Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31754/2015

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 4 September 2017	**On 12 September 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

ABDALLA ISSA MOHAMMED
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: MS D Dhaliwal, instructed by Lords Solicitors LLP
For the respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Chohan promulgated 29.11.16, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 10.9.15, to refuse his application for LTR on private and family life grounds. The Judge heard the appeal on 19.10.16.

2. First-tier Tribunal Judge Dineen refused permission to appeal on 10.5.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge McWilliam granted permission to appeal on 4.7.17.

3. Thus the matter came before me on 4.9.17 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision should be set aside.

5. In summary, the appellant, who is a citizen of Tanzania, came to the UK as a student in 2008. His leave expired in 2011 and he overstayed. He entered into an Islamic marriage ceremony with a citizen of Somalia settled in the UK with refugee status along with her child born in 2009 from a previous relationship. The couple had a further child, born in the UK in 2011, and at the time of the First-tier Tribunal appeal hearing, she was expecting a further child of the relationship, subsequently born in April 2017.

6. The first child of the appellant's partner has a significant health condition, namely a heart condition, as detailed in the evidence put before the First-tier Tribunal.

7. In granting permission to appeal, Judge McWilliam observed that whilst the First-tier Tribunal Judge considered *availability* to treatment in Tanzania, he did not consider *accessibility* to that treatment.

8. Ms Dhaliwal submitted that on the evidence before the First-tier Tribunal, there were not facilities in Tanzania to treat the appellant's step-child. It was argued that the judge overlooked the fact that as the child is not a citizen of Tanzania, he would not be able to benefit from the arrangements provided for Tanzanian citizens to receive such treatment in Israel or India. It is also submitted that the decision is silent as to the accessibility or affordability of medical treatment in Tanzania.

9. Ms Dhaliwal also submitted that there was no proper analysis as to the best interests of that child in remaining in the UK and no reference to the impact of the appellant's removal on that child, or the children, pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009. It is claimed that the judge failed to address the role of the appellant in the lives of the children, and in particular how he was able to look after the children during his wife's recent pregnancy.

10. In carefully considering the decision of the First-tier Tribunal, it is clear that the judge accepted the evidence relating to the child's heart condition. At [14] the judge cited the letter of Dr Bhole, dated 23.6.15, to the effect that at the last assessment things were satisfactory. The heart condition will require life-long follow up. When he is older he will require cardiac surgery and in the interim, if any other issues arise, he may require cardiac catheterisation at a centre with expertise to perform this in a child. "Overall, his prognosis is good, provided he has cardiac reviews at

regular intervals."

11. The judge made a careful assessment of the evidence as to availability of medical treatment in Tanzania. There is not a single specialised hospital in Tanzania that can deal with the complex heart problems of the child. At [19] the judge did not overlook that, not being a Tanzanian citizen, the child would not be able to be sponsored to India or Israel for treatment.

12. On the other hand, at [20] the judge noted the evidence adduced by the respondent that there are facilities in Tanzania to treat children with heart conditions, but there is a lack of trained cardiac surgeons. The judge concluded that treatment is available, but it may come at a cost.

13. At [21] the judge pointed out that on the evidence the child will not require surgery until he is much older. It follows that his health would not deteriorate if he were to go to Tanzania with the appellant. He would not need to be sponsored to India or Israel. There was insufficient evidence to show that the medication he is currently prescribed is not available in Tanzania. The burden of demonstrating that treatment is not available is on the appellant. The judge concluded that ongoing treatment is available in Tanzania, although it may come at a cost.

14. In Paposhvili [2016] (41738/10), the EHCR reviewed the relevant case law, including N v UK, that it is not correct to apply article 3 only in cases where the person facing expulsion is close to death, as this deprives aliens who are seriously ill, but whose condition is less critical, of the benefit of article 3. "Other very exceptional cases" should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, "on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health, resulting in intense suffering or to a significant reduction in life expectancy." This remains a high threshold. At [186] of that case, the ECHR pointed out that it is for the appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, they would be exposed to a real risk of being subjected to treatment contrary to article 3. Where such evidence is adduced, it is for the state authorities to dispel any doubts.

15. Considering the decision of the First-tier Tribunal as a whole, I am satisfied that the conclusions of the First-tier Tribunal were fully open to it on the evidence and for which cogent reasoning has been provided. The crucial facts are that if the appellant's partner decides to accompany the appellant to Tanzania, with her children, the child in question will not need cardiac surgery until he is much older. The judge was satisfied that treatment that he currently needs would be available, and it is clear from the correspondence, including the letter from a paediatric cardiologist in Tanzania, that the regular reviews spoken of in other correspondence will

be available. The appellant failed to provide evidence to show that the child would be exposed to treatment contrary to article 3, and in particular failed to show that the reviews and any ongoing medication would not be available. On the facts of this case, they do not meet the high threshold required under article 3. In the circumstances, further attention to the issue of *accessibility* of treatment would not have made any material difference to the outcome of the appeal.

16. Further, the judge has adequately addressed the best interests of the children. It will be for the appellant and his partner to decide whether she and the children will accompany him, or remain in the UK, where they have settled status. He could make an entry clearance application from Tanzania. Neither the partner nor the children will be obliged to leave the UK. The judge also carefully considered the reasonableness of expecting the children to leave the UK with their parents, it being in their best interests to remain with the parent and/or step-parent. In the light of the Court of Appeal's more recent decision in MA (Pakistan) [2016] EWCA 705, the wider public interests are relevant to that reasonableness assessment, which must take account of the immigration history and the public interest. In that light, I am not satisfied that any more detailed attention to the fact that the eldest child was a qualifying child under s117B(6) would or could have made any difference to the outcome of the appeal. The judge concluded, for cogent reasons, that it would be reasonable to expect the children to leave the UK.

17. Whilst it was accepted that the relationship was genuine and subsisting, the family relationship with the partner was precarious from the outset. The judge spent considerable time considering whether there were insurmountable obstacles to the family life continuing outside the UK, concluding that there are not. That conclusion was fully open to the judge on the evidence and for which cogent reasoning has been provided. There is no merit in the grounds of appeal relating to article 8 family life.

Conclusions:

18. For the reasons summarised above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.

Signed

Deputy Upper Tribunal Judge Pickup

Dated