HØJESTERETS DOM

afsagt tirsdag den 13. december 2022

Sag BS-13536/2022-HJR
(1. afdeling)

A
(advokat Camilla Ernst, beskikket)

mod

Udlændingenævnet
(advokat Paw Fruerlund)

I tidligere instanser er afsagt dom af Retten i Aarhus den 15. oktober 2020 (BS-56770/2019-ARH) og af Vestre Landsrets 6. afdeling den 8. juli 2021 (BS-44368/2020-VLR).

I pådømmelsen har deltaget fem dommere: Michael Rekling, Hanne Schmidt, Oliver Talevski, Jan Schans Christensen og Søren Højgaard Mørup.

Sagen er behandlet skriftligt, jf. retsplejelovens § 387.

Påstande
Appellanten, A, har påstået stadfæstelse af byrettens dom.

Indstævnte, Udlændingenævnet, har påstået stadfæstelse af landsrettens dom.

Supplerende sagsfremstilling
Af en mail af 17. januar 2019 fra U.S. Department of State, Bureau of Consular Affairs, Office of Overseas Citizen's Services, fremgår bl.a.:

”Thank you for reaching out — and I'm happy to provide any sort of assistance that I can. I have actually worked on several similar cases, but not with all of the complications that you listed below.

Regarding assistance for her return to the U.S., if there is no private or travel insurance, we would normally search for other private resources that may be able to assist such as any family or friends who might be able to assist to paying for the costs to her return to the United States. If we were unable to find a private source of funds and an individual in this situation were unable to receive adequate care in the host country, we could offer a repatriation loan which could cover the costs of her return to the U.S., including, if needed, costs of a medical escort. While this is technically a loan, we pay heed to any compassionate aspects related to the original loan application in which attempted collection of a debt incurred would be against equity and good conscience. A repatriation loan to assist an individual who I incapacitated and needs a medical escort may be a little complicated and time consuming since there are several legal and technical aspects that would need to be worked out, but definitely doable.

In regards to public assistance, one aspect of our repatriation program in cases where it is required is resettlement assistance. This, by U.S. law, is not handled by the Department of State, but by the Department of Health and Human Services, typically through their contractor, International Social Services (ISS). When we hear of a situation that may need resettlement assistance, we typically engage with ISS so they can locate assistance in the U.S. citizen's last state of residence. It is the individual state government that will determine the level of support or assistance needed and direct a U.S. citizen to those state resources. This can be from a homeless shelter to an assisted living facility or hospice care, depending on the need of the citizen. In terms of long-term assistance to a U.S. citizen, it really depends on the resources available at the state level, and in some cases, resources available with Social Security and Medicare to provide assistance. In the latter case, typically a state government will appoint some sort of individual case worker who will assist the incapacitated individual to navigate benefits available to them. How exactly this is done, however, is typically on a case-by-case basis and administered by state or local governments.

We would arrange all of this through our Consular Officers at our Embassy in Copenhagen with my office here in DC liaising with local agencies that may be able to provide support. If you were interested in pursuing this route to return this U.S. citizen to the United States, I could provide any additional information on to my colleagues in Copenhagen.

> I hope this answers your question. Please let me know if you need any additional information or if I can be of any further assistance."

Supplerende anbringender

A har supplerende anført navnlig, at Udlændingenævnets skøn er åbenlyst urimeligt som følge af den ringe vægt, som nævnet har tillagt den aktuelle relation mellem hende og hendes søn. Selv om det kan tillægges betydning, at hun har opholdt sig ulovligt i Danmark i syv måneder, kan det ikke i sig selv føre til, at hun ikke skal have opholdstilladelse. Nævnets afgørelse er endvidere i strid med en lighedsgrundsætning, da omstændighederne i sagen er de samme som i nævnets afgørelse af 16. marts 2017 i en anden sag. Nævnets synspunkter vedrørende udlændingelovens § 9 b om humanitær opholdstilladelse er irrelevante for sagen, da Højesteret ikke skal tage stilling til afslaget på opholdstilladelse efter denne regel.

Udlændingenævnet har supplerende anført navnlig, at nævnets skøn ikke er åbenbart urimeligt, og at afgørelsen ikke er i strid med en lighedsgrundsætning, da afgørelsen er i overensstemmelse med praksis. Omstændighederne i denne sag er ikke de samme som i nævnets afgørelse af 16. marts 2017, bl.a. fordi der i den sag var spørgsmål om udsendelse til Afghanistan. Spørgsmålet om, hvorvidt As helbredsmæssige tilstand kan begrunde opholdstilladelse, hører hjemme under udlændingelovens § 9 b. De afgørelser, der er truffet efter denne bestemmelse, er ikke til prøvelse i denne sag. I øvrigt er betingelserne for at meddele opholdstilladelse efter denne bestemmelse ikke opfyldt, idet A ikke er i fare for at lide en uoprettelig forværring af sit helbred, som vil resultere i intens lidelse eller væsentlig reduktion af forventet restlevetid, som følge af, at hun skal vende tilbage til USA.

Supplerende retsgrundlag

I Den Europæiske Menneskerettighedsdomstols dom af 7. december 2021 i sagen Savran mod Danmark (sag nr. 57467/15) udtalte Domstolen bl.a.:

> "*1. Article 3: general principles*
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> 121. It is the Court's settled case-law that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment and its guarantees apply irrespective of the reprehensible nature of the conduct of the person in question (see, among many other authorities, *Aswat v. the United Kingdom*, no. 17299/12, § 49, 16 April 2013).
> 122. The prohibition under Article 3 of the Convention does not, however, relate to all instances of ill-treatment. Such treatment has to attain a

minimum level of severity if it is to fall within the scope of that Article. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *N. v. the United Kingdom* [GC], no. 26565/05, § 29, ECHR 2008; *Paposhvili*, cited above, § 174; and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

123. An examination of the Court's case-law shows that Article 3 has been most commonly applied in contexts in which the risk of being subjected to a proscribed form of treatment has emanated from intentionally inflicted acts of State agents or public authorities. However, in view of the fundamental importance of Article 3, the Court has reserved to itself sufficient flexibility to address its application in other situations (see *Pretty v. the United Kingdom*, no. 2346/02, § 50, ECHR 2002-III, and *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 111, ECHR 2012 (extracts)). In particular, it has held that suffering which flows from a naturally occurring illness may be covered by Article 3 where it is, or risks being, exacerbated by treatment stemming from measures for which the authorities can be held responsible (see *N. v. the United Kingdom*, cited above, § 29). Moreover, it is not prevented from scrutinising an applicant's claim under Article 3 where the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country (see *Paposhvili*, cited above, § 175).

2. Article 3: expulsion of seriously ill aliens

124. In its case-law concerning the extradition, expulsion or deportation of individuals to third countries, the Court has consistently held that as a matter of well-established international law and subject to their treaty obligations, States Parties have the right to control the entry, residence and expulsion of aliens. Nevertheless, the expulsion of an alien by a State Party may give rise to an issue under Article 3 of the Convention where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country (ibid., §§ 172-73, and the authorities cited therein).

125. In its judgment in the case of *Paposhvili* (cited above), the Court reviewed the applicable principles, starting with the case of *D. v. the United Kingdom* (2 May 1997, *Reports of Judgments and Decisions* 1997-III).

126. The Court observed that the *D. v. the United Kingdom* case concerned the intended expulsion to St Kitts of an alien who was suffering from

AIDS which had reached its terminal stages. It had found that the applicant's removal would expose him to a real risk of dying under most distressing circumstances and would amount to inhuman treatment (ibid., § 53). The case was characterised by "very exceptional circumstances", owing to the fact that the applicant suffered from an incurable illness and was in the terminal stages, that there was no guarantee that he would be able to obtain any nursing or medical care in St Kitts or that he had family there willing or able to care for him, or that he had any other form of moral or social support (ibid., §§ 52-53). Taking the view that, in those circumstances, his suffering would attain the minimum level of severity required by Article 3, the Court held that compelling humanitarian considerations weighed against the applicant's expulsion (ibid., § 54).

127. It further observed that since the subsequent case of *N. v. the United Kingdom* (cited above), in which it had concluded that the applicant's removal would not give rise to a violation of Article 3, it had declared inadmissible as being manifestly ill-founded numerous applications raising similar issues lodged by aliens who were HIV positive or suffered from other serious physical or mental illnesses. Several judgments had also been adopted; in all of them – with the exception of the case of *Aswat* (cited above, which concerned the extradition to the United States of a detainee suffering from paranoid schizophrenia) – it had been found that the applicants' removal would not breach Article 3 of the Convention (see *Paposhvili*, cited above, § 179).

128. The Court concluded from that recapitulation of the case-law that the application of Article 3 of the Convention only in cases where the person facing expulsion was close to death, which had been its practice since the judgment in *N. v. the United Kingdom* (cited above), had deprived aliens who were seriously ill, but whose condition was less critical, of the benefit of that provision. Moreover, the case-law subsequent to *N. v. the United Kingdom* had not provided any more detailed guidance regarding the "very exceptional cases" referred to in *N. v. the United Kingdom*, other than the circumstances contemplated in *D. v. the United Kingdom* (see *Paposhvili*, cited above, § 181).

129. In that connection, the Court went on to elucidate what "other very exceptional cases" could be so contemplated, while reiterating that it was essential that the Convention was interpreted and applied in a manner which rendered its rights practical and effective and not theoretical and illusory (ibid., § 182):

> "183. The Court considers that the 'other very exceptional cases' within the meaning of the judgment in *N. v. the United Kingdom* (§ 43) which may raise an issue under Article 3 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. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness."

130. As to whether those conditions were satisfied in a given situation, the Court stressed that the national authorities were under an obligation under Article 3 to establish appropriate procedures allowing an examination of the applicants' fears to be carried out, as well as an assessment of the risks they would face if removed to the receiving country (ibid., §§ 184-85). In the context of those procedures,
(a) it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (ibid., § 186);
(b) where such evidence is adduced, it is for the returning State to dispel any doubts raised by it, and to subject the alleged risk to close scrutiny by considering the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual's personal circumstances; such an assessment must take into consideration general sources such as reports of the World Health Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question (ibid., § 187); the impact of removal must be assessed by comparing the applicant's state of health prior to removal and how it would evolve after transfer to the receiving State (ibid., § 188);
(c) the returning State must verify on a case-by-case basis whether the care generally available in the receiving State is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3 (ibid., § 189);
(d) the returning State must also consider the extent to which the applicant will actually have access to the treatment, including with reference to its cost, the existence of a social and family network, and the distance to be travelled in order to have access to the required care (ibid., § 190);
(e) where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the applicant – on account of the general situation in the receiving country and/or their individual situation – the returning State must obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons

concerned so that they do not find themselves in a situation contrary to Article 3 (ibid., § 191).
131. The Court stressed in the above connection that the benchmark was not the level of care existing in the returning State; it was not a question of ascertaining whether the care in the receiving State would be equivalent or inferior to that provided by the healthcare system in the returning State. Nor was it possible to derive from Article 3 a right to receive specific treatment in the receiving State which was not available to the rest of the population (ibid., § 189). In cases concerning the removal of seriously ill persons, the event which triggered the inhuman and degrading treatment, and which engaged the responsibility of the returning State under Article 3, was not the lack of medical infrastructure in the receiving State. Likewise, the issue was not one of any obligation for the returning State to alleviate the disparities between its healthcare system and the level of treatment existing in the receiving State through the provision of free and unlimited healthcare to all aliens without a right to stay within its jurisdiction. The responsibility that was engaged under the Convention in cases of this type was that of the returning State, on account of an act – in this instance, expulsion – which would result in an individual being exposed to a risk of treatment prohibited by Article 3 (ibid., § 192). Lastly, the Court pointed out that whether the receiving State was a Contracting Party to the Convention was not decisive.
132. There has been no further development in the relevant case-law since the *Paposhvili* judgment (cited above).

3. General considerations on the criteria laid down in the Paposhvili *judgment*

133. Having regard to the reasoning of the Chamber and the submissions of the parties and third parties before the Grand Chamber, the latter considers it useful with a view to its examination of the present case to confirm that the *Paposhvili* judgment (cited above) offered a comprehensive standard taking due account of all the considerations that are relevant for the purposes of Article 3 of the Convention. It maintained the Contracting States' general right to control the entry, residence and expulsion of aliens, whilst recognising the absolute nature of Article 3. The Grand Chamber thus reaffirms the standard and principles as established in *Paposhvili* (cited above).
134. Firstly, the Court reiterates that the evidence adduced must be "capable of demonstrating that there are substantial grounds" for believing that as a "seriously ill person", the applicant "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" (ibid., § 183).
> 135. Secondly, it is only after this threshold test has been met, and thus Article 3 is applicable, that the returning State's obligations listed in paragraphs 187-91 of the *Paposhvili* judgment (see paragraph 130 above) become of relevance.
> 136. Thirdly, the Court emphasises the procedural nature of the Contracting States' obligations under Article 3 of the Convention in cases involving the expulsion of seriously ill aliens. It reiterates that it does not itself examine the applications for international protection or verify how States control the entry, residence and expulsion of aliens. By virtue of Article 1 of the Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities, who are thus required to examine the applicants' fears and to assess the risks they would face if removed to the receiving country, from the standpoint of Article 3. The machinery of complaint to the Court is subsidiary to national systems safeguarding human rights (ibid., § 184)."

I Den Europæiske Menneskerettighedsdomstols afgørelse af 18. november 2014 i sagen Senchishak mod Finland (sag nr. 5049/12) fandt Domstolen, at der ikke var et beskyttelsesværdigt familieliv mellem klageren og dennes voksne datter, der i en årrække havde passet klageren. I dommen hedder det bl.a.:

> "7. The applicant had a husband and two daughters in Russia. In 1988 one of the daughters moved to Finland and has lived there permanently since then. She is a Finnish citizen. The other daughter went missing in 2003 and is probably dead. The applicant raised her granddaughter, who was born in 1986, from the age of 3 or 4, when the child's mother went missing.
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> 8. In November 2006 the applicant suffered a stroke in Russia. Apparently her right side was then paralysed. At the time, she lived with her husband, until he died in 2007. Thereafter the applicant apparently lived with her granddaughter and her family near Vyborg.
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> 9. On 7 December 2008 the applicant arrived in Finland with a tourist visa issued for a period of 30 days, without having lodged a prior application for a residence permit at a Finnish Representation. Since then she has been living with her daughter in Espoo.
> …

49. The applicant complained that her removal to Russia by the Finnish authorities would violate Article 8 of the Convention.
…

51. The Government contested that there existed such a close family tie or dependency between the applicant and her daughter that refusing the applicant's residence permit or deporting her to Russia would constitute an interference within the meaning of Article 8 § 1 of the Convention. The applicant arrived in Finland only on 7 December 2008, prior to which she had lived in Russia. Her daughter had moved permanently to Finland in 1988. Thus the family life between the applicant and her daughter had been interrupted for more than 20 years. There was thus no interference and Article 8 did not apply to the case.

52. Were the Court of another opinion, the Government argued that, in any event, the impugned measure was in accordance with the law and pursued the legitimate aims of public safety, economic well-being of the country and the protection of the rights and freedoms of others. As to the necessity in a democratic society, the Government noted that the applicant could not be considered a settled migrant. The impugned measure was thus necessary in a democratic society. There was thus no violation of Article 8 of the Convention.

53. The applicant argued that during the previous five years she had had a close family relationship with her daughter and her family. In Russian culture the grandparents were considered as family members who needed protection. It was impossible to obtain a place in an elderly people's home in Russia if a person had even one living child, as it was the child's responsibility to take care of the parents.

54. The Court notes that, in the Convention case-law relating to expulsion and extradition measures, the main emphasis has consistently been placed on the "family life" aspect, which has been interpreted as encompassing the effective "family life" established in the territory of a Contracting State by aliens lawfully resident there, it being understood that "family life" in this sense is normally limited to the core family (see *Slivenko v. Latvia* [GC], no. 48321/99, § 94, ECHR 2003-X; and, *mutatis mutandis, Marckx v. Belgium*, 13 June 1979, § 45, Series A no. 311). The Court has, however, also held that the Convention includes no right, as such, to establish one's family life in a particular country (see, *inter alia*, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 68, Series A no. 94; *Gül v. Switzerland*, 19 February 1996, § 38, *Reports of Judgments and Decisions* 1996-I; and *Boultif v. Switzerland*, no 54273/00, § 39, ECHR 2001-IX).

55. The Court also reiterates the principle that relationships between parents and adult children do not fall within the protective scope of Article 8 unless "additional factors of dependence, other than normal emotional ties, are shown to exist" (see *Emonet and Others v. Switzerland*, no 39051/03, § 35, 13 December 2007; and, *mutatis mutandis*, *Kwakye-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000). Therefore, the existence of "family life" cannot be relied on by applicants in relation to their elderly parents, adults who do not belong to the core family, unless the latter have been shown to be dependent on the members of their family (see *Slivenko v. Latvia* [GC], cited above, § 97).

56. The Court finds it established in the present case that the applicant came to Finland on 7 December 2008, before which she lived in Russia. Her daughter moved permanently to Finland in 1988. As the Government pointed out, the family life between the applicant and her daughter was thus interrupted for at least 20 years. The fact that the applicant has spent the last five years in Finland does not create a relationship between the applicant and her daughter which could amount to "family life" within the meaning of Article 8 of the Convention. This issue cannot be decisive as the applicant has not been lawfully resident in Finland during this time and she must have been aware of her insecure situation created by the fact that she was not regularised in Finland.

57. As to dependency, the Court notes that the applicant had a stroke in November 2006 in Russia after which she lived in Russia for two years before coming to Finland with a tourist visa in December 2008. After the expiry of her visa, her legal status in Finland was not regularised. Even assuming that the applicant is dependent on outside help in order to cope with her daily life, this does not mean that she is necessarily dependent on her daughter who lives in Finland, or that care in Finland is the only option. As mentioned earlier, there are both private and public care institutions in Russia, and it is also possible to hire external help. Moreover, as noted by the Government, the applicant's daughter can support her financially and otherwise from Finland, in particular as her place of residence is not very far from the applicant's place of residence in Russia. With a view to the Court's case-law, the Court therefore considers that no such "additional factors of dependence other than normal ties of affection" exist between the applicant and her daughter, and that there is thus no "family life" between them within the meaning of Article 8. This Article is therefore not applicable in the instant case due to the lack of family life.'

> 58. Accordingly, the complaint under Article 8 of the Convention must be rejected as incompatible *ratione materiae* with the provisions of the Convention and be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention."

Højesterets begrundelse og resultat
A, der er amerikansk statsborger, indrejste den 17. april 2015 i Danmark, hvor hun tog ophold hos en af sine voksne sønner, der er dansk statsborger.

Hun søgte første gang om opholdstilladelse den 15. juli 2015. Den 26. februar 2016 meddelte Udlændingestyrelsen afslag på opholdstilladelse i medfør af udlændingelovens § 9 c, stk. 1. Den 5. december 2016 stadfæstede Udlændingenævnet styrelsens afgørelse.

Den 21. juni 2016 meddelte Udlændinge-, Integrations- og Boligministeriet A afslag på en ansøgning om humanitær opholdstilladelse i medfør af udlændingelovens § 9 b, stk. 1. Den 25. april 2019 meddelte Udlændinge- og Integrationsministeriet på ny afslag på humanitær opholdstilladelse i medfør af udlændingelovens § 9 b, stk. 1, efter at hun havde anmodet om genoptagelse af sagen. I afgørelsen tog ministeriet stilling til bl.a., om afslaget ville være i strid med artikel 3 i Den Europæiske Menneskerettighedskonvention og praksis fra Den Europæiske Menneskerettighedsdomstol, herunder Domstolens dom af 13. december 2016 i sagen Paposhvili mod Belgien (sag nr. 41738/10). Ministeriets afgørelse er ikke til prøvelse under denne sag.

Den 19. juni 2019 meddelte Udlændingestyrelsen på ny afslag på opholdstilladelse i medfør af udlændingelovens § 9 c, stk. 1, efter at A den 1. december 2018 havde indgivet en ny ansøgning om familiesammenføring. Den 21. oktober 2019 stadfæstede Udlændingenævnet styrelsens afgørelse.

Sagen angår for Højesteret, om Udlændingenævnets afgørelse af 21. oktober 2019 skal ophæves, således at sagen hjemvises til fornyet behandling i nævnet.

Efter udlændingelovens § 9 c, stk. 1, 1. pkt., kan der efter ansøgning gives opholdstilladelse til en udlænding, hvis ganske særlige grunde, herunder hensynet til familiens enhed og, hvis udlændingen er under 18 år, hensynet til barnets tarv, taler derfor.

Det fremgår af forarbejderne, at bestemmelsen blev indført som led i en ændring af udlændingeloven, der havde til formål at begrænse og kontrollere adgangen til Danmark med henblik på at sikre den nødvendige ro og frigøre de nødvendige ressourcer til en bedre integration af de udlændinge, som allerede er i Danmark. Ved ændringen blev den hidtidige adgang til familiesammenføring med forældre over 60 år ophævet. Ifølge forarbejderne kan det ved afgørelser efter § 9

c, stk. 1, indgå bl.a., om ansøgeren har et særligt pleje- eller behandlingsbehov. Der skal meddeles opholdstilladelse efter bestemmelsen, hvis det vil være i strid med Danmarks internationale forpligtelser, herunder navnlig artikel 8 i Den Europæiske Menneskerettighedskonvention, at meddele afslag, medmindre der er mulighed for at tillade familiesammenføring efter andre bestemmelser.

Afgørelsen af, om A skal meddeles opholdstilladelse efter udlændingelovens § 9 c, stk. 1, beror således på et skøn med hensyn til, om der foreligger ganske særlige grunde.

Udlændingenævnet har i overensstemmelse med lovens ordlyd og forarbejder bl.a. vurderet tilknytningen mellem A og hendes sønner og inddraget hendes pleje- og behandlingsbehov.

Højesteret tiltræder, at der som anført af landsretten ikke er grundlag for at tilsidesætte Udlændingenævnets skøn eller for at fastslå, at afgørelsen er i strid med en forvaltningsretlig lighedsgrundsætning.

Højesteret tiltræder endvidere, at der efter oplysningerne om relationerne mellem A og hendes sønner, udviklingen af hendes helbredstilstand og mulighederne for hende for at vende tilbage til og få pasning og pleje i USA ikke er grundlag for at fastslå, at afgørelsen er i strid med artikel 8 i Den Europæiske Menneskerettighedskonvention, jf. herved Den Europæiske Menneskerettighedsdomstols dom af 18. november 2014 i sagen Senchishak mod Finland.

Højesteret stadfæster herefter landsrettens dom.

Det bemærkes, at det ved håndhævelse af pligten for A til at udrejse af landet påhviler myndighederne at påse overholdelsen af Danmarks forpligtelser ifølge artikel 3 i Den Europæiske Menneskerettighedskonvention og praksis fra Den Europæiske Menneskerettighedsdomstol. Myndighederne skal i den forbindelse iagttage de processuelle og materielle krav, der fremgår af præmis 129-130 i Den Europæiske Menneskerettighedsdomstols dom af 7. december 2021 i sagen Savran mod Danmark med hensyn til inddragelse af aktuelle oplysninger om bl.a. de konsekvenser, som udsendelsen vil have for hendes helbredstilstand, og de udgifter, der vil være forbundet med hendes pleje i USA.

THI KENDES FOR RET:

Landsrettens dom stadfæstes.

I sagsomkostninger for Højesteret skal statskassen betale 30.000 kr. til Udlændingenævnet.

Sagsomkostningerne skal betales inden 14 dage efter denne højesteretsdoms afsigelse.