



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01604/2017

THE IMMIGRATION ACTS

Heard at Field House
On 9th January 2019

Decision & Reasons Promulgated
On 29th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KYEI [O]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr K Siaw, KPP Oplex Solicitors

DECISION AND REASONS

1. Although the Appellant is the Secretary of State I refer to the parties as they were in the First-tier Tribunal.
2. In a decision promulgated on 6th November 2018 I decided that there was an error of law in the decision of First-tier Tribunal Judge McIntosh who allowed the Appellant's appeal in a decision promulgated on 25th May 2018 and I set that decision aside. My decision is appended hereto. There was a resumed hearing on 9th January 2019 at which I heard oral evidence from the Appellant and submissions

from Ms Everett and Mr Siaw with a view to re-making the decision. I reserved my decision which I now give with reasons.

3. At the hearing the Appellant confirmed the contents of his second witness statement dated 7th January 2019. He was not subject to cross-examination. I asked him a number of questions and he said that he is currently paying for the medical treatment he receives in the UK. Since 2010 he has been paying £100 per month to the international patients' department at King's College Hospital. He produced a number of receipts in relation to these payments. He said that he received this money from his mother who is in the UK. He said that he lives with his mother and his younger sister. He said that his mother works as a care assistant and supports him financially. He said that his younger brother and his father live in Ghana.
4. I heard submissions from Ms Everett and Mr Siaw. In her submissions Ms Everett relied on the reasons for refusal letter of 16th January 2017. She submitted that the Appellant has not demonstrated that there would be very significant obstacles to his reintegration in Ghana under paragraph 276ADE(1)(vi). She submitted that he has family members there, he spent his formative years there. She submitted that the Appellant has been to Ghana and that his medical condition would not have an impact on his integration there. In relation to the Article 3 claim, Ms Everett submitted that the medical evidence provided does not meet the Article 3 threshold. In these circumstances she contended that the medical evidence could not meet the Article 8 threshold either. She submitted that the recent case law suggests that the decision in the case of **Paposhvili v Belgium** [2017] Imm AR 867 has a mitigating effect on the Article 3 test. However, she submitted that in this case the medical evidence does not suggest that the Appellant meets the test set out in **Paposhvili** of demonstrating that there would be a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy as set out in **Paposhvili**. She accepted that the evidence suggests that treatment is probably not available to the Appellant in Ghana and she accepted that the evidence suggests that those with similar health issues have had to obtain treatment elsewhere. However, she submitted that there is support and treatment there and it has not been shown on the evidence that the Appellant would suffer a decline as set out in the test. She accepted that the Appellant would like to stay in the UK for treatment but contended that he does not meet the Rules or Article 3. In relation to Article 8 she accepted that the Appellant is having treatment in the UK and that he is paying for that treatment but contended that his private and family life was in Ghana and that he could search for treatment elsewhere or apply to re-enter the UK to seek treatment here. She accepted that the Appellant has been paying for treatment in the UK.
5. In his submissions Mr Siaw relied on his skeleton argument. He contended that in the reasons for refusal letter the Respondent was mistaken in the assessment of the Appellant's medical condition as the information at page 4 of the reasons for refusal letter refers to cancer, whereas this Appellant has a tumour. He accepted that the decision made by the First-tier Tribunal in 2014 was based on different criteria but highlighted that that Tribunal had accepted that there was no treatment in Ghana for

the Appellant. Mr Siaw referred to page 9 of the Appellant's bundle which highlights that there is a facility in India where someone with a similar condition to the Appellant had to seek treatment. He submitted that there is no treatment in Ghana. In his submission the Appellant would run the risk of losing his life on return to Ghana. He relied on page 15 of the Appellant's bundle which contains an article setting out details of a woman with a similar condition who lost her life and submitted therefore that it has been established that treatment is not available in Ghana. In relation to Article 3 he contended that a shift in the threshold as a result of **Paposhvili** means that Article 3 covers a case where a patient runs a real risk of a significant reduction in their health. He referred to the medical evidence, in particular the letter from King's College at page 1 of the Appellant's bundle which states that the Appellant's case is due to be reviewed and it is anticipated that further treatment would be required. He referred to the document at page 3 of the Appellant's bundle which states that the Appellant has "*quite significant residual meningioma which continues to creep and grow*". It states that the options for further treatment are limited but that there is one option which is "*of somewhat experimental nature*", this involves chemotherapy and is a treatment which is being pioneered for a select group of patients. Mr Siaw submitted that the Appellant has been prescribed medication including painkillers and that if he were no longer taking those painkillers he would suffer intense pain. In Mr Siaw's submission the Article 3 test has been met by the medical evidence provided. He submitted that there is no facility in Ghana, there is a lack of treatment in Ghana and patients with similar issues have been referred outside of the country. In relation to paragraph 276ADE he pointed out that the Appellant has been in the UK for eight years and accepted that he cannot meet the criteria of the Immigration Rules as he does not have the required length of residence. In terms of consideration of Article 8 outside the Rules, he submitted that the Appellant would have difficulty settling in Ghana where he would receive no treatment for his medical condition.

My Findings

6. In reaching my findings I note that First-tier Tribunal Judge Cockrill considered the Appellant's appeal against a previous decision on 22nd July 2014. However, that appeal addressed the requirements of paragraph 54 of the Immigration Rules and addressed different questions from those to be addressed in this appeal.
7. In considering this appeal I start with the provisions of the Immigration Rules. Although Mr Siaw conceded that the Appellant could not meet paragraph 276ADE(1) and failed to make any submissions in relation to 276ADE(1)(vi) I consider that provision nonetheless as it does not, contrary to Mr Siaw's submission, have a residence requirement.
8. Paragraph 276ADE(1)(vi) requires an Appellant to show that they are aged 18 or above and that there would be "very significant obstacles" to their integration into the country to which they would have to go if required to leave the UK.

9. In considering whether there are very significant obstacles to the Appellant's integration in Ghana, I take into account that the Appellant resided in Ghana until he entered the UK in December 2010 as a visitor when he was 22 years old. He therefore spent the majority of his life in Ghana. The Appellant's father and younger brother remain in Ghana. No evidence has been put forward as to any difficulties integrating there upon his return in terms of culture, language or other related matters. I take into account the evidence in relation to the Appellant's medical condition. It was accepted by Ms Everett that the evidence shows that there is no specific medical treatment available in Ghana for the Appellant's condition. I take into account the letter from Dr George Kojo Wepeba, consultant neurosurgeon at Korle Bu Teaching Hospital in Accra. Dr Wepeba notes that the Appellant has a recurrent atypical meningioma. I note that he stated:

"Challenges for his treatment and follow up routine are quite enormous in our environment. We lack focal radio surgery resources such as the linear accelerator and other adjuvant therapy which he needs. Also the Intensive Care Unit is not readily equipped to take care of his condition. There is a lack of equipments like the Cavitron Ultrasonic Surgical Aspiration (CUSA) as well in our system which he needs. There is also a recurrent pre pontine tumour extension that is challenging for us to treat. In summary, he has a complex ongoing medical needs and our system lacks the resource to cope with that".

It is clear from this that there may not be adequate medical treatment available to the Appellant to deal with his medical condition. I also take into account that the Appellant has lost one eye through this condition. However, there is no specific evidence as to any limitations this damage to his sight would place on his integration in Ghana. Whilst I accept on the basis of the evidence before me that the Appellant is likely to face difficulties upon his return to Ghana, I do not accept that the evidence before me demonstrates that these amount to "very significant obstacles" to his integration in Ghana. In all of the circumstances, in my view the Appellant has not demonstrated that he meets the requirements of paragraph 276ADE(1)(vi).

10. I have considered the medical evidence in the context of Article 3 of the ECHR. Guidance on the decision in Paposhvili was provided by the Court of Appeal in AM (Zimbabwe) v Secretary of State for the Home Department [2018] EWCA Civ 64 where Sales LJ said at paragraph 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."

11. This interpretation of the protection provided by Article 3 against removal in medical cases shows some expansion of the test to cover those who would be exposed to a "serious, rapid and irreversible decline" in his state of health resulting in intense suffering or to a significant reduction in life expectancy.
12. I have considered the medical evidence in the context of this test. In the letter from Mr Nick Thomas, Consultant Neurosurgeon at King's College Hospital, dated 5th November 2018, the background to the surgery performed in 2011 is set out and radiotherapy carried out in 2012 which has "*debulked but not completely removed the tumour*". It stated that since 2012 the Appellant's condition has been followed up with regular imaging and "*there remains an extensive skull base meningioma*". It states that this is a grade 2 tumour which means that it is atypical in its growth pattern which may mean that its growth is more rapid. It states that he is under regular review from ophthalmologists and that he appears to have satisfactory vision at the present time. He is reviewed in the neurology clinic for his known epilepsy. The report states that at his last review, along with recent imaging, showed that the tumour had slightly increased in size comparing imaging from 2016 with that of October 2017 and that since that time the appearances have remained stable. It states that it is anticipated that further treatment will be required at some time but it is not required presently and that further treatment might be in the form of additional surgery or a form of radiotherapy. It states that the tumour the Appellant has is complex requiring a sizeable multidisciplinary team of skull base surgeons and radiotherapists as well as ophthalmology, neuro-radiology, clinical nurse specialists and endocrinologists.
13. The letter from Dr Omar Al-Salihi, Consultant Clinical Oncologist in the Neuro/Oncology clinic in Guy's Hospital, dated 26th November 2018, states that the Appellant has quite significant residual meningioma "*which continues to creep and grow*". It goes on to state that unfortunately for the Appellant "*the options of further treatment are limited but we have discussed one option which we are trying with some patients in his situation and which is of somewhat experimental nature*". This is said to be a process involving chemotherapy.
14. There is also a letter dated 19th November 2018 from Hayley Cheetham, skull base clinical nurse specialist at the Department of Neurosurgery at King's College Hospital which states that the plan for the Appellant is for active surveillance, for consideration of off-license use of Gemcitabine for disease management.

15. In my view it is clear from the medical evidence provided that the Appellant has a skull base meningioma. It appears that he is under regular review and that further treatment will be required at some time but is not required presently. Further treatment might involve additional surgery or radiotherapy. In my view this evidence does not demonstrate that if the Appellant were to be returned to Ghana he would face a real risk in the absence of appropriate treatment of being exposed to a “serious, rapid and irreversible decline” in his state of health resulting in intense suffering or to a significant reduction in life expectancy. The evidence provided simply does not show that this would be the case.
16. In these circumstances it has not been demonstrated that removal of the Appellant would breach Article 3 of the ECHR.
17. In relation to Article 8 no submission has been made that the Appellant has established a family life in the UK. Whilst he lives with his mother and sister, no evidence has been put forward that the relationship is one where there are more than the normal emotional ties between an adult and his sibling or parent.
18. I accept, however, as he has been in the UK since 2010, that the Appellant has established a private life in the UK and that his removal would interfere with that private life. I accept that such interference would be sufficient to engage Article 8. Any interference would be in accordance with the law as it would be in accordance with the Immigration Rules as set out above.
19. In considering proportionality I note that there is limited evidence before me as to the nature and extent of any private life developed by the Appellant in the UK. He has been in receipt of medical treatment for which he has been paying. However, there is little evidence over and above the period of time spent in the UK and his assertion that he resides with his mother and sister. I take into account that his medical treatment to date has not incurred any cost to the public purse. I take into account also the fact that the Appellant’s father and brother reside in Ghana and that he would therefore have family support there as he has in the UK. Of significant weight is the fact that the Appellant cannot meet the private life requirements of the Immigration Rules as encapsulated in paragraph 276ADE.
20. In considering the public interest I take account of the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002. The Appellant speaks English. Although he says that his mother pays for his medical treatment there is no evidence that he is financially independent (section 117B (3)). Any private life was developed when his status was precarious (section 117B (5)).
21. I take into account the medical evidence and, whilst I accept that the Appellant has a significant medical condition and has restricted vision as a result of the removal of his eye, I also accept that there is limited medical provision available in Ghana to treat the Appellant.
22. However, in weighing the public interest I find that the decision to refuse the application is proportionate to the Appellant’s right to private life.

Notice of Decision

23. I dismiss the appeal on human rights grounds.

24. No anonymity direction is made.

Signed

Date: 28th January 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed, therefore there can be no fee award.

Signed

Date: 28th January 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

APPENDIX
ERROR OF LAW DECISION



IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01604/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10th October 2018

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KYEI [O]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr K Siaw of KPP Oplex Solicitors

DECISION AND DIRECTIONS

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.

2. The Appellant, a national of Ghana, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 16th January 2017 to refuse his application for indefinite leave to remain in the UK or discretionary leave to receive medical treatment. First-tier Tribunal Judge McIntosh allowed the appeal in a decision promulgated on 25th May 2018. The Secretary of State now appeals against that decision with permission granted by First-tier Tribunal Judge Pickup on 30th August 2018.
3. The background to this appeal is that the Appellant entered the UK on 8th December 2010 as a visitor with a visa valid from 6th December 2010 until 6th June 2011. He made applications for further leave to remain as a visitor for private medical treatment and leave to remain was granted until 24th April 2013. The Appellant submitted an application for a further extension of stay on 3rd April 2013. The Secretary of State refused that application and the Appellant appealed to the First-tier Tribunal. In a decision promulgated on 22nd July 2014 First-tier Tribunal Judge Cockrill allowed the appeal under paragraph 54 of the Immigration Rules on the basis that the Appellant met the requirements of that paragraph. The judge noted that in future a full set of papers should be obtained to show an up-to-date diagnosis and prognosis and a clear description of what the proposed or continuing treatment is so that in any future application the decision maker could know precisely what is involved, that is regarding the frequency of consultations, the likely duration of the treatment and details as to the costs and confirmation that the cost is being met properly.
4. On the basis of that decision the Appellant was granted further leave to remain as a visitor to receive private medical treatment until 6th May 2015. He was subsequently granted further leave to remain in the same category until 22nd March 2016.
5. The Appellant's application for discretionary leave to remain outside the Rules/indefinite leave to remain was made on 17th March 2016. The Secretary of State made a decision on 16th January 2017. The Secretary of State considered the application under paragraph 276ADE (1) (vi) and under Article 3 of the ECHR. In considering paragraph 276ADE (1) (vi) the Secretary of State did not accept that there would be very significant obstacles to the Appellant's integration in Ghana if he were required to leave the UK. In looking at Article 3 the Secretary of State considered the medical evidence and concluded;

“The NHS documents you have provided do not specify that you are unable to travel, or that you are currently receiving urgent treatment. Your condition is not life threatening, and no evidence has been provided to show that undertaking a journey or having a short break in treatment whilst relocating is likely to have a hugely detrimental effect on your condition”.
6. The Secretary of State took into account the fact that treatment may not be free at the point of delivery in Ghana and that he may not be able to afford to pay for treatment there but considered that this did not make his situation exceptional. The Secretary of State considered that suitable medical treatment is available in Ghana and that the Appellant had not produced any evidence that the Appellant would be denied

medical treatment or that he would be unable to travel to obtain such treatment. The Secretary of State considered that the Appellant had not shown that he had a terminal illness or that he would be unable to continue to access treatment in his home country.

7. In her decision the First-tier Tribunal Judge set out the evidence at paragraphs 9 to 15. This includes the Appellant's oral evidence about the history of his condition and ongoing treatment and a letter from Mr Nick Thomas, Consultant Neurosurgeon, dated 8th September 2017. The judge's findings are at paragraphs 23 to 25 of the decision. At paragraph 23 the judge said that she took the previous determination of Immigration Judge Cockrill as the starting point and said "there is no additional evidence from the Secretary of State since that previous decision. In relation to this appeal, the Appellant has produced up-to-date evidence of his ongoing treatment for his very serious condition".
8. The judge said at paragraph 24 that the Appellant suffers from a very serious condition which "without treatment would be life threatening". The judge noted that the Appellant was diagnosed with a malignant meningioma of the brain and remains under the treatment of the neurological team at King's College Hospital. The judge said "it is apparent from the facts that the Appellant does not meet the requirements of paragraph 276ADE of the Immigration Rules".
9. The judge went on to consider Article 3 and quoted from the letter from the Consultant Mr Thomas which stated that the Appellant would be unable to receive appropriate treatment for the tumour in Ghana. The judge also noted that there was the oral evidence from the Appellant that when he travelled to Ghana in 2015 the medication he had been prescribed was not available in Ghana, medication without which his health would deteriorate significantly resulting in his premature death.
10. In conclusion the judge said at paragraph 25;

"I find that there is no evidence that the treatment the Appellant requires to treat his condition is available in Ghana. The evidence from the Appellant and Consultant, Nick Thomas is that the necessary medication is not available in Ghana. In the circumstances in the absence of evidence contrary that which was relied upon before Judge Cockrill I allow this appeal".
11. At paragraph 27 in considering a fee award the judge said "as I have allowed this appeal under the Rules and I have considered whether to make a fee award", the judge found that "there was no change of circumstances since the matter was before First-tier Immigration Judge Cockrill in July 2014 and consider it appropriate therefore to make a fee award in favour of the Appellant".

Grounds of appeal

12. In the grounds the Secretary of State contends that there are two material errors in the decision. It is firstly contended that in allowing the Appellant's appeal under Article 3 the judge made a material misdirection in law by failing to have regard to the relevant authorities of the higher courts, in particular **M v the UK [2008] ECHR**

453 and GS (India) and Others v Secretary of State for the Home Department [2015] EWCA Civ 40. It is further pointed out that the Court of Appeal in **AM (Zimbabwe) v the Secretary of State for the Home Department [2018] EWCA Civ 64**, the Court of Appeal considered the recent ECHR decision in **Paposhvili v Belgium [2017] Imm AR 867** and that even following **Paposhvili** and **AM** the Article 3 threshold had not been lowered to the extent that this case could meet it.

13. In the second ground the Secretary of State contends that the judge gave inadequate reasons for accepting the evidence from the Consultant, Mr Thomas, as to the availability of medication in Ghana.

Error of Law

14. In my view there are a number of clear errors of law in this decision. The first is in the whole approach made by the judge to the decision-making process in this case. At paragraph 23 the judge states that she took the decision of Judge Cockrill as the starting point and went on to say that there was no additional evidence from the Secretary of State since that previous decision.
15. That was an erroneous approach, firstly because the decision made by Judge Cockrill was in the context of an appeal against a decision based on paragraph 54 of the Immigration Rules. Accordingly Judge Cockrill was addressing a completely different question which was whether the Appellant met the requirements of paragraph 54, set out at paragraph 13 of Judge Cockrill's decision. This required an analysis of a number of factors, including the nature of the illness, the duration of the treatment, details of cost of the treatment and details of progress being made. Judge Cockrill allowed the appeal because he was satisfied that the requirements of paragraph 54 were met. In addition, Judge Cockrill attached significant weight to what he considered to be faults in the Secretary of State's decision. Further, Judge Cockrill highlighted that there were inadequacies in the medical evidence which the Appellant would need to address when the case came to be considered again.
16. Judge McIntosh was considering an appeal on a completely different basis, that is on human rights grounds and in particular under paragraph 276ADE(1)(vi) and Article 3. There are very different criteria and factors to be considered in the assessment of these provisions. However Judge McIntosh appeared to wrongly consider that the decision of Judge Cockrill was determinative of some of those issues.
17. At paragraph 25 Judge McIntosh said; "in the circumstances in the absence of evidence contrary that which was relied upon before Judge Cockrill I allow this appeal". Here the judge misstated the burden of proof and the proper approach to the previous judge's decision. In this case the burden of proof was on the Appellant to demonstrate that he met the requirements of paragraph 276ADE (1)(vi) or Article 3 of the ECHR.
18. The second error in the Judge McIntosh's decision relates to her treatment of the evidence. At paragraph 24 the judge said that the Appellant suffers from a very serious condition which "without treatment would be life threatening". Later in

paragraph 24 the judge said that, without medication he requires, “the Appellant’s health would deteriorate significantly resulting in his premature death”. I have looked at the medical evidence before the judge and see nothing to support those conclusions.

19. Further, the judge gave no reasons for the conclusion in paragraph 24 that the Appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules.
20. The judge considered Article 3 of the ECHR with reference to the letter from the Consultant, Nick Thomas, dated 8th September 2017 saying that the Appellant has complex ongoing medical needs relating to his multidisciplinary input into his extensive skull base meningioma and that further treatment for the future is likely. The judge also took into account the Appellant’s evidence that in 2015 the medication he had been prescribed was not available in Ghana. However I see nothing in the evidence before the judge as to the nature or the purpose of this medication and nothing to support the judge’s conclusion that, without this medication, the Appellant’s health would deteriorate significantly, resulting in his premature death.
21. Further the judge said at paragraph 25 that there was no evidence that the treatment the Appellant requires to treat his condition is available in Ghana. The judge misstated the evidence from Mr Thomas, saying “the necessary medication is not available in Ghana”. There is nothing in the evidence before me from Mr Thomas to that effect.
22. In considering Article 3 the judge failed to have regard to the relevant case law. The most recent statement of the law in this regard is by the Court of Appeal in **AM (Zimbabwe)** where the Court of Appeal said that until the Supreme Court rules on the effect of **Paposhvili** the law is as set in **N v the Secretary of State for the Home Department**. At paragraph 38 Sales LJ said;

“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” (paragraph [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”.

23. In this case Judge McIntosh undertook no analysis in accordance with the guidance given in AM or elsewhere.
24. Moreover, the evidence before the judge as to availability of appropriate treatment in Ghana (one line in a letter from the Consultant), without more was insufficient to reach any conclusion that there is no treatment available to the Appellant in Ghana. Further there was insufficient evidence before the judge as to the consequences to the Appellant of there being no treatment or being unable to access any treatment in Ghana. The conclusions of the judge at paragraph 24 in relation to the consequences to the Appellant of being unable to access treatment were speculative and not based on the evidence.
25. In the circumstances I set aside the decision of the First-tier Tribunal on the basis that there are the material errors of law identified above.
26. Although Mr Siaw asked that I consider remitting the appeal to the First-tier Tribunal, I considered that this was not appropriate given that there are no further findings of fact to be made. Remaking the decision in this case is a matter of applying the facts found to the requirements of the Rules and the case law in relation to Article 3. In this case the Appellant has not been deprived of a fair hearing or opportunity to put his case in the First-tier Tribunal and the nature and extent of fact-finding is not such that it is necessary for the decision in the appeal to be remade.
27. In these circumstances I adjourn the appeal for a resumed hearing for submissions to be made with a view to remaking the decision.
28. I give the following directions:
 - (a) The resumed hearing is to be heard on 6th December 2018.
 - (b) All further evidence to be relied upon by either party is to be served on the Tribunal and the other party no later than seven days before the resumed hearing.
 - (c) The Appellant’s representative is to provide a skeleton argument addressing the relevant provisions forming the basis of the appeal.

No anonymity direction is made.

Signed

Date: 1st November 2018

Deputy Upper Tribunal Judge Grimes