IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001091

First-tier Tribunal No:
HU/52840/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 29th of September 2023

Before

THE HON. MRS JUSTICE HILL
UPPER TRIBUNAL JUDGE KEITH

Between

AHIA
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr R Solomon, Counsel, instructed by Jein Solicitors
For the respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 20 July 2023

DECISION AND REASONS

Introduction

1. The appellant is a national of Nigeria, born on 19 March 2007 (and so now aged 16). She appeals the decision of First-tier Tribunal Judge Feeney ("the judge"), dated 13 February 2023, which dismissed her appeal against the

respondent's decision dated 10 June 2021 to refuse her application to remain in the UK. The appellant claims that her removal would breach the UK's obligations under Articles 3 and/or 8 of the European Convention of Human Rights ("the ECHR").

Anonymity

2. The appellant is a child and vulnerable. This appeal involves detailed consideration of her health issues. We remind ourselves that the Presidential Guidance Note No. 2 of 2022: Anonymity Orders and Hearings in Private, paragraph 33 provides that the names of children will not normally be disclosed nor will their school, the names of their teacher or any social worker or health professional with whom they are concerned, unless there are good reasons in the interests of justice to do so. We are satisfied that no such good reasons exist in this case. We therefore maintain the anonymity order made by the judge.

The factual background

3. The appellant has severe sickle cell anaemia, having been diagnosed with the illness when she was 9 months old. In 2014, when she was 7 years old, she suffered a stroke which affected her left hand and leg. Since then, she has had frequent crisis episodes, around every five or six weeks. In November 2019, while the appellant's family was living in Nigeria, her younger brother died from pneumonia, when he was aged 10, brought on by his sickle cell anaemia. The family decided to come to the UK to get away for a while and grieve.

4. On 22 December 2019 the appellant arrived in the UK with her parents, both Nigerian nationals. She was granted leave to stay as a visitor until 21 June 2020. After 2 weeks the appellant's father returned to Nigeria for work reasons. The appellant and her mother stayed in the UK. Once the Covid-19 lockdown was imposed, they self-isolated. The appellant's father returned to the UK in September 2020.

5. While in the UK, the appellant suffered a series of sickle cell crises for which she was treated. The appellant's case before the First-tier Tribunal was that this led her mother to realise that her son had not been properly treated in Nigeria and that his death was preventable, despite him having been treated in the best private hospital in Nigeria.

6. On 30 September 2020 the appellant made a human rights claim by applying for leave to remain in the UK based on her serious health condition. On 10 June 2021 the respondent refused this application. The appellant appealed the refusal on the ground that the decision was unlawful under section 6 of the Human Rights Act 1988, as it was incompatible with her rights under Articles 3 and/or 8.

The First-tier Tribunal hearing and decision

7. The appeal was heard on 7 February 2023. The appellant's parents gave oral evidence at the hearing. By way of a decision dated 13 February 2023 the judge dismissed the appeal.

8. At [11] to [16] of the decision the judge summarised the medical evidence regarding the appellant's condition. This consisted of evidence from (i) Dr M.A. Akinsete, Consultant Paediatric Haematologist and Oncologist at the Lagos University Teaching Hospital; (ii) Dr Subarna Chakravorty, Consultant Paediatric Haematologist at King's College Hospital, London; (iii) Dr Keith Pohl, Consultant Paediatric Neurologist at King's; and (iv) Maria Goridari, Clinical Psychologist at King's.

9. At [17] to [22] the judge set out the key medical evidence regarding treatment in Nigeria. This was derived from (i) evidence from Dr Maiza Mohammed of De New Aiyetoro Medical Centre in Lagos, provided by the appellant; (ii) the Home Office Country Information Note, Nigeria: Medical treatment and healthcare (Version 4.0, December 2021); and (iii) the Home Office Country of Origin Information report dated January 2020.

10. At [24] the judge directed herself to the key authorities, namely AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17; [2020] 2 WLR 1152, Savan v Denmark (application no. 57467/15) and AM (Art 3; health cases) Zimbabwe [2022] UKUT 00131 (IAC); [2022] All ER (D) 114 (Mar). As the headnote to AM [2022] makes clear, the relevant issues are: (1) Has the person ("P") discharged the burden of establishing that he or she is "a seriously ill person"? (2) Has P adduced evidence "capable of demonstrating" that "substantial grounds have been shown for believing" that as "a seriously ill person" he or she "would face a real risk" (i) "on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, (ii) of being exposed (a) to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or (b) to a significant reduction in life expectancy"?

11. At [25], the judge accepted that the appellant is a seriously ill person. This was on the basis that she has had sickle cell disease from the age of 7; suffers from acute crises; has had a stroke leaving her with left side weakness and changes to her brain; is on lifelong penicillin; is on a "regular programme of blood transfusions through a permanent catheter"; "must be monitored regularly if she is to survive"; and that her condition is "severe".

12. At [26]-[32], the judge considered whether there was appropriate and accessible/affordable treatment for the appellant's condition in Nigeria, by reference to a series of issues. The judge concluded that vaccinations, consultations, monitoring and testing would be available in Nigeria, on a private paying basis ([27]-[29]). In addition, the judge made the following findings which we set out in full because they feature in particular in the grounds of appeal:

> "Medications

> 26. The appellant requires various forms of treatment. She is currently taking penicillin and possibly hydroxyurea. Both medications are available in Nigeria and she was taking both medications in the past [see letter from Dr Akinsete]. I have taken into account availability of the medication. The family live in an urban setting where medicines tend to be more available. Also they did not tell me that they were unable to source medicine for [their] daughter while in Nigeria"….
>
> Blood transfusions
>
> 30. The appellant will need to undergo blood transfusions. Again, it seems to me that this will need to be paid for on a private paying basis. Blood transfusions are available in Nigeria and as is evident from [Dr] Akinsete's letter the appellant was enrolled on a blood transfusion programme. The appellant's father explains that the blood transfusion procedure in the UK is less painful than the manual version used in Nigeria. However transfusions are nonetheless available on a private paying basis".

13. At [31] the judge specifically addressed the issue of the affordability of treatment. She noted that there was little evidence to say that the appellant's parents would be unable to afford the medications, vaccinations, consultations or blood transfusions. The witness evidence referred to both the appellant's parents as having good jobs in Nigeria and being able to afford to pay for private treatment for her and her brother in one of Nigeria's best hospitals. The judge recorded that during the hearing the family had emphasised that "the issue was not money but the quality of the treatment". There was no evidence that the family would be unable to work in Nigeria. They were being supported by friends in the UK and she had not been told that that support could not continue until they established themselves in their former jobs or in new employment in Nigeria.

14. At [32] the judge considered whether the appellant's levels of cognition would affect her ability to access treatment. She observed that the appellant would return to Nigeria with her parents and she would be able to access treatment with their support. Further, she could return to Nigeria with the letters from her physicians and continue the same treatment there.

15. At [33] the judge found that if there was a lack of appropriate treatment, this would affect the appellant's life expectancy. She noted Dr Chakravorty's opinion that the appellant would not survive without the treatment regime.

16. Having made these findings, the judge concluded at [34] that there were no substantial grounds for believing that there is a real risk of breach of article 3, as the appellant will be able to access and afford treatment in Nigeria. She reiterated her conclusion on the appellant's Article 3 claim at [43], as follows:

> "I have every sympathy for this family who would like their daughter to receive the best available treatment. Her claim fails under Article 3 as Nigeria does have treatment for sickle cell, she has received treatment there [in] the past and the family can afford it on a private paying basis".

17. At [35]-[42], the judge considered the appellant's Article 8 claim. She accepted that the removal of the appellant from the UK could lead to unduly harsh consequences as she would be unable to continue her present treatment regime and removal would disrupt her settled life in the UK. At [38] she noted that the appellant was "in her final years of GCSEs" and that she required support at school regarding her anxiety. As to the proportionality assessment, the judge directed herself to section 117B of the Immigration Act 2014, (which we assume was intended to refer to section 117B of the Nationality, Immigration and Asylum Act 2002, as amended by the 2014 Act) and set out the "pros" and "cons" of removal under the "balance sheet" approach. The judge's conclusion on the appellant's Article 8 claim was also at [43], as follows:

> "I have considered the appellant's article 8 claim and bear in mind her best interests are a primary consideration. I have factored into my assessment her new found stability and the support she receives from school and friends who support the family financially. However there is clear public interest in maintaining effective immigration control. There is significant cost to the public purse in the use of NHS resources and this weighs heavily in the balance such that the respondent's decision is proportionate to the legitimate aim pursued in this appeal".

18. For these reasons the judge refused the appellant's human rights claim.

19. The appellant sought permission to appeal. The two overarching grounds advanced were that the judge had erred in law (i) in finding that there is appropriate treatment for the appellant in Nigeria which is accessible; and (ii) in the assessment of proportionality for the purposes of Article 8.

20. On 9 May 2023 permission was granted by Upper Tribunal Judge Jackson.

The appeal hearing

21. The appellant relied on her grounds and skeleton argument, the submissions in which were further developed orally by Mr Solomon. The respondent relied on a rule 24 response dated 7 June 2023, drafted by Chris Avery from the respondent's Specialist Appeals Team, and a revised Rule 24 response dated 19 July 2023, drafted by Mr Terrell, who made additional submissions orally.

22. The respondent had not been represented before the First-tier Tribunal. Mr Terrell identified several areas in which the appellant appeared to be advancing

points that had not been taken below, as they did not feature in the appellant's skeleton argument for the First-tier Tribunal. Mr Solomon explained that the skeleton argument had been drafted some time before the hearing, and that matters had moved in on several key respects by the time of the hearing, on which he made oral submissions only. He provided a copy of his "speaking note" in the form of his skeleton argument, marked up with certain hand-written additions.

23. For the purposes of this appeal, we and the respondent were content to accept that the hand-written additions to the skeleton argument reflected oral submissions Mr Solomon had made to the First-tier Tribunal. However, we take this opportunity to reiterate the guidance given by the President, albeit after the hearing in this case, in Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC). This makes clear that the parties are under a duty to assist the First-tier Tribunal and are required to engage in the process of defining and narrowing the issues in dispute, including by filing and serving a focused Appeal Skeleton Argument setting out the key issues.

Submissions and discussion

Ground 1

24. The appellant submitted that the judge's finding that there is appropriate treatment available for the appellant in Nigeria which is accessible was vitiated by several errors. The respondent contended that the judge had provided a detailed and balanced decision and had addressed all the key issues in accordance with Budhathoki (reasons for decisions) [2014] UKUT 341 (IAC).

1.1 Supply of medicines

25. *First*, Mr Solomon argued that the judge's finding at [26] of the decision that the appellant's parents had not said that they were "unable" to source medicine for the appellant while in Nigeria was unsupported by the evidence and was simply wrong. He relied on the joint letter from the appellant's parents to the respondent, where they had said "Sometimes, the routine drugs are not available when there is a need for a refill. We've had to wait weeks to get a refill". He contended that in the context of a seriously ill person, a delay in accessing medication is effectively the same as a denial of access to them.

26. We have looked carefully at the evidence that was before the judge. The extent of the appellant's parents evidence on this issue was the sentence cited above. This was, in our judgment, equivocal. They had not said in terms that the delays meant that the appellant went without her medication; and their witness statements did not deal with this issue at all. We therefore consider that the judge's observation about the evidence was a justified one.

27. *Second*, Mr Solomon submitted that the judge had not taken the country evidence that "poor co-ordination of medicines procurement and supply to public facilities leads to a shortage of medicines, which are very common in governmental hospitals, particularly in primary healthcare facilities" adequately into account.

28. We cannot accept this. The judge specifically accepted country evidence to the effect that the system of drug distribution in Nigeria is "chaotic" and that "adherence tends to be poor" due to the lack of availability of key medications": see [19] and [22] of the decision. However the judge went on to note the more nuanced country evidence to the effect that accessibility to drugs is better in urban areas; and the fact that the appellant's family live in such a setting in Nigeria: see [19] and [26] of the decision. The judge was also aware that money was not an issue as far as the appellant's ability to access medication was concerned: see [31] of the decision. We are fully satisfied that the judge took into account the aspect of the country evidence referred to by Mr Solomon, albeit noting that the weight to be attached to it was, in any event, a matter for the judge.

1.2 Difficulties with availability of automated blood exchange

29. This argument focussed on the judge's finding at [30] of the decision that blood transfusions would be available for the appellant in Nigeria. Mr Solomon argued that the judge had failed to engage with the appellant's parents' evidence on this issue, specifically where they explained that she currently receives her blood transfusions in England on an automated basis, through a permanently placed catheter or "port" (which we understand removes the difficulties in seeking venous access each time a transfusion is needed).

30. In our judgment it is clear from [25] and [30] of the decision that the judge understood that the appellant currently receives her blood transfusions in England through the permanent catheter. Her parents' evidence was not that the automated method was not available at all in Nigeria, but that it was only available in certain hospitals. The judge was aware that finance was not an issue, and that the appellant's brother had been treated at one of the best hospitals in Nigeria. On that basis the evidence suggests that the appellant's parents would, or might, secure access to automated blood exchange for her in Nigeria.

31. However, it appears that the judge considered it more likely that the conventional manual method for blood transfusions would be accessed by the appellant in Nigeria: she referred to "the manual version used in Nigeria" [our emphasis] at [30] of the decision. She specifically referred to the appellant's father's evidence that this could be painful for the appellant. The judge noted the general country evidence that transfusions are available in both public and private facilities; and was aware from Dr Akinsete's evidence that the appellant had had blood transfusions previously in Nigeria: see [11] and [28] of the decision. In our assessment, therefore, the judge was well aware of the difficulties with the availability of automated blood exchange, but was justified in concluding, based on the evidence set out at [29] above, that the manual alternative would be available to the appellant in Nigeria.

32. In the grounds reliance was also placed on part of the appellant's parents evidence where they had described occasions when the clinicians in Nigeria had had difficulties in securing venous access in the appellant for the purposes of performing transfusions. No particular submissions were made about this

part of the evidence at the hearing. However for completeness we observe that this evidence was again, rather equivocal: it was not clear if the parents were contending that transfusions had been missed entirely, or rather that on occasions it was difficult to secure venous access such that repeated, perhaps painful, attempts at finding a vein were required. The parents' witness statements did not address this issue at all. Further, our understanding of the medical evidence is that issues over venous access could be remedied if the automated method was accessed: see [28] above.

1.3 Difference in survival rates for the condition between the UK and Nigeria

33. *First*, Mr Solomon submitted that the judge had failed adequately give any or any adequate regard to engage with the evidence as to the difference in survival rates. This was to the effect that in Nigeria only 5% of children with sickle cell anaemia live beyond the age of 10 (Dr Mohammed); whereas in the UK over 99% of children survive to adulthood (Dr Chakravorty).

34. However we accept Mr Terrell's submissions that it was a perfectly lawful approach for the judge, in determining whether treatment was available and/or accessible to the appellant, to focus on the specific features of the appellant's case (such as that her parents were wealthy, and they would live in an urban area) rather than on these general statistics. We also note his correct observation that the appellant is now over the age of 10, and there was no evidence before the judge about survival rates in Nigeria for children over 10.

35. *Second*, Mr Solomon argued that the judge had had no or inadequate regard to the fact that the appellant's brother had died despite being treated at one of Nigeria's best hospitals. However, we accept the respondent's submissions that the judge was plainly aware of the tragic death of the appellant's brother (see [31] of the decision) but it was hard to criticise her for not affording further weight to this in the absence of more information about his death, including, importantly, proof that that it was due to inappropriate care.

1.4 Risk to the appellant's mental health and availability of treatment for the same

36. The appellant argued that the judge had taken no or inadequate account of her mental health. Her parents had given evidence that the loss of her only brother and the stroke she had suffered in Nigeria had greatly affected her emotionally and psychologically; and that sending her back to Nigeria would cause a downward spiral in her mental health. The appellant's own evidence had been that she had been referred to a psychologist and that she would be very afraid to enter a hospital in Nigeria. The expert psychology evidence from Maria Goridari was that if the appellant did not receive the level of support outlined in her report, which included access to counselling or emotional-psychological support, then she would not have the level of quality of life she could have. Mr Solomon referred to the December 2021 country information

evidence, to the effect that the mental health provision in Nigeria is such that fewer than 10% of mentally ill Nigerians have access to the care they need.

37. Mr Terrell submitted that it did not appear to have been part of the appellant's case that she would face an Article 3 risk on the basis of her mental health: the overall focus of her claim was on her severe sickle cell anaemia. The judge had considered Ms Goridari's evidence, summarised it accurately, and taken the issue of the appellant's anxiety into account in the Article 8 assessment: see [16] and [42](c) of the decision. Overall, it was hard to see how even if the judge had expressly considered the appellant's mental health as part of the Article 3 assessment, she would have reached any other conclusion.

38. In our judgment it is important to see Ms Goridari's conclusion that the appellant would benefit from counselling or emotional-psychological support in its full context. Ms Goridari's 26 May 2022 report was some 23 pages long. It was focussed on determining "the extent of any cognitive difficulties related to her health condition". It set out in detail the results of the neuropsychological/psychometric assessments of the appellant and provided 2.5 pages of recommendations and strategies, almost all of which related to educational support for the appellant. One of these referred to counselling or emotional-psychological support.

39. Mr Solomon's skeleton argument for the hearing before the judge focussed on her physical health issues. He explained that after he had drafted the skeleton, Ms Goridari's evidence had been received, and thus he had made oral submissions only on the mental health issues. We can see from the hand-written additions to the skeleton argument that he referred to Ms Goridari's overall conclusion as to the level of support the appellant required, including her need for emotional-psychological support. We can also see that he referred to Ms Goridari's letter dated 16 January 2023 stating that if the appellant did not receive this level of support, she was at risk of "not achieving to the best of her abilities and she will not have the quality of life she could have". We can see that he referred to various parts of the country evidence suggesting difficulties in accessing mental health care in Nigeria.

40. We cannot see from the hand-written additions to the skeleton argument that Mr Solomon referred to the rather more tangible recommendation made by Ms Goridari of counselling. In any event even after the oral submissions, it does not appear that the appellant's mental health was at the forefront of her Article 3 case before the judge. In our judgment, this explains why the judge did not identify the appellant's mental health as one of the key issues on the Article 3 claim. We also agree with Mr Terrell that the evidence of the appellant's physical health issues was much more likely to meet the Article 3 threshold than those relating to her mental health. If the judge was not persuaded that the appellant's physical health issues did not meet the Article 3 threshold, we cannot see how her mental health issues would do so.

41. For these reasons we do not consider that the judge erred by failing to give specific consideration to the appellant's mental health issues in the context of the Article 3 analysis.

1.5 Failing to consider that the position may be different for a seriously ill child compared to an adult

42. The appellant contended that the four errors referred to above materially impugned the judge's Article 3 assessment and were compounded by the fact that the judge had been referred to, but had failed to consider, SQ (Pakistan) v Upper Tribunal (Immigration and Asylum Chamber) [2013] EWCA Civ 1251; [2013] All ER (D) 235 (Oct). In SQ, the Court of Appeal had recognised that there would be circumstances in which the Article 3 threshold would be reached in relation to a child where it would not be reached in the case of an adult. In oral submissions Mr Solomon contended that the fact that the appellant is a child is relevant to all elements of the AM assessment.

43. Mr Solomon made clear in oral submissions that this was not a "free-standing" argument but was parasitic on the earlier points advanced under Ground 1. For the reasons given under sections 1.3-1.4 above, we do not consider that the judge erred in the ways alleged. However, we have gone on to consider the SQ argument in case we are wrong in any of our earlier decisions.

44. Mr Terrell accepted that the age of the appellant would be relevant to the "minimum level of severity" limb of the AM test (that under paragraph 2(ii) of the headnote summarised at [10] above). This was clear from the Upper Tribunal's finding in AM at [17](4) that this element was "relative and depends on all the circumstances of the case"; and was consistent with Lord Wilson's observation in AM in the Supreme Court at [31] to the effect that a reduction in life expectancy can vary quite significantly depending on the age of the person.

45. However, Mr Terrell was right to highlight that the judge had expressly made no detailed findings on the minimum level of severity limb in the appellant's case: see [33] of the decision. This was because she considered that it had been rendered unnecessary by her finding that the appellant had not made out the "treatment" limb of the test (that under paragraph 2(i) of the headnote summarised at [10] above). The judge was entitled to take this course. She did, however, refer at [33] Dr Chakravorty's evidence that the appellant would not survive without the treatment regime, suggesting that had she considered it necessary to make detailed findings on this limb, they would have been in the appellant's favour.

46. Mr Terrell also accepted that the fact that the appellant is a child is course relevant to the question of whether treatment is accessible or affordable. However, we accept his submission that the judge took this into account: it is clear from [31]-[32] of the decision that the judge understood that the appellant would be returning to Nigeria with her parents and had plainly not ignored the fact that she is a child.

Conclusion on Ground 1

47. We therefore consider that the judge's Article 3 assessment was not vitiated by any errors of law.

Ground 2

48. Further or alternatively, Mr Solomon argued that the judge had materially erred in concluding that the respondent's decision was proportionate under Article 8 in several key respects. Mr Terrell submitted that the appellant's arguments amounted to little more than a disagreement with the weight the judge attached to various strands of the evidence; and that it is well recognised that such weight is a matter for the judge.

2.1 The Appellant's parents' outstanding applications for leave to remain

49. The appellant argued that no or no inadequate account had been taken of the fact that her parents had applied separately for leave to remain (in May 2022) and that their applications remained outstanding with the respondent. Although this was not made clear in his skeleton argument, Mr Solomon's hand-written additions to it suggest he referred in oral submissions to the judge to the fact that the parents had recently applied to regularise their status. He told us that he "would" have advanced to the judge what he described as the "routine" argument that because the appellant's parents could not lawfully be removed from the UK given their outstanding applications, it would be disproportionate to remove the appellant.

50. We consider that there remains some lack of clarity as to how clearly this argument had been advanced to the judge. Had it been the appellant's case that her parents' outstanding applications were a material factor or a complete answer to the attempt to remove her, this would have been identified as an issue by the judge.

51. Further, it is very difficult, in any event, to see how this would have been a significant factor in the assessment, not least as the appellant's parents had overstayed their right to be in the UK and their applications were presumably based on their roles as parents of the appellant, so that if her application failed, their applications would also fail. Mr Solomon advanced no other basis for the appellant's parents' applications.

2.2 Stage of education and SEND support

52. The appellant contended that the judge had erroneously found at [38] of the decision that she was in her "final years" of her GCSE's, which was unsupported by the evidence from her school. This made clear that she was sitting her GCSE's in May and June 2023 and so was a matter of months, not years, from the examinations.

53. Reading the decision as a whole, we agree with Mr Terrell that the phrase "final years" used by the judge was a typographical error and that the judge had meant to say final "year". In our judgment this is the only way to reconcile what the judge said at [38] with her observations at [42](b), where she had

referred to the “crucial stage” of the appellant’s education and that she would be “completing” her GCSE’s. It is well-known that GCSE’s are taught over roughly two school years, such that the judge would have been unlikely to use these phrases if she thought that the appellant was in the first year of the course and so well over a year away from taking her exams, as opposed to a few months away from doing so.

54. Further, the appellant argued that the judge had failed to take into account the evidence that she has Special Educational Needs and Disabilities (“SEND”) support in school and is currently being considered for an Educational, Health and Care Plan (“EHCP”); such that removing her from the academic, medical and emotional support she currently receives would have a detrimental and potentially life limiting impact on her.

55. We respectfully disagree. Having specifically noted at [38] that the appellant required support from school for her anxiety, the judge included within the “pros” in the Article 8 balance sheet assessment that she had a “stable…school life”, and a “newfound stability” including “the support she receives from school”: see [42](a) and [43] of the decision. Further, the judge listed within the “cons” in the Article 8 balance sheet assessment the fact that the appellant “requires specific care in the form of education plans within the education system” and that she would be able to continue her studies in Nigeria: see [41](b) and (d) of the decision. We cannot therefore accept that the judge ignored this factor. The matter of weight to be attached to it was an issue for the judge.

2.3 Cognitive functions

56. The appellant contended that in assessing the impact on her education, the judge had failed to engage adequately with the psychologist’s opinion that her cognitive functions fell between very low and low average; and her functioning would have an impact on her school and learning (see [15] of the decision).

57. We cannot discern from Mr Solomon’s skeleton argument or the hand-written amendments to it that the appellant’s cognitive functioning was explicitly advanced to the judge as a factor relevant to the Article 8 balancing exercise. It appears to us very closely linked with the level of support the appellant receives in school, which we consider the judge took into account, as set out under section 2.3 above. Further, as Mr Terrell highlighted, that the evidence from the appellant’s school was that the appellant is a “mid-ability” student. The judge had also taken into account the appellant’s levels of cognition when considering her ability to access treatment: see [32] of the decision. We do not therefore accept that the judge disregarded this issue. Again, the amount of weight to be attached to it was a matter for the judge.

2.4 Significant cost of UK treatment

58. The appellant argued that the judge had failed to give any or any adequate reasons for finding at [41](b) of the decision that the costs to the public purse of the support she was currently receiving was “significant”; and

that there was an absence of any evidence regarding the amount spent, such that the judge's finding was speculative.

59. The respondent acknowledged that the judge did not have direct evidence of the cost of the support the appellant receives in the UK but contended that this was a finding open to her on the evidence given the complexity of the appellant's medical condition, the level of care she requires and the significant medical evidence available to the judge.

60. We concur with the respondent's analysis: the judge was entitled to conclude that given the appellant's significant healthcare needs and the educational support she requires, the cost to the public purse is, and will continue to be, significant. As Upper Tribunal Judge Jackson observed in granting permission, it is "self-evident that the current costs to the public purse of heath care and education for the Appellant are significant (with no actual figures or evidence needed for this)".

2.5 Parents' contribution

61. The appellant argued that the judge had erred in failing to take into account a material consideration, namely the potential contribution her parents could make to the cost of her treatment through the tax and National Insurance they would pay if permitted to work in the UK. The evidence was that the appellant's parents are highly qualified and have qualifications and skills employable anywhere in the world.

62. Mr Terrell contended in the revised Rule 24 response that it was not clear whether the parents' positive contributions had been relied on as part of the Article 8 balancing exercise. It does appear from the Mr Solomon's hand-written additions to his Skeleton Argument that he submitted to the judge that the appellant's parents are highly skilled, and could work and thereby contribute towards the cost of her treatment.

63. However, that is not the end of the matter. Mr Terrell relied on the principles expressed in Thakrar (Cart JR, Art 8, Value to Community) [2018] UKUT 336 (IAC) to the effect that (i) in order to diminish the importance to be given to immigration controls, for the purposes of Article 8(2), such a contribution would need to be "very significant"; (ii) in practice, this is likely to arise only where the matter is one over which there can be no real disagreement; (iii) one touchstone for determining this issue is to ask whether the removal of the person concerned "would lead to an irreplaceable loss to the community of the United Kingdom or to a significant element of it"; and (iv) the fact that a person makes a substantial contribution to the United Kingdom economy cannot, without more, constitute a factor that diminishes the importance to be given to immigration controls, when determining the Article 8 position of that person or a member of his or her family.

64. Thakrar concerned the past contribution that someone might have made to the United Kingdom economy. However, we accept Mr Terrell's submission that it can apply by analogy to the contribution that someone might make in the future; and that logically, such a speculative future contribution cannot be

afforded more weight in the Article 8 balancing exercise than a proven past contribution.

65. In light of the Thakrar principles, we do not consider that the fact that the appellant's parents could contribute towards the cost of her treatment through the payment of tax and National Insurance in the future would carry any substantial weight in the Article 8 balancing exercise. In any event, the judge took into account the fact that they are already paying a stipend contribution towards her treatment: see [41](b) of the decision.

Conclusion on Ground 2

66. For all these reasons we consider that there was no material error of law by the judge in the Article 8 assessment.

Rule 15(2A) application

67. The appellant sought to admit evidence that was not before the First-tier Tribunal, namely a letter dated 24 May 2023 from Dr John Brewin, Consultant Paediatric Haematologist at King's College Hospital.

68. Dr Brewin confirmed in the letter that the appellant requires exchange blood transfusions to prevent further strokes (of which she is at particularly high risk), which would significantly worsen her morbidity and be a risk to her life.

69. Further, he explained that due to difficulty in securing venous access in the appellant, an indwelling central venous catheter has been inserted. His evidence was that these devices are not routinely used in Nigeria, such that expertise in their care and presentation will not be available. In his view, the use of such a device in Nigeria would represent a significant risk of infections and blood clots which could prove life threatening for the appellant.

70. Conversely, he explained that attempting to continue to provide blood transfusion via peripheral cannulas could prove very difficult and lead to delays and failures in treatment which again would pose a threat to her life. He indicated that reliable access to safe blood products cannot be guaranteed in Nigeria and frequently leads to delays or unsafe transfusions. Finally, Dr Brewin referred to the different survival rates for children with sickle cell anaemia as between the UK and Nigeria.

71. While Dr Brewin's evidence is credible, and post-dates the hearing before the First-tier Tribunal judge, it is very similar in content to the evidence the judge received from different sources about the appellant's condition, her treatment, her catheter, difficulties with treatment in Nigeria and differential survival rates. We did not consider that it would have an important influence on the outcome of this appeal or that, exceptionally, the interests of justice require us to admit it, taking as our starting point the familiar principles set out in Ladd v Marshall [1954] 1 WLR 1489 as considered in Kabir v SSHD [2019] EWCA Civ 1162.

Notice of Decision

72. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant without that individual's express consent. Failure to comply with this order could amount to a contempt of court.

73. The judge's Article 3 and Article 8 assessments included no errors of law, such that the appeal is dismissed.

The Honourable Mrs Justice Hill DBE

Sitting as a Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 September 2023