



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

Appeal Number: HU/02364/2020 (V)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 12 August 2021**

**Decision Promulgated on
09 September 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PAUL THOMAS

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr O Agho, of Bridges Solicitors

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Thomas's appeal against the Secretary of State's decision to refuse his human rights claim.

3. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Thomas as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

4. The appellant is a citizen of Liberia, born on 23 March 1970. He entered the UK illegally on 22 September 2004 and was refused leave to enter. He claimed asylum the same day, but his claim was refused on 8 March 2005 and an appeal against the refusal decision was dismissed on 8 May 2005. He made further submissions which were rejected on 11 November 2009.

5. On 27 September 2012 the appellant applied for indefinite leave to remain outside the immigration rules on the basis of his private life and in particular his medical condition, namely being partially blind, and on the basis of having no family or friends in Liberia and of being at risk on return from the Liberian authorities. His application was refused on 19 March 2014. The appellant's appeal against that decision was dismissed in the First-tier Tribunal by Judge Drabu on 29 July 2015 on the basis that he had provided no evidence to show a lack of medical facilities in Liberia and that he had not provided a credible account of his support system in the UK or of the absence of family and friends in Liberia.

6. On 7 November 2019 the appellant made a human rights claim on the basis of his private life, again in relation to his medical condition, but with additional evidence about the availability of medical treatment in Liberia and the impact of removal upon him as a result of his medical condition. His claim was refused on 29 January 2020 on the grounds that he did not meet the requirements of Appendix FM or paragraph 276ADE(1) of the immigration rules on the basis of family and private life. The respondent did not accept that the appellant would face very significant obstacles to integration if he returned to Liberia or that there were exceptional circumstances justifying a grant of leave outside the immigration rules. The respondent gave consideration to the appellant's medical conditions, of advanced primary open angle glaucoma, left central retinal vein occlusion and left cystoid macular oedema, but did not consider that his removal to Liberia would meet the Article 3 threshold in that regard or that his condition amounted to compassionate circumstances for the purposes of Article 8.

7. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Brannan on 1 February 2021. The judge had before him recent medical evidence from a consultant ophthalmologist at Moorfields Eye Hospital confirming the appellant's condition and asserting that the relevant medical expertise would not be available to him in Liberia. The judge noted that the evidence of the appellant's medical condition was accepted by the respondent and he concluded that, as a result of his eyesight, the appellant needed assistance with the activities of daily living as well as any more complex activities outside the home and that he would not have access to suitable healthcare in Liberia. The judge rejected the findings of the previous judge, Judge Drabu, as to the appellant's lack of family and friends in Liberia, finding that he had erred in law in his findings in that regard, and concluded that the appellant had provided credible evidence that he had no such support

network. He therefore accepted that the appellant would have no support network in Liberia and was likely to lose the little eyesight he currently retained and he considered on that basis that there were very significant obstacles to the appellant's integration to Liberia for the purposes of paragraph 276ADE(1). The judge also found that the appellant's removal to Liberia would breach his Article 3 rights, not on the basis of his blindness but because of the dangers he may face in Liberia owing to his inability to see, such as being run over because of his inability to see cars and roads, which he considered was sufficient to meet the threshold set out in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. The judge accordingly allowed the appellant's appeal on Article 3 and 8 human rights grounds in a decision promulgated on 15 February 2021.

8. The Secretary of State sought permission to appeal Judge Brannan's decision on two grounds: firstly that the judge had erred in law by failing to adhere to the principles in Devaseelan [2002] UKIAT 00702 when departing from the previous decision of Judge Drabu in relation to his findings on the availability of support in Liberia from family and friends and by finding the Judge Drabu had erred in law; and secondly that the judge had erred in law by finding that the legal threshold set out in AM (Zimbabwe) had been met on what was a purely speculative basis.

9. Permission to appeal was granted in the First-tier Tribunal on both grounds and the matter then came before me for a remote hearing conducted through Microsoft Teams.

10. Both parties made submissions before me. Ms Everett relied on the grounds and the grant of permission but agreed that the second ground was stronger than the first. She submitted, with regard to the second ground, that the judge had misapplied AM (Zimbabwe) by applying it on an entirely speculative basis. Mr Agho submitted that, whilst the judge was wrong to say that Judge Drabu had erred in law in his decision, he had nevertheless applied the guidance in Devaseelan and had made his own findings on the evidence before him after taking Judge Drabu's decision as a starting point. The decision allowing the appeal on Article 8 grounds should therefore be upheld. As for the decision on Article 3, he agreed with Ms Everett and submitted that the appellant was content to succeed on Article 8 grounds alone. He had no objection to me upholding the Article 8 decision and re-making the Article 3 decision without a further hearing, dismissing the Article 3 grounds.

Discussion and conclusions

11. As I indicated to the parties at the conclusion of the hearing, I was minded to uphold Judge Brannan's decision in relation to Article 8 but to set aside his decision in relation to Article 3 and to re-make that part of the decision by dismissing the appeal on Article 3 grounds.

12. With regard to the decision under Article 3, Mr Agho quite properly accepted Mr Everett's argument that the decision had been made on an entirely speculative basis. Having found that the appellant could not meet the

Article 3 threshold, as set out in AM (Zimbabwe), on the basis of his medical condition, the judge clearly erred in law by interpreting AM (Zimbabwe) as allowing for the threshold nevertheless to be met on the speculative basis of the appellant facing dangers due to his blindness such as being run over by a car. The judge failed to provide any proper basis for concluding that the relevant Article 3 threshold set out in AM (Zimbabwe) was met and ought, on the evidence before him, to have dismissed the appeal on Article 3 grounds. There is no further evidence adduced in that regard and accordingly the judge's decision under Article 3 is set aside and I re-make the decision by dismissing the appeal on Article 3 grounds.

13. I do not consider that that impacts in any way upon the judge's findings on Article 8. With regard to those findings it was clearly not open to the judge to find that Judge Drabu had erred in law in his decision. Judge Drabu's decision, as made at the time it was made, clearly stands and Judge Brannan plainly erred in law in his findings at [49] to [51] in that respect. However, it was open to Judge Brannan to depart from Judge Drabu's conclusion on the appellant's credibility in respect to his family and other ties to Liberia, on the basis of the evidence before him. That is what he did at [56], when he took Judge Drabu's decision as a starting point but then considered the evidence before him. That was entirely consistent with the guidance in Devaseelan and Judge Brannan was entitled to accept the appellant's account of his lack of support in Liberia. Accordingly any error made by Judge Brannan at [49] to [51] was immaterial, in light of his properly made findings at [56] to [60]. The judge was therefore entitled to conclude that there were very significant obstacles to the appellant's integration in Liberia for the purposes of paragraph 276ADE(1) of the immigration rules and was entitled to allow the appeal on Article 8 grounds on that basis.

DECISION

14. The decision of the First-tier Tribunal on Article 3 involved the making of an error of law and is set aside. The decision is re-made by dismissing the appeal on Article 3 grounds. The decision to allow the appeal on Article 8 grounds stands, or alternatively, the decision is re-made by allowing the appeal on Article 8 grounds for the reasons given by Judge Brannan.

Signed: S Kebede
Upper Tribunal Judge Kebede
2021

Dated: 12 August