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Appeal No. HX07455-02
MD (Medical Facilities) Sierra Leone CG [2002] UKIAT 07187

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 17 February 2003

Date Determination notified:

12...03...2003.....

Before:

Professor D B Casson (Chairman)
Mrs W Jordan

MARIE WINIFRED GEORGANIA DECKER
APPELLANT

and

Secretary of State for the Home Department
RESPONDENT

Representation

For the appellant : In person

For the respondent : Mr L. Parker, Home Officer Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Sierra Leone against the determination of an Adjudicator (Mrs P.M. Skitmore) notified on 11 July 2002, dismissing her appeal on asylum and human rights grounds against the decision by the respondent on 9 October 2001 to give direction for removal to Sierra Leone as an illegal entrant.
2. The appellant arrived in the United Kingdom on 19 May 2000. She had travelled by air from the Gambia (where she had spent some fifteen months). On arrival at Gatwick Airport she presented her valid Sierra Leone passport, which contained a visitor's visa, and was given leave to enter for six months. She claimed asylum on 7 August 2001, some nine months after the expiry of her leave to enter. An asylum interview was held on 21 September 2001 but her application was refused for reasons given in a letter dated 4 October 2001. The appellant had been accompanied by her brother, Arthur Cecil Obafemi Decker, whose date of birth was given as 31 December 1984, and who was treated as her dependant.

3. The appellant gave evidence at the hearing of her appeal before the Adjudicator on 20 June 2002. The Adjudicator also received a witness statement by her brother, who was treated as a minor. The Adjudicator found the appellant not to be a credible witness and dismissed both the asylum and the human rights appeals. The Adjudicator noted, however, medical evidence relating to her brother (known as Cecil) and, at paragraph 32 of her determination, said:

‘32. I ask that the respondent satisfies himself that Cecil receives whatever treatment is necessary for his scarring and any possible heart/blood pressure problems here before returning him to Sierra Leone in view of the minimal medical services there at the present time.’

4. In granting leave to appeal to the Tribunal, the Vice President said:

‘Ground 1 relating to the medical condition and treatment of the applicant’s brother and failure to give reasons for the rejection of an Article 3 ECHR claim in his regard, does appear to have merit. The remaining grounds do not indicate an arguable basis for an appeal. Leave is granted therefore in respect of grounds 1, 2 and 3 only.’

5. The appellant appeared before us without representation. She said she could not afford to pay her solicitor’s fees, but a letter from her solicitors, Ratnam & Co. dated 14 February 2003, states that their letters to the appellant asking her to attend for appointment have been ignored and that she cancelled an appointment the previous week, saying that she was going to see her counsellor. We asked the appellant about that, and she agreed that she had indeed cancelled an appointment with her solicitor and that, as disclosed by the documentary evidence, she had cancelled or failed to keep several appointments with the counsellor. We determined in these circumstances that it was appropriate for us to hear the appeal as listed, but we did not call upon Mr Parker to make any submissions.

6. The medical evidence before the Adjudicator relating to the appellant's brother, Cecil (who is now an adult) concerned ‘large and very ugly keloid scars on his chest and arm’ which were being treated. The Adjudicator noted: ‘While there is nothing in the medical evidence to suggest that these scars are life threatening, the effect of them on such a young man is possibly damaging from the point of view of his self-confidence and self-esteem. I am aware from the respondent’s CIPU Report that there are minimal medical facilities in Sierra Leone at the moment.’ The Adjudicator also referred to a letter from Professor Wilkins at the Hammersmith Hospital in relation to Cecil’s cardiac condition, stating: ‘It is likely that he is normotensive’ and his cardiomegaly is a feature of his ethnic group.’

7. Ratnam & Co. put before us a letter dated 10 February 2003 from Mr M. Philips, a consultant surgeon at Charing Cross Hospital, giving further information as to Cecil's health condition. The report states that he has a 'slight abnormality on the renal artery of his right kidney, which may be the cause of his high blood pressure, and which is being investigated'. The reports states that this kind of abnormality is very rare on people of his age and could lead to serious health (cardiovascular) disorder if not treated appropriately. He has been put on a three weeks course of beta blockers, has been advised to keep away from stressful activity and to take regular rest and to make some dietary changes.
8. No up-to-date background evidence has been put before us. We therefore accept the position as described by the Adjudicator that 'there are minimal medical facilities in Sierra Leone at the moment.' We consider the position in the light of the decision of the European Court of Human Rights in Bensaid [2001] INLR325, where the appellant was suffering from a long term mental illness, schizophrenia, for which he was currently receiving medication in the United Kingdom. The evidence was that if he returned to his own country, Algeria, that drug would no longer be available to him free as an outpatient. At paragraph 40 of its judgement, the Court said:

'The Court accepts the seriousness of the applicant's medical condition. Having regard, however, to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the contracting state for the infliction of harm, the Court does not find that there is a sufficiently real risk that the applicant's removal in these circumstances would be contrary to the standards of Article 3. It does not disclose the exceptional circumstances of the D case, where the applicant was in the final stages of a terminal illness, AIDS, and had no prospect of medical care or family support on expulsion to St Kitts.'

9. Although Cecil is currently being treated without charge under the National Health Service and would not be likely to enjoy similar facilities in Sierra Leone, we do not regard the evidence as to his medical condition and treatment as falling within the 'exceptional circumstances' of the appellant in D v United Kingdom. Cecil would be returned to Sierra Leone accompanied by a sister, the appellant in this appeal, and we take note of the fact that removals to Sierra Leone are to Freetown. Medical facilities there may not be the equal of those in London, but we are not persuaded that his removal would be contrary to the standards of Article 3 of the European Convention on Human Rights.
10. We add that leave to appeal appears to have been granted also in respect of the Adjudicator's lack of clarity at paragraph 32 of her determination as to whether she was in fact making a recommendation to the respondent. A

decision to make or not to make a recommendation when dismissing an appeal is not itself appealable to the Tribunal. It has been made clear in numerous cases that Adjudicators who make informal recommendations to the Secretary of State are stepping outside their statutory functions and should consider making such a recommendation only in the most exceptional circumstances. This is not such a case. We have ourselves considered the position but we do not wish to make any recommendation to the respondent.

11. The appeal is dismissed.

D.B. CASSON
ACTING VICE PRESIDENT