



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

Appeal Number: HU/18247/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26th February 2019**

**Decision & Reasons Promulgated
On 13th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**AHMED [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance – letter produced

For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Morocco born 3rd January 1957. On 27th April 2015 the Appellant had made a human rights application for leave to remain in the United Kingdom on the basis of his private life. That application was refused by Notice of Refusal dated 16th March 2016. The Appellant claims to have entered the United Kingdom on 10th January 1998. Consequently, at the date of hearing of this appeal he has been in the country for over twenty years although at the date of application and decision he had been here for a period considerably longer.

2. The appeal came before First-tier Tribunal Judge Herbert sitting at Taylor House on 11th October 2018. In a decision and reasons promulgated on 19th November 2018 the Appellant's appeal was allowed under Articles 3 and 8 of the European Convention on Human Rights.
3. Judge Herbert made some comments which are pertinent to the facts of this matter. Unfortunately, the Appellant is seriously ill and the overall consensus from the medical professionals is that he is entirely dependent upon others for his physical needs. He had a severe stroke in 2013 and spent a whole year in a coma before being released to be cared for initially in hospital and then in a specialist care home now in London. He cannot wash, dress or move about independently and if it was not for the provision of the health services and Social Services that care for him he would have clearly died a very sad and undignified and, as Judge Herbert states, quite probably painful death. In such circumstances, Judge Herbert considered that the threshold in relation to Article 3 and Article 8 had been reached.
4. The Secretary of State on 23rd November 2018 lodged Grounds of Appeal to the Upper Tribunal. The main thrust of those grounds was that the Home Office Presenting Officer had been prevented by the First-tier Tribunal Judge from making submissions. On 9th January 2019 First-tier Tribunal Judge Andrew on that basis granted permission to appeal.
5. Such issues raised the question that I was going to consider as to whether or not, if there was a concession, that there had been procedural unfairness due to the Home Office Presenting Officer being prevented from making submissions as to whether that was material bearing in mind the tragic circumstances of the Appellant.
6. However, matters moved on and there is presented to me a letter, firstly asking that their attendance be excused by the Appellant's solicitors and secondly advising, which Ms Jones on behalf of the Secretary of State confirms, that the Secretary of State has granted discretionary leave to the Appellant to remain in the UK until 7th February 2022.
7. On that basis and without making further concessions, Ms Jones indicates that she is prepared to withdraw the appeal. What happens in 2022 is a matter of course for the Secretary of State to consider. No-one knows what the condition of the Appellant will be at that time and of course he will by then have been in the UK for some 24 years.
8. In order for there to be a withdrawal under the Upper Tribunal Rules it is appropriate for both parties to consent and I note that they both, on that basis, do so.

Notice of Decision

9. The Secretary of State withdraws the appeal against the decision of First-tier Tribunal Judge Herbert on the basis that the Secretary of State has

granted discretionary leave to the Appellant to remain in the UK until 7th February 2022.

10. No anonymity direction is made.

Signed

Date 11 March 2019

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 11 March 2019

Deputy Upper Tribunal Judge D N Harris