



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23258/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 July 2018

Decision & Reasons Promulgated
On 10 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

V.O.A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of Judge of the First-tier Tribunal Broe who in a determination promulgated on 2 August 2017 dismissed her appeal against a decision of the Secretary of State to refuse leave to remain on human rights grounds.
2. The appellant is a citizen of Ghana born on 17 March 1979. She entered Britain as a visitor on 26 June 2013 asserting that she was coming to buy clothes for her wedding which was to take place in Ghana. She states that after she arrived her fiancé was killed in a car accident and she decided to remain without leave. She formed a

relationship with SK and they had two children, SMK was born on 26 September 2014 and AYK was born on 17 September 2015. Shortly before her second child's birth she made an application for leave to remain on the basis of domestic violence which was refused on 22 December 2015. In January 2016 she made an application for leave to remain on the basis of private and family life. That was refused on 26 September 2016 and she appealed against that decision, the appeal coming before Judge Broe on 13 July 2017.

3. The appellant's eldest son suffers from sickle cell anaemia. Her relationship with SK has broken down and he plays no part in the upbringing of the children. The appellant is dependent on state benefits and housing and also receives some support from friends in Britain. It was accepted that she has no basis of stay under the Rules. Rather her assertion is that because of her son's sickle cell anaemia it would be unfair to return her and her children to Ghana. In a letter dated 28 January 2016 the appellant asked that she be granted discretionary leave to remain because she, her son and her daughter were victims of circumstances and she had been deceived into marriage. She stated that she wanted to be able to work here and have a better future for her children. She stated that she was a trained teacher and had a B.Ed management degree. She said that she was in debt with the NHS and she wanted to work to pay back that debt. She added:-

"I wouldn't want to live in the fear of losing my son all the time because of his sickle cell disease which demands immediate medical attention when he has crises (please see the attached letter from his sickle cell consultant).

In Ghana there is only one hospital that has a sickle cell unit in that is in the capital and you have to pay for the services too. I know two people who die because of inadequate medical attention and that scares me a lot. It takes eight hours drive from my home town to the capital so should in case my son needs medical attention by the time we reach the hospital the worst would have happened. I can't afford to live in the capital too because of the economic situation. My son has suffered a lot because of the conditions surrounding his birth and is still suffering. I don't want to lose my son but I want him to be a testimony to other people not to give up because there is hope for all."

4. A letter from Northampton County Council dated 3 March 2016 stated that they had been supporting the appellant and the children since April 2015 financially and that she and the children were on a child in need plan. A letter from a specialist nurse for children with sickle cell anaemia stated that the appellant's son had had a diagnosis of haemoglobin SC disease and stated that she believes the family would benefit from remaining in the United Kingdom. She stated that it would be in a child's best interests not to be removed from the UK where he is being treated and monitored for his condition.
5. A human rights assessment was made by the New Ark Foundation which stated that SMK had sickle cell anaemia and a hole in the heart from birth due to his premature arrival. It stated the hole was being monitored for improvements. It was also said that he suffered from chronic lung disease which was being monitored. The

appellant was considered to be destitute. The note asserted that if the appellant were to return to Ghana it was unlikely that she would be in a position to go back to work with two children and, incorrectly, stated that SMK was a British citizen. It was assessed that the appellant and her son had a good network of people here in England which included close family friends and "faith community". An assertion was made that returning to Ghana would mean withdrawal of SMK's existing support "leading to degrading treatment and possible death".

6. The letter of refusal pointed out that the appellant could not qualify for leave to remain under the Rules. In the section headed Decision on Exceptional Circumstances it is stated:

"... in support of your claim you state that your child SK is suffering from sickle cell disease. This has been carefully considered. Objective information resourced from Country of Origin shows that treatment for this condition is available in Ghana. Treatment is available at Korley Bu Teaching Hospital, Accra, Greater Accra. Treatment includes but is not limited to inpatient services, radiology, blood transfusion services, laboratory services, in and outpatient treatment and follow up by a haematologist."

It was also pointed out that the children would be returning to Ghana with their mother as a family unit.

7. Judge Broe noted the appellant's evidence at the hearing which was that she had not been in contact with her family since July 2014 because they did not approve of her relationship with the father of the children. The appellant had said that single mothers were not accepted in Ghana and she would be looked down on and there would be no assistance for her. She had said that she had many friends from her church who provided support for the children's needs but they would not support her in Ghana because the money would not cover her increased living expenses. The appellant stated that she had her mother, elder sister and her son in Ghana who live in Offinso, her home area. Her son lives with her sister and she is in contact with him and speaks to him through one of his teachers. She stated that she could not relocate to Accra because she had no relatives there.
8. The judge set out her findings in paragraphs 19 onwards of the determination. She stated that she did not accept that the appellant's fiancé had been killed in a car accident as she had claimed. She pointed out that the appellant had entered as a visitor and overstayed and that the children were not British citizens. She accepted that SMK suffered from sickle cell anaemia and had had the benefit of NHS treatment and noted the appellant accepted that treatment was available in Ghana although the appellant had claimed that it would be unreasonable to expect her to travel a long distance to gain access to it. The judge pointed out that the appellant had said that she could not relocate away from her family but that was exactly what she had done when coming to Britain. The judge noted that the appellant was not in a relationship and did not work and that she had family including her mother, sister, brother-in-law and a son in Ghana. She stated that she did not accept that the appellant would not have the support of friends and relatives on return to Ghana.

Having set out the relevant human rights law and referred to the judgment of the Supreme Court in Zoumbas [2013] UKSC 74 which stated that children who were not British citizens had no right to education and healthcare in Britain.

9. She set out the headnote in the determination of the Tribunal in Akhalu (Health claim: ECHR Article 8) Nigeria [2013] UKUT 00400 (IAC) which emphasised that:-

“The correct approach is not to leave out of account what is, by any view, a material consideration of central importance to the individual concerned but to recognise that the countervailing public interest in removal will outweigh the consequences for the health of the claimant because of a disparity of health care facilities in all but a very few rare cases.”

She found on the basis of that decision that SMK’s Article 8 rights were not engaged by reason of his health.

10. The lengthy grounds of appeal were considered in the First-tier by Judge of the First-tier Tribunal N J Bennett and refused and were then renewed in the Upper Tribunal. The first ground stated the underlying issue was not treatments available for SMK’s condition but whether or not his life would be at risk if he were to return to Ghana. They referred to comments made by Dr Richard Breene and a Dr Koodiyedath in letters dated 23 January 2017 and 11 July 2017. They quoted Dr Breene as saying:-

“In sickle cell disease children have a steady state anaemia (low haemoglobin) which is a permanent feature of this illness. In addition from time to time they can have acute exacerbations known as sickle cell crises. These crises can be of various types but the most common ones are acute or painful crises. Haemoglobin SC typically has a milder course than haemoglobin SS which is the most severe form of the disease however children are still at risk of complications and require medical follow up. Children with this condition have reduced function of the spleen leaving them at an increased risk of infection. As a result of this SMK requires ongoing long-term Penicillin prophylaxis. He also will require extra booster immunisations of pneumococcal vaccinations as time goes by.

With the help of intensive management children with this condition can live for a very long time with very few complications in developed countries. The prognosis however is less good in underdeveloped countries particularly in Africa where there are several problems such as increased risk of infection and lack of safe blood products. In addition it is sometimes hard to get access to local and timely healthcare. Here in the UK we give children with this condition open access to the paediatric ward to come in in the event of any parental concerns. This would not be available for SMK if he were to return to Africa.”

11. Dr Koodiyedath had stated:-

“Children with sickle cell disease need constant monitoring of their disease process and also adequate support when they become unwell. Due to the intensive support and management received their life expectancy of the

children and adults with sickle cell disease in developed countries is better. Prognosis however is very poor in underdeveloped countries particularly in Africa. In Africa there are several problems namely the risk of infection and lack of safe blood products. Hence for this reason most children die in the early years of life. SMK is at great risk if he does not get the appropriate treatment on time.”

12. It was asserted that SMK’s life would be at risk in Ghana due to poor prognosis, risk of infection, lack of safe blood products and the risk of not receiving appropriate treatment on time. It was stated the judge had erred in not considering these issues in order to determine the risk on return. It was asserted that SMK’s condition did meet the threshold set out in N v SSHD [2003] EWCA Civ 1396 and furthermore that the judge had not properly considered the provisions of Section 55 of the 2009 Act and had not conducted a careful examination of all relevant information and factors and “scrupulous analysis” to identify the child’s best interests and then balancing them with other material considerations. Reference was made to the first appellant’s skills in English and ability to work here if she were granted permission to work.
13. In granting permission to appeal, Upper Tribunal Judge Freeman stated that: “There is a potential risk to life for a child with sickle-cell anaemia, without effective treatment: whether imminently enough in this case to affect the result will be a question for argument.”
14. At the hearing of the appeal before me the first appellant produced a skeleton argument which attempted to distinguish this case from that of the appellant in Akhalu because of the age of the appellant’ son and referred to evidence of poor health care in Ghana stating that Sickle Cell Anaemia was one of the top 3 specific causes of death. It was asserted that the appellant could not pay for treatment there and referred to high infant mortality in Ghana. A UNICEF report had stated:

“Every year in Ghana about 80,000 children do not live to celebrate their fifth birthday. Most of these children die from preventable causes. Malaria is hyper-endemic in Ghana and claims one quarter of all under-five deaths every year - 20,000 young lives. ... acute respiratory infection ... is responsible for 18% of under five deaths, and diarrhoea for another 18%. Malnutrition is the underlying cause of death in half of all under five-deaths.”
15. It was argued that sending a child with sickle cell anaemia to a developing country where he is “is massively exposed to inadequate health care or medical facilities and potential early death was tantamount signing his death warrant”. The appellant relied on the skeleton argument and stated that her son could not go to Ghana because of the heat and the likelihood of his suffering malaria. Her cousin, [EO], acted as a MacKenzie friend, and made an emotional plea that the appellant and her children be allowed to remain for the sake of her son.
16. I note the letters to which reference was made in the grounds of appeal and the documents in the bundle lodged before the hearing. These included, inter alia a

report provided by Diversity and Equality in Health and Care which stated as follows:-

“... sickle cell disease (SCD) is an inherited disorder affecting 2% of all babies born in Ghana. SCD is the commonest genetic condition of clinical and epidemiological importance in Africa and over 95% of children born with the disease die before the age of 5 years. Often the healthcare provision for people with SCD requires a holistic approach involving a multiplicity of well-trained professionals as well as a well-defined system of social support that caters for their physical, emotional, psychological and financial needs.”

17. The report went on principally to argue for improved healthcare and social services for patients and families in Ghana through the adoption of an “affordable intermediate strategy” that could be the model for the development of services in both Ghana and elsewhere in Africa.
18. The bundle also included a report entitled “Healthcare Provision for Sickle Cell Disease in Ghana: Challenges for the African Context” by a body called “Research Gate” which emphasised the relative cost of delivering the same health care are vastly different between Ghana and the UK or America. It went on to say:-

“According to Rahimy et al (2003), the most frequent reasons for hospital/medical consultation by SCD patients in Africa are fever/infection and pain. The management of the febrile patient in most African countries is intended to rule out bacterial infection and cover for possible malaria. This is now an entirely outpatient or home-based procedure for the majority of patients who do not appear ill. Patients are given two doses of ceftriaxone (Rocephin) and a three-day course of anti-malarials which cost less than US\$20 in Ghana and is now covered through the health insurance scheme (Ansong and Osei-Akoto, 2006). A 72-hour admission for pain management intravenous hydration and opioid analgesics costs approximately US\$6,000 dollars at the Children’s Hospital of Philadelphia (Ohene-Frempong, 2006, unpublished data). The same care delivered at Komfo Anokye Teaching Hospital may cost less than US\$50 as opioids are not the drug of choice. These lower costs do not mean that they are affordable to the average Ghanaian patient but they imply that the cost to the public health system or a national insurance health plan may not be as high as expected in the UK or the US. In Ghana the management of SCD is primarily a low-tech affair. The routine drugs, folic acid, and prophylactic anti-malarials are quite cheap and easily accessible. The high technology comes in the new evaluation tools, such as magnetic resonance imaging and trans-cranial doppler ultrasonography (TCD) used to screen patients for the risk of stroke, that are recommended for most SCD treatment centres. Even TCD, apart from its initial capital cost of around US\$45,000 for the equipment and technical training may cost less than US\$5 per test when administered in Ghana or other African countries.”

19. In the section entitled Training For Healthcare Workers in SCD Management it then states that:-

“An important dimension is the extent to which healthcare workers in Ghana and other African countries are trained to care for SCD patients and their families. Healthcare workers are introduced to SCD as a haemoglobinopathy during their professional training as students. Experience in SCD management is often gained as part of the on-the-job training. Continued medical and specialist training is limited to a few cities (Accra and Kumasi) and organised on an ad hoc basis.”

20. The judge, when considering her decision, did take into account the evidence in the appellant’s bundle and the supporting documents as is clear from paragraphs 3 and 17 of the determination and in paragraph 29 onwards she specifically addressed the issue of whether or not Article 8 was engaged because of any effect on SMK. She noted the medical records and was correct to say that nothing suggested that SMK’s health was such that the threshold set in **N v SSHD** was met so as to engage Article 3. She properly noted the terms of the determination in **Akhalu** and adopted the reasoning in that determination.
21. It is clear that the judge did properly consider all relevant factors relating to the principal appellant. Her findings that the principal appellant should be able to obtain work and could if she wished live in Accra were fully open to her. Moreover, the principal appellant has family members in Ghana. The judge was entitled to find the appellant’s claim that she had no contact with her family lacked credibility. She was entitled to find that the appellant had not lost the social and cultural ties which existed before she came to Britain. Her finding that the principal appellant would have the support of friends and relatives on return to Ghana was fully open to her. In reaching her conclusions she properly applied relevant law and was entitled to place weight on the fact that the appellant and her two children would be returning to Ghana as a family unit. There was no evidence whatsoever that the principal appellant is still in touch with the father of the children but in any event it appears from the papers that he does not have permanent residence in Britain.
22. The focus of this appeal is, of course, the medical condition of SMK. In reaching her conclusions regarding his situation the judge was entitled to find the threshold set out in **N v SSHD [2003] EWCA Civ 1396** was not met. It is clearly the case where SMK is not being sent to a country where treatment is not available. Moreover, while the jurisprudence regarding the rights of an individual in a health case under Article 3 has been further elaborated in the European Court of Human Rights in the case of **Paposhvili**, I note that at paragraph 183 of that judgment (13 December 2016 ECTHR Application 41738/10) it is written that:-

“183. The Court considers that the ‘other very exceptional cases’ within the meaning of the judgment in **N v The United Kingdom** (paragraph 43) which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of

access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.”

23. The judgment in Paposhvili was considered by the Upper Tribunal in the case of EA and Others (Article 3 medical cases – Paposhvili not applicable) [2017] UKUT 445 (IAC). I follow the reasoning in that decision. That then is the legal context in which the condition of SMK should be considered.
24. The question is not whether or not SMK could receive better care here but what care he could receive in Ghana and this must be considered in the context of Section 55 of the 2009 Act and the evidence in the various reports before me. The report from Diversity and Equality in Health and Care refers to the very high proportion of children in Ghana with sickle cell anaemia who die before the age of 5. However, it is not clear from that report how many of these children were not diagnosed with sickle cell anaemia or died from other conditions caused by poor nutrition, malaria or other diseases. That is very different from the position of SMK who has a well-educated mother and who has properly been diagnosed. Dr. Breene makes it clear that with intensive care children can live for a very long time: there is nothing to show that SMK would not have available to him such intensive care. The Secretary of State referred to the Korley Bu Teaching Hospital in Accra; with her qualifications the appellant has the ability to get work in Accra should she relocate there and, although her family do not live there, there is nothing to suggest that the additional support she received from her church and friends here could not continue.
25. In any event, should the appellant not wish to live in Accra, there is nothing to indicate that treatment is not available outside Accra. The report entitled “Healthcare Provision for Sickle Cell Disease in Ghana: Challenges for the African Context” indicates that a large number of healthcare professionals are fully aware of the treatment of sickle cell anaemia and are able to provide it that there is treatment outside Accra. It is evident that treatment is provided at a hospital in Kumasi which is much nearer the principal appellant’s family home.
26. That report also makes it clear that treatment in Ghana is provided at far less cost than in Britain and Although there may be costs that will be incurred in the treatment the reality is as is clear from the many letters of recommendation in the appellant’s bundle that there are those in Britain who are willing to assist the appellant financially here and there is nothing to indicate that they would not do so when the children returned to Ghana. There is therefore nothing to indicate that the appellant could not have access to appropriate treatment for her son in Ghana. Taking all these factors into account it appears to me that it is clear that SMK’s condition is not such as to mean that his removal with his mother and sister would be a disproportionate interference with his private life –and as a young child, of course his family life is entirely focused on the immediate family unit. The reality is of course that he would have step-brother in Ghana and other family members.

27. While I have analysed the documentary evidence in greater detail than Judge Broe, the reality is that she did consider all relevant factors and clearly had in mind the background evidence when she reached her conclusion which was reached after a consideration of relevant case law.
28. For these reasons I find that there is no material error of law in the determination of the judge in the First-tier Tribunal and I dismiss this appeal.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:



Date: 9 August 2018

Deputy Upper Tribunal Judge McGeachy