused, and he appealed. His appeals were dismissed, and he became appeal rights exhausted on

© CROWN COPYRIGHT 2023

13th December 2018. He remained in the UK and on 30th July 2020 he applied to remain on the basis of a human rights application based on his family life relationship with his partner and private life ties with the UK. This application was refused on 21st June 2021. His appeal against the decision was allowed by First-tier Tribunal Judge Hussain after a hearing on 18th November 2022.

3. Permission to appeal was granted to the Secretary of State by Judge of the First-tier Tribunal LK Gibbs on 30th December 2022 on the basis that it was arguable that the First-tier judge had erred in law in making findings under the suitability provisions of the Immigration Rules at Appendix FM, and in failing to determine the appeal by reference to Article 8 ECHR when this was the basis on which the matter came before him.

4. The appeal came before me on 11th April 2023 but the claimant's newly instructed solicitors failed to appear, having applied to adjourn the hearing due to their lack of papers but having not received a response from the Upper Tribunal prior to the hearing. This was clearly not appropriate behaviour, but I adjourned the hearing so this vulnerable claimant, who attended the hearing with his carer, could be represented. The representative for the Secretary of State kindly forwarded the relevant papers to the new solicitors.

5. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and the decision should be set aside.

Submissions – Error of Law

6. In the grounds of appeal for the Secretary of State, the skeleton argument of Mr Melvin and in oral submissions from Mr Melvin it is argued, in summary, as follows. It is contended that the First-tier Tribunal erred in law when considering the suitability of the claimant under Appendix FM of the Immigration Rules with respect to the issue of his very large debt to the NHS for treatment (amounting to £139,873) by introducing a requirement that the Secretary of State should have warned the claimant of the consequences of not paying for treatment when this is not part of the Immigration Rules or any policy of the Secretary of State. Further no rational reasons are given why this very substantial debt should be disregarded when the suitability requirements at paragraph S.LTR.4.5 state that an application will normally be refused on this basis if there is a debt of over £500. It is argued that it was not rational of the First-tier Tribunal to have found that the claimant's inability to ever repay the substantial debt was a reason to exercise discretion in his favour.

7. A Rule 24 notice was filed by the claimant on 16th June 2023, and in this document and in oral submissions from Mr Chakmakjian it is argued, in summary, as follows. It is argued that the grounds of the Secretary of

State wrongly state the law: the Immigration Rules at S-LTR.4.1 states these are suitability grounds on which an applicant "may be refused" not "should normally be refused". It is not irrational for the First-tier Tribunal to have taken the inability to repay the debt into account because the Secretary of State's own guidance states under "Consideration of an application where there is an NHS debt" that compassionate and other circumstances including "illness of applicant (which may affect ability to work to repay debt)" is a consideration. Further, it is argued, the comments about a lack of a warning about the implications of incurring the debt were simply an observation and were not held in favour of the claimant or against the Secretary of State, and so were not taking into account an immaterial matter. It was argued that this is not a case, as was accepted by Mr Melvin at the hearing before the Upper Tribunal, of health tourism, and it is clear that the First-tier Tribunal considered that this debt arose from essential emergency treatment which was needed for the claimant's survival. When looked at in the round the First-tier Tribunal properly acknowledged the discretion under the Immigration Rules and gave proper reasons for exercising it in the claimant's favour, and thus properly found he met the suitability Immigration Rules. Having found the claimant met the private life Immigration Rules there was no need to reason the decision further outside of those Rules.

8. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had not erred materially in law but would set out my reasons in writing.

Conclusions – Error of Law

9. At the time of the hearing the claimant had become estranged from his partner so the appeal proceeded on the basis of his private life connections with the UK only as set out at paragraph 20 and 25 of the decision. At paragraph 26 the First-tier Tribunal reasonably finds that if the claimant can satisfy the private life Immigration Rules at paragraph 276ADE(1)(vi) that there will be no need to go on to consider Article 8 ECHR outside of the Immigration Rules. There is no challenge in the grounds to this approach; and if the Rules are satisfied then the interference, that removal from UK would represent, to the claimant's private life would clearly not be proportionate as there would not public interest reasons why the claimant should not remain.

10. As noted in the decision of the First-tier Tribunal at paragraph 39 the claimant's medical conditions were not in dispute. As set out in the reasons for refusal letter they may be summarised as follows. Type two diabetes, hypertension heart disease, asthma and due to a brain haemorrhage: cognitive impairment including decreased attention, concentration, memory, planning, sequencing, initiating, and ceasing tasks perseveration; severe receptive and expressive aphasia; and traits of cognitive communication disorder including lack of eye contact, being very distractible, and shifting off topic quickly. As a result the

claimant finds it difficult to communicate, and needs support with personal care and managing his medication.

11. The First-tier Tribunal directs itself to the meaning of the term integration at paragraph 37 of the decision, and set out its reasoning as to why there would be very significant obstacles to integration for the claimant on return to Nigeria at paragraph 42 of the decision. There is no challenge to the direction or findings by the Secretary of State.

12. The First-tier Tribunal correctly understands that there is a discretion as to whether the NHS debt held by the claimant is one which means that he is not able to meet the suitability Rules at paragraph 35 of the decision, and concludes that this discretion should be exercised in the claimant's favour in the final sentence. As stated by Mr Chakmakjian an unpaid NHS debt is an issue which may be a matter which means that the claimant cannot satisfy the suitability criteria under the Immigration Rules. There is no presumption that he should be refused on this basis in the rules at S-LTR. I find that the First-tier Tribunal therefore correctly directs itself to the relevant law.

13. I find that the First-tier Tribunal did bring an immaterial consideration into play when making its decision at paragraph 35: it was not relevant that the Secretary of State had not shown that she had issued a prior warning to the claimant about the consequences of obtaining the treatment from the NHS and the potential impact on future immigration applications. This would clearly have been impossible in the actual medical circumstances of this case and there is no law or policy which requires this from the Secretary of State. However, I do not find this error was material as the First-tier Tribunal gave other unarguably rational reasons for finding discretion should be exercised in the claimant's favour. Firstly, there are compassionate reason relating the severity of the ill health of the claimant, the fact that the treatment given by the NHS was unplanned, resulting from an unforeseen episode of ill health, and the fact that the claimant needed the treatment to survive. Secondly, it is found, that given the claimant's medical condition, there is absolutely no prospect of the debt being repaid. I find that both of these sets of reasons are ones identified as relevant by the Secretary of State's own policy on the suitability criteria: "Consideration of an application where there is an NHS debt" which identifies that compassionate circumstances and the inability to repay the debt due to inability to work are factors to be considered. In these circumstances I find that the decision of the First-tier Tribunal is not materially affected by the error of law and so should be upheld.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

2. I uphold the decision of the First-tier Tribunal allowing the appeal on Article 8 ECHR grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20th June 2023