



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00062/2020 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business
On Wednesday 31 March 2021

Decision & Reasons Promulgated
On Wednesday 05 May 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

OLK

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Nicholson, Counsel instructed by Times PBS solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves consideration of the Appellant's medical condition and therefore refers to personal data of a particularly confidential nature, I consider it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Ford promulgated on 6 March 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 19 December 2019, refusing her human rights claim based on her family and private life in the UK. The claim was in large part based on the Appellant’s medical condition.
2. The Appellant is a national of Zambia. She was born in the UK but taken to Zambia by her parents when she was aged three. She re-entered the UK as a student in 2009. She had leave to enter in that capacity until 1 January 2010. Thereafter, she overstayed. She applied for further leave in November 2019 leading to the decision under appeal. In the interim, she completed her studies in law and began working as a paralegal. It is not entirely clear to me how she managed to do this without leave but that is not relevant to the issues I have to determine.
3. The Appellant suffers from HIV. Her condition in the UK is stable and maintained by treatment involving monitoring and medication. I will come on to the detail of the evidence in that regard later in this decision.
4. The Appellant also relies on her family life with her sister and nephew with whom she lives. The two sisters grew up in an abusive household. Their father was a violent drug addict. The Appellant says that therefore they share a close, emotional bond. Further, the Appellant’s sister and nephew are said to depend on the Appellant financially to some extent.
5. The Judge accepted that the Appellant receives “psychological and emotional support” from her sister and aunt ([34] of the Decision). However, she found that this could continue if the Appellant were removed to Zambia. The Judge found at [32] of the Decision that the Appellant is well-educated and “a capable young woman” who “has secured stable professional employment and is self-supporting”. The Judge did not accept that the Appellant would be unable to secure employment in Zambia ([35]).
6. In relation to the Appellant’s medical treatment, the Judge considered the evidence but concluded that there was insufficient evidence that the Appellant’s return would lead to a breach of Article 3 ECHR on this account ([40]).
7. The Judge went on to consider the Article 8 claim including the Appellant’s family life, the best interests of the Appellant’s nephew and the Appellant’s medical condition which the Judge accepted forms part of the Appellant’s private life. Having balanced the interference with the Appellant’s family and private life, the Judge concluded that removal would not be disproportionate and therefore would not breach Article 8 ECHR. The appeal was therefore dismissed on human rights grounds.
8. The Appellant appeals the Decision on six grounds as follows:

Ground one: The Judge failed to determine a relevant issue under the Immigration Rules (“the Rules”) namely whether there would be “very significant obstacles” to the Appellant’s integration in Zambia (specifically under paragraph 276ADE(1)(vi) of the Rules – “Paragraph 276ADE(1)(vi)”).

Ground two: Whilst it was accepted that the Judge did reach a conclusion in relation to Paragraph 276ADE(1)(vi), it is said that her conclusion was premised on factual errors based on what is said to be an error made as to the Appellant’s age.

Ground three: The Judge is also said to have reached an impermissible conclusion in relation to the position on return as regards the acceptability of the Appellant’s qualifications in Zambia. It is said that there was no evidence on which the Judge could have reached the conclusion that such qualifications would be acceptable.

Ground four: The Judge erred in her conclusion that the Appellant and her family would be able to maintain their family life at long distance.

Ground five: The Judge failed to consider whether “the Appellant’s right to respect for her physical and moral integrity” under Article 8 ECHR would be breached by removal, specifically with regard to the Appellant’s medical condition.

Ground six: In relation to both Articles 3 and 8 ECHR, the Judge erred in her treatment of the evidence before her.

9. Permission to appeal was refused by First-tier Tribunal Judge Kelly on 17 August 2020 in the following terms so far as relevant:

“...It is not arguable that the Tribunal failed to undertake a ‘broad, evaluative judgement’ under paragraph 276ADE (vi) of the Immigration Rules given its findings at paragraph 42, coupled with its finding (in the first sentence of paragraph 39) that the appellant had failed to prove that she would be unable to access appropriate treatment for her medical condition on return to Zambia.

Neither is it arguable that the Tribunal’s faulty arithmetic in calculating the number of years that had elapsed since the appellant left Zambia was material to the outcome of the appeal. If anything, the fact the appellant had been absent from Zambia for fewer years than the Tribunal had assumed was one that weakened (rather than strengthened) her claim to face insurmountable obstacles to integration on return.

It is not arguable that the Tribunal erred in placing little weight upon an expert report that failed to identify the source(s) of information upon which its author based his or her conclusion that the appellant’s employment prospects in Zambia were poor.

It is not arguable that the *obiter dicta* cited from the judgment in Mansoor [2011] EWHC (Admin) established any general or binding principle of law. This is for several reasons, which include (but is not limited to) the fact that the judgement was given in judicial proceedings (and therefore not technically binding on the Tribunal) and that those proceedings had in any event been compromised.

It is not arguable that the Tribunal made a material error of law in failing to consider the Appellant’s medical condition within the context of Article 8 (in addition to Article 3) given that this could not of itself have sufficed to establish such a claim absent some additional factor that fitted, ‘the Article 8 paradigm’ (GS (India) [2015] EWCA Civ 40).

It is not arguable that the Tribunal erred in finding that the appellant had failed to discharge the burden of proving that adequate medical treatment would be unavailable to her on return to Zambia given that Dr Madge was ‘not sure’ that it would be available, whereas it was for the appellant to establish (on a balance of probabilities) that such treatment would not be available.”

Judge Kelly extended the Appellant's time to appeal as the application for permission was out of time.

10. The Appellant renewed the application to this Tribunal on the same grounds. Permission to appeal was granted, it was said on grounds five and six only by Upper Tribunal Judge Jackson on 3 November 2020 in the following terms so far as relevant:

"... The first four grounds of appeal are unarguable. The First-tier Tribunal undertook a well-rounded assessment of the Appellant's likely circumstances on return to Zambia, considering all the factors as to whether she would face very significant obstacles to reintegration which contain no arguable error of law, the first ground of appeal amounting only to disagreement. The second ground of appeal relates to a typographical error in the Appellant's age, which if anything is an error in her favour and cannot on any view be material. The third ground of appeal somewhat misreads the decision, the First-tier Tribunal does not find that the appellant would necessarily be able to obtain employment as a lawyer with English language qualifications, but only that such professional qualifications and experience would have some value in finding employment and cogent reasons were given for attaching little weight to the expert report as this was not taken into account. The fourth ground of appeal is not supported by any evidence that the family would be unable to keep in touch and there is nothing to suggest that they would not be able to keep in touch to maintain their relationship by some means.

The fifth ground of appeal is just arguable, given that the First-tier Tribunal does expressly refer to the Appellant's medical condition as one of the matters taken into account as part of her private life. It is arguable because it is intrinsically linked with the final ground of appeal.

The final ground is arguable following the Supreme Court's decision in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] 2 WLR 1152 given the lack of specific evidence from the Respondent beyond the reference to a functioning healthcare system and no response to the Appellant's evidence identifying a particular medical need for specific ARVs and expert evidence (accepted as credible) on problems with supply of the required medication, all of which had to be imported and with risks of regularity and quality of supply.

The First-tier Tribunal's decision does [contain] an arguable error of law capable of affecting the outcome of the appeal and permission to appeal is therefore granted on grounds five and six only. Permission is refused on all other grounds."

I observe at this point that, although Judge Jackson stated in her reasons that she refused permission on grounds other than grounds five and six that was not repeated in the heading of her decision. I will come on to the effect of that below.

11. Judge Jackson indicated her provisional view that the error of law issue could be determined at a remote hearing. The parties were given the opportunity to object to that course. Neither party did so.
12. So it is that the matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties and by the Appellant herself. The hearing was disrupted by a loss of

connectivity part-way through the hearing, but reconnection was achieved. Apart from that one disruption, the hearing proceeded with no major technical difficulties.

13. I had before me the Appellant's bundle before Judge Ford (to which I refer as necessary below as [AB/xx]) and the Respondent's bundle of core documents. I also had outline written submissions and a skeleton argument prepared by Mr Nicholson and written submissions prepared by Mr Melvin.

DISCUSSION AND CONCLUSIONS

The Ambit of the Grant of Permission

14. I begin with the basis on which permission was granted. As I indicate at [10] above, UTJ Jackson expressed the decision as a grant on grounds five and six only. Mr Melvin therefore submitted that the Appellant's arguments should be confined to those two grounds.
15. However, as I pointed out at the hearing, even though the grant of permission is expressed as a limited one and the grant states expressly within the reasons that permission is refused on grounds other than five and six, there is no express refusal within the decision itself (as opposed to the reasons). The Tribunal in the case of Safi and others (permission to appeal decision) [2018] UKUT 388 (IAC) made clear that, where a Judge intends to grant permission only on limited grounds and refuse on others, that must be made clear in the decision section of the permission to appeal notice and not confined to the reasons section.
16. Further, and in any event, I reach the conclusion that I cannot exclude from my consideration grounds one to four based on what is said at paragraph 22 of the Procedure Rules ("Rule 22") which reads as follows:

"Decision in relation to permission to appeal

22. – (1) Except where rule 22A (special procedure for providing notice of a refusal of permission to appeal in an asylum case) applies, if the Upper Tribunal refuses permission to appeal or refuses to admit a late application for permission, it must send written notice of the refusal and of the reasons for the refusal to the appellant.

(2) If the Upper Tribunal gives permission to appeal –

(a) the Upper Tribunal must send written notice of the permission, and of the reasons for any limitations or conditions on such permission, to each party;

(b) subject to any direction by the Upper Tribunal, the application for permission to appeal stands as the notice of appeal and the Upper Tribunal must send to each respondent a copy of the application for permission to appeal and any documents provided with it by the appellant; and

(c) the Upper Tribunal may, with the consent of the appellant and each respondent, determine the appeal without obtaining any further response."

17. There are two reasons why the wording of Rule 22 leads me to the conclusion that the Appellant should be permitted to pursue his first four grounds. First, UTJ Jackson did not, in the operative part of the decision granting permission expressly refuse

permission to appeal on the first ground. Second, unless a direction is made by the Tribunal, the application for permission to appeal stands as the notice of appeal. That application therefore includes grounds one to four and there is no direction removing those grounds as part of the appeal.

18. I can however deal very briefly with most of the arguments in grounds one to four as I agree with UTJ Jackson that they lack merit. I therefore deal with those first for the sake of completeness and despite the fact that most of Mr Nicholson's submissions focussed on the issues raised by grounds five and six.

Grounds one to three

19. I take these three grounds together as they all concern the Judge's analysis whether there are very significant obstacles to integration in Zambia for the purposes of Paragraph 276ADE(1)(vi). I make clear that for the purposes of these grounds, I exclude consideration of the Appellant's medical condition which is the subject of the Appellant's grounds five and six, even though there is some overlap there with Paragraph 276ADE(1)(vi).

20. The main paragraph setting out the Judge's conclusion on the Paragraph 276ADE(1)(vi) issue is [42] of the Decision which reads as follows:

"In relation to Article 8 I accept that the Appellant will face obstacles to her integration in Zambia but I cannot see how I can find on the evidence that those obstacles will be very significant. She has lived her life as an independent adult for 21 years now since she left home at the age of 18. Zambia's laws are based on common law and customary law and her qualifications and experience acquired in the UK will not be without value in Zambia. I am not satisfied that she will be unable to find and sustain employment suitable to maintain herself in Lusaka."

21. I begin with ground one which suggests that the Judge has failed to determine the Paragraph 276ADE(1)(vi) issue. That is without any merit. Although the Judge may not have referred expressly to the paragraph or given herself any legal direction in that regard, there is no error of substance. She has clearly understood that the paragraph needed to be considered and the level of the test which applies.
22. At [11] to [13] of her outline submissions which were before Judge Ford, the Appellant points to the factors which she says are relevant to the assessment under Paragraph 276ADE(1)(vi) as being the time spent in the UK which includes all her adult life, lack of contacts in Zambia (being estranged from her parents) and her medical condition.
23. To consider this ground, it is necessary to say something about the structure of the Decision. The Judge begins her section entitled "Conclusion" at [32] of the Decision. Although that is entitled "Conclusion", that section of the Decision in fact encompasses the Judge's findings, the Judge having dealt up to that point with the evidence received and the legal framework. As such, when one comes to [42] of the Decision, the Judge has already dealt with the Appellant's situation in the UK ([32]), family life with her

sister and nephew ([33] and [34]), situation in Zambia ([35]) and medical condition including availability of treatment ([36] to [41]). Those findings therefore have to be read into the Judge's conclusions at [42] of the Decision.

24. I do not at this stage deal with family life (which is the subject of the Appellant's ground four) nor with medical condition (which is the subject of the Appellant's grounds five to six). It is appropriate first to deal with the two shorter points regarding the obstacles on return.
25. Dealing first with length of residence, it is said that the Judge has miscalculated the Appellant's age and that this impacts on her assessment of the obstacles on return. The Judge sets out the background chronology in this regard at [2] of the Decision. The Appellant was born in 1990 (not 1993 as stated in the grounds). The chronology within her own bundle ([AB/1] states that she returned to the UK on 20 January 2009. She was then aged eighteen. It is correctly recorded at [42] of the Decision that the Appellant left home at that age. The only error therefore is a slip between the statement that she left home twenty-one years ago rather than eleven years ago. That error operates in the Appellant's favour in two regards. First, for the purposes of her life in the UK, the Judge has assumed that the Appellant has been in the UK for longer. Second, and more importantly, for the purposes of integration in Zambia, the Judge has assumed that the Appellant has been away from her home country for longer and would be more likely to have lost her ability to integrate rather than less so. The point made that the Appellant has lived as an independent adult since coming to the UK is no less relevant to the assessment and is not impacted by the error in calculation (see also what is said at [8] of the Decision regarding the Appellant's background).
26. The point made by the Judge is that the Appellant has lived independently in the UK and therefore could do so in Zambia (see in that regard [32] of the Decision). That brings me on to ground three, and the ability of the Appellant to rely on her qualifications obtained in the UK and to secure employment in Zambia. There are two answers to the Appellant's grounds on this point.
27. First, insofar as it is the Appellant who asserts that she would be unable to rely on those qualifications and obtain employment in the legal sector in Zambia, it is for her to provide evidence that this is so. In that regard, the evidence which the Judge did have about the Appellant's employment prospects is set out at [35] of the Decision as follows:

"According to the World bank the unemployment rate in Zambia in 2019 was just above 7%. The expert Mr Burchill is very negative about the Appellant's prospects of employment but his view is not backed up by information about professionals living in Lusaka and he does not take into account the Appellant's qualifications and experience when assessing her ability to secure employment. The Appellant has several years experience as a paralegal and is will [sic] present as an able and capable professional in Zambia albeit with British legal qualifications. She presented no evidence as to what she would have to do to requalify in Zambia. She presented no evidence as to enquiries she had made of any potential employers in Zambia."

28. Second, what is there said has to be set in context. The Judge is, as Judge Jackson remarked, not saying that the Appellant will necessarily be able to practise in Zambia without some form of requalification. The point made however and the reason for giving less weight to Mr Burchill's report in that regard is that the qualifications gained will provide evidence to prospective employers of her professional background and education. Those are factors not considered by Mr Burchill. Similarly, therefore, when it comes to paragraph [42] and the assessment of employment opportunities as a potential obstacle, the Judge does not say that she would be able to practise as a lawyer relying solely on the qualifications obtained in the UK. She makes the point that those qualifications would not be "without value in Zambia". There is no flaw in the Judge's reasoning in that regard.
29. For those reasons, I emphasise, leaving aside the Appellant's medical condition which is considered by the Judge immediately prior to the paragraph regarding obstacles to integration in Zambia (which therefore needs to be looked at in the context of the earlier consideration of the Appellant's medical condition), the Judge has not erred either in failing to consider the Appellant's case under Paragraph 276ADE(1)(vi) nor in her findings or reasoning.

Ground Four

30. This ground criticises the Judge's approach to the Appellant's family life. Although not directly relevant to the obstacles to integration, the Judge does in this section deal with the Appellant's estrangement from her parents. The Judge's findings in relation to the Appellant's family circumstances are at [33] and [34] of the Decision as follows:

"33. I find that the Appellant shares family life with her sister and her nephew because of their current circumstances and their family history. They grew up as two sisters in an abusive household their father being a violent drug addict. They grew close as a result and have relied heavily on each other emotionally for many years as children and as adults. In addition the Appellant's sister and her sister's son have become financially dependent to some extent on the Appellant as they share accommodation and outgoings. They share a closeness with their maternal aunt, in particular since they became estranged from their parents having left their parents' abusive home and moved to the UK. The Appellant has no contact with either of her parents. [A] is her only sibling. She has never had a good relationship with her father although it would appear that her sister [A]'s relationship with him is even worse. I find that she cannot rely on her parents for any support.

34. I find that her sister [A] and her aunt [S] will continue to be a source of psychological and emotional support for her were she to relocate to Zambia. I accept that they will be unable to supply monies on a regular basis for her maintenance due to their own outgoings and responsibilities."

31. I have already made the point at [26] above, that the Judge has found the Appellant to be independent and therefore to be able to look after herself on return to Zambia. The Judge's findings in that regard are at [32] of the Decision as follows:

“The Appellant is a well-educated lawyer. She is a capable young woman of Zambian nationality who has entered the UK lawfully but then overstayed and gone on to study and work in the UK without permission. She has secured stable professional employment and is self-supporting. She speaks English as her primary language”.

32. Paragraphs [32] to [34] need to be taken into account when one comes to the Judge’s consideration of the Appellant’s family life at [46] of the Decision which is the paragraph criticised in the Appellant’s grounds. That reads as follows:

“It was argued on her behalf that she enjoys family life with her sister, nephew, aunt and her aunt’s daughter in the UK. They are certainly close, and I accept that there is family life between them. But it is in the nature of extended family relationships that the family life between individuals will be enjoyed in different ways at different times according to the circumstances of the individuals involved which invariably shift over time. I find that the family relationships in this case will continue if the Appellant is living in Zambia. The Appellant will maintain her relationships with her sister, aunt and their children by written, Skype, social media and telephone communication.”

33. It is said in the grounds that none of the witnesses gave evidence about their “disposition or ability to maintain their relationships in the manner described”. It is therefore said that this is impermissible speculation. I return to the point however that it is for the Appellant to show the extent of her family life and the level to which removal would interfere. As UTJ Jackson remarked in her permission grant, “[t]he fourth ground of appeal is not supported by any evidence that the family would be unable to keep in touch and there is nothing to suggest that they would not be able to keep in touch to maintain their relationship by some means.”

34. The evidence given by the Appellant and her sister (who has “recently” been permitted to remain in the UK) is that they are close, and that the Appellant has a “very strong bond and close relationship” with her nephew. It is said that she is like a second mother to her nephew particularly since there is no paternal support. She “believe[s] that it will be emotionally difficult for [her] nephew to be separated from [her] and [she] from [him]”. That is undoubtedly the case. There is however no independent evidence from, for example, a social worker as to the extent of the impact on the child and the Judge has considered that evidence within her assessment of the child’s best interests at [43] of the Decision.

35. The fact that family life has been found to exist therefore does not mean that the appeal succeeds. It is for the Appellant to demonstrate the strength of that family life and how removal would interfere with it. The Judge is entitled to consider what weight to give the family life, depending on the evidence, and to determine how removal would interfere (particularly if no evidence is given in that regard). As the Judge states, the nature and extent of family life can vary over time. Without wishing to speculate, the Appellant may well wish at some point in the future to move away to found her own family or may find work elsewhere. That is likely to be the position even if she remains in the UK.

36. The point made by the Judge is that context is all when considering the extent of and interference with family life. For that reason, the case relied upon in the grounds, Mansoor v Secretary of State for the Home Department [2011] EWHC 832 (Admin) ("Mansoor"), does not assist. The circumstances of that case are very different as is apparent from [16] of the judgment on which reliance is placed. That paragraph reads as follows:

“Third, the reference to ‘continue to contact and can visit and communicate and maintain family ties’ seems to again have been generic assessment as between husband and wife, husband and minor children, claimant wife and minor children as well as the parents and their older children, who were now over the age of 18 using the ages given at the outset of this judgment. If members of a family enjoy family life in an inter-dependent household of partners and minor and dependent children it is no comfort to say that they can continue to enjoy that family life by telephoning each other, emailing, video conferencing or any of the other forms of electronic technology that may be in existence. Lord Bingham was indicating this in the landmark case of Huang v SSHD [2007] UKHL 11 at paragraph 20, but more recently, and I appreciate not available to the IJ at the time, the Upper Tribunal has made the point in the case of EM (Zimbabwe) [2010] UKUT 98 (IAC). If the IJ thought that there would be no interference with the family life enjoyed between husband and wife and parents and minor children if they could communicate from abroad he was again mistaken.”

37. As that paragraph reveals, the case of Mansoor concerned a family unit involving parents and minor children which is somewhat distinct from the circumstances of this case. In any event, the judgment makes clear that the error was said to be in the finding by the Judge that there would be no interference with that family life even if one of the interdependent members were removed. The Judge in this case does not find that there would be no interference. The “family life interests” are weighted in the balance in the overall proportionality assessment at [47] of the Decision. Further, and in any event, Blake J did not decide that it could never be said that family relationships could be continued remotely. His criticism was of the finding to that effect in the context of the extent of the family life and consideration of that family life by the Judge in that case.

38. For those reasons, I conclude that there is no merit in the Appellant’s fourth ground.

Grounds five and six

39. I turn then to the grounds on which permission was expressly granted and which took up a major part of the submissions at the hearing before me. I take them together as both concern the Appellant’s medical condition. It is however appropriate to start with a point which does not find any mention in the original grounds of challenge to the Decision but is taken only against the refusal of permission to appeal by the First-tier Tribunal. This concerns the appropriate burden and standard of proof.

40. I begin with the way in which this issue is articulated in the grounds at [14] and [15] as follows:

"14. The test propounded in *AXB v Secretary of State for the Home Department* [2019] UKUT 397 (IAC) is that of 'a real risk'. As was submitted in the Appellant's grounds the Tribunal said:

'We accept that the evidence provided by the appellant does not have to amount to 'clear proof' in terms of the standard which applies: that is due to the speculative nature of what has to be proved and is what justifies the application of the 'real risk' test in cases of this kind.'

15. It follows that in refusing permission the Judge of the First Tier Tribunal was wrong in law to say that the Tribunal had not erred in law in its determination of the Appellant's appeal in respect of Article 3 because:

'it was for the appellant to establish (on balance of probabilities) that such treatment would not be available'."

41. The first and most obvious point to make in this regard is that I am not here concerned with the reasons of the First-tier Tribunal when refusing permission to appeal but the approach of the Judge in the Decision. Mr Nicholson was however able to show me by reference to the Decision that the Judge is said to have imposed the burden on the Appellant to a balance of probabilities standard. The following are the relevant references:

"6. The Appellant bears the burden of proof and the standard is the balance of probabilities."

"26. The Appellant appeals on Articles 3 and 8 human rights grounds. The Appellant bears the burden of proof and the standard is the balance of probabilities. I am considering the circumstances up to the date of the hearing."

42. The first of those references is a general self-direction. The second is that relied upon in the main by Mr Nicholson, in particular so far as Article 3 ECHR is concerned.

43. I turn then to what is said in *AXB (Art 3 health: obligations; suicide) Jamaica* [2019] UKUT 397 (IAC) ("*AXB*") about the burden and standard in the headnote as follows:

"3. The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of Article 3 ECHR to the standard and threshold which apply. **If the appellant provides evidence which is capable of proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant's evidence or dispelling doubts arising from that evidence.** Depending on the particular circumstances of the case, such evidence might include general evidence, specific evidence from the Receiving State following enquiries made or assurances from the Receiving State concerning the treatment of the appellant following return."

[my emphasis]

44. Although that guidance was given in the context of a protection claim to which the test of "real risk" invariably applies, I accept that the same test is adopted in *AXB* in relation to what would occur on return in a health case. That is because, as the Tribunal observed in *AXB* in the citation in the grounds (set out at [40] above) what will occur in the future is necessarily speculative.

45. The Supreme Court considered what was said in AXB in the case of AM (Zimbabwe) v Secretary of State for the Home Department [2020] EWCA Civ 64 ("AM (Zimbabwe)") as follows:

"32. The Grand Chamber's pronouncements in the *Paposhvili* case about the procedural requirements of article 3, summarised in para 23 above, can on no view be regarded as mere clarification of what the court had previously said; and we may expect that, when it gives judgment in the *Savran* case, the Grand Chamber will shed light on the extent of the requirements. Yet observations on them may even now be made with reasonable confidence. The basic principle is that, if you allege a breach of your rights, it is for you to establish it. But 'Convention proceedings do not in all cases lend themselves to a rigorous application of [that] principle ...': *DH v Czech Republic* (2008) 47 EHRR 3, para 179. It is clear that, in application to claims under article 3 to resist return by reference to ill-health, the Grand Chamber has indeed modified that principle. **The threshold, set out in para 23(a) above, is for the applicant to adduce evidence 'capable of demonstrating that there are substantial grounds for believing' that article 3 would be violated. It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish 'substantial grounds' to have to proceed to consider whether nevertheless it is 'capable of demonstrating' them. But, irrespective of the perhaps unnecessary complexity of the test, let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence adduced by the applicant is to demonstrate 'substantial' grounds for believing that it is a 'very exceptional' case because of a 'real' risk of subjection to 'inhuman' treatment.** All three parties accept that Sales LJ was correct, in para 16, to describe the threshold as an obligation on an applicant to raise a 'prima facie case' of potential infringement of article 3. This means a case which, if not challenged or countered, would establish the infringement: see para 112 of a useful analysis in the Determination of the President of the Upper Tribunal and two of its senior judges in *AXB v Secretary of State for the Home Department* [2019] UKUT 397 (IAC). Indeed, as the tribunal proceeded to explain in para 123, the arrangements in the UK are such that the decisions whether the applicant has adduced evidence to the requisite standard and, if so, whether it has been successfully countered fall to be taken initially by the Secretary of State and, in the event of an appeal, again by the First-tier Tribunal."

[my emphasis]

46. Whilst I accept therefore that the Appellant has only to show there is a "real risk" that the Appellant will face a situation which breaches her Article 3 ECHR rights, it is evident from this passage that it is for the Appellant to establish her case that the relevant (high) Article 3 threshold is reached and to do so based on evidence which demonstrates that there are substantial grounds for believing that the real risk will eventuate. There can therefore be no doubt where at least the initial burden lies and the threshold which applies to what has to be demonstrated. Although the Court in AM (Zimbabwe) concluded that the ECtHR had intentionally modified the threshold which applies in an Article 3 health case in Paposhvili, it remains a high threshold. As the Supreme Court noted at [31] of the judgment, "the general context is inhuman treatment; and the particular context is that the alternative to 'a significant reduction in life expectancy' is 'a serious, rapid and irreversible decline in.. health resulting in intense suffering'".

47. Turning back to the Decision itself, I accept that if the standard which the Judge required to be satisfied in relation to what would occur on return was one of a balance of probabilities as suggested in particular by what is said at [26] of the Decision then that would be an error, although might not, depending on the remainder of the reasoning, be a material one. I also observe that it may also be a somewhat simplistic analysis to suggest that the burden in relation to Article 8 ECHR falls on an appellant to a balance of probabilities standard. As I have reiterated a number of times above, it is for an appellant to demonstrate by evidence the strength of the family and private life with which removal will interfere and how removal will interfere. The establishing of the facts in that regard is based on a likelihood of what will happen. However, as the Judge recognised in this case at [27], thereafter, it is for the Tribunal to assess the circumstances. It is for the Respondent to provide justification of the interference in terms of the necessity and proportionality of removal action (in other words to justify her actions in the public interest).
48. As Mr Nicholson accepted, the Judge did not have the benefit of what was said by the Supreme Court in AM (Zimbabwe) at the time of the hearing or the Decision. Although the decision in AXB had been reported by the time of the hearing and Decision, there is no reference to it in the Appellant's outline submissions. Reliance is placed on the Court of Appeal's judgment in AM (Zimbabwe). It is no doubt for that reason that the Judge has set out parts of that judgment in extenso at [25] of the Decision. Her citation includes the following which she has underlined no doubt for emphasis:
- “[38] So far as the ECtHR and the Convention are concerned, the protection of Article 3 against removal in medical cases is now not confined to deathbed cases where death is already imminent when the applicant is in the removing country. It extends to **cases where ‘substantial grounds have been shown for believing that [the applicant], 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 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’ (para. [183]). This means cases **where the applicant faces a real risk of rapidly experiencing intense suffering (i.e. to the Article 3 standard)** in the receiving state because of their illness and the non-availability there of treatment which is available to them in the removing state or faces a real risk of death within a short time in the receiving state for the same reason. In other words, the boundary of Article 3 protection has been shifted from being defined by imminence of death in the removing state (even with the treatment available there) to being defined by the imminence (i.e. likely ‘rapid’ experience) of intense suffering or death in the receiving state, which may only occur because of the non-availability in that state of the treatment which had previously been available in the removing state.”
- [my emphasis]
49. I observe that, although the Supreme Court in AM (Zimbabwe) concluded at [30] of the judgment that the Court of Appeal was wrong in its comments about the test in terms of imminence of death, there is no criticism by the Supreme Court of the remainder of that paragraph in particular in relation to the procedural, evidential requirement.

50. On the one hand, therefore, the Judge has made a bare assertion that the Appellant bears a burden of establishing a breach of Article 3 ECHR to the balance of probabilities standard and on the other has directed herself that the requirement is to provide evidence which demonstrates that there are substantial grounds for believing that there is a real risk of an Article 3 breach.
51. Although I accept that this is not clear from the Decision itself, it may be that the distinction which the Judge had in mind is between the establishing of the facts underlying the Appellant's case and the consideration thereafter of the consequences of the factual findings. That would not be inconsistent with the position in protection cases where, for example, an appellant may need to establish his or her nationality, ethnic group and past involvement with various groups. I accept that, in a protection claim, even past facts do not necessarily have to be proved to a standard of likelihood (see for example what is said in Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 at [98] to [102] of the judgment). However, that is largely due to the difficulty of proving past events in such cases and that much of the evidence will be the appellant's testimony and therefore a Judge's assessment will turn on the credibility of an appellant. By contrast, a health case, certainly in terms of the past and current position is likely to consist of evidence which is far more likely to be capable of proof to the civil standard. Taking the instant case as an example, the Appellant has put forward evidence from those treating her in the UK as to the nature and extent of her condition and the treatment she is receiving. She has put forward evidence which she says demonstrates what is the availability currently of that treatment in Zambia. That evidence then is more likely to be capable of proving past and current facts to the civil standard.
52. I do not need to decide whether this is a distinction which the Judge intended to draw, however, because, having read the Decision carefully, I am satisfied that, even if the Judge has erred in her assertion at [6] and [26] of the Decision, she has not applied a standard of balance of probabilities when assessing what will occur in the future. Her conclusions in relation to what will occur on return to Zambia are set out at [39] and [40] of the Decision as follows:

"39. **I do not accept that there is sufficient evidence to find that** provided the Appellant uses a registered medical practitioner for her ongoing treatment, **she will be at risk of not being able to access suitable ARVs or of being provided with out of date and ineffective drugs so as to diminish the effectiveness of her treatment.** The Appellant's situation falls well short of the high threshold for Article 3 breach. **I am not satisfied that if removed to Zambia she 'would face a real risk** on account of the absence of appropriate treatment in the receiving country or 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'.

40. **I am not satisfied on the evidence as it stands that she 'faces a real risk** of rapidly experiencing intense suffering (i.e. to the Article 3 standard) in the receiving state because of their illness and the non-availability there of treatment which is available to them in the removing state or faces a real risk of death within a short time in the receiving state for the same reason."

In other words, the Judge has reached her conclusion based on an assessment whether the evidence discloses a real risk.

53. Whilst I would accept that the reference to sufficiency of evidence at [39] of the Decision might beg the question of the standard which has been applied to assess whether it is sufficient, I am unable to read what is said in the remainder of that paragraph and at [40] of the Decision as indicating that the Judge adopted the wrong standard. She has clearly directed herself to the question whether the evidence shows that there will be a real risk of treatment breaching Article 3 ECHR. There is no reference to probability or even likelihood as to what will occur on return. She has not required the Appellant to show that it is more likely than not that what she says will happen will in fact occur. In the end, the Judge's conclusion turns on the absence of evidence that the requisite (high) Article 3 threshold is reached.
54. Before turning to the substance of the evidence, it is necessary to say something about [25] of the grounds regarding the burden of proof applying the guidance in AXB. I have already set out at [43] above the headnote in relation to the way in which the burden is to be met. I have also set out at [45] above, the paragraph of the judgment in AM (Zimbabwe) expanding upon what is there said and citing that guidance with approval.
55. As those paragraphs now make clear, it is for the Appellant to establish the "real risk" that she meets the very high threshold in Article 3 ECHR (described by the Supreme Court as a threshold which is a "not undemanding" one to cross). It is only if her evidence establishes that the threshold is met that the burden passes to the Respondent to dispel the "doubts arising from that evidence". In other words, whilst the standard of proof which the Appellant has to meet to show what will occur on return is a low one (and lower than balance of probabilities) the threshold of the effect of removal which the evidence has to demonstrate to be met is a high one. It is not entirely clear to me that this is understood in what is said at [25] of the grounds.
56. Having set out my view about the burden and standard of proof and the Article 3 threshold which applies and the way the Judge deals with that in the Decision (which I have concluded is not erroneous in law), I turn to the Judge's consideration of the evidence which the Appellant provided.
57. I begin with the evidence of Dr Madge, the Appellant's consultant. She is an Associate Specialist in the Department of Infection and Immunity at the Royal Free Hospital, London. She has written a number of letters. The most recent is dated 10 July 2019 which appears at [AB/42] and reads as follows (so far as relevant):

"..[The Appellant] has been seen here since 2012. She was diagnosed with TB in February 2012 and subsequently found to be HIV positive. At that time, she had advanced HIV disease with a low CD4 count (90 cells/mm³) and a high viral load (over half a million copies.mL). She has been on antiviral therapy since June 2012. She remains on antiviral therapy and is currently on Rilpivirine 25mg daily and Kivexa 1 tablet daily. Her most

recent viral load is undetectable with a CD4 count of 429 cells/mm³. She is seen regularly in this service for monitoring and blood tests relating to her HIV disease.

In the past she has had some intolerability of previous antiviral regimes.

At the current time, she is not awaiting any other referrals in other departments here.

I am not sure whether her current, exact, regime of Rilpivirine and Kivexa would be available in Zambia. She has failed due to intolerability on previous regimes which might be available and whilst I know HIV therapy is available in Zambia, the range of antivirals is less and the range of monitoring tests, too, is less than in this country..."

58. The Judge faithfully recorded that evidence at [16] of the Decision and also noted at [13] of the Decision that the Appellant has "reacted badly to certain ARV combinations in the past".
59. Dr Madge's evidence then is that the Appellant's condition is well controlled on two types of medication with regular blood tests and monitoring (although it is not said in the letter how often she is monitored). As will be noted from the foregoing, Dr Madge does not express any firm opinion about the availability of the Appellant's medication and routine monitoring which exists in Zambia. She merely records that "she is not sure" that the exact medication and forms of monitoring exist there.
60. In terms of what would occur on return to Zambia, the Appellant relied on a report of John Birchall. He is a Development Economist who has lived and worked in Zambia. His report dated 8 November 2019 appears at [AB/277-295]. He does not profess himself to have any medical expertise or involvement in medical services in that country. Instead, he has relied on "several professional contacts working in the country", "especially those working in the medical profession". It is not clear when he last lived in Zambia. He says that he has "a range of contacts who live and work in Zambia".
61. The relevant section of Mr Birchall's report reads as follows:
- "To make certain of my personal interpretation of the availability of the correct range of medicines prescribed to [OLK] whilst resident in the United Kingdom, I asked the following for their opinions. I used the latest recommendations from her medical team.
- Those I selected for assistance were:
- Sara Longwe - the leading Equality campaigner and proponent for comprehensive HIV/Aids treatment for all, regardless of income
- Felix Masiye - the Chief Executive of the prominent HIV/Aids NGO, which offers assistance to HIV/Aids sufferers.
- A doctor at the University Hospital, Lusaka - who wished to remain anonymous.
- I noted some differences in opinion. Sara felt that even at the University Hospital, [OLK] would struggle to receive continuous treatment and the correct dosage. She noted periods of acute shortages and some evidence of fake drugs and other supplies being out of date. The doctor did not deny shortages, especially when foreign currency was in short supply. He was proud of how his team coped against what we agreed to be 'considerable challenges'.
- Felix was of the opinion that supplies were regular, free to someone who registers and provides adequate information of their requirements and that such treatment would be free of charge. In fairness this is what appears on the official website of the Ministry of Health.

Author's Comments

I felt it best to investigate via an independent party, to whom I gave no information as to specific needs of [OLK], the availability of medicines required by her. She too is a medical practitioner and someone I have worked with on development programmes involving girls and female hygiene. She is a young Zambian, proud of her country and decorated at 'international' level for her work with young females.

She favoured more the interpretation of Sara and the doctor. In theory all medicines noted are available. But supplies can be erratic and sometimes out of date stocks are known to be fed into the conventional supply. I would therefore suggest to the Court that [OLK] cannot be guaranteed an adequate supply of ALL the drugs she needs.

I would be concerned for [OLK] in two ways. One is the actual availability of the specific drugs she needs and the other would be the regularity of supply. Little, if any, credit lines exist for HIV drugs and as many come through South Africa the recipient institution has to be able to pay in foreign currency. I would also like to inform the Court of the problems associated with fake drugs, which can be considerable, especially if the route into Zambia involves Zimbabwe - which is now entering yet another period of hyper inflation and the firing of doctors from the public sector. There is a distinct chance that out of date drugs will move within the region and so will fakes."

62. Before moving on to the Judge's consideration of this evidence, I make the following observations of my own. First, the final paragraph of that section appears to be comment by Mr Birchall himself. It is unsourced. As I have pointed out, he is a Development Economist and not a medical professional. Whilst he may have personal knowledge of Zambia's economy which might include how the country procures drugs, much of what is there said appears speculative. Although he refers earlier in the report to drugs having to be imported and his "own knowledge of the Zambian health service", he makes no mention from where that knowledge derives nor from when. Similarly, his comment about "experience of low level of supplies, erratic supplies, poor quality of supplies" contains no specific information about from when and where his own experience arises nor whether the medications of which he is there speaking are those to treat HIV/Aids and/or the specific medication which the Appellant requires.
63. Second, it is unclear why Mr Birchall took it upon himself to ask another individual about the comments he had received from the three identified sources. That person is not named. It is not said that she has any expertise in relation to HIV/Aids treatment in Zambia. Importantly, Mr Birchall did not inform this person of the Appellant's medical needs. The comments he received from that source appear largely worthless.
64. Third, the issue is not whether the Appellant can be guaranteed a steady supply of drugs but whether the supply of those drugs would be interrupted to a level that there would be a real risk that her condition would deteriorate to the threshold of the test set out in AM (Zimbabwe).
65. Fourth, it is said that the doctor from the University Hospital in Lusaka (who would appear to be the person most directly involved in the treatment of HIV/Aids sufferers) "did not deny shortages". However, it is not said that he identified these shortages as of particular concern and said that his team "coped".

66. Fifth, insofar as there was a clear difference of opinion between Sara and Felix, it is to be noted that Sara is a campaigner whereas Felix is the Chief Executive of a prominent and relevant NGO. As such, it is likely that his opinion would carry more weight. As Mr Birchall fairly accepts, the official website of the Ministry of Health in Zambia indicates that there are regular supplies of medication which is provided free of charge.

67. I turn then to how the Judge dealt with this evidence. She records the evidence in this regard at [17] to [22] of the Decision as follows:

“17. In the country expert report John Birchall states that he spoke to an independent medical practitioner in Zambia about the availability of medicines required by the Appellant. He says ‘In theory all medicines noted are available. But supplies are erratic and sometimes out of date stocks are known to be fed into the conventional supply’. He suggests that the Appellant cannot be guaranteed an adequate supply of all the drugs that she needs. He is concerned in two ways. Firstly the availability and secondly the regularity of supply. He said that given the presence of fake drugs in the market (in particular coming through Zimbabwe where they are entering another period of hyperinflation), there is a distinct chance that out of date drugs will move within the region and so will fakes.

18. Mr Burchill [sic] spoke to a doctor at the University Hospital in Lusaka who did not deny shortages, especially when foreign currency was in short supply.

19. The chief executive of a prominent AIDS NGO which offers assistance to AIDS and HIV sufferers said that supplies were regular, free to someone who registers and provides adequate information of their requirements and such treatment would be free of charge. But the doctor to whom Mr Burchill spoke said that even at the University hospital the Appellant would struggle to receive continuous treatment, noting periods of acute shortages and some evidence of fake drugs and supplies being out of date. Specialist care is only available in Lusaka and even then the care is not consistent and is understaffed. He said that the Appellant would be forced to live in a high-density area of the capital and as a single woman with a serious medical condition he would not advise this. He says that the Appellant would struggle to gain any meaningful employment.

20. The numbers of those suffering with HIV/AIDs has fallen but remains worryingly high at 14.3% of women in Zambia over the age of 15 in 2017. This compares with 8.8% of their male counterparts. In 2018 75% of all people with HIV were on treatment. This rose to 89% in 2019, 75% of whom were virally suppressed.

21. Mr Burchill [sic] concludes that although Zambia is a peaceful country its finances have suffered considerable decline in the last decade and that has had a negative impact on the quality of the service offered and the maintenance of supplies. He says that as someone returning after a considerable period of time abroad, with virtually no other family or other support, she would be vulnerable to exploitation. He believes she would have difficulty maintaining herself in such a society. She would suffer the additional difficulty of social stigma.

22. Mr Burchill [sic] is a development economist with considerable knowledge of and expertise in Zambian affairs and he has used suitable qualified contacts in Zambia to gather and verify information relevant to the Appellant’s case. I consider him to be a suitably qualified and experienced country expert on Zambia and attach weight to his report and included in my holistic assessment.”

68. The Judge reaches her findings about the medical evidence generally and Mr Birchall’s evidence specifically at [36] and following (leading to the conclusions which I have already set out at [39] and [40] of the Decision). This passage reads as follows:

“36. Mr Burchill is concerned about [the] whether there would be a steady and reliable supply of suitable antiretrovirals for this Appellant to maintain the stability of her current condition. He made some enquiries of a medical contact but he has not enquired of the health service or of NGO’s including the World health organisation as to whether the Appellant would be able to access supplies of suitable ARVs.

37. I was concerned that he assessed the Appellant’s difficulties on the basis that she would be very ill on arrival or shortly thereafter, unable to work or if able to work then working in a menial job, only able to afford the most basic accommodation in an overcrowded area and be at risk of exploitation as a young, single and vulnerable woman. I find that I have to treat his opinion with some caution because he has not taken account of the Appellant’s education, professional skills and experience and her coping mechanisms acquired through her life experiences since coming to the UK in order to assess whether she will be able to secure employment in Lusaka (where I accept that she will need to live in order to access suitable medical treatment).

38. Her current medical condition is well controlled with ARVs, her viral load is negligible and she is currently well. She will not present as unwell if her condition continues to be well controlled. While the death rate from HIV/AIDs is horrific in Zambia the expert has not sufficiently acknowledged that the percentage of deaths among those suffering from HIV/AIDs in Zambia has fallen markedly over the last few years which is good evidence of successful treatment being available in the country.”

69. At [22] of the grounds, issue is taken with the Judge’s treatment of Dr Madge’s evidence. It is said that “the only evidence as to the availability of the Appellant’s necessary medication came from Dr Madge. There was nothing in the objective evidence compiled by the Appellant’s representatives which indicated otherwise than that her doubts as to the availability of Rilperverine and Kivexa were well founded”. As I have already pointed out, though, Dr Madge did not offer a view about availability of treatment save to say that she was not sure that the medication would be available. She did not say that it would not be nor even that it might not be. She expressed concerns in that regard but that is the highest her evidence can be put.
70. I deal at this point with a discrete point regarding monitoring. It is said in the grounds that Dr Madge was concerned whether monitoring would be available. However, the same answer applies. Dr Madge was not sure that it would be but did not know. Mr Birchall’s report does not deal with this discrete issue. The concerns expressed by those with whom Mr Birchall spoke relate to availability of medication not with availability of monitoring.
71. Turning then to Mr Birchall’s report, the grounds set out extracts from his report and from the Decision. However, all that is said is that Mr Birchall’s report “identified the existence of the risk that the Appellant would not receive the treatment she needed in Zambia”. Mr Nicholson in the course of his submissions accepted that the evidence in this regard was “very well set out” by the Judge at [16] to [19] of the Decision (as set out so far as relevant to Mr Birchall’s report above). He said though that this recital of the evidence could not lead to the conclusion at [39] of the Decision.

72. I disagree. The Judge at [36] of the Decision has pointed out the deficiencies in Mr Birchall's report in relation to availability of medication. As I have already pointed out, more might be said about those deficiencies, but the point made by the Judge that Mr Birchall had not made direct enquiries of the health service or of NGOs including the WHO about accessible supplies of ARVs is a valid one. In fact, Mr Birchall had made some enquiries of a treating doctor and the Chief Executive of one NGO as the Judge recorded. The evidence which they provided as set out in Mr Birchall's report does not assist the Appellant for the reasons I have already given.
73. As the Judge points out at [38] of the Decision, Mr Birchall has also failed sufficiently to acknowledge the progress of Zambia in treating HIV/Aids and reducing deaths (as set out at [20] of the Decision).
74. Finally, as the Judge also found, Mr Birchall failed sufficiently to have regard to what were likely to be the Appellant's circumstances on return, particularly given her professional qualifications and background.
75. Those were all criticisms of Mr Birchall's report that the Judge was entitled to make. She was entitled to reach the conclusion she did about the evidence. Whilst the Appellant might have shown that there were some concerns about the availability of medication from time to time, her evidence did not show sufficiently that there would be a real risk that she would not be able to access the medication she needs in order to keep her condition under control as it is now. As I have already pointed out, the Appellant has to show a real risk that she would suffer very serious impact on her health. As the Supreme Court said in AM (Zimbabwe), the threshold is a not undemanding one.
76. The other criticism made about the Judge's treatment of the Appellant's evidence as to her medical condition is that set out in ground five. In short summary, the Appellant says at [20] of the grounds that "the Judge of the First Tier Tribunal has nowhere in her determination indicated whether the Appellant's right to respect for her physical and moral integrity is violated by the Respondent's decision nor whether if it is the violation is proportionate".
77. I have already dealt with the Judge's findings about very significant obstacles to the Appellant's integration in Zambia leaving out of account the Appellant's medical condition as well as her findings regarding the Appellant's family life. At [47] of the Decision, the Judge says this:

"The decision is in accordance with the law and is, on the facts of this case entirely justified. I accept that the Appellant's HIV+ status and the needs arising from that condition form part of her private life. I find that this educated, intelligent and capable young woman will ensure that she is provided with legitimate medication from a reliable source through a qualified and reputable medic. I am not satisfied that she will be unable to find suitable employment to support herself financially as she has done in the UK for the last 10 years. While unemployment levels are higher than in the UK, this Appellant has the advantage of several years of good qualifications and professional working experience behind her. Even

taking into account the best interests of the children and adding in the weighted private life interests and the family life interests of the Appellant and weighing it against public interest in immigration control, I find that the decision is justified and goes no further than is necessary on the facts of this case to protect the public interest. The decision is proportionate and there is no breach of Article 8 protected rights of any of the individuals named above. I dismiss the appeal on Article 8 grounds.”

78. Whilst I accept that the Judge does not use the words “physical and moral integrity” she has considered this in substance in her finding that the Appellant’s medical condition and “needs arising from that condition” (in other words the treatment she is receiving for it) form part of her private life with which removal will interfere. The Judge has therefore taken into account when balancing interference with the public interest the impact on the Appellant’s private life of the withdrawal of treatment in the UK. This passage follows the Judge’s finding that there is not a real risk that the Appellant will be unable to access treatment to control her condition on return to Zambia. There is no error in the Judge’s assessment in this regard. She has not failed to have regard to the Appellant’s physical and moral integrity.
79. At [12] to [15] of her outline submissions, the Appellant says that the Judge has failed to take into account the Appellant’s medical condition as part of the obstacles to integration and has failed conversely to take into account the Appellant’s other family and private life when considering Article 8 as a whole. Mr Nicholson made reference to what was said by Laws LJ in GS (India) and others v Secretary of State for the Home Department [2015] EWCA Civ 40 that “If the Article 3 claim fails ..., Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm.” The difficulty for the Appellant in this regard is that the Judge, at [47] of the Decision, has clearly taken into account all the factors relating to the Appellant’s family and private life when balancing the interference against the public interest. As I have already pointed out, that includes the impact on the Appellant’s private life of the withdrawal of her treatment in the UK.
80. As to the consideration of the Appellant’s medical condition as part of the very significant obstacles to integration, it is again necessary to look at the structure of the Decision. The paragraph which I cited at [20] above regarding the obstacles to integration follows immediately after the Judge’s assessment of the Appellant’s medical case and the consideration of what will occur on return. That section includes consideration of the likely employment situation. What is said in the first sentence of [42] of the Decision about the existence of obstacles to integration has to be read in conjunction with the section of the Decision preceding that paragraph. The Judge was clearly aware that the Appellant would face some obstacles to integration based on her medical condition but concluded that those were not sufficient to reach the threshold.
81. For the foregoing reasons, I am satisfied that grounds five and six do not disclose errors of law in the Decision. The Judge has applied the correct burden and standard of proof when assessing what will occur on return to Zambia as regards the Appellant’s medical treatment. The Appellant’s medical condition and treatment

therefor are considered both under Article 3 and Article 8. Those factors are considered alongside the other factors forming part of the Appellant's private and family life when assessing interference. The Judge was entitled to reach the conclusions she did that the evidence did not sufficiently show that there would be a real risk of impact reaching the threshold of Article 3 ECHR and that, even taken with all factors relating to the Appellant's family and private life, when interference with that family and private life is balanced against the public interest, removal would not breach Article 8 ECHR.

CONCLUSION

82. For the foregoing reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision with the result that the Appellant's appeal remains dismissed.

DECISION

The Decision of First-tier Tribunal Judge Ford promulgated on 6 March 2020 does not involve the making of an error on a point of law. I therefore uphold the Decision.

Signed: *L K Smith*

Upper Tribunal Judge Smith

Dated: 26 April 2021