Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15160/2019

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 18th August 2020	**On 26th August 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MUHAMMAD REHMAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Woodhouse, S H Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Pakistan. He appealed the respondent's decision dated 29th August 2019 to refuse his application for leave to remain in the UK

on human rights grounds. The appeal to the First-tier Tribunal ("FtT") was dismissed by FtT Judge Fox for reasons set out in a decision promulgated on 20th December 2019.

2. Permission to appeal to the Upper Tribunal was granted by FtT Judge Adio on 12th May 2020. The matter comes before me to determine whether the decision of FtT Judge Fox is vitiated by a material error of law, and if so, to remake the decision.

3. The hearing before me on 18th August 2020 took the form of a remote hearing using skype for business. Neither party objected, and I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings. There were no technical issues during the course of the hearing.

Background

4. The appellant arrived in the UK on 17th May 2016 with entry clearance as a medical visitor with leave valid until 4th November 2016. Since then the appellant has made a number of applications for leave to remain as a medical visitor or on the basis of his family and private life in the UK. Each of the applications has either been rejected, treated as void, or refused by the respondent. Most recently, on 28th March 2019 the appellant submitted an application for leave to remain on private and family life grounds. The application was refused by the respondent for reasons set out in a decision dated 29th August 2019 and it was that decision that was the subject of the appeal before Judge Fox.

5. The background to the claim is uncontroversial and because it is central to the claim made by the appellant, it is helpful for me to say a little more about the health of the appellant, taken from the medical evidence that was before the First-tier Tribunal. In 2006 the appellant, whilst living in Pakistan, the appellant had a head scan which showed some changes in his bone and following investigation, he was diagnosed as having a 'Meningioma'. The position is usefully summarised in four particular documents that were before the FtT. The first is a 'Ophthalmic Medical Report' from Mr J M Uddin dated August 2016. Mr Uddin states that the appellant had surgery in Pakistan in 2006 and after a lot of swelling his right eye was apparently better. In 2011, the appellant had swelling on both sides and underwent upper lid surgery following which he lost vision in the right eye. In 2011 he had further surgery for his visual loss. Mr Uddin states:

> "... On examination he has no perception of light in the right eye with a right dense RAPD. He has gross corneal exposure and poor closure of the right eye as well as proptosis.
>
> The left eye looked as though he had slight changes. I have arranged for him to have an ultrasound electrodiagnostics *(sic)* and to be review *(sic)* with my maxillofacial and neurosurgical colleagues….
>
> The previous pathology is consistent with a meningioma.
>
> The electrodiagnostic examination of the right eye confirms no vision and severe optic nerve damage. There is no hope to recover the eyesight in the right eye.
>
> I would advise removal of the eye and a prosthesis to be fitted for the right eye.
>
> The CT scanner confirms an infiltrative mass of the cranium and forehead. On the left side, it extends to the superior orbit and towards the superior orbital fissure and cavernous sinus. There is evidence of previous surgery.
>
> Mr Rehman would like the whole tumour to be removed as much as possible. This would require a neurosurgical approach by Mr Minhas. A bicoronal incision and extensive craniotomy with removal of the tumour over the whole of the frontal bone and extending to the superior orbital fissure and brain.
>
> This would leave an extensive part of the cranium (bone covering the brain) and superior orbit missing (where the tumour has been removed).
>
> This would be reconstructed by Mr Manisali with bone from other parts of the skull (for the superior orbit) and a custom-made Titanium Cranioplasty to fit as a new skull.
>
> The surgery is complex, extensive and has risk which has been discussed. The surgery may take eight hours. Hospital stay would be at least five days, some in an intensive care type ward …"

6. Mr Uddin sets out in his report the cost of the treatment. The cost of the surgery, the Titanium cranial cover and an artificial eye for the right eye, to include pre-operative, surgical and post-surgical fees is estimated to be a minimum of £39,000. Second, in a further letter dated 7th October 2016, Mr Uddin states:

> "This gentleman has very significant tumour involving the bone around the brain and the orbits. He has had previous surgery in Pakistan a number of times. This has resulted in blindness in the right eye with a poorly looking right eye. He is getting increasing pain, discomfort on the left side and he also had visual problems. He is due to have surgery in London at St George's Hospital…it is quite significant surgery that involves neurosurgery and also special prosthetic construction.
>
> We plan to do surgery in the next one to two months so which may be in November or December and he will need to stay in the UK for at least another two months to rehabilitate. He would like to have his surgery in the UK and that was the purpose of his visit. I would be grateful if you could assist him in extending his ability to stay here."

7. The appellant also relied upon a letter from Professor Taylor, a Professor of Clinical Oncology and Senior Medical Advisor at Rutherford Cancer Centres, dated 26th March 2019 that is found at page 8 of the appellant's bundle. The letter is addressed to Mr G S Cruickshank at the Priory Hospital. Professor Taylor met with the appellant on 21st March 2019. He states:

> "When I saw him, he was in relatively good spirits. He still has useful vision in his left eye. We discussed his management at the proton therapy MDT on Tuesday 26th of March. We agreed that we should consider some form of radiotherapy as he has never had any treatment with modality in the past. The question is whether we can preserve vision in his left eye.
>
> As a first step we will be consulting with our colleagues in Philadelphia and will then come to a consensus view on the merits of proton therapy versus conventional radiotherapy and I will contact him and his friend again in the near future.
>
> We realise that we cannot treat the entirety of his disease, but his main symptom and concern relates to the poor vision in the left eye. Any form of radiotherapy including proton therapy will probably not spare the lacrimal gland on the left. Proton therapy might have the advantage of sparing as much as possible of the orbital contents and also might make retreatment of other areas in the future less complicated…"

8. The appellant also relied upon a further letter from Professor Taylor dated 29th October 2019 that is to be found at page 6 of the appellant's bundle, and is addressed to the appellant's representatives. In that letter, Professor Taylor confirms the appellant was reviewed by the clinic with regard to the possibility of proton radiotherapy. Professor Taylor states:

> "… His disease is currently severely affecting his vision. He is blind in the right eye and can only count fingers on the left. The aim of treatment would be to try and preserve as much vision as possible and then for him to return to his family.
>
> The risks of the procedure would be that despite treatment, blindness is a risk from the combination of the tumour itself and also from the treatment. I am not aware of what other institution in the UK or abroad that would be able to treat him. As you point out he has a unique set of circumstances. He would not be able to be treated by proton radiotherapy in an NHS centre in the UK. Regarding prognosis, if untreated his tumour will definitely adversely affect his remaining vision. Regarding life expectancy, he has a relatively slow growing tumour recurrence which is compatible with living a number of years but ultimately will be incurable. The precise life expectancy is difficult to predict…"

The decision of FtT Judge Fox

9. At paragraph [10] of his decision, Judge Fox states:

> "I consider Article 3 and 8 ECHR in the context of N, D and GS (India) due to the medical issues raised in the appeal."

10. Before Judge Fox, the appellant claimed that the total cost of the medical treatment he requires is approximately £70,000 and he currently has approximately £20,000 to meet those costs. The appellant claimed he had received inadequate treatment in Pakistan previously, and the treatment he requires is not available in Pakistan. It was submitted on behalf of the appellant that there will be a rapid deterioration in his health if he does not receive treatment. It was said that there is no proton radiotherapy available in Pakistan, and neither is it available on the NHS in the UK. At paragraph [22] of his decision, Judge Fox noted there is no dispute that the appellant has a serious medical condition and that he requires specialist treatment. He also noted there

is no dispute that the appellant is unable to fund his treatment privately on the basis of his current financial position.

11. At paragraph [23], Judge Fox refers to "*... evidence at page 28 of the appellant's bundle ...*" that is said to demonstrate that the appellant was pursuing enquiries, via medical professionals, for treatment in the USA. Having referred to the evidence before him, and in particular the letter from Professor Taylor, at paragraphs [25] and [26], Judge Fox stated:

> "25. This letter confirms that the appellant is unable to avail himself of publicly funded treatment in the UK. It also confirms that life expectancy is difficult to predict. This leads to the reasonable conclusion that the appellant cannot satisfy the high threshold required in Article 3 ECHR medical cases.
>
> 26. I therefore continue to consider the evidence within the prism of Article 8 ECHR; physical and moral integrity. The letter at page 8 of the appellant's bundle maintains the medical opinion that the appellant's condition cannot be addressed in its entirety."

12. Judge Fox refers to the cost of the treatment that was set out in the report of Mr Uddin and the funds that are available to the appellant. He noted the appellant must generate a further £50,000 before he is able to pursue the recommended medical treatment. At paragraphs [30] and [31], Judge Fox concludes at follows:

> "30. It is reasonable to conclude that the appellant's immigration status is not the barrier to his medical treatment. Even if the respondent were to grant the appellant a form of leave, there remains a financial barrier to medical treatment. Conversely if the appellant is able to raise the required funds it is likely that he would qualify for leave to remain as a medical visitor in the same manner as he secured entry clearance.
>
> 31. I accept that the instant appeal falls into a category of a small minority of exceptional cases. I offer sincere sympathy for the appellant's position but for the reasons stated above the appellant's remedy does not lie within the respondent control."

The appeal before me

13. The appellant claims the decision of the First-tier Tribunal is against the weight of the evidence adduced by the appellant and Judge Fox erroneously states in

paragraph [23] of his decision that the document at page [28] of the appellant's bundle demonstrates that the appellant was pursuing enquiries via medical professionals in the USA. At paragraph [5] of the grounds of appeal the appellant claims *"It is clear that proton radiotherapy is available to the appellant in the United Kingdom at Rutherford Cancer Centre, South Wales, and that such treatment is rare"*. It is said the appellant should therefore not be forced to return to Pakistan and then make further enquiries whether such treatment can be obtained in the USA, when there is no certainty of this option being available. It is said the appellant has already lost vision in one eye, and if the appellant does not receive this treatment of proton radiotherapy he will lose vision in both of his eyes. It is said removal of the appellant would delay the procedure and will cause him further unnecessary suffering.

14. The appellant also claims, at paragraph [6] of the grounds of appeal that he meets the high threshold applicable to an Article 3 claim in light of the decision in Paposhvilli v Belgium 41738/2010. The appellant claims he is already experiencing immense suffering and will continue to do so if he is left untreated without proton radiotherapy treatment as he will lose his vision. It is said he should not therefore be returned to Pakistan where such treatment is not available. The appellant claims the treatment is only available to the appellant in the UK and sufficient evidence was provided of this.

15. Mr Woodhouse submits that when addressing the Article 3 claim, Judge Fox plainly applied the wrong test. The judge was referring to the test in N and it is now known following the decision of the Supreme Court in AM (Zimbabwe) v SSHD [2020] UKSC 17, that that is not the correct test. Mr Woodhouse submits that at paragraph [22] of his decision Judge Fox noted there is no dispute that the appellant has a serious medical condition. He referred to the letters from Professor Taylor and submits the proton therapy is available to the appellant. Although Mr Woodhouse submits the cost of that treatment is set out in the letter from Mr Uddin, as I pointed out to Mr Woodhouse, that cannot be correct. Mr Uddin was not considering proton therapy but removal of the tumour that

would require a neurosurgical approach, extensive craniotomy and reconstruction with bone from other parts of the skull and a custom-made Titanium Cranioplasty. There is no reference to proton therapy forming any part of the treatment set out in the report of Mr Uddin. Mr Woodhouse was unable to confirm whether the treatments referred to by Mr Uddin and Professor Taylor are in any way linked, or are, as appears to be the case, two distinct options that may be available to treat the appellant. Mr Woodhouse accepts the medical evidence before the First-tier Tribunal was limited.

16. Mr Woodhouse submits that in any event, Judge Fox took into account irrelevant factors such as whether treatment is available in the USA. He submits that the only reference to treatment in the USA is the reference in the letter of Professor Taylor dated 26th March 2019 to consultation with colleagues in Philadelphia, as a first step, before a consensus view is reached as to the merits of proton therapy versus conventional radiotherapy.

17. Finally, Mr Woodhouse submits that in his assessment of the Article 8 claim, at paragraph [31], Judge Fox accepts that the appeal falls into a category of a small minority of exceptional cases. He submits that if, as here, the test of exceptionally is met, the only rational conclusion open to the Judge was that the removal of the appellant would be in breach of the appellant's moral and physical integrity so that the Article 8 claim should have succeeded.

18. By way of clarification, Mr Woodhouse confirmed the appellant's case before the FtT was that he wishes to remain in the UK to undergo the treatment that he requires. Mr Woodhouse was unable to say whether the two treatments referred to in the letters from Professor Taylor and Mr Uddin are alternatives, but he submits neither would be available to the appellant on the NHS. He accepts that the costs of treatment by proton therapy is not set out in the reports that were before the FtT. Mr Woodhouse accepted that although the appellant claims to have received what he described as "botched treatment" in Pakistan previously, there was no evidence before the FtT that the appellant was treated

inappropriately, and neither was there any evidence before the FtT regarding the availability of the type of surgical treatment referred to by Mr Uddin in Pakistan, or the costs of such treatment, if it is available.

19. I accept that at paragraph [23] of his decision Judge Fox erroneously refers to *"evidence at page 28 of the appellant's bundle ..."*. It is clear the evidence Judge Fox had in mind was that which is to be found at page 8 of the appellant's bundle. That is the letter from Professor Taylor dated 26th of March 2019 in which Professor Taylor states that "*... As a first step we will be consulting with our colleagues in Philadelphia and will then come to a consensus view on the merits of proton therapy versus conventional radiotherapy …"*. The references to treatment in the USA, although erroneous, are not material to the outcome of the appeal. Judge Fox noted at paragraph [25] of his decision, in the further letter from Professor Taylor dated 29th October 2019, the appellant is unable to be treated by proton radiotherapy in an NHS centre in the UK, and as regards life expectancy, that is difficult to predict.

20. It is clear that in reaching his decision, Judge Fox determined the appeal on Article 3 grounds by reference to the test set out in N and D. Judge Fox cannot be criticised for doing so in light of the decision of the Court of Appeal in AM (Zimbabwe) v SSHD [2018] EWCA Civ 64. The relevant test was considered by the Supreme Court following the decision of the Grand Chamber of the European Court of Human Rights ("the ECtHR") delivered in Paposhvilli v Belgium [2017] Imm AR 867. The Supreme Court handed down its judgement on 29th April 2020, and that judgement postdates the decision of Judge Fox. The question for me is whether any error is material to the outcome of the appeal.

21. On the evidence that was before Judge Fox, the error is in my judgement immaterial. Mr Woodhouse referred to paragraph [183] of the decision of the ECtHR in Paposhvilli and submits that the very exceptional cases referred to in N now includes situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she,

although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.

22. On the facts here, and the evidence before the First-tier Tribunal, the appellant cannot in my judgment benefit from the decision of the Supreme Court in AM (Zimbabwe) v SSHD [2020] UKSC EWCA Civ 64. It is correct to say that in Paposhvilli, the ECtHR considered the "other very exceptional cases in which the humanitarian considerations are equally compelling" and held, at paragraph [183], that they should now be taken to include cases in which there were substantial grounds for believing that the applicant, while not at imminent risk of dying, would face a real risk in the receiving country of being exposed either to a serious, rapid and irreversible decline in health resulting in intense suffering, or to a significant reduction in life expectancy. The Supreme Court held the Court of Appeal was mistaken in taking the ECtHR's phrase, "a significant reduction in life expectancy", to mean "the imminence of death" [30]. At paragraphs [30] and [31] Lord Wilson said:

> "30. There is, so I am driven to conclude, validity in the criticism of the Court of Appeal's interpretation of the new criterion. In its first sentence the reference by the Grand Chamber to "a significant reduction in life expectancy" is interpreted as "death within a short time". But then, in the second sentence, the interpretation develops into the "imminence … of … death"; and, as is correctly pointed out, this is achieved by attributing the words "rapid … decline" to life expectancy when, as written, they apply only to "intense suffering". The result is that in two sentences a significant reduction in life expectancy has become translated as the imminence of death. It is too much of a leap.
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> 31. It remains, however, to consider what the Grand Chamber did mean by its reference to a "significant" reduction in life expectancy in para 183 of its judgment in the Paposhvili case. Like the skin of a chameleon, the adjective takes a different colour so as to suit a different context. Here 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". From these contexts the adjective takes its colour. The word "significant" often means something less than the word "substantial". In context, however, it must in my view mean substantial. Indeed, were a reduction in life expectancy to be less than

> substantial, it would not attain the minimum level of severity which article 3 requires. Surely the Court of Appeal was correct to suggest, albeit in words too extreme, that a reduction in life expectancy to death in the near future is more likely to be significant than any other reduction. But even a reduction to death in the near future might be significant for one person but not for another. Take a person aged 74, with an expectancy of life normal for that age. Were that person's expectancy be reduced to, say, two years, the reduction might well - in this context - not be significant. But compare that person with one aged 24 with an expectancy of life normal for that age. Were his or her expectancy to be reduced to two years, the reduction might well be significant.

23. As Lord Wilson also set out in paragraphs [23] and [32] of his judgment, in Paposhvili, the ECtHR also set out requirements, at paragraphs [186] to [191], for the procedure to be followed in relation to applications under Article 3 to resist return by reference to ill-health. It was for the appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. The Supreme Court confirmed that that is a demanding threshold for an applicant. His or her evidence must be capable of demonstrating "substantial" grounds for believing that it is a "very exceptional case" because of a "real" risk of subjection to "inhuman" treatment. An applicant must put forward a case which, if not challenged or countered, would establish a violation of Article 3. At paragraph [32], Lord Wilson said:

> "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.

24. Lord Wilson held, at paragraph [33], that if the applicant presents evidence to that standard, the returning state can seek to challenge or counter it. The Supreme Court found that Paposhvili states that, in doing so, the returning state must "dispel any doubts raised" by the evidence; but "any doubts" here should be read to mean any serious doubts.

25. There are in my judgement significant gaps in the evidence that was before the First-tier Tribunal such that even upon a proper application of the test as set out by the Supreme Court in AM (Zimbabwe) the outcome of the appeal would be the same. Taken at its highest, the evidence relied upon by the appellant cannot establish on any reasonable view, that while not at imminent risk of dying, the appellant would face a real risk in Pakistan of being exposed either to a serious, rapid and irreversible decline in health resulting in intense suffering, or to a significant reduction in life expectancy. As matters stand, the unfortunate position that the appellant finds himself in the UK, is no different to that which the appellant will find himself in, in Pakistan. He is not currently receiving treatment in the UK. Professor Taylor, who considered treatment by way of proton radiotherapy considered the prognosis and stated that if untreated, the tumour will definitely adversely affect the appellant's remaining vision. As regards life expectancy, he expresses the opinion that the appellant has a relatively slow growing tumour recurrence which is compatible with living a number of years but ultimately will be incurable. He states the precise life expectancy is difficult to predict.

26. In March 2019, Professor Taylor noted that as a first step, the Rutherford Cancer Centre would be consulting with colleagues in Philadelphia and would then come to a consensus view on the merits of proton therapy versus conventional radiotherapy. In his subsequent letter dated 29th October 2019, Professor Taylor does not set out the outcome of any consultation with colleagues in Philadelphia and whether any consensus view has been reached as to the merits of proton therapy versus conventional radiotherapy. Although Professor Taylor confirms that the aim of treatment would be to try and preserve as much vision as possible, he confirms that despite treatment, blindness is a risk from the combination of the tumour itself and also from the treatment. He confirms the appellant would not be able to be treated by proton radiotherapy in an NHS centre in the UK. There was no evidence before Judge Fox regarding the continuing merits of such treatment or the likely cost. Without such evidence it would be impossible to determine how long the appellant may require to raise the necessary funds to fund the treatment, but what is clear is that that the appellant would be no worse off in Pakistan than in the UK.

27. Insofar as the evidence of Mr Uddin is concerned, although there was evidence of the complex surgery that could be undertaken in the UK at a minimum cost of £39,000, there was no evidence before the First-tier Tribunal at all that such a surgical procedure would not be available in Pakistan or that the appellant would be unable to access such treatment. In the respondent's decision of 28th August 2019, the respondent noted the appellant had previously received treatment in Pakistan for his current condition and considered that treatment is therefore available in Pakistan. It is common ground that the appellant is funding his own treatment in the UK, and the respondent had noted that private medical care/treatment would be available to the appellant in Pakistan and there is no evidence to establish that he would be unable to fund the treatment in Pakistan.

28. Taken at its highest, the medical evidence that was before the First-tier Tribunal does not establish that the appellant would face a real risk in Pakistan of being

exposed to a serious, rapid and irreversible decline in health resulting in intense suffering.

29. I reject the submission made by Mr Woodhouse that having accepted that the appeal falls into the category of a small minority of exceptional cases, the only rational conclusion open to the Judge was to allow the appeal on Article 8 grounds. As Judge Fox properly noted at paragraph [30] of his decision it is reasonable to conclude that the appellant's immigration status is not the barrier to his medical treatment. Even if the respondent were to grant the appellant a form of leave, he would be unable to access the medical treatment that he requires.

30. In GS (India) v SSHD [2015] EWCA Civ 40, Underhill LJ said at [111]:

> "First the absence or inadequacy of medical treatment, even life preserving treatment, in the country of return, cannot be relied on at all as a fact engaging article 8: if that is all there is, the claim must fail. Secondly, where article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may or may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the no obligation to treat principle."

31. In SL (Saint Lucia) v SSHD [2018] EWCA Civ 1894, the Court of Appeal considered whether Paposhvili had any impact on the approach to Article 8 claims but rejected that submission. At [27], Hickinbottom LJ said:

> "As I have indicated and as GS India emphasises, article 8 claims have a different focus and are based upon entirely different criteria. In particular, article 8 is not article 3 with merely a lower threshold: it does not provide some sort of safety net where a medical case fails to satisfy the article 3 criteria. An absence of medical treatment in the country of return will not in itself engage article 8. The only relevance to article 8 of such an absence will be where that is an additional factor in the balance with other factors which themselves engage article 8?.

32. All that the appellant relies upon here in support of his Article 8 claim is his wish to continue with medical treatment in the UK, albeit that he is not receiving treatment at the moment, but he may raise sufficient funds to fund the

treatment at some point in the future. That in itself is insufficient to establish an Article 8 claim. It follows that in my judgement, there was no material error in the decision of Judge Fox capable of affecting the outcome of the appeal and the appeal is dismissed.

DECISION

33. The appeal is dismissed and the decision of First-tier Tribunal Judge Fox shall stand.

V. Mandalia Date 19th August 2020

Upper Tribunal Judge Mandalia