



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

Appeal Number: IA/18338/2015

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham

Decision & Reasons

On 29th January 2018

Promulgated

On 27th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**NTOMBIE PATIENCE RAMAKOLOE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Liew of JBR Morgan Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of South Africa born on 16th October 1971. She first arrived in the United Kingdom on 6th October 2004 when she was given leave to enter. After various unsuccessful applications for leave to remain, on 9th February 2015 the Appellant applied again for leave to remain on the basis of her marriage to the Sponsor, Edward Ndou. That application was refused for the reasons given in a Reasons for Decision letter dated 28th April 2015. The Appellant appealed and her

appeal was heard by Judge of the First-tier Tribunal Colyer (the Judge) sitting at Nottingham Justice Centre on 13th March 2017. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 7th April 2017. The Appellant sought leave to appeal that decision and on 13th November 2017 such permission was granted limited to the first and third grounds of the grounds of application.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The first ground of the grounds of application allege a procedural irregularity. Paragraph 7 of the Decision explains that after two adjournments because of uncertainty as to whether the Appellant was suffering from TB, at the hearing on 13th March 2017 it was agreed by the representatives of the parties and the Judge that the appeal would proceed in the absence of the Appellant from the court room, although she had attended the hearing centre. The Judge agreed to accept a signed witness statement from the Appellant who would not be cross-examined.
4. The Judge dismissed the appeal because he did not find the Appellant to be credible and was not satisfied that she met the requirements of paragraph 276ADE of HC 395. The Judge then considered the Article 8 ECHR rights of the Appellant and her family outside of the Immigration Rules and decided that the public interest carried more weight than any compassionate circumstances of the Appellant and that therefore the decision of the Respondent was proportionate.
5. At the hearing before me, Ms Liew argued that the Judge had erred in law in coming to these conclusions. The Judge was wrong to agree to the Appellant being excluded from the hearing. There was no evidence before the Judge of any potential risk to the health of any other person attending the hearing. The Judge had wrongly denied himself the opportunity of hearing further necessary evidence from the Appellant as to the nature of her relationship with her husband, and the Appellant's medical condition.
6. Ms Liew then argued that when considering the Appellant's Article 8 ECHR rights, the Judge had erred in law by failing to properly consider the position of the Appellant's husband, a British citizen. In particular, the Judge had failed to consider whether it was reasonable to expect the Appellant's husband to return to South Africa with her. Further, the Judge had not fully considered the medical conditions of the Appellant.
7. In response, Mrs Aboni referred to the Rule 24 response and submitted that there had been no such error of law. There had been no procedural unfairness considering the history of the appeal. It was recorded in the

Decision that the Appellant had been properly represented at the hearing and that that representative had agreed to the course of action suggested by the Judge. The Appellant in contradiction to Directions had failed to provide any medical evidence that there was no longer any risk of infection or contagion.

8. As regards Article 8 ECHR, Mrs Aboni argued that the Judge had taken all relevant factors into consideration at paragraphs 62 to 69 inclusive of the decision and had come to a decision open to him on that evidence. He had given adequate reasons for the decision.
9. I find no material error of law in the decision of the Judge. As regards the alleged procedural irregularity, the conduct of an appeal hearing is a matter for the discretion of the Judge provided he acts within the overriding objectives set out in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. This provides that the Tribunal must deal with cases fairly and justly so as to enable the parties to participate fully in the proceedings. However, the Tribunal must also avoid delay. In this case, the Judge was rightly concerned that the hearing of the case had been adjourned twice in the past owing to the potential danger from the Appellant's medical condition. The Appellant had failed to provide evidence that she was no longer a risk to others at the hearing as required by Directions, and the Judge made the best of a difficult situation by seeking the agreement of both parties' representatives to a way of proceeding. I find it significant that the Appellant was properly represented at the hearing, and that there was consent to the proposed procedure.
10. I also find no material error of law in the Judge's Article 8 ECHR decision. He followed the format given in the decision in **R (Razgar) v SSHD [2004] UKHL**, and demonstrated that he had carried out the balancing exercise necessary for any assessment of proportionality. The Judge dealt with the Appellant's medical condition as part of this assessment at paragraph 70 of the Decision, and he took account of the evidence of the Appellant's husband at paragraphs 33 to 37 inclusive of the Decision. The Judge came to a conclusion that was open to him on the evidence before him and which cannot be described as perverse. He was entitled to find that the public interest carried the most weight, and he explained sufficiently his decision that it did.
11. For these reasons I find no material error of law in the decision of the Judge.

Decision

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

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Dated 21st February 2018

Deputy Upper Tribunal Judge Renton