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## AIDS/HIV Cases and Removal

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This information sheet provides information about how someone's need for medical treatment for AIDS/HIV may affect a decision by the UK Border Agency that the person is to be removed from the UK.

### **The leading UK decision**

The leading UK decision is the judgment given by the House of Lords in May 2005 in the case of *N (Uganda) v SSHD* [2005] UKHL 31.

Before the UK Supreme Court was established in October 2009, the House of Lords was the highest court in the UK. The UK Supreme Court has now replaced the House of Lords as the highest court in the UK. Decisions of the House of Lords before the UK Supreme Court was established continue to have the same authority as they would have had if the House of Lords had not been replaced.

In *N (Uganda)*, the House of Lords decided that cases where a person faces suffering because of his or her medical condition, if he or she was removed from the UK, are to be decided differently to other cases where a person faces suffering (e.g. because of torture or other some other serious mistreatment). In the medical case, if there are no other relevant factors to consider, it will only be in the most exceptional of circumstances (e.g. where death is imminent) that the removal will be prevented. In the *N (Uganda)* case, the House of Lords dismissed the appeal. This was despite agreeing that, if removed, the appellant would face “*an early death after a period of acute physical and mental suffering*”.

The *N (Uganda)* case was later considered by the Grand Chamber of the European Court of Human Rights. The Grand Chamber of the European Court considers particularly complex or important cases. The Grand Chamber reached the same conclusion as the House of Lords.

### **Recent decision of the Court of Appeal**

In the case of *JA (Ivory Coast) & ES (Tanzania) v SSHD* [2009] EWCA Civ 1353, the Court of Appeal considered the appeals of two people who were HIV+ and receiving medical treatment by the NHS for their condition.

Unlike in the *N (Uganda)* case, the appellants in *JA (Ivory Coast) & ES (Tanzania)* had been granted permission to enter or stay in the UK because of their medical condition. This permission had been granted, under Home Office policy (that has since been withdrawn), before the House of Lords decision in the *N (Uganda)* case. However, when they had applied to extend their permission to stay in the UK, the Home Office refused.

The key issue for the Court of Appeal was whether it made any difference that the two appellants had previously been granted permission to enter or stay in the UK because of their medical condition. The Court of Appeal decided that this was an important difference between these cases and the *N (Uganda)* case. It was not necessary to demonstrate the most exceptional circumstances.

However, it did not necessarily follow that in all cases where permission to enter or stay in the UK had been granted under the previous policy, an application to extend permission to stay in the UK should be granted. The Court of Appeal decided that *ES (Tanzania)* would be able to obtain work in Tanzania and pay for continued medical treatment there. It was not disproportionate, therefore, for the UK Border Agency to expect her to return to Tanzania. However, *JA (Ivory Coast)* was not in the same position. There was no reason to think that she could pay for, or otherwise obtain, treatment in the Ivory Coast, and it was disproportionate to expect her to return because of the suffering she would face (since she did not need to show the most exceptional circumstances).

### **Further information and other types of cases**

The *JA (Ivory Coast)* & *ES (Tanzania)* cases provide one example of where the very strict test in *N (Uganda)* may not apply. It is important in highlighting the need in the case of someone who is HIV+ to consider all the facts carefully to see whether there is some important point of difference between that person's case and the case of *N (Uganda)*.

In the *JA (Ivory Coast)* & *ES (Tanzania)* cases the important point of difference was that the Home Office had previously granted permission to enter or stay in the UK because of the individual's medical condition. However, there are other points of difference that may be relevant in other cases. Some of these are described below.

In *CA v SSHD* [2004] EWCA Civ 1165, the Court of Appeal agreed with an adjudicator that it was important in that case that the appellant was HIV+ and pregnant. There was a significant risk that her HIV infection might be passed on to her as yet unborn child, and this risk would be heightened if she was removed from the UK. The risk that, if removed from the UK, the appellant would have to face the suffering and death of her child made the case significantly different to other medical cases. The appeal was allowed.

In the *CA* case, the appellant also had a three years old son. Although that case was not put in this way, it would be important to consider the future of the child if mother and child were to be removed from the UK. The suffering and possible death of an adult would not normally, following the *N (Uganda)* decision, be sufficient to prevent removal. However, the suffering, incapacity and death of a child's mother might well be sufficient in some cases.

In cases such as *Chikwamba v SSHD* [2008] UKHL 40 and *EB (Kosovo) v SSHD* [2008] UKHL 41, the House of Lords explained circumstances in which it may be disproportionate to remove someone, who has established a private and family life in the UK. These cases do not concern people who are HIV+. However, people who are HIV+ (just like other people) may establish a private and family life in the UK. That someone is HIV+ and in need or receipt of medical treatment does not justify his or her removal from the UK in circumstances where, if he or she was not HIV+, removal would not be proportionate. The person's medical treatment may be the reason or a key reason why the private and family life he or she has established in the UK is so important. Further information on *Chikwamba* and *EB (Kosovo)* is available from the July 2008 "Article 8 judgments" information sheet. See also the September 2008 "Article 8" information sheet.

The cases described here all demonstrate the importance in AIDS/HIV cases of showing how the case involves facts or circumstances that are different to the case of *N (Uganda)*.