Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/51812/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 August 2014	**On 26 August 2014**
Prepared 21 August 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADEBOWALE ADELODUN

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr R O Ojukotola of Messrs by S L A Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal Courtney who in a determination promulgated on 12 June 2014 allowed the appeal of Mr Adebowale Adelodun against a decision of the Secretary of State made on 13 June 2013 to refuse him an extension of stay as a visitor for private medical treatment.

2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier Tribunal.

Similarly I will refer to Mr Adebowale Adelodun as the appellant as he was the appellant in the First-tier Tribunal.

3. The appellant is a citizen of Nigeria born on 2 June 1938 who entered Britain as a visitor on 7 December 2012. Before his leave to remain ended he made an application for an extension of stay as a visitor for private medical treatment. When refusing that application the Secretary of State referred to the provisions of paragraph 41 of the Rules and those in paragraph 51(ii)-(v) and then referred to the requirements in paragraph 54 of the Rules. Those requirements stated that the applicant must produce evidence in the form of a letter on headed notepaper giving a private practice or hospital address from a registered medical practitioner who holds an NHS consultant post or who appeared in the special register of the GMC. The letter has to provide details of the nature of the illness, the proposed or continuing treatment, the frequency of consultations, the probable duration of the treatment, details of the cost of treatment and confirmation that all expenses were being met and, where treatment amounted to private visits to a consultant for a relatively minor ailment, details of the progress being made. The Rule at (iii) also required that the applicant would have to provide that:

> "He has met out of the resources available to him, any costs and expenses incurred in relation to his treatment in the United Kingdom and (iv) provided evidence that he has sufficient funds available to him in the United Kingdom or, if relying on funds from abroad, has provided evidence that those funds are fully transferable to the United Kingdom, to meet the likely costs of his treatment and intends to meet those costs."

It appears that the appellant also had, in his application stated that he wished to care for his son who was settled in Britain and had various illnesses but that part of the application was refused and was not raised again in the appeal. The letter of refusal also pointed out that the appellant could not meet the requirements of the private life requirements of the Rules.

4. In her determination the judge set out the requirements in paragraph 54 of the Rules as listed above and then set out her findings in paragraphs 9 onwards of the determination. She noted that the appellant was suffering from an enlarged prostate gland and that his condition had been diagnosed after his arrival in Britain in December 2012. He had entered into agreement with Kings College Hospital to pay the costs of the treatment he had had in monthly instalments – a total of £1,687.27 in all and had a catheter inserted and had been prescribed Finasteride. She noted that a doctor from King's College had written that she had referred the appellant for a renal review and that he required surgery to "disobstruct" the prostate and that the doctor had said that "I booked him for a photoselective vaporisation of the prostate with Green Light laser which should be done in the near future". She noted the appellant's evidence that he had been told that he might be called for an operation at any time. No up-to-date medical report had been supplied but the Judge stated that the appellant's daughter, whom she found to be entirely credible had confirmed that her father was still awaiting surgery. The Judge stated therefore that the appellant met the requirements of Rules.

5. The Secretary of State appealed pointing to the fact that the determination had stated that no up-to-date medical report had been supplied and the judge had accepted oral evidence of the appellant that he was still awaiting surgery in considering that the appellant had met the requirements of the Rules.

6. At the hearing of the appeal before me Mr Tufan referred to the requirements of paragraph 54(ii) and stated that the evidence which was required had simply not been produced. There was a clear error of law. There was in particular no detail of how the further treatment would be paid for, when it would take place or indeed whether or not the treatment was private or under the NHS. He also pointed to a letter sent by Mr Francesco Sanguedolce to a Dr Flandrin of Parkside Medical Centre, Camberwell which stated that:

> "However the patient is in our waiting list since April 2013 for having a laser vaporisation of the prostate which did not happen likely because of his legal problems that are going to be sorted shortly as he is married with an English woman. The patient needs to have the operation done as soon as possible as it was planned more than one year ago in order to avoid for him to be bothered more by the urethral catheter. As soon as his legal situation would be sorted the patient would be called for the operation."

7. Mr Tufan pointed out that there was no application for leave to remain because the appellant was "married with an English woman" and therefore it appeared that the hospital had been misled.

8. In reply Mr Ojukotola stated that the judge had relied on oral evidence which she had accepted. He pointed out that the appellant had been granted indefinite leave to remain in 1967 and that he had three children who are resident in Britain and his second son here has a medical condition. The appellant's wife is also settled here. He referred to the appellant's pension here but confirmed it was correct that the appellant was not applying for residence. He had come as a visitor to attend to the graduation ceremony of his daughter and had then been diagnosed and had been treated as a private patient and had made payments for the treatment he had received under the payment plan which had now been completed - a total of £1,687 having been paid. He said that no amount had been agreed regarding the further treatment which the appellant required. While he accepted that the medical report before the judge was not up-to-date he stated that what was relevant was that there was a medical report. Moreover the appellant's daughter who had a PhD in Medical Sciences had been asked about her father's treatment and had undertaken to ensure that his costs would be met. He referred to the three letters dated 18 March, 4 April and 27 June 2013 before the judge and stated it was not the case that there was no medical evidence before her. He stated that the appellant had returned to Nigeria in 1974 but because of the work which he had done here received a pension. He referred to a pending surgery agreement and stated that the appellant's costs would be met as his costs in the past had been met. He therefore asked me to dismiss the respondent's appeal.

Discussion

9. The Immigration Rules are quite clear. They require up-to-date medical evidence, evidence that the applicant would receive private treatment and that the applicant can pay for that treatment. There was simply no evidence before the judge that the appellant would receive private treatment, when that treatment would take place and how it would be paid for. The appellant's daughter's bank statements are in the file but these show net salary of approximately £1,630 per month. There is no indication how, from that sum, the appellant's daughter would be able to pay for medical treatment let alone, of course, the fact that there is no indication of what the costs of the required "photoselective vaporisation of the prostate" should cost if that indeed is the only surgery which is required.

10. The judge clearly erred in law by not considering the requirements of the Rules and in, apparently, concluding that those requirements had been met. There was simply no evidence on which she could have based her conclusion. I therefore set aside her decision.

11. In re-making the decision and for the same reasons - the lack of evidence that the requirements of the rules can be met, I find that this appeal cannot succeed. There are lacunae in the evidence which cannot be met by oral evidence regarding the lack of an up-to-date report of the medical treatment which the appellant requires, the costs of that treatment, when it will take place and how the costs will be met. The fact that the payment for the initial procedure which the appellant has now been paid in full (six instalments of £100 per month) is not sufficient indication that the appellant would be able to pay for any other, and probably more expensive, treatment.

12. I would add that the initial letter of application appeared to raise the issue of the appellant being treated as a returning resident. Clearly that could not succeed given that the appellant has been out of Britain for 40 years. It was also argued that he should be a carer for his son but again there was no evidence that he is playing any such role.

13. For the above reasons I, having set aside the decision of the Judge of the First-tier Tribunal re-make the decision and dismiss this appeal.

Signed Date

Upper Tribunal Judge McGeachy