Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04248/2015

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 7 October 2019	**On: 15 October 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ALOYSIOUS NTEGE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K McCarthy, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Uganda, born on 10 November 1974. He has been given permission to appeal against the decision of First-tier Tribunal Judge Jones dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant entered the United Kingdom on 27 February 2007 with a visit visa valid until 14 August 2007. On 27 March 2007 he suffered a stroke and was admitted to hospital where he was treated for about three months and was diagnosed as being HIV Positive. On 26 June 2007 he submitted an application for leave to remain outside the immigration rules which was refused

on 25 September 2007 with no right of appeal. He submitted further representations on medical grounds on 12 December 2008 and then commenced judicial review proceedings on 17 June 2014 to challenge the respondent's lack of response to those representations. The respondent agreed to reconsider his immigration status and the judicial review claim was withdrawn on 20 September 2014. The appellant was served with a removal notice on 7 July 2015 and he subsequently, on 27 July 2015, submitted further information about his circumstances which was treated by the respondent as a human rights claim on the basis of his private life in the UK and his ill-health. That application was refused by the respondent on 4 August 2015.

3. In refusing the appellant's application, the respondent noted that there was no evidence of family life for the purposes of Appendix FM and considered that the appellant could not meet the criteria in paragraph 276ADE(1) on the basis of his private life. The respondent considered that there were no very significant obstacles to integration in Uganda for the purposes of paragraph 276ADE(1)(vi), noting that the appellant had a wife and six dependent children living in Uganda. The respondent considered whether there were any exceptional circumstances justifying a grant of leave outside the immigration rules and concluded that there were not. The respondent noted that the appellant had stated that he was HIV Positive and was still recovering from a subarachnoid haemorrhage from the arterial artery which had caused his stroke in 2007. He had also obtained medical assistance in relation to mental health. The respondent accepted that the appellant's condition may be life-threatening but concluded that the threat to his life was not immediate and that treatment for his condition was available in Uganda. There was also no reason why his family in Uganda could not provide him with support. The respondent did not accept that the appellant's medical condition reached the threshold for establishing an Article 3 claim in accordance with the test in N v United Kingdom (Application no. 26565/05) [2008] ECHR. When considering whether there were compassionate circumstances, the respondent noted that the appellant had spent significant amounts of time in the UK without any legal basis of stay and that he had previously admitted to having falsely represented his circumstances in order to gain entry clearance to the UK by advising that he had one child in Uganda instead of six.

4. The appellant appealed against that decision and his appeal was heard on 31 January 2017 by First-tier Tribunal Judge Coutts. At that hearing the appellant's evidence was that he was separated from his wife and had had no contact with her or his children since coming to the UK. He was suffering from depression and psychosis and was receiving medical treatment. He lived alone and had a carer visiting him three times a week to assist with shopping, cleaning and cooking. He was also assisted by his friend Burhan Osman. The judge considered that the appellant had family in Uganda who could assist him including fifteen brothers and ten sisters together with their families and that his rights did not engage Article 3 or Article 8.

5. Judge Coutts decision was set aside by the Upper Tribunal in a decision promulgated on 12 February 2018 on the basis that the judge had failed to consider the appellant's statement to a Dr Efimba that his wife had abandoned him shortly after he came to the UK because he was unwell and that he had

had no contact with his children for eight years, that he did not apply the test in Paposhvili v. Belgium - 41738/10 (Judgment (Merits and Just Satisfaction) : Court (Grand Chamber)) [2016] ECHR 1113 and AM (Zimbabwe) & Anor v The Secretary of State for the Home Department [2018] EWCA Civ 64, and that he did not consider paragraph 276ADE(1)(vi) of the immigration rules.

6. The case was remitted to the First-tier Tribunal and was heard before Judge Jones on 20 May 2019. The appellant did not give evidence as it was said that he had difficulty expressing himself, as confirmed in an expert report prepared by a chartered psychologist. The judge had before him a country expert report from Dr Hazel Cameron which he did not admit as he did not consider that she was qualified as an expert with the requisite expertise. He also had medical reports from Dr Schwenk, Dr Hillen, Dr Grewal, Dr Efimba and Dr Ahmed and a witness statement from the appellant. The judge did not accept the appellant's claim to have no contact with his family in Uganda, noting inconsistencies in his evidence in that regard. He considered that the appellant had chosen to remain in the UK in order to access medical attention and care and not because he was unable to return to Uganda. He considered that the appellant was able to undertake routine daily tasks of personal care and household chores and that there was adequate medical treatment available in Uganda. He did not accept that the appellant would be destitute if he returned to Uganda as he had family there. Judge Jones did not accept that the threshold for Article 3 was met, even if the wider test in Paposhvili was considered, and he did not consider that there were very significant obstacles to integration in Uganda or compelling circumstances outside the immigration rules. He concluded that the appellant's removal would not be disproportionate and would not breach his Article 8 human rights and he dismissed the appeal.

7. The appellant then sought permission to appeal to the Upper Tribunal on the following grounds: that the judge's reasons for excluding the expert report of Dr Cameron were unsustainable and unjustified; that the judge rejected relevant medical evidence without valid reasons and reached conclusions which understated the extent of the appellant's medical problems and care needs; and that the judge erred in his assessment of the availability of appropriate treatment in Uganda.

8. Permission was granted by the First-tier Tribunal.

9. The matter then came before me.

10. Having heard submissions from both parties I have come to the conclusion that the judge's decision contains errors of law such that it has to be set aside in its entirety.

11. Although Mr Clarke sought to defend the judge's findings about Dr Cameron's lack of expertise in the areas which she addressed in her report, he also accepted that it was perhaps unreasonable of the judge to refuse to consider the report at all. The appellant's grounds of appeal provide various reasons why Dr Cameron's report ought not to have been excluded and I am in agreement that the judge's decision to exclude the entire report and give it no consideration whatsoever was not a reasonable or sustainable one in the circumstances. It may be that the judge was justified in according less weight

to parts of her report than others, based upon her qualifications and academic records in the subject matters addressed, but that does not justify excluding the entire report.

12. Mr Clarke's further submission was that the exclusion of the report was in any event not material since the report was predicated upon the appellant having no family or other support in Uganda whereas the judge had properly found that the appellant had a wife, children and siblings in Uganda. Mr Clarke submitted that the judge's adverse credibility findings in regard to the appellant's family in Uganda were sustainable. However, I note that the judge's findings in that regard were not properly informed. At [38] the judge gave considerable weight to the appellant's inconsistent evidence about the number of children he had, with reference in particular to the information given in Dr Hillen's report, yet paragraph 36 of Dr Hillen's report confirms the appellant's account of having six children, four with his wife and two with other women. Accordingly the reason given by Mr Clarke for his submission that the exclusion of Dr Cameron's report was immaterial is flawed and it seems to me that the wholesale refusal to consider the report is a material error of law.

13. The appellant's grounds also go on to make relevant points about the judge's assessment of the medical evidence and the care needs of the appellant and I find merit in the submissions made by Ms McCarthy in that regard. The judge's assessment of the extensive medical evidence focusses, to a great extent, on the question of the appellant's evidence about his family in Uganda and his receipt of medical treatment at the expense of the British taxpayer but largely fails to engage with the relevant aspects of the reports. I refer in particular to [25] to [27] of his decision in that respect. With regard to the appellant's care plan the judge draws negative conclusions from the hours of care provided to the appellant without a proper engagement with the care required, as the grounds refer at [14](i)]. There is an absence of proper reasoning for the conclusion reached at [34] as to the appellant's ability to work in Uganda, as referred to in the grounds at [14(ii)] and there is no consideration by the judge of the unsuccessful drugs combination previously attempted for the appellant, as the grounds refer at [14(iii)].

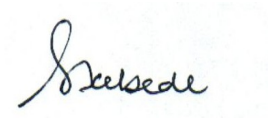
14. It seems to me that, as a whole, the judge's decision simply focusses on negative aspects of the evidence without engaging in a properly balanced and rounded assessment of all the evidence. It may be that the outcome of such an assessment would lead to the same conclusions as reached by the judge on the appellant's Article 3 and 8 claims, but fairness dictates that such an outcome be reached by a proper engagement with the evidence.

15. For all these reasons I set aside the First-tier Tribunal's decision and remit the matter for consideration afresh.

DECISION

16. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of

the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Jones and Judge Coutts.

Signed 
Upper Tribunal Judge Kebede

Dated: 10 October 2019