Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/08171/2019**

THE IMMIGRATION ACTS

Heard remotely via video (Skype for Business)	**Decision & Reasons Promulgated**
On 3 March 2021	**On 15 March 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MARIA MANTILLA FLUENTES
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the respondent: Mr B Haseldine, counsel, instructed by Lisa's Law Solicitors

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

Background

1. The Secretary of State for the Home Department ("the appellant") has been granted permission to appeal against the decision of Judge of the First-tier

Tribunal Devitte ("the judge"), promulgated on 11 October 2019, in which he allowed the human rights appeal of Ms Maria Mantilla Fluentes ("the respondent") against the appellant's decision dated 24 April 2019 refusing her human rights claim based on her private life rights.

2. The respondent is a national of Venezuela, born on 8 July 1951. She entered the UK as a visitor in April 2005. She overstayed. She made a human rights claim on 7 January 2019. She relied on, inter alia, her age (67 years old), her length of residence in the UK (almost 14 year at the date of decision), her heart condition (Arrhythmia) and the deteriorating social and economic circumstances in Venezuela. The appellant considered the respondent's application under paragraph 276ADE(1)(vi). The appellant was not satisfied there would be 'very significant obstacles' to the respondent's integration if removed to Venezuela. The appellant noted in particular that the respondent was born in Venezuela and lived there most of her life, and that she would be familiar with the culture and customs and social norms. In concluding there were no exceptional circumstances such as to constitute a disproportionate breach of Article 8 if the application was refused the appellant noted the respondent's ties with friends and a church in the UK and her heart condition, but concluded that the respondent's friends would be able to provide financial assistance should she return, that she had two sister in Venezuela who could provide support, and that Venezuela has a functioning healthcare system. The respondent appealed the appellant's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

The Decision of the First-tier Tribunal

3. In his decision the judge accurately summarised the basis of the respondent's appeal and the basis of the appellant's refusal to grant the respondent leave to remain. The judge quoted from the respondent's witness statement concerning the social and economic situation in Venezuela. The judge noted the respondent's assertion that there were no functioning banking services in Venezuela, that the financial system had collapsed, as had the telecommunications system, and that there was no healthcare system that she would be able to access. The respondent maintained that her one sister remaining in the country was 83 years old and her husband was disabled, and so would be unable to provide any support or assistance. Her other sister was a refugee in Colombia.

4. At [4] the judge noted that the respondent had not produced any medical evidence detailing her heart condition. At [5] the judge expressed concern that there was only limited background evidence before him relating to the situation in Venezuela. At the end of the hearing the judge indicated that he would either allow the respondent's representatives to provide further evidence or that he (the judge) would have regard to UNHR documents and other documents in the public domain relating to the situation in Venezuela, with particular reference to whether the respondent, given her particular circumstances, would encounter very significant obstacles even if she was able to get financial support

from the UK. It is important to note that there was no objection registered by either party to this proposed course of action. In the event the judge considered a number of relevant documents himself. At [7] the judge set out an extract from a UNHCR Briefing on Venezuela from July 2019, and then identified all the documents he had additionally considered. At [8] the judge identified the other reports he had considered, which included a Human Rights Watch report, an article from The Telegraph from May 2019, a UN news report and Foreign and Commonwealth Officer Report from 2019, an UNHCR Agency report and a United Kingdom Nations online report from 2018.

5. At [9] the judge summarised the evidence that emerged from his consideration of the various reports. He noted, inter alia, that hyperinflation had reached one million percent, that Venezuela was in total economic collapse, that people could not afford food and basic commodities, and that millions were fleeing the country. The judge quoted a UK Minister for International Development who spoke of "*awful scenes of human suffering and families resorting to eating rotten food to survive*."

6. At [10] the judge noted that the respondent's difficulties would be compounded by the fact that, after so much displacement and the respondent's long absence from the country, she was unlikely to have any social contacts or even family support upon which she could rely in Venezuela. The judge accepted that, to the extent that the respondent could be sent funds from the UK, this would be of little help to her given the collapse in the banking system. At [11] the judge found, based on his assessment of the background material, that Venezuela was in the midst of a humanitarian crisis that had indiscriminately affected millions and that the breakdown in social services and the economy was of such magnitude that there were very significant difficulties for a significant proportion of the population in respect of their day-to-day lives and that their very lives were at risk from a lack of basic services. The judge found that the respondent, who was 67 years old and who would be returned after an absence of at least 15 years, would face equally if not more challenging obstacles in seeking to integrate in Venezuela.

7. At [12] the judge did not consider it appropriate to take an armchair view by asserting that it was open to the respondent to avoid the adverse conditions because she would be able to receive financial support from the UK. According to the judge the country background evidence showed in compelling terms that sanitation and other basic services had broken down, that the economy had collapsed and that living conditions had become intolerable. The judge therefore concluded at [13] that, having regard to the respondent's age, her need for medication and the total breakdown in basic governance and basic social services without which one cannot live a normal life, the respondent would face very significant obstacles in integrating in Venezuela. The judge accepted that the only person the respondent had in Venezuela was her 83 year old sister and that even if she was able to obtain financial support from friends in the UK it was difficult to see how this would mitigate the difficulties that she would face. Having found that the respondent met the requirements of

paragraph 276ADE(1)(vi), the judge allowed the appeal on human rights grounds.

The challenge to the judge's decision

8. It is important to note that the appellant did not challenge the judge's reliance on and consideration of the documents he identified at [7] and [8] of his decision. Nor do the grounds challenge the judge's assessment of the social and economic conditions in Venezuela, summarised in particular at [9], but also in respect of his references at [10] to [13]. At no stage in these protracted proceedings has the appellant sought to amend her grounds, and there was no application to amend the grounds at the 'error of law' hearing. Mr Diwnycz confirmed that this was the case. There has therefore been no challenge to the judge's reliance on the background materials he considered or to his factual assessment of those materials and his factual conclusions based on those materials.

9. The first ground is difficult to follow. It asserts that the judge failed to apply the correct test when finding in the respondent's favour. It claims that the test that should have been applied was that determined in **Agyarko** [2017] UKSC 11 and that, as the respondent has resided in the UK unlawfully for 14 years, she was required to meet the "high threshold" of the "insurmountable obstacles" test. Mr Diwnycz was, despite his best efforts, unable to illuminate the first ground any further.

10. The 2nd ground of appeal contends that the judge failed to deal with the issue of proportionality. It notes again the length of the respondent's unlawful residence and that her private life should have been afforded little weight. It was claimed that the respondent's age and medical condition were insufficient to displace the public interest, that the respondent did not provide any evidence that there would be a deterioration in her Arrythmia if removed or that she'd be unable to obtain medication, and that she had the support of her family members in Venezuela. It was claimed that that nothing had been identified in the country situation that would reach the threshold required to support a grant of leave to remain. The third ground contends that the judge failed to consider the factors in s.117B of the Nationality, Immigration and Asylum Act 2002. At the hearing Mr Diwnycz indicated that he was unable to expand upon the grounds, that he saw force in the skeleton argument provided by Mr Haseldine, and made no further submissions.

Discussion

11. There is no merit in the first ground. The judge was demonstrably aware of the correct legal test under paragraph 276ADE(1)(vi) (see, for example, [2] and [13]). By contrast, the author of the grounds has quoted the wrong test. **Agyarko** [2017] UKSC 11 was concerned with the "insurmountable obstacles" test in EX.1 of Appendix FM in respect of the difficulties that a couple would encounter in continuing their relationship outside the UK. The judge self-directed himself correctly. There was no material misdirection of law.

12. The second ground amounts to no more than a disagreement with the factual assessment undertaken by the judge. It is abundantly clear from the decision, read holistically, that the judge was aware that the respondent has resided in the UK in excess of 14 years without lawful leave, that there was no medical evidence relating to her Arrhythmia, that she had spent the majority of her life in Venezuela, and that she had an elderly sister in Venezuela. The judge expressly considered the possibility that the respondent would be able to obtain some financial assistance from the UK, but concluded, having regard to the breakdown of services in Venezuela, that this would not militate the difficulties the respondent would have in integrating ([11], [12], [13]). The judge weighed up these factors against his assessment of the social and economic crisis in Venezuela and concluded that the situation was so bad that someone in the respondent's position and circumstances would face 'very significant obstacles'. This was a conclusion rationally open to the judge for the reasons he gave and based on the evidence that he considered. Although the judge did not quote from **SSHD v Kamara** [2016] EWCA Civ 813 it is satisfactorily clear that he applied the essence of the approach identified in that authority to the issue of integration.

13. There is no merit in the 3rd ground. If a person satisfies the requirements of the Immigration Rules, whether or not by reference to an Article 8 informed requirement, then this will be positively determinative of that person's Article 8 appeal, provided their case engages Article 8(1). This is because it would then be disproportionate for that person to be removed (**TZ (Pakistan) and PG (India)** [2018] EWCA Civ 1109). The judge's conclusion that the respondent would face very significant obstacles to her integration if removed to Venezuela meant that the respondent met all the requirements for a grant of leave to remain under paragraph 276ADE(1). This was positively determinative of the respondent's Article 8 appeal. As such, the judge's decision to allow the human rights appeal was open to him.

Notice of Decision

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

The Secretary of State for the Home Department's appeal is dismissed.

D.Blum 4 March 2021

Signed Date
Upper Tribunal Judge Blum