Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07231/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th November 2018	**On 12th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[G D]
~~(ANONYMITY ORDER NOT MADE)~~

Respondent

Representation:
For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer
For the Respondent: Mr E Wilford, Counsel instructed by Globetrot Consultancy Services

DECISION AND REASONS

1. For convenience purposes I shall employ the appellations "Appellant" and "Respondent" as at first instance.

2. The Appellant is a citizen of Zimbabwe who came to this country in August 2002 as a visitor and when in this country was diagnosed as HIV positive; she has been receiving appropriate treatment during her time here. She also suffers from epilepsy. She sought asylum but was unsuccessful in

that regard. The most recent decision is a decision by First-tier Tribunal Judge Cockrill who in a decision promulgated on 13th September 2018 concluded that she would face very significant obstacles to her reintegration into Zimbabwe and allowed the appeal on human rights grounds (Article 8). He dismissed the protection appeal on asylum grounds and there is no further argument about that.

3. The decision of Judge Cockrill is challenged by the Secretary of State who lodged grounds of application stating that there was a material misdirection of law in that the judge had said he was not given any evidence that would suggest that the sort of device necessary for epilepsy would be available to the Appellant in Zimbabwe and it did not need much imagination to think about what could happen to a woman of her years who would be living on her own there and who suffered an epileptic seizure. The conclusion reached was that the Appellant would face very significant obstacles to her reintegration and it was submitted by the Secretary of State that the main reason for allowing the Appellant's appeal was her health condition which clashed with the findings in **GS (India) [2015] EWCA Civ 40** at paragraph 111.

4. Permission to appeal was granted by First-tier Tribunal Judge Lambert in a decision dated 3rd October 2018.

5. For the Appellant a skeleton argument was submitted noting that permission had been granted on the basis that Judge Cockrill had failed to apply **GS (India)**.

6. It was said that Judge Cockrill neither held Article 8(1) to be engaged on the basis of the absence or inadequacy of medical treatment or on the fact that she is receiving medical treatment in this country which might not be available in the country of return. What was important to note was that there were findings at paragraph 42 of the decision where the judge said there was family life in existence between mother and daughter. The judge commented on the particularly close relationship which existed between the two because of the extent of dependence upon the daughter that the Appellant has had and still does have. There had been no assertion or at any point in the decision that Article 8(1) was engaged by the absence of inadequacy or inadequacy of medical treatment in the country of return. The judge had moved on to the balancing exercise and it was plain that the medical treatment point was not the sole basis upon which his finding that the decision to remove her was disproportionate. Judge Cockrill had plainly taken into account on the one side the period of the Appellant's residence in the UK and the bond between the Appellant and her daughter and the practical difficulties with illness; on the other side he had taken into account the public interest.

7. It was said that the decision disclosed no error of law.

8. Before me Mr Jarvis relied on his grounds but wished to amend the grounds orally to note that the judge had misapplied the burden and

standard of proof in setting out that he had not been given any evidence at all in paragraph 44. The burden of proof was on the Appellant and the judge had failed to recognise that.

9. It was argued per the grounds that there were no very significant obstacles to her reintegration in Zimbabwe.

10. For the Appellant Mr Wilford relied on his skeleton argument. The Home Office had had plenty of time to consider their position and it was far too late now to amend on the morning of the hearing the grounds of application. The point was that the judge did not rely solely on the medical issue in allowing the appeal under Article 8 grounds. The judge had given other reasons all are set out in the skeleton argument. As such the decision did not involve the making of an error on a point of law and the decision should stand.

11. I reserved my decision.

Conclusions

12. It seems to me that the Home Office are too late to amend their Grounds of Appeal. While it is to be noted that at no point does Judge Cockrill set out the formal burden and standard of proof (where under the Immigration rules the burden rests on the Appellant) he was entitled to say that there was a lack of evidence on an issue before him. Furthermore, there is, in my view, no passage of narration which suggests he has applied the wrong standard of proof.

13. I think the point to note here is as set out by Mr Wilford in his skeleton argument namely that this is not purely a medical treatment case. The judge noted (paragraph 41) that the Appellant had been in the United Kingdom for some sixteen years and for the vast majority of her time here she has had the close and loving support of her daughter. The judge noted that the daughter's position had been regularised to the extent that she had been granted a period of leave and that was not the case before the previous judge. In paragraph 42 the judge went on to say that there was family life in existence here between mother and daughter and he said that because of the particularly close relationship which existed between the two of them and because the extent of dependence upon the daughter that the Appellant has had and still does have that this was an important factor in allowing the appeal.

14. The judge referred to the Appellant's medical condition and said (paragraph 44) that he was deeply concerned that, looking at the totality of the situation, that she would face very significant problems in going back now to Zimbabwe. In terms of paragraph 276ADE(vi) he was prepared to accept that her clinical position was sufficiently marked and serious such that the Appellant would have very serious problems in adjusting to life in Zimbabwe without day-to-day support and care. He recognised the test was an unquestionably high one but, in his judgment,

he considered it had been met and concluded that the Appellant would face very significant obstacles to her reintegration in Zimbabwe if she was expected to return there and he said that because of the various major health conditions from which she suffers.

15. In my view the judge's conclusions in relation to paragraph 276ADE(vi) are reasoned and coherent and entirely sustainable. It follows from that finding alone that the judge was entitled to go on and allow the appeal on human rights grounds.

16. I also repeat that I agree with the submissions set out by Mr Wilford namely that this is clearly not just a purely medical treatment case and the judge has given entirely adequate reasons for concluding that, overall, the appeal should be allowed on human rights grounds.

17. As such there is no error of law in the judge's decision which must stand.

Notice of Decision

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

19. I do not set aside the decision.

20. No anonymity order is made.

Signed *J G Macdonald* Date 7th December 2018

Deputy Upper Tribunal Judge J G Macdonald