IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001977

First-tier Tribunal No:
HU/50031/2021
IA/00277/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 August 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

ADM
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 17 April 2024

DECISION AND REASONS

This appeal concerns sensitive matters regarding the health of the appellant and pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

INTRODUCTION

1. The appellant is a national of Jamaica. Her appeal against the respondent's decision of 22 December 2020 to refuse an application for leave to remain in the UK on private life grounds was dismissed by First-tier Tribunal Judge Athwal ("the judge") for reasons set out in a decision dated 17 June 2021.

2. The appellant claims the decision of Judge Athwal is vitiated by material errors of law on grounds settled by Bassi Solicitors. In summary, the appellant claims the judge has not properly considered the evidence before the Tribunal with regard to the appellant's family and private life and the significant difficulties the appellant would face if returned to Jamaica. The appellant refers, in particular, to the fact that that she is HIV positive and is actively receiving treatment in the UK.

3. Permission to appeal was granted by First-tier Tribunal Judge Sweeney on 12 November 2021. Judge Sweeney said:

> "1. …The grounds are lengthy but can be summarised as follows (1) the judge erred in applying too much weight to the previous decision when there had been a change of circumstances (2) did not take into account that this was a complex case of HIV (3) did not attach adequate weight to Dr Watson's report (4) did not provide an adequate assessment of private life.
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> 2. In paragraph 40 the judge clearly explained that she would consider the Article 3 claim afresh as there had been a change in the medical condition. So I am less persuaded by this ground.
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> 3. The judge was aware of the appellant's medical condition. In paragraph 47 the Judge noted that the burden was on the appellant and in this case the judge said there was a lack of information about whether the appellant would be able to take different HIV medication in Jamaica. Notwithstanding this the judge arguably erred in not attaching sufficient weight to Dr Watson's assessment of the appellant's heath and as a consequence arguably erred in her conclusion as to whether this passed the initial threshold in AM Zimbawe.
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> 4. The grounds also assert the appellant would not be able to pay for any medication, but the Judge found the appellant had not been truthful about the fact she worked in the UK. In those circumstances I am less persuaded by this ground. The Judge did provide an assessment of private life and I am less persuaded by this ground."

THE HEARING OF THE APPEAL BEFORE ME

4. The appellant did not attend the hearing. On 7 March 2024, the Upper Tribunal was notified by Bassi Solicitors that they no longer represent the appellant. The Upper Tribunal was provided with the appellant's address in Birmingham. Notice of the hearing listed before me was sent to the parties on 26 March 2024. The Upper Tribunal records show that the Notice of Hearing was sent to the appellant at the appellant's last known address as provided by Bassi Solicitors. I am satisfied that the Notice of Hearing has been served upon the appellant as required by Rule 36 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In considering whether

to proceed under rule 38, I am satisfied that the appellant has been notified of the hearing and I consider it to be in the interests of justice to proceed with the hearing in the appellant's absence.

5. Mr Lawson invited me to dismiss the appeal. He submits the judge found the appellant had not been truthful about her ability to work. The medical evidence before the FtT was dated and the judge heard evidence from the appellant regarding her health. There was no evidence before the FtT that the treatment required by the appellant was not available in Jamaica. Dr Watson is not a country expert and cannot comment on the availability of treatment in Jamaica. Mr Lawson submits the grounds of appeal amount to a disagreement with the decision.

DECISION

THE DECISION OF FTT JUDGE ATHWAL

6. The judge referred to the appellant's immigration history at paragraph [1] of her decision. She noted that in August 2017 the appellant had made a claim for asylum and that claim was refused by the respondent on 30 January 2018. She noted the appellant's subsequent appeal against that decision was dismissed on 12 April 2018 by FtT Judge Phull.

7. The judge summarised the respondent's reasons for refusing the application made by the appellant on 29 November 2008 for leave to remain on family and private life grounds at paragraphs [4] to [11] of her decision. She summarised the appellant's case at paragraphs [13] to [15] of her decision. At paragraphs [16] and [17] of the decision the judge identified the written evidence before the Tribunal. The appellant and her brother gave evidence.

8. At paragraphs [23] to [38] of the decision the judge refers to the relevant legal framework. Her findings and conclusions are set out at paragraphs [39] to [67] of the decision.

THE GROUNDS OF APPEAL

9. I reject the appellant's claim that the judge unfortunately draws upon the previous determination of Judge Phull rather than looking at the report of Dr Watson in more detail to distinguish between the severity of the appellant's HIV as it was in 2019 compared to the position before Judge Phull. The appellant claims that the "Article 3 medical condition test is met in light of Dr Watson's report".

10. The judge noted at paragraphs [39] and [40] of her decision that although the previous decision of Judge Phull forms her starting point, it is not determinative. She noted the Tribunal now has the evidence of Dr Watson that was not previously before Judge Phull. At paragraph [40] the judge said:

> "Judge Phull was not provided with Dr Watson's September 2019 diagnosis. The Appellant's medical treatment has become more complicated since 2018, as set out in those letters. Given the nature of the additional

> evidence before me, the change in caselaw, and the potential impact of that on the findings of Judge Phull, I take the view that it is appropriate for me to consider the Article 3 medical claim afresh. My function is not to speculate as to what impact the additional evidence and new caselaw may have had on the view of Judge Phull and addressing the situation afresh is the appropriate way to avoid such complications."

11. The judge referred to the evidence of Dr Watson as set out in a letter dated 12 September 2019 at paragraph [42] of her decision. She also referred to the 'medical notes' provided to the Tribunal at paragraph [43] of her decision noting that they end in September 2017 and no further medical evidence was available. The judge referred to the appellant's evidence that she is not on dialysis but still has issues with her kidneys and is being monitored, at paragraph [44] of the decision. At paragraphs [45] to [47] the judge said:

> "45. The burden is upon the Appellant to produce a prima facie case. Dr Watson indicated that the Appellant's medication was not available in all other countries. He did not state whether or not a different combination of drugs would successfully manage the Appellant's condition, and if so whether that would be available in Jamaica. Furthermore the report provided is nearly two years old. At the time the Appellant was under close follow up in preparation for dialysis, this has not materialised and there is no explanation before me as to why this is and whether the Appellant remains on the same medication. Nor have I been provided with an explanation for the absence of more recent medical evidence.
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> 46. Not only has the Appellant failed to provide evidence of her current state of health, she has also failed to provide evidence of whether she could access treatment in Jamaica. She told me that neither she nor her family had made enquiries in Jamaica about the availability of treatment and whether it would be free or available at a charge. The Country Policy and Information Note Jamaica: Medical and healthcare issues, version , March 2020 (March 2020 CPIN) at section 11 establishes that treatment for HIV is available in Kingston, which is where the Appellant originates from.
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> 47. It is for the Appellant to prove that there are substantial grounds for believing that she is a seriously ill person who faces a real risk of being exposed to a serious, rapid, and irreversible decline in her state of health which would result in intense suffering or a significant reduction in his life expectancy. Whilst I accept the serious nature of her illness, the Appellant has not established what treatment she is currently receiving and whether that treatment is unavailable or inaccessible in Jamaica."

12. At paragraph [42] of her decision the judge referred to the content of the letter from Dr Watson at some length. As the judge noted at paragraph [45] of her decision, the burden rests upon the appellant to establish a prima facie case. The judge was right to note that Dr Watson did not state whether or not a different combination of drugs would successfully manage the appellant's condition, and if so whether that would be available in Jamaica. It was not for the judge to speculate whether if an alternative combination of medication were available, that would have been referred to by Dr Watson. Dr Watson is a treating clinician in the UK. The content of his letter dated 12 September 2019 is brief and was

somewhat dated by the time of the hearing before the FtT on 10 June 2021. The medical notes relied upon by the appellant were even more dated, ending on 20 September 2017. The Judge was plainly aware of the opinions expressed by Dr Watson and weighed that against the paucity of more current medical evidence and the evidence of the appellant herself as set out in paragraph [44] of the decision. Such cases often turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations, clinicians, and country experts with contemporary knowledge or expertise in medical treatment and country conditions in the receiving state. There was no such evidence before the FtT.

13. The appellant also claims that in light of Dr Watson's report, there would be very significant obstacles to the appellant's integration into Jamaica. The appellant claims that due to her long residence of 19 years in the UK and her claim that she has no family, social or cultural ties left in Jamaica, she is unable to afford the treatment no matter what the cost would be. The appellant claims the judge failed again to have proper regard to the report of Dr Watson and she maintains that on the evidence before the Tribunal, the conclusion that the appellant has not established that there would be very significant obstacles to her integration in Jamaica is irrational.

14. The judge addressed the appellant's Article 8 claim at paragraphs [49] to [67] of the decision. She concluded that on the evidence before the Tribunal there was no reason to depart from the previous findings of Judge Phull that the appellant is not at risk from criminal gangs in Jamaica. The judge also considered the previous finding made by Judge Phull as to whether there would be very significant obstacles to the appellant's integration into Jamaica. The judge referred to the evidence of the appellant and her brother at paragraphs [54] to [59] of her decision. The judge found at [60] that:

    i) The appellant is financially dependent upon her family to some extent. She has worked in the past and there is no evidence to suggest that her health prevents her from working now.

    ii) The appellant lives alone and only requires limited assistance with tasks such as shopping or cleaning.

    iii) The appellant has documented health issues but on the evidence before the Tribunal the judge could not determine whether the appellant's health would be an obstacle to re-integration.

    iv) The appellant is close to her family but her ties with them go no further than the normal emotional ties found in families.

    v) There is no evidence to corroborate the appellant's account that she would be stigmatised in Jamaica because she is HIV positive.

15. The judge therefore found that the appellant does not meet the requirements for leave to remain on private life grounds as set out in paragraph 276ADE(1)(vi) of the immigration rules. The Judge nevertheless

went on to consider the Article 8 claim outside the immigration rules. The judge found the appellant's removal would not cause an interference with the appellant's family life but accepted there would be an interference with her private life. She considered the relevant public interest considerations and at paragraphs [66] and [67] concluded as follows:

> "66. The Appellant's private life is established by that fact that she has lived in the UK for nearly nineteen years. I accept that during that time she has built up ties and relationships with family and friends. However little weight should be attached to it because it was established at a time when the Appellant's immigration status was precarious.
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> 67. I have balanced those factors for and against the Appellant's removal and I am satisfied that the public interest in maintaining effective immigration controls significantly outweighs the individual rights of the Appellant. Consequently, I am satisfied that the Appellant's removal would be proportionate."

16. The FtT's decision is to be read looking at the substance of its reasoning and not with a fine-tooth comb or like a statute in an effort to identify errors. In giving her reasons the judge was entitled to focus on the principal issues in dispute between the parties. She made it clear that she has considered the evidence in the appeal alongside the legal framework for her decision. Any proper reading of the decision clearly shows that the judge took full account of the background to the appeal and the evidence before the Tribunal. She made sustainable findings that are in accordance with the evidence received, following a careful evaluation of the documentary evidence relied upon by the appellant and properly directing herself as to the legal framework. The findings and conclusions reached are neither unreasonable nor irrational.

17. I am mindful of the reminder, in *Lowe v SSHD* [2021] EWCA Civ 62 by McCombe LJ at paragraph [29], that appellate courts should exercise caution when interfering with evaluative decisions of first instance judges. Having considered the matters relied upon in the Grounds of Appeal and I am satisfied that the grounds relied upon by the appellant and the claims made within them are nothing more than a disagreement with the findings made by the judge and the conclusions that she reached. The grounds fail to establish any error of law in the judge's decision capable of affecting the outcome.

18. It follows that I dismiss the appeal.

NOTICE OF DECISION

19. The appeal is dismissed.

20. The decision of First-tier Tribunal Judge Athwal dated 17 June 2021 stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 July 2024