Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/16242/2017
HU/16252/2017
HU/16258/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 January 2019	**On 20 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

O P (FIRST APPELLANT)
Y P (SECOND APPELLANT)
G P P (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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 Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:
For the Appellants: Mr Swain, Counsel, instructed by Synthesis Chambers Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are challenges by the three Appellants to the decision of First-tier Tribunal Judge Zahed (the judge), promulgated on 11 September 2018, in which he dismissed their appeals against the Respondent's combined decision of 16 November 2017, which in turn had refused their human rights claims.

2. The first and second Appellants are husband and wife and the third Appellant is their son, G, born in November 2015. The first and second Appellants had, when their claims were made, been in the United Kingdom for a considerable period of time, albeit on an unlawful basis. The main focus of their cases related to the fact that G was born with a congenital condition called congenital diaphragmatic hernia (CDH), which required an emergency operation soon after his birth and ongoing monitoring as to his lung functioning as he gets older. He had been receiving treatment under the NHS in this country. It was said that the health service in Ukraine is particularly poor and that it was unlikely that relevant treatment would be available for the CDH.

The judge's decision

3. Having cited case law at some length, the judge considers G's best interests and goes through the medical evidence relating to his treatment in the United Kingdom. In summary the judge found that this indicated that G was doing well after the operation and indeed was said to be "thriving".

4. At [20] the judge states as follows:

> "I have looked at all the evidence that has been submitted with regard to the poor health service that exists in the Ukraine. However I note that the public have put health reform at the top of the agenda and politicians are motivated to have a systematic reform of the health sector in the Ukraine."

5. In the following paragraph he goes on to say:

> "I find that [G] is thriving and that he can have a lung function test in 2/3 years time in Ukraine. I find that his condition has been repaired and the annual monitoring is just to confirm that he is continuing to thrive. However I find that [G's] medical situation as at the date of hearing is substantially below the threshold of the cases of N and D

> and the judgment given in GS(India) to engage Article 3 or Article 8 of the ECHR."

6. The judge concludes that it would be in the best interests of G to remain with his parents and for that family unit to return to Ukraine. All three appeals were duly dismissed.

The grounds of appeal and grant of permission

7. The grounds assert that the judge failed to take relevant evidence into account, in particular that contained in the Appellants' bundle and relating to the poor state of the health service in Ukraine. The skeleton argument that was before the First-tier Tribunal is attached to the grounds.

8. Permission to appeal was granted by Deputy Upper Tribunal Chamberlain on 12 December 2018. She states that it was arguable that the judge failed to give adequate reasons for his finding that G would be able to have a lung function test in Ukraine.

The hearing before me

9. Mr Swain relied on the grounds of appeal and referred me to the country information on medical care in Ukraine, which he described as being particularly poor. He acknowledged that there was no specific evidence on treatment related to CDH in Ukraine. It was submitted that the judge had simply failed to look at the country information as a whole and that there had been no proper analysis of G's best interests in the context of the issue of medical treatment. In this regard he referred me to paragraph 35 of EV (Philippines) [2014] EWCA Civ 874.

10. It was submitted that the high threshold set out in GS (India) [2015] EWCA Civ 40 was ameliorated in cases concerning children. The point here was that, notwithstanding the absence of specific evidence relating to CDH, there was a reasonable inference to be drawn from the country information as a whole that appropriate treatment would simply not be available in Ukraine.

11. For his part, Mr Bramble submitted that there were no material errors. The judge had had G's best interests well in mind throughout, had had regard to the medical evidence from the United Kingdom and had looked at everything in the round. It was significant that there was no specific evidence on the possibility of treatment for CDH in Ukraine.

12. At the end of the hearing I reserved my decision.

Decision on error of law

13. This has not been an easy case to decide. It may well have been that if I had heard this case at first instance I would have decided the case differently from the judge.

14. However, my task now is to decide whether or not the judge made any material errors of law, reading his decision holistically and sensibly. On this basis, I conclude that there are no such errors. I say this for the following reasons.

15. First, the judge did have relevant case law and the principles contained therein in mind, as is clear throughout his decision.

16. Second, it is also clear enough that he has addressed his mind to the best interests of G. Although Mr Swain's argument was certainly not without merit, it is tolerably clear in my view that the judge had assessed the best interests in light of relevant factors set out in EV (Philippines) and the evidence before him.

17. Third, the judge's assessment of the medical evidence from the United Kingdom is sound. This showed that the initial operation had been successful, that G was thriving (a word used in one of the medical reports), and that what was required thereafter was monitoring and lung functioning tests in due course.

18. Fourth, I appreciate that the reference to the public's view of health reform and the motivation of politicians in [20] does not form a particularly strong basis for reasons. However, the judge has stated that he had taken all of the evidence into account and that that evidence was relevant to the poor health service existing in Ukraine.

19. A real problem for the Appellant throughout has been the absence of any specific evidence relating to possible treatment for CDH in Ukraine. By "treatment" I mean the annual review and lung function tests to be carried out at the five year stage. I appreciate Mr Swain's point that the judge was being asked to draw an inference from the general country information relating to the poor state of the health service in that country to the extent that any treatment for this particular condition would be non-existent. However, the judge was not *bound* to draw such an inference (there is certainly no perversity challenge here) and, despite the somewhat thin reasoning in [20], the finding that a lung functioning test would be possible at the appropriate point in time was open to the judge. I so saying, I of course must bear in mind the fact that the burden of proof rested with the Appellants.

20. Fifth, it is right that the judge has cited GS (India) in [21]. Yet as I have mentioned already he had also set out relevant extracts from EV (Philippines) at some length earlier on in his decision. I must read his decision as a whole. This being the case, I see no misdirection in law.

21. Sixth, in light of the judge's findings, he did not in my view have to conclude that it was in G's best interests to remain in the United Kingdom, in addition being with his mother and father. Therefore, his failure to state such a conclusion does not constitute an error.

22. Seventh, finally, the factors considered by the judge in [22] and [23] were all relevant.

23. I appreciate that my decision will come as a real disappointment to G's parents but I conclude that there is no proper basis on which I can interfere with the judge's decision.

Notice of Decision

The decision of the First-tier Tribunal does not contain material errors of law and it shall stand.

The Appellants' appeals to the Upper Tribunal are dismissed.

Signed ..... Date: 16 February 2019

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed ..... Date: 16 February 2019

Deputy Upper Tribunal Judge Norton-Taylor