



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

Appeal Number: PA/00466/2020

**THE IMMIGRATION ACTS**

**Decided Without a Hearing under  
Rule 34  
On 16 October 2020**

**Decision & Reasons Promulgated**

**On 26 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**IRAM [N]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: AG Solicitors (Written Submissions)

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer  
(Written Submissions)

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan who was born on 6 October 1986. She arrived in the United Kingdom on 5 January 2014 and claimed asylum on that day. Her asylum claim was refused by the Secretary of State on 4 August 2017 and her subsequent appeal to the First-tier Tribunal was dismissed on 19 June 2018. She became appeal rights exhausted on 17 January 2019.
2. On 7 June 2019, further submissions were made on the appellant's behalf which were refused on 27 July 2019 with no right of appeal. A subsequent

judicial review was unsuccessful and permission was refused on 26 September 2019.

3. Further submissions were again made on the appellant's behalf on 10 August 2019. The basis of those submissions was that the appellant suffered advanced chronic kidney disease resulting in a transplant when she was 8 years of age. That transplant started to fail and the appellant became dependent upon haemodialysis treatment in April 2014. Her claim was that, due to her health, on return to Pakistan she would suffer serious ill-treatment contrary to Art 3 of the ECHR and, indeed, because of her condition she would be unable to travel to Pakistan without a breach of Art 3 of the ECHR.
4. On 12 December 2019, the Secretary of State refused the appellant's claim under Art 3 of the ECHR.
5. The appellant appealed to the First-tier Tribunal and, in a decision sent on 11 March 2020, Judge C J Dainty dismissed the appellant's appeal under Arts 3 and 8 of the ECHR.
6. The appellant sought permission to appeal. On 27 May 2020 the First-tier Tribunal (Judge Gumsley) granted the appellant permission to appeal, in particular on the basis that the judge had arguably  
"failed to engage with or address the issues surrounding the evidential burden imposed upon the respondent, particularly in relation to the appellant's transit to Pakistan".
7. In the light of the COVID-19 crisis, on 30 July 2020 the Upper Tribunal issued directions provisionally indicating that the error of law hearing could be held remotely by Skype for Business. The parties were invited to make submissions both on the substance of the appeal and also as to whether they had any objection to a remote hearing taking place. The parties were also invited to discuss the case and ascertain whether it was agreed that there had been an error of law by the First-tier Tribunal and as to the proper disposal of the appeal.
8. In response, on 2 September 2020 the Secretary of State accepted that the First-tier Tribunal's decision involved an error of law on the basis upon which permission was granted and "invites the Tribunal to set aside the decision of the FTT. It may be appropriate for this case to be remitted to the FTT".
9. The appellant's legal representative responded on 4 September 2020 in a "Skeleton Argument" enclosing up-to-date medical evidence concerning the appellant. The representatives made no reference to whether the appeal (at the error of law stage) should be determined remotely or otherwise. The skeleton argument essentially seeks to argue, based upon the new medical evidence and the decision of the Supreme Court in AM (Zimbabwe) v SSHD [2020] UKSC 17 decided subsequent to the First-tier

Tribunal's decision, that the appellant should succeed under Art 3 of the ECHR.

10. In the light of the submissions, and having regard to the respondent's concession that the First-tier Tribunal's decision cannot stand and should be set aside, I have concluded that it is in the interests of justice to determine the error of law issue without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
11. I accept on the basis of the respondent's concession, and in the light of the appellant's grounds of appeal and the terms of the grant of permission, that the First-tier Tribunal erred in law in dismissing the appellant's appeal under Art 3 of the ECHR. That decision cannot stand and I set it aside.
12. The appellant now wishes to rely upon new evidence and the Supreme Court's decision in AM (Zimbabwe) in seeking to establish that the appellant's health condition would result in a breach of Art 3 of the ECHR if she is returned (or in the process of returning her) to Pakistan.
13. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of the appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Gumsley. At that hearing, the appellant will be able to rely on up-to-date medical evidence and the (now) prevailing approach to Art 3 in health cases after the Supreme Court's decision in AM (Zimbabwe).

### **Decision**

14. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
15. The appeal is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Gumsley.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
20 October 2020