Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07713/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Decision Promulgated**
On 3 February 2015	**On 6 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

IA
(Anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Trevelyan, instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Anonymity order

1. The First-tier Tribunal made an anonymity direction in relation to the appellant because of the nature of the case and the fact the appellant has two dependent children. It is appropriate to make a similar order in the Upper Tribunal under Procedure Rule 14(1) to prohibit the disclosure or publication of any matter likely to lead members of the public to identify the appellant or her children. To give effect to this order, the appellant is to be referred to as IA.

DECISION AND REASONS

2. The appellant appeals to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Hawden-Beal that was promulgated on 19 November 2014. Judge Hawden-Beal dismissed the appeal against the immigration decisions of 18 September 2014 to remove her to Nigeria. The appellant had overstayed and her asylum and human rights claims had been refused.

3. Mr Trevelyan relied on the grounds of appeal (which were the grounds of application) and his skeleton argument. Before considering either document I must comment on the fact that early in the course of his submissions in relation to whether there was an error on a point of law in Judge Hawden-Beal's decision and reasons statement, Mr Trevelyan had to admit that he did not have and never had seen a copy of the statement against which the appeal was brought. His instructing solicitors had not provided a copy despite his repeated requests. This makes it somewhat surprising that Mr Trevelyan makes reference to specific paragraphs of the statement in his skeleton argument. I accept that Mr Trevelyan did not intend to mislead the Tribunal and his apology for any inconvenience is accepted. However, it was no way to proceed. In the interest of justice, I provided him with a copy of the statement and gave him time to prepare.

4. The grounds of appeal focus on the single issue of whether Judge Hawden-Beal properly considered the fact that one of the appellant's children had received substantial medical treatment relating to burns and that she remained under medical supervision. It was argued that the judge had not had proper regard to the evidence and therefore her findings in relation to the private and family life rights of the appellant and her children had not been properly assessed. The grounds took particular issue with two points. First, the judge had misread the medical evidence and had concluded that future treatment was not likely even though the consultant had indicated that future treatment was likely to be necessary. Secondly, the judge had failed to take proper account of the appellant's inability to fund treatment in Nigeria, even assuming such treatment would be available.

5. Mr Trevelyan amplified the grounds of appeal and made the following additional submissions. He alleged that Judge Hawden-Beal had conflated issues relating to article 3 and article 8 of the human rights convention. He drew this from the fact that at the start of paragraph 34 the judge made reference to the case of N v SSHD [2005] UKHL 31. The case of N clearly relates to article 3 issues and not to private and family life rights.

6. To support the submission relating to whether the judge had misread or misapplied the medical evidence, Mr Trevelyan took me to the two letters from the consultant doctor, Mr Bruce Philp, of 15 April and18 October 2014. Mr Trevelyan admitted that he only had poor copies but said that the letters clearly show that the consultant had advised that it was more likely than not that the appellant's child would require further reconstructive surgery. The fact the judge minimised the likelihood of future treatment undermined her reasoning. In addition to these points relating to the medical evidence, Mr Trevelyan also argued that the fact that there was no timescale regarding such

surgery was immaterial since the judge should have been concerned with assessing the best interests of the child.

7. As to the final issue, whether the appellant would be able to afford similar treatment in Nigeria, Mr Trevelyan admitted that no evidence of her financial ability or likely cost had been provided to the First-tier Tribunal. In addition, he acknowledged that the appellant and her children could not expect to benefit from a circular argument that they are entitled to free NHS treatment indefinitely. The National Health Service (Charges to Overseas Visitors) Regulations 2011 establish the family's entitlement whilst being dependents of a student (as they were) and whilst seeking asylum. Otherwise they have no entitlement. There is no explanation as to how the appellant would pay for continued treatment in the UK, and as identified by Maurice-Kay LJ at paragraph 9 of AE (Algeria) v SSHD [2014] EWCA Civ 653,

> "Moreover, I do not consider that it would be inappropriate for the future cost and duration of Maya's treatment and care in this country to play a part in the balancing exercise as matters relating to the economic wellbeing of this country, given the strains on the public finances."

8. Of course, the failure of the appellant to provide relevant evidence means that this ground must fail.

9. I turn to the other issues. As I indicated to Mr Trevelyan when discussing his complaint that Judge Hawden-Beal conflated article 3 and article 8 issues by reference to N, his argument is wholly misguided. Not only was the judge merely putting the article 8 case in context, she did so to ensure that the different approaches to each right were identified. As I pointed out, the Court of Appeal has done exactly the same (albeit with more eloquence) in the recent judgment of GS (India) and others v SSHD [2015] EWCA Civ 40 and as Mr Trevelyan admitted he would have no similar complaint with regard to the Court of Appeal's approach.

10. As to his complaint regarding the judge's reading of the medical evidence, as I indicated to Mr Trevelyan both he and the author of the grounds of appeal are seeking to read more into the consultant's comments than is there. The consultant indicates that further reconstructive surgery is often necessary in children and therefore it remains a possibility for the appellant's child. However, no one would know what surgery would be required until the child had grown. There is nothing in what the judge found that contradicts that conclusion. It is further of note that the judge uses the wording employed by the consultant in the latest letter which is highly conditional. The idea that the evidence shows that future surgery was more likely than not to be required or that the judge minimised the child's condition is nonsense and a deliberate attempt to read into the medical evidence something which is not there.

11. The fact that I am satisfied that the judge has shown that she was fully cognisant with the medical evidence means that I find no error on a point of law in her assessment of the child's medical needs. The judge clearly had these in mind when assessing the child's best interests. As indicated by the Supreme Court in Zoumbas v SSHD [2013] UKSC 74 and by the Court of Appeal in EV (Philippines) v SSHD [2014] EWCA Civ 874, the best interests of a child are to be weighed in the balancing exercise when considering whether an

immigration decision that will in full or in part require a child to leave the UK is reasonable or proportionate. It is clear from the decision and reasons statement that Judge Hawden-Beal undertook this approach and there is nothing to undermine her findings.

12. I mention that permission to appeal was granted on the basis that Judge Hawden-Beal had failed to have proper regard to the guidance in AE (Algeria) in that she did not have regard to the different approaches required by article 3 and article 8 in medical cases involving children. As I have indicated, I do not find there is any such error, the reference to N in paragraph 34 merely being to identify the contrast. This is a case where the medical evidence was not sufficient to show that removal would undermine the physical or moral wellbeing of the child and therefore would not meet the article 8 test, which is what Judge Hawden-Beal identified in paragraphs 32 and 33. As I have already indicated, the Court of Appeal in GS (India) also draws parallels between the thresholds for engaging articles 3 and 8 on medical grounds and identifies that to succeed on article 8 alone would require some additional significant factor to be established. That is, in effect, all that can be drawn from the guidance in AE (Algeria), therein the additional factor being the need to take account of the young age of the person who has medical needs. However, it is clear that Judge Hawden-Beal had regard for the child's age throughout.

13. As the grounds were obviously wholly without merit, there was no need to hear from Mr McVeety in detail. The appeal fails as none of the grounds establishes that Judge Hawden-Beal's statement contains any error on a point of law.

Decision

The appellant's appeal to the Upper Tribunal is dismissed because there is no legal error in the decision and reasons statement of First-tier Tribunal Judge Hawden-Beal.

The decision of the First-tier Tribunal is upheld.

[NB The Upper Tribunal has made an anonymity order as set out in paragraph 1 above.]

Signed Date **6 February 2015**

Deputy Judge of the Upper Tribunal