Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/11612/2019(P)**

THE IMMIGRATION ACTS

Decision under Rule 34	**Decision & Reasons Promulgated**
Without a hearing	
25th August 2020	**On 27th August 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

CATHERINE NZONGIA WODONGO

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. FtT Judge Carroll dismissed the appellant's appeal against the refusal of her human rights claim for reasons set out in a decision promulgated on 1st November 2019. Permission to appeal was granted by FtT judge Ford on 30th March 2019 on limited grounds only, namely that it was arguable the FtT judge had failed to engage with page 15 of the appeal notice when considering whether there were very significant obstacles to her reintegration in DRC. An application for permission to appeal the grounds upon which the FtT had refused permission, was not made to the Upper Tribunal.

2. Directions for the further conduct of the appeal were sent on 30th June 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside, to be determined on the papers.

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3. Both parties complied with the directions; neither party sought an oral hearing of the error of law issue.

4. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me[1] are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

5. The submissions sent by email by the appellant's sponsor, made in response to directions, are said to also include:

- a video which was not before me and had not been before the FtT when she made her decision;
- A file from Holly Private Hospital. This was not before me and was not before the FtT judge;
- What seems to be a list of hospitals in the DRC although this was also not before me and was not before the FtT judge;
- A death certificate (in French) which was before me but not before the FtT judge;
- A maternity DNA report said to confirm the mother/daughter/granddaughter relationship between the appellant and the sponsor. This was also not before me or before the FtT Judge.

6. I am unable to take account of documents that have been submitted to the Tribunal which were not before the FtT judge. It cannot be an error of law for the FtT judge to fail to take into account evidence which was not before her.

The FtT decision

7. The first-tier judge identified the basis of claim and the evidence before him. In particular the judge set out that she had made an application for leave to remain in the UK on the basis of her private life and medical condition. The application was refused by the respondent on the basis that she had not provided an expected end date for her medical treatment, had not made a declaration that she intended to leave the UK when the treatment had finished, she had spent only a relatively short period of time in the UK, there was no evidence to show there would be significant obstacles to her re-integration into the DRC, no evidence to show there were exceptional circumstances, no evidence that the relationships she had with family members in the UK was such as to engage Article 8 and that the medical treatment she required did not reach the threshold of Article 3 and was available in the DRC.

[1] (a)the reasons for refusal of the appellant's claim dated 17th June 2019; (b) the grounds of appeal to the FtT with a discharge summary from hospital dated 28th April 2019and a letter dated 23rd July from her sponsor; (c) the decision of FtT judge Carroll; (d) The application for permission to appeal to the FtT; and (e) the grant of permission to appeal.

8. The appellant, although she and her family are in the UK, did not seek an oral hearing. The judge considered the evidence before him and referred to the discharge summary from the Royal Free Hospital in London which he noted gave a different name and a different date of birth to that of the appellant.

9. There was no other evidence before the judge. The judge concluded that on the basis of the evidence before him there was no evidence to demonstrate that she enjoyed family life in the UK for the purposes of Article 8, that little weight should be given to private life established when a person's immigration status was precarious as was the case for this appellant and there was no evidence to show that her medical condition reached the Article 3 threshold or that there were circumstances such as would give rise to harsh consequences for her return to the DRC.

Error of Law

10. The grounds upon which permission to appeal was sought referred to relatives in the DRC but that they were neglecting her, that to require her to return to the Congo would be a form of neglect which meets the threshold of Article 3 and that the respondent had taken a decision on the basis that there was treatment available for the appellant but had considered treatment for Arthrogryposis rather than Lumbar Spondylosis and Stenosis.

11. Permission to appeal was refused on the diagnosis point but granted on the basis that it was arguable that the first-tier judge may have erred in failing to engage with the notice of appeal when considering whether the appellant faced very significant obstacles to her integration to the DLC.

12. The evidence before the first tier Tribunal judge as to potential obstacles to her return to the DRC consisted of a reference to the appellant being old with medical obstacles and no family members in the Congo who were willing to provide physical or emotional support. Reference was made to her inability to walk unassisted and that prior to coming to London she had been severely neglected.

13. The submissions made in response to directions are made by the appellant's granddaughter and state that they would like her to be granted the right to live in the UK with her family for the few remaining years she has left as opposed to living in the DRC where she cannot receive the care she needs and where she was neglected.

14. A copy of the application that was made to the respondent was not in the papers before the first tier Tribunal judge. From the refusal letter it seems that there were submissions made by Mr Okafor regarding the medical treatment that she requires and the medical evidence that was submitted referred to a pre-existing medical condition for which she had travelled to the UK without any incidents. The appellant did not produce evidence to the first tier Tribunal judge that there was insufficient treatment for her pre-existing medical condition. Nor did she produce evidence to the first tier Tribunal judge of her relationship to family members in the UK. On the basis

of the evidence that was produced to the first tier Tribunal judge it is inconceivable that the judge could have reached findings other than those that were reached. A mere statement that she had been neglected with no detail of her living conditions is simply inadequate to enable a finding that she would face significant obstacles to integration, absent other evidence. There was simply inadequate evidence in connection with her pre-existing medical condition, her current medical condition, her current need for care, the lack of available care (whether paid for or not), in the DRC and the nature of the relationships she has in the UK. The submission of further evidence at this stage is not relevant to the decisions made by the first tier Tribunal judge although of course it is open to the appellant to make a further application with full information being provided to the respondent at that time.

Findings

15. Although the decision by the first tier Tribunal judge is brief, it considered all the available evidence and submissions that were before the tribunal and reached conclusions and findings that were inevitable. There is no error on a point of law in the first tier Tribunal judge decision.

16. The appeal is dismissed.

Conclusions:

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 the decision. The decision of the first-tier tribunal dismissing the appeal stands.

Jane Coker
Upper Tribunal Judge Coker   Date: 25 August 2020