



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00059/2014

THE IMMIGRATION ACTS

Heard at Manchester Crown Square Decision and Reasons
On 6 January 2016 promulgated On 22 March 2016

Before

Upper Tribunal Judge Plimmer

Between

**AN
ANONYMITY ORDER MADE**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Ms Patel, Counsel

Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Introduction

1. The origins of this appeal are traceable to a decision made on behalf of the SSHD dated 16 December 2013, to deport the appellant, a national of

Jamaica from the United Kingdom ('UK'). I have anonymised the appellant because this decision refers to sensitive medical information concerning him.

2. On 9 October 2014, the appellant's appeal against the SSHD's decision was dismissed by a panel of the First-tier Tribunal ('FTT'). The appellant has appealed against this decision in wide-ranging grounds. Permission to appeal was granted on the basis that the FTT arguably erred in law in: (i) its approach to section 72 of the Nationality, Immigration and Asylum Act 2002 and its assessment of the asylum claim; (ii) failing to engage with the medical evidence and Article 3 of the ECHR; (iii) failing to apply the relevant paragraphs in the Immigration Rules.
3. In a rule 24 notice dated 20 March 2015 the SSHD invited the Tribunal to dismiss the appeal.

Hearing

4. Ms Patel relied upon the grounds of appeal she had drafted on behalf of the appellant. Having heard fully from Ms Patel I indicated that I did not need to hear from Mr McVeety and announced that I was satisfied that the FTT had not made a material error of law that required the decision to be set aside.
5. I now provide my written reasons for this decision.

Error of law discussion

Asylum

4. I accept that the FTT has provided brief reasons for rejecting the appellant's claim to fear serious harm in Jamaica following the death of his brother [67]. I am however satisfied that the reasoning is adequate to inform the appellant why his claim has been dismissed. The FTT accepted that the appellant's brother had been killed but provided three reasons for concluding that there is no real risk of the appellant being seriously harmed if returned to Jamaica: (i) the brother was killed in a random act of violence; (ii) the appellant's family members in Jamaica have not come to any harm in Jamaica (notwithstanding the passage of time since the killing in December 2011); (iii) there is a sufficiency of protection in Jamaica given the nature of the crime and the fact that the family have a police officer contact.
5. The FTT made these findings having taking into account all the relevant evidence [9] and having considered the submissions of both representatives, which referred to the relevant evidence [39-66].
6. Ms Patel submitted that these findings fail to take into account the available country background evidence on Jamaica. Whilst findings on

prospective risk should generally take into account the likely conditions in the country of origin, the FTT has not materially erred in law in failing to specifically refer to country evidence when making its findings. It is clear that the FTT had such evidence in mind [9]. In any event, Ms Patel was unable to take me to any country evidence available to the FTT that called into question any of the reasons provided by the FTT. Reason (i) was a finding of fact open to the FTT and is consistent with the evidence provided by the appellant during his interview and the evidence contained in his witness statement. Reason (ii) is another factual finding entirely consistent with the evidence, and indeed accepted by the appellant, who has numerous close family members in Jamaica: parents, a brother, two sisters and children.

7. As the FTT found no real risk of serious harm to the appellant upon return it did not need to address the issue of sufficiency of protection. Ms Patel nevertheless submitted that the finding that there would be a sufficiency of protection is inconsistent with the country evidence. The only evidence that she took me to related to the prevalence of generalised gang violence in Jamaica. That does not address the situation here, where the appellant has no direct or indirect relationship with any gang.
8. Ms Patel did not seek to impugn the findings on the asylum claim for any other reason and I am satisfied they are sustainable and not infected by any material error of law.
9. Ms Patel accepted that if I was against her in relation to the FTT's asylum findings then the errors regarding the approach adopted in relation to the section 72 certificate are immaterial, and there is therefore no need for me to address this issue.

Immigration Rules Article 3 / Article 8 / medical evidence

10. Ms Patel accepted at my invitation that the appellant was unable to meet paragraphs 399 or 399A of the Immigration Rules and in these circumstances the FTT was obliged to consider whether "*there are very compelling circumstances over and above those described in paragraphs 399 and 399A*" pursuant to paragraph 398. Ms Patel correctly pointed out that the FTT did not direct itself to the relevant wording of paragraph 398 and applied a different test at [74]. Ms Patel however accepted that the test under the Immigration Rules as well as the applicable tests to be applied under Articles 3 and 8 of the ECHR could not be met if the FTT's findings regarding the medical evidence and the appellant's circumstances upon return to Jamaica are sustainable. I therefore turn to these.
11. I entirely accept that the FTT has dealt with the medical evidence and the appellant's likely circumstances upon return to Jamaica briefly [70] and in a case such as this it would have been more helpful for this evidence to have been addressed in greater detail. The FTT said this, inter alia:

“No evidence has been produced to suggest [the appellant] is not in contact with his family in Jamaica nor has any evidence been produced to suggest that they cannot assist him to receive the day-to-day medical care he requires.”

12. Ms Patel submitted that this wholly fails to engage with the detailed medical evidence concerning the appellant. The appellant suffers as a result of a serious head injury sustained in an assault in 2009. This has caused or contributed to a number of other conditions such as panhypopituitarism, microcytic anaemia and visuospatial problems. These conditions have an impact on the appellant’s memory and day-to-day functioning. He requires support in taking his medication and dealing with daily routines. He requires assistance in accessing on-going medical treatment and must take particular care. The appellant suffers from serious medical conditions and requires day-to-day support to access medical and other assistance.
13. The FTT decision must be read as a whole. The FTT was taken to the detailed medical evidence during the course of submissions. This is briefly but adequately set out within the decision [54 and 55]. It is clear from this that the FTT was aware of and took into account the medical evidence. The FTT accepted that the appellant requires medical care and was entitled to focus its attention on whether his family would be able to assist him to receive that care.
14. The key issue in the appeal was therefore whether or not the appellant’s family members in Jamaica could provide the necessary support to ensure he accesses medical care. The FTT concluded that they could. This is a finding open to the FTT given the limited nature of the evidence before it. The appellant’s interview and witness statement confirmed that he was still in contact with his parents (who continued to work in the market - Qs 42 and 46), his brother and two sisters. When I took Ms Patel to this evidence, she accepted that there was no evidence, apart from his parents being elderly, adduced on behalf of the appellant to support a submission that his various family members in Jamaica were unable to assist in looking after him or that he would not get the treatment he requires in Jamaica. The appellant’s elderly parents continued to work in the market. Ms Patel accepted that the fact that the appellant’s siblings have their own families does not obviate an ability and / or willingness to assist the appellant.
15. Ms Patel was only able to take me to very generalised evidence regarding healthcare in Jamaica. No specific evidence was adduced before the FTT regarding the non-availability of the treatment the appellant requires, in Jamaica. I note that healthcare is free of charge in Jamaica, albeit problems in accessing non-urgent healthcare remain. The burden rested upon the appellant, who was represented by experienced legal representatives, to adduce the evidence to support his claim that he would not receive the support necessary to cope with his day-to-day activities or access the medical treatment he requires in Jamaica. The evidence that

went to that issue was very limited. Give the nature and extent of that evidence, the FTT was entitled to find that he would be sufficiently assisted by family members he continued to have contact with. Such a finding meant that the appellant could not meet the high threshold required to meet the Immigration Rules, Article 8 or Article 3.

16. It follows that whilst the FTT has not properly directed itself to the appropriate test under the relevant legal framework, such an error is immaterial because on the FTT's findings the appellant's claim to remain under the Immigration Rules, Article 8 or Article 3 was incapable of success.

Decision

17. The decision of the FTT does not contain a material error of law and is not set aside.

Signed: Ms Melanie Plimmer
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 7 January 2016