



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA/46848/2014

THE IMMIGRATION ACTS

Heard at Field House
On 5 November 2015

Determination Promulgated
On 10 November 2015

Before

**MR JUSTICE PHILLIPS
UPPER TRIBUNAL JUDGE WARR**

Between

**OKECHUKWU IBEABUCHI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Plowright of Counsel, instructed by Perera and Company
For the Respondent: Mr P Naith, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Nigeria, born on 27 February 1946. He arrived in this country in 2007 on a 6-month visa, granted to enable him to access private medical treatment.

2. On 31 October 2014 the respondent refused the appellant's renewed application for leave to remain in the United Kingdom on human rights grounds. For the purposes of this appeal, the relevant determinations were:
 - a. that the appellant did not meet the Suitability requirements for limited leave to remain on the grounds of family or private life under Paragraph 276ADE of Appendix FM to the Immigration Rules. The respondent found that S-LTR.2.3 was not satisfied because the appellant owes the NHS in excess of £1000; and
 - b. that in any event, the appellant could not satisfy Paragraph 276ADE(vi) because there were no very significant obstacles to the appellant integrating into Nigeria; and
 - c. that the appellant's medical condition, including End Stage Renal failure (meaning that the appellant requires dialysis three times a week at least until a transplant is available) did not entail that his removal would be contrary to articles 3 or 8 of the ECHR. The appellant would have access to adequate treatment in Nigeria (and a potential donor had been found there) and, in any event, the appellant's condition was not so serious as to cross the very high threshold set in D v. The United Kingdom (1997) 24 EHRR 423 (and recently considered and applied in GS (India) and others [2015] EWCA Civ 40).
3. The appellant's appeal was dismissed by Judge Nicholls on 28 May 2015. The judge has no difficulty in rejecting the appeal against the article 3 decision, applying the decision in GS (India), recording that the appellant recognised the difficulties in that aspect of his appeal.
4. In relation to the appeal against the determination in respect of the appellant's private life claim, the judge expressed reservations about the finding on Suitability (but made no finding in that regard). However, the judge in any event saw no basis on which the appellant could satisfy paragraph 276ADE(vi) because the only grounds for the appellant's contention that he would face very significant obstacles in integrating into Nigeria were related to his medical condition. Judge Nicholl held that, as the Immigration Rules were designed to give effect to article 8 rights, those rules could not be satisfied where it was established that there was no breach of article 8, such as in medical cases which did not meet the high threshold referred to in GS (India).
5. On 17 August 2015 Judge Nicholson granted the appellant permission to appeal on the grounds that Judge Nicholls' approach to the interrelationship between paragraph 276ADE(vi) and article 8 in medical cases was novel and gave rise to an arguable point of law.
6. The respondent, by letter dated 27 August 2015, took the point that the appellant cannot in any event succeed on his claim because he owes the NHS at least £200,000 and cannot therefore meet the suitability requirements for a private life.

7. We invited Mr Plowright, counsel for the appellant, to deal first with the question of Suitability. He referred us to the following relevant provisions in Appendix FM to the Immigration Rules:

“S-LTR.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.4. apply.

...

S-LTR.2.3. One or more relevant NHS body has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £1000”.

8. Mr Plowright accepted that Guy’s and St Thomas’ Hospital had notified the respondent that his client had been invoiced for charges to an overseas visitor totalling in excess of £200,000 and that he had failed to pay any of those charges. He further accepted that, although the NHS has stated that it had assessed those sums as “irrecoverable”, that did not mean that the invoices had ceased to be outstanding: the fact that a creditor does not see any prospect of recovering a debt (and even writes it off internally) does not in itself remit the debt.
9. Mr Plowright’s relied instead on the discretionary nature of the decision as to Suitability arising from non-payment of NHS charges, such a discretion being inherent in the provision that leave to remain will “normally” be refused in such circumstances. He referred to the fact that that the respondent did not expressly carry out any balancing exercise in considering the application of S-LTR.2.1, an aspect on which Judge Nicholl also remarked in his decision.
10. The respondent did, however, set out the history of the appellant’s medical charges in some detail, as follows:
- a. The appellant arrived in the United Kingdom in 2007, expressly on the basis that he wished to access private medical treatment, stating that he had an appointment with a private clinic.
 - b. In the event the appellant did not attend such a clinic, but instead obtained extensive treatment on the NHS.
 - c. In October 2007 the appellant applied for an extension to his visa, stating that he would leave after his private treatment. This application was supported by a letter from his sister dated 21 October 2007, stating that she would support the appellant throughout his stay for medical treatment. In contrast, the month before his sister had written to the NHS Finance Department stating that she was unable to pay for the appellant’s mounting NHS bills.
 - d. In May 2008 the appellant submitted a letter in support of his application for an extension of stay, claiming that Guy’s and St Thomas’ Hospital had waived fees for treatment, but would not confirm that in writing. But on 28 August 2008 that NHS Trust confirmed that the appellant had no right to free NHS care, had been billed by the Overseas Visitors Office, but had made no

payment. Those matters were re-confirmed in a letter dated 25 September 2008.

- e. The appellant was refused leave to remain in 2008, and his appeal was dismissed in 2009. Judge Mitchell recorded the appellant's sister's evidence that the NHS had billed £180,000 for the appellant's treatment, but had agreed not to enforce the invoices it was sending. However, other invoices had been submitted subsequent to that alleged agreement.
11. It follows that the appellant has incurred outstanding NHS charges many times the amount where leave to remain will normally be refused, and has done so whilst remaining in the United Kingdom illegally and by exercising a significant degree of deception in relation to payment for his medical treatment. It is therefore not surprising that the respondent took the 'normal' course of refusing leave to remain by reason of the outstanding charges.
12. Indeed, it is not clear what countervailing factors should have been considered on the question of Suitability: none was identified by the appellant in his application and none was suggested by Mr Plowright. We accept Mr Plowright's submission that the respondent must take into account all relevant circumstances in exercising a discretion, but we cannot see that the respondent can be criticised for following a course of action presumed by the Rules in a plain case, where no countervailing factors are apparent or suggested.
13. In view of our conclusion on the issue of Suitability, the question of law in respect of which permission to appeal was granted does not arise for decision.

Appeal dismissed

Anonymity Order

An Anonymity direction was not requested and is not made.

Fee Award

We make no fee award.

Signed

Mr Justice Phillips

9 November 2015