



IAC-AH-SC/FH-CK-V2

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

Appeal Number: HU/07282/2019

THE IMMIGRATION ACTS

**Heard via Skype for Business at Field
House
On 11 December 2020**

**Decision & Reasons
Promulgated
On 21 January 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**ORIGHO REGINALD ERUTEYA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr E Divaris, instructed by Jasvir Jutla & Co Solicitors

DECISION AND REASONS

1. The Secretary of State has appealed to the Upper Tribunal, with permission granted by a Judge of the First-tier Tribunal, against the decision of the First-tier Tribunal, on 23 September 2019, allowing the appeal of Mr Eruteya against the Secretary of State's decision of 19 July 2019 refusing a human rights claim.

2. In the event I need say little about the appeal. The judge allowed it on the basis first that she accepted that it was more likely than not that Mr Eruteya had resided in the United Kingdom for twenty years and secondly that in light of the medical evidence, in particular from Dr Ford, a consultant at King's College Hospital, he met the test of Article 3 medical condition and as a consequence the appeal was allowed on that basis. The Secretary of State sought permission to appeal in respect of both matters.
3. At the hearing before me Mr Clarke accepted, entirely properly, that the challenge to the Article 3 findings could not succeed in light of the decision of the Supreme Court in AM (Zimbabwe) [2020] UKSC 17.
4. It is relevant to note that at paragraph 12 of her decision the judge observed that in light of the medical evidence it was clear that Mr Eruteya required access to dialysis to survive and had shown on the balance of probabilities that he would not have access, due to the prohibitive cost and location of potential treatment, to dialysis in Nigeria on return and that therefore there was a risk of intense suffering in the event of his return to Nigeria. The medical evidence of Dr Ford stated that death would be likely to follow in a matter of days or weeks.
5. This falls clearly within the guidance in AM in particular as set out at paragraph 31 of that decision. Accordingly, the judge's conclusions on Article 3 are not shown to contain any legal error, and the appeal must therefore succeed on that basis.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'A. M.', written in a cursive style.

Signed

Date 8 January 2021