Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02471/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent	**Decision & Reasons Promulgated**
On 14th September 2015	**On 21st September 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS J I
(Anonymity Direction Made)

Respondent

Representation:
For the Appellant: Mr A McVeety (Senior Home Office Presenting Officer)
For the Respondent: Mrs U Sood (Instructed by 1st call Immigration Services)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State, with permission, against the determination of First-tier Tribunal Judge Devlin promulgated on 4th June 2015 in which he allowed the Appellant's appeal against the Secretary of State's decision to refuse to grant her and her dependant husband and three children leave to remain outside the Rules. Judge Devlin allowed the appeal on Article 8 grounds based on the medical condition of one of the children.

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2. The grounds argue that the Judge erred at paragraphs 113 – 119 of his decision where he found that the evidence relied upon by the Secretary of State that the drug, Levetiracetam is available in Nigeria was unreliable. It is asserted that his reliance on RP (proof of Forgery) Nigeria [2006] UKAIT 00086 is misplaced and that he has reversed the burden of proof. The burden is on the Appellant to show that the drug is unavailable.

3. Secondly, the grounds assert that he Judge erred in giving insufficient weight to the "public interest" factors as set out in s.117 of the Nationality, Immigration and Asylum Act 2002. In particular he gave insufficient weight to the fact that the family was in the UK illegally and thus little weight should be given to private life. He erred in giving credit to the husband for working when he was working illegally and that the family had already been a burden on the state as a result of education and the NHS.

4. The grounds also assert that the Judge erred in allowing a health claim and that his conclusions on what would happen in Nigeria were speculative and hypothetical.

5. I have read the Decision and Reasons with care. It is a meticulous assessment of the claim taking full account of legislation, the Immigration Rules and case law. The grounds are simply not made out.

6. The Judge set out the claim and the evidence before him which included a considerable amount of medical evidence in relation to one child who was diagnosed at 5 months of age with "West Syndrome" which is a rare form of epileptic disorder in infants. He has as a result of his illness required emergency treatment more than once and has required emergency rescue medication. It is clear that the treating team have tried various anti–convulsant medications and found the current one, Levetiracetam, the most effective to date. It is also clear that the child needs access to expert medical care with a knowledge of his rare condition quickly. Seizures are likely to result in brain damage or death if not rapidly controlled.

7. So far as the availability of the medication in Nigeria is concerned, the Judge has not erred as suggested. He has given careful consideration to what the WHO says as quoted in the Letter of Refusal and noted no mention is made of Levetiracetam . The medications listed are the more common anti convulsive drugs. Those are not what this child requires. The Judge notes that although the Letter of Refusal refers to evidence from Drs that the medication is available, that evidence was not produced. He was entitled on that basis to prefer the other evidence that indicated it was unavailable. He did not reverse the burden of proof but accepted that the Appellant's evidence established, to the required standard, that the medication was unavailable.

8. So far as the public interest and s.117 is concerned it is clear that the Judge was well aware of his duty. He set out at great length that for the

rest of the family there were no obstacles to their removal, even the children. He catalogued the poor immigration history and it is plain that, absent the medical condition of the one child, he would have dismissed the appeal.

9. The evidence about the child's condition was extensive including the real risk of death without the appropriate treatment and the evidence, again which was set out in detail pointed to it being unavailable.

10. The Judge did note that father was working. However he was aware that this was illegal and that as on overstayer he had no right to work. Nevertheless he was supporting his family, a factor that the Judge was entitled to take into account.

11. The determination, running to 24 pages does not suffer from "padding" but is in its entirety dealing with the issues and the relevant law. It is a meticulous assessment of the case and contains no material error of law. It does not run counter to statute or case law, which the decision demonstrates, the Judge was fully aware of and took into account.

12. The Secretary of State's appeal to the Upper Tribunal is dismissed.

13. The First-tier Tribunal having made an anonymity direction I see no reason not to continue it.

Signed Dated 15th September 2015

Upper Tribunal Judge Martin

Direction regarding anonymity

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.

Signed Dated 15th September 2015

Upper Tribunal Judge Martin