Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05245/2018

THE IMMIGRATION ACTS

Heard at North Shields
On 29 January 2020

Decision & Reasons Promulgated
On 02 March 2020

Before

UPPER TRIBUNAL JUDGE REEDS

Between

B E
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Brakaj, Solicitor instructed on behalf of the appellant
For the Respondent: Ms Petterson, Senior Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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Background:

1. The appellant is a citizen of Nigeria. She was issued with a 3-year Tier 2 (Minister of Religion) visa on 27 October 2014 to carry out missionary work. She claims to have entered the UK in February 2016 but returned to Nigeria on the 15 October 2016. It is stated that she had a disagreement with her convent and returned to the UK using her visa although she was not working in the capacity of that visa on her return. On 26 May 2017 the appellant claimed asylum.

2. On 9 April 2018 the respondent served a notice of immigration decision, together with the detailed reasons for refusal letter refusing her claim for international protection and on human rights grounds. An appeal was lodged, and the appeal came before the FtT on 11 July 2019.

3. In a decision promulgated on the 18th July 2019 the FtTJ dismissed the protection claim but allowed the appeal on Article 3 (medical) grounds and in the alternative allowed the appeal for the same reasons on Article 8 grounds.

4. The Secretary of State appealed against the decision of First-tier Tribunal (Judge Hands) ("FtTJ") promulgated on the 18th July 2019 allowing her appeal against the decision to refuse her human rights claim. Permission to appeal was granted on the 20th August 2019.

5. There was also a cross-appeal as the appellant also applied for permission to appeal to challenge the FtTJ's decision where the Judge dismissed her protection claim.

6. The appeal came before the Upper Tribunal on the 30 October 2019. I had the advantage of hearing submissions from each of the advocates and reserved my decision at the conclusion of the hearing.

7. In a decision promulgated on the 19 November 2019 I gave my decision on the appeal and the cross-appeal before me. There is a copy of that decision attached and marked "Appendix 1" and this decision should be read alongside that decision.

8. In summary, I reached the conclusion that there was no error of law in the assessment made of the protection claim and the decision of the FtTJ to dismiss the appeal set out my reasons for this.

9. As to the cross-appeal brought by the respondent I reached the conclusion that the FtTJ erred in law when reaching the decision that on the facts of this particular case that it would reach the high threshold for a breach of Article 3.

10. As to the alternative finding made by the FtTJ whereby she allowed the appeal on Article 8 grounds (see paragraph [49]), in my judgement the FtTJ erred in law in her assessment of Article 8. By reference to the relevant case law cited in the error of law decision, it shows that absent a combination of other circumstances that might be relevant to an assessment under Article 8 of the European Convention the threshold is equally high. I could find no other elements identified by the FtTJ other than the

issue of medical treatment or lack of it. Article 8 could not prosper without some separate or additional factual element which brought the case within the Article 8 and none was identified here. The appellant's length of residence in the UK was relatively short having entered in 2016. The FtTJ did not consider the Rules and whether she could meet them (based on length of residence and whether were any very significant obstacles to her reintegration) and it does not appear to have been submitted on the appellant's behalf that she could meet the rules as the FtTJ made reference to the claim made outside the Rules at [44].

11. I also reached the conclusion that whilst the FtTJ purported to apply the S117 public interest considerations, the FtTJ did not carry out any proper analysis as the respondent's grounds set out. There was no weighing in the balance of the appellant's inability to meet the Rules as to private life and that there were no very significant obstacles to her reintegration. The FtTJ did not place in the balance when assessing the issue of effective immigration control of the cost of the treatment and the continuing financial burden nor did the FtTJ place in the balance the adverse findings made as set out at paragraphs [24] and [25].

12. Whilst I considered that it may be reasonable to assume that she has established some form of private life here since 2016, there was little evidence to suggest that she has established particularly strong connections. She had no family in the UK. The appellant's length of residence was not a compelling factor, even taken with her medical condition, which would elevate the circumstances to the threshold that might be required to show a disproportionate breach of Article 8.

13. I was therefore satisfied that the decision of the FtTJ involved the making of an error on a point of law and I set aside her decision to allow the appeal on Article 3 and on Article 8 grounds.

14. For the reasons given in my decision and on the factual basis of her claim, I found that it fell far short of establishing breach of Article 3 and I therefore dismissed the appeal on Article 3 grounds.

15. I had also set out my reasons as to why the decision to dismiss her appeal on the protection claim involved no error and I therefore upheld the decision in this respect.

16. This left the only issue as to Article 8. It had not been made clear by Ms Brakaj whether there has been any change in the position of the appellant and for the reasons set out above, the FtTJ did not carry out a full proportionality balance. In the circumstances, the appeal was listed for the parties' advocates to give their submissions concerning Article 8.

The re-making of the decision:

The Submissions:

17. Miss Brakaj on behalf of the appellant confirmed that there had been no changes in the appellant's circumstances and there was no new medical evidence for the

Tribunal to consider. She did not seek to call the appellant to give evidence and was content for the appeal to be remade based on the submissions of the advocates only.

18. She submitted that the central issue was the appellant's medical condition. She had been admitted to hospital in Nigeria 13 years ago and had two significant episodes in the UK leading to 2 admissions made under the MH Act both of which had involved expressing strong religious beliefs to 3rd parties. She was therefore diagnosed with schizophrenia (see letter July 2019 from the psychiatric nurse) and that without the required medication she would relapse.

19. Ms Brakaj submitted that she had gained a level of stability in the UK living a productive life. She had a faith which she wished to follow and that there is a safety net of assistance for her if she had a relapse. This will be significantly different in Nigeria where she was told that this was a "spiritual" matter and not given medication.

20. The appellant has now had a diagnosis and therefore the likely treatment she would receive on return is an issue. She submitted that there is a history of correctional psychiatry in Nigeria and there was a risk that offenders who have mental illness are now treated in prison even when found "not guilty by reason of insanity" (see p37). There is one psychiatrist in the Nigerian prison service. She therefore submitted that this evidence did not shown an ability to recognise that the appellant is not an offender or that the behaviour is as a result of a mental illness and therefore there is no effective way to ensure that she is not characterised as an offender. Therefore, there is a disproportionate breach of Article 8 on the basis that the appellant is very religious and would be prevented from being so and facing the stigma of being characterised as an offender when she is not.

21. When looking at the likelihood of accessing mental health treatment, she submitted that there was a lack of up-to-date medication, there was a lack of mental health facilities, there were inadequacies in the system and a lack of trained providers. There was widespread counterfeit medication (see page 44) and the appellant requires care in the community and there is no indication that that would be available to her. There is a high cost of treatment and Nigeria has an overstretched civil society. There are difficulties concerning NGO's and the prevalence of counterfeit drugs and thus the appellant will be in the same position.

22. At p.45 the material makes reference to the lack of family support and the difficulties of navigating the mental health care system would be far harder for an individual without family support and at page 46 there is reference to people suffering from mental health disorders facing high levels of discrimination from healthcare professionals at a local level as well as in the wider community. The material makes reference to the intense stigma that surrounds mental health in Nigeria being rooted in spiritual and religious beliefs and that there is a risk that with a diagnosis it would be believed that it is a spiritual issue and would give rise to a risk in the future. At page 52 of the bundle there is reference to women being trafficked into prostitution.

23. In summary she submitted that there was a severe shortage mental health professionals and there would be difficulties in accessing care for the appellant. There is a prevalence of counterfeit drugs and there is a risk that if she had an episode, she would then fall into the criminal justice system without a safety net. There was evidence that this happened in Nigeria in the past where it was diagnosed as a spiritual issue. When looking at the previous two occasions when she had relapses, they were not anticipated. There is a risk that if they were not picked up in the UK then it is likely that that would happen in Nigeria and this would amount to a breach of her private life and a breach of her ability to care for herself and be a useful member of the community.

24. Ms Brakaj submitted that this was a private life case and that return to Nigeria presently would be a disproportionate breach of Article 8. There would be very significant obstacles to her reintegration to Nigeria as she would not be able to live independently and would live with the fear of potential prosecution as a result of a mental illness and would not be able to access effective treatment to enable her to enjoy any private life in Nigeria.

25. Ms Petterson on behalf of the respondent submitted that in relation to her mental health, the evidence set out in the document dated 10/7/19 set out the history and that she had been discharged in March 2019 and had remained concordant with her medication since that date. She is looked after by the community mental health team and they continue to monitor her. There is no evidence that since that date there has been any further relapse and she has continued to take her medication. According to the character reference she has been able to perform voluntary work in the UK.

26. Whilst it was submitted that she would be unable to have access to medication due to counterfeit drugs and the risks of the criminal justice system, the medication which the appellant is taking is olanzapine which is available and there is no reason why she could not take a supply with her from the United Kingdom to assist her in ensuring she obtains her medication. The evidence set out in the decision letter demonstrate the medication that the appellant is taking is widely available in Nigeria and it is speculative to suggest that the appellant would not be able to take that medication and have a relapse.

27. The FtTJ did find that the appellant had family support and that was shown by the email from her brother which was included in part of the evidence. The judge also rejected the appellant's claim of being the subject of forced marriage and therefore it cannot be suggested that the family would not support her. The appellant has been in contact with her brother and other relatives and will have their support in Nigeria to access any medical needs, to access appropriate medication to help treat the condition.

28. Ms Petterson submitted that whilst it had been said the appellant had an episode whilst living in Nigeria, that was 13 years ago, and there had been a long spell in Nigeria where she was not taking medication but had no relapse since the admission in 2006. It is therefore speculative to say that she would have a relapse.

29. When looking at the material relied upon by the appellant at pages 51 – 52 of the bundle, that has no relevance to this appellant; it is not the appellant's case that she has ever fell into a category of a trafficked woman nor does she believe that she is under any form of curse.

30. Ms Petterson submitted that the appellant's condition is not such that there would be very significant obstacles to her reintegration. She has spent 36 years of her life there and has only been in the United Kingdom since November 2016. Whilst it is accepted that she has an illness and is currently accessing medical treatment, there is little evidence that she has a strong private life to overcome the public interest in returning to Nigeria.

31. Whilst it was submitted on behalf of the appellant that there was a lack of a safety net in Nigeria, the appellant will have family support who will be able to provide her with support to live in the community. Therefore, despite the acknowledgement that the appellant does have a medical condition for which she received treatment; this is insufficient to demonstrate a breach of Article 8.

32. By way of reply Ms Brakaj submitted that this is a long-term illness and that even if the family were minded to source the medication there is a prevalence of counterfeit drugs. She submitted that there was no indication the family have any position with the authorities to obtain drugs and even if there was family support they were in no different position from general members of society and should be viewed in this way.

33. She submitted that there was evidence that when the appellant did not take a drug, she would have a relapse (as set out in the medical notes). The appellant has a denial of relapse and requires help to take medication. There is also the issue that her symptoms do not always provide it with the knowledge that there is to be a relapse, and this will be relevant to taking incorrect drugs which would lead to difficulties for the appellant on return.

34. At the conclusion of the hearing I reserved my decision.

The legal framework:

35. The only ground of appeal available to the appellant is that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. As to the Article 8 claim, the burden of proof is upon the appellant to show, on the balance of probabilities, that she has established a family or private life and that her removal from the UK as a result of the respondent's decision, would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances. If Article 8 is engaged, the Tribunal may need to look at the extent to which an appellant is said to have failed to meet the requirements of the rules, because that may inform the proportionality balancing exercise that must follow.

36. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the fact that the immigration rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the Rules. 17.

37. As to the human rights claim on Article 8 grounds, I adopt the approach set out by Lord Bingham in Razgar [2014] UKHL 27. I must first determine whether Article 8 of the ECHR is engaged at all. If Article 8 is engaged, I should go on to consider the remaining four stages identified in Razgar.

38. Part 5A of the NIAA 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to private or family life and as a result is unlawful under the Human Rights Act 1998. In considering the 'public interest question' a court or tribunal must have regard to the issues outlined in section 117B in non-deportation cases. The 'public interest question' means the question of whether interference with a person's right to respect for their private or family life is justified under Article 8(2) of the European Convention.

39. Part 5A provides in relevant part as follows:

"**PART 5A**

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result, would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

Discussion:

40. The appellant does not rely upon any family life established in the United Kingdom. Her claim is solely advanced on behalf of her private life established in the United Kingdom and on the submissions made on her behalf by Ms Brakaj the claim based on her private life relates solely to her medical condition. Article 8 of the European Convention protects the right to 'physical and moral integrity', which can include a person's health: see *Bensaid v UK* (2001) 33 EHRR 10.

41. Therefore Article 8 is engaged. I also find that the decision to refuse the appellant leave to remain may have consequences of such gravity as potentially to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved.

42. The appellant's ability to satisfy the immigration rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative factor, when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control.

43. The appellant cannot satisfy the requirements for leave to remain under paragraph 276ADE in relation to hr private life. The appellant has lived in the UK since 2016 and as such, the appellant has not been resident in the UK for a period of 20 years, so she does not meet the private life requirement contained in paragraph 276ADE(1)(iii) of the Immigration Rules.

44. It is submitted by Ms Brakaj is that her medical condition is a "very significant obstacle to her reintegration."

45. There is no dispute that the appellant became known to the mental health services in the UK in 2017 when she was detained under section 2 of the Mental Health Act after having a psychotic episode where the medical records refer to her presenting as having fixed ideas about religion and politics. Following what appears to be a diagnosis of schizophrenia, she was discharged and prescribed medication. Since that discharge the appellant has had two relapses; the first in 2017 where she forcibly removed a woman's hijab and in January 2019 after she failed to take her medication for a period since June 2018. She was discharged in March 2019 (from January 2019) and has had no relapse since that time and has remained concordant with her medication and is monitored by the community health team (see letter dated 10/7/19). No further medical evidence has been provided and Ms Brakaj confirms that she has had no further relapses since that date.

46. Whilst it is submitted that she had an episode whilst living in Nigeria, the evidence in the reports make reference to that having taken place 13 years ago and after that time the appellant was able to function well in Nigeria to the extent that she was able to obtain further qualifications and underwent training in a convent which sent her to the United Kingdom to undertake missionary work for which she obtained visas in 2016.

47. It is submitted on behalf of the appellant that she would be unable to access treatment in Nigeria. Ms Brakaj relies upon country material set out in the appellant's bundle which she concedes also includes historic evidence from 2015. I have considered that evidence alongside the material relied upon the respondent set out in the CPIN Nigeria: medical and healthcare issues version 2.0 28 August 2018.

48. The Nigerian health system is organised into primary, secondary and tertiary healthcare levels. Primary health care consists of local healthcare such as local clinics and dispensaries and is the first point of contact for many people and the responsibility of the local government area. Secondary healthcare institutions such as general hospitals provide specialist healthcare and are the responsibility of the state government. The provision of mental health care consists of government services in large tertiary institutions such as psychiatric hospitals and universities in hospitals in large cities. The material in the appellant's bundle at (page 41) is consistent with the respondent's CPIN at paragraph 9.1.1 that there are eight neuropsychiatry hospitals throughout the country and each of the accredited medical schools and the attached teaching hospital as a psychiatric department. There are six state owned mental hospitals financed and managed by various state governments. According to the

Med COI country contact, the treatment of mental illness as provided for in public hospitals. There is no form of mental illness for which treatment is not available in Nigeria.

49. At page 42, reference is made to the gradual practice of introducing mental healthcare into a broader range of institutions including community clinics, health centres and health posts although this integration has taken effect in only 10 – 15 of the 175 local government areas across the country (in 2017). There is also reference made to the neuropsychiatric hospitals being concentrated in the major cities. There is reference in the FtTJ's decision at [27) that the appellant has family members in Lagos. There is also reference to Enugu State which also has a psychiatric hospital.

50. However, the CPIN and the report set out in relation to mental health services in Nigeria report at page 41) refers to the large number of patients and that there is a shortage of specialists available to meet Psychosocial care (see page 44). Ms Brakaj has also referred Tribunal to page 44 with reference to the difficulties with counterfeit drugs and the lack of effective regulation of medication. There is also reference made to those who suffer from mental health disorders is facing high levels of discrimination from healthcare professionals and for the wider community (page 46) and that there is a stigma which surrounds mental health which is hosted in spiritual and religious beliefs (see page 46).

51. When making an assessment of country materials I take into account that whilst there are difficulties in accessing mental health care in Nigeria as demonstrated by the material, there are facilities which identify the availability of both inpatient and outpatient treatment by psychiatric and psychological public facilities and that psychological/psychiatric counselling in addition to psychiatric nurses and care in the home is available in Nigeria (some by way of private facilities).

52. The material also makes it plain that navigating the mental health system is far harder for someone without family support and that such engagement has proved to be critically important for the success of mental health treatment (see page 45 – 46).

53. On the facts of this appeal, the appellant has the advantage of support and assistance from close family members who reside in Nigeria. The FtTJ referred to her parents, and those siblings include her sister and brother (at [27]). The presenting officers note previously provided sets out the appellant's evidence that she had five siblings in Nigeria and on her own account, is in touch with her brother who provided evidence for the appeal itself. In light of the finding of fact made that the appellant was not at risk of forced marriage nor that there were problems relating to her parents, no protection needs were identified in Nigeria which would undermine any support or assistance family members could provide for the appellant.

54. Whilst Ms Brakaj submitted that family members the appellant has in Nigeria should be viewed as "general members of the population" that is not reflected in the evidence. The appellant has a sister who is a nurse and a reasonable inference raised

from that is that she would have some knowledge of accessing medical care which could be utilised in establishing a care regime or providing support.

55. Ms Brakaj also referred to an article concerning "corrective psychiatry in Nigeria" (dated 19/3/2018 at p37AB). She submits that the evidence demonstrates that if she had a psychotic episode that she would be arrested and placed in prison and treated harshly. She relies upon the episode in the UK in 2017 where she forcibly removed a woman's hijab. I accept the submission made by Ms Petterson that such submission is speculative and is not based on the factual circumstances of the appellant. That incident and the later one took place against the background of the appellant living alone in the United Kingdom and as someone who did not have the close family support that she would have available in Nigeria. This also provides the "safety net" which the community team provide currently. Nor does it take into account the large gaps in her medical history where the appellant has been able to live and function without any relapses which suggest that her family had been able to supervise and closely monitor her behaviour and assist her with any mental health issues she had experienced.

56. The country materials also demonstrate that the medication prescribed is available in Nigeria (see appendix A of the CPIN).

57. In my assessment, I am not satisfied that it is been demonstrated that she would face 'very significant obstacles' to her integration there for the purpose of paragraph 276ADE(1)(vi). The appellant was born in Nigeria and has spent most of her life there. It is likely that she will continue to have cultural, linguistic and other ties there, including her family members. The material that out above demonstrates also that there is medical treatment for mental health conditions available in Nigeria, although it is noted that there are difficulties in that regard and that her geographical location in either Enugu state or Lagos are in areas where treatment is accessible and available.

58. Whilst Article 8 of the European Convention protects the right to 'physical and moral integrity', which can include a person's health: see *Bensaid v UK* (2001) 33 EHRR 10, unlike Article 3, Article 8 is not an absolute right.

59. I have previously set out the relevant decisions in this area of law. I have not been addressed upon them by either advocate at this hearing.

60. In her submissions Ms Brakaj has not been able to identify any additional factors that might engage Article 8 beyond her submissions based on the appellant's medical condition.

61. The relevant authorities demonstrate that the threshold for showing a breach of Article 8 solely on medical grounds is equally high: see *GS (India) v SSHD* [2015] EWCA Civ 40 and *MM (Zimbabwe) v SSHD* [2012] EWCA Civ 279. The Court of Appeal in *SL (St Lucia) v SSHD* [2018] EWCA Civ 1894 concluded that the decision in *Paposhvili* did not affect this principle (at [27]):

> "27. ... I am entirely unpersuaded that Paposhvili has any impact on the approach to article 8 claims. As I have described, it concerns the threshold of severity for article 3 claims; and, at least to an extent, as accepted in AM (Zimbabwe), it appears to have altered the European test for such threshold. However, there is no reason in logic or practice why that should affect the threshold for, or otherwise the approach to, article 8 claims in which the relevant individual has a medical condition. As I have indicated and as GS (India) emphasises, article 8 claims have a different focus and are based upon entirely different criteria. In particular, article 8 is not article 3 with merely a lower threshold: it does not provide some sort of safety net where a medical case fails to satisfy the article 3 criteria. An absence of medical treatment in the country of return will not in itself engage article 8. The only relevance to article 8 of such an absence will be where that is an additional factor in the balance with other factors which themselves engage article 8 (see (MM (Zimbabwe) at [23] per Sales LJ). Where an individual has a medical condition for which he has the benefit of treatment in this country, but such treatment may not be available in the country to which he may be removed, where (as here) article 3 is not engaged, then the position is as it was before Paposhvili, i.e. the fact that a person is receiving treatment here which is not available in the country of return may be a factor in the proportionality balancing exercise but that factor cannot by itself give rise to a breach of article 8. Indeed, it has been said that, in striking that balance, only the most compelling humanitarian considerations are likely to prevail over legitimate aims of immigration control (see Razgar at [59] per Baroness Hale).
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> 28. Therefore, in my firm view, the approach set out in MM (Zimbabwe) and GS (India) is unaltered by Paposhvili; and is still appropriate. I do not consider the contrary is arguable. "

62. In GS (India); EO (Ghana); GM (India); PL (Jamaica); BA (Ghana) and KK (DRC) v SSHD [2015] EWCA Civ 40 it was held that if the Article 3 claim failed, Article 8 could not prosper without some separate or additional factual element which brought the case within the Article 8 paradigm: the core value protected being the quality of life, not its continuance. That meant that a specific case must be made under Article 8. The rigour of the D exception for the purpose of Article 3 in such cases as these applied with no less force when the claim was put under Article 8.

63. Although the UK courts have declined to state that Article 8 could never be engaged by the health consequences of removal from the UK, the circumstances would have to be truly exceptional before such a breach could be established (paras 45, 85 - 87 and 106 - 111). At paragraph 111, Underhill LJ said this "First, the absence or inadequacy of medical treatment, even life-preserving treatment, in the country of return, cannot be relied on at all as a factor engaging Article 8: if that is all there is, the claim must fail. Secondly, where Article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the 'no obligation to treat' principle."

64. In SL (St Lucia) v SSHD [2018] EWCA Civ 1894 the Court of Appeal commented that the focus and structure of Article 8 is different from Article 3. They were

unpersuaded that Paposhvili had any impact on the approach to Article 8 claims. An absence of medical treatment in the country of return would not of itself engage Article 8. The only relevance would be where that was an additional factor with other factors which themselves engaged Article 8. The decision in Razgar was referred to for the proposition that only the most compelling humanitarian considerations were likely to prevail over legitimate aims of immigration control. The approach set out in MM (Zimbabwe) and GS (India) was unaltered by Paposhvili.

65. On the material before the Tribunal there is the availability of medication and treatment in Nigeria whilst I accept that it may not be the same level of treatment available in the UK. On the facts of this appeal it is also the case that combined with the availability of treatment and medication is the family support available to the appellant in Nigeria from her close family members. The evidence before the FtTJ demonstrated that there was a wide extended family and that her sister was a nurse which contrasts with the position that she has in the United Kingdom where the support she has is from the community services. That would provide the "safety net" which Ms Brakaj referred to and demonstrates that she would not be left wholly unsupported on return to Nigeria.

66. When considering the public interest considerations set out in Section 117 A-D, the maintenance of effective immigration control is in the public interest, alongside the point relied upon by Ms Petterson is that the courts have stated that signatory states to the European Convention do not have an obligation to treat non-nationals and that this is factor in favour of the public interest. The appellant can speak English but is not financially independent although a character reference was provided which referred to offering her employment. The short private life that she has established in the United Kingdom was at a time when her status was "precarious" therefore should be afforded little weight (see Rhuppiah v. Secretary of State for the Home Department [2018] UKSC 58). The private life that she has established by way of reliance upon medical treatment could be re-established in Nigeria.

67. When considering the applicable case law, it shows that absent a combination of other circumstances that might be relevant to an assessment under Article 8 of the European Convention the threshold is equally high when the issue is that of medical treatment, which is the only issue advanced on behalf of the appellant.

68. On the evidence before this Tribunal I can find no other elements beyond the appellant's medical condition and as set out earlier in the decision, Article 8 cannot not prosper without some separate or additional factual element which brought the case within the Article 8 and none have been identified by Ms Brakaj. Therefore, taking into account the matters set out above and in light of the legal authorities I have had regard to, I have reached the conclusion that it has not been demonstrated that return to Nigeria would be a disproportionate breach of Article 8 and that consequently the decision made would be unlawful under Section 6 of the HRA 1998.

Notice of Decision

69. The decision of the First-tier Tribunal contains an error of law and the decision to allow the appeal on Article 3 grounds and Article 8 grounds is set aside. I do not set aside the decision to dismiss the appeal on protection grounds as that part of the decision does not demonstrate the making of an error on a point of law.

70. I re-make the decision by dismissing the appellant's appeal on Article 3 and Article 8 grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*
Upper Tribunal Judge Reeds

Date 25/2/2020