Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10846/2017**

THE IMMIGRATION ACTS

Heard at Glasgow **Decision & Reasons Promulgated**
On 7 March 2019 **On 13 March 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

LINDAH CHENYAMA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Haddow, Advocate, instructed by Brown & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by FtT Judge McGavin, promulgated on 22 June 2018, dismissing her appeal on asylum and human rights grounds. She does not challenge the findings on asylum grounds. Her grounds are set out as 1, failure of anxious scrutiny; 2, onus on respondent to verify availability of medical treatment; and 3, consideration of the best interests of the children. She no longer advances ground 4.

2. Ground 1 is directed against what the judge at [65-70] made of an "expert report" by Professor Ferrand of the London School of Hygiene & Tropical Medicine, dated 17 November 2017, item K of the appellant's 1st inventory of productions in the FtT.

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3. As I observed when referred to this item in course of submissions, it is not in the format of an expert report. The inventory refers to it as a "letter", as does the judge. The author says in her first sentence, "Thank you for your request to provide a report", but it is far from clear that her letter is intended as a fully formed expert report.

4. What is clear from the letter is that the author has outstanding qualifications and experience in the subject. However, the deficiencies of the "report" are not just formal. Although the appellant's case, both in the FtT and in the UT, has been extensively and clearly prepared and presented, in this respect there has not been compliance with Practice Direction 10 on expert evidence. There is no statement from the author, or in accompanying materials, of the instructions and information provided to her – PD 10.1, 10.9(c). The "report" contains no verifying statement of truth – PD 10.10-11.

5. The ground says that the judge's reasons for giving the report "no real weight" are "inadequate or irrational" and "unfair", and that she had no reason for preferring evidence from the respondent.

6. The judge noted that the report was written on the basis that the appellant was "at high risk of mental health problems", but there was no report from a mental health expert to support that.

7. The appellant argues that the choices for the judge were (i) to infer that the expert had material to support what she said, (ii) to direct further submissions or a supplementary report, or (iii) "to infer from the lack of detailed reasoning that notwithstanding her credentials, experience and duty to the tribunal … [the expert's] clearly stated conclusion was entirely baseless and … it was legitimate for the FtT to draw an entirely contrary conclusion".

8. I do not think that the criticism of the judge for taking option (iii) is a fair representation of her decision. After noting the absence of a report from a mental health expert, the judge considers the other evidence before her. A fortnight before the date of the letter, the appellant told her GP she did not wish to commence antidepressants. The appellant produced a considerable body of evidence about herself, but there has been no reference to anything about a mental health condition, apart from the apparent assumption by Professor Ferrand.

9. The furthest the judge took this matter, at [66], was that she was not satisfied that a particular medication would be inappropriate for the appellant.

10. My conclusions on this ground are reinforced by the fact that what was before the judge was a letter, requiring evaluation, but not an expert report.

11. In that evaluation, the judge (i) was not bound to take everything mentioned at face value, (ii) did not come under a duty to give the

appellant an opportunity to improve her case, and (iii) came to a conclusion which did not involve the making of an error on a point of law.

12. Ground 2 overlaps with ground 1. It contends that applying *Paposhvili v Belgium* ECtHR 4173/10, the judge erred by treating the onus as remaining on the appellant, when she had produced evidence which obliged the respondent to verify that care would be available and appropriate.

13. *Paposhvili* at [185] says that appellants have to "adduce evidence capable of demonstrating … substantial grounds for believing that … they would be exposed to a real risk of being subjected to treatment contrary to article 3"; qualified by the remark that some speculation is inherent, and the obligation is not to "provide clear proof".

14. Applying that to the facts of the present case, on failure of ground 1, the onus had not shifted.

15. Mr Haddow said that there is no domestic authority on transfer of onus since *Paposhvili*, the point not being dealt with in *AM (Zimbabwe)* [2018] EWCA Civ 64. Although *Paposhvili* was founded upon in the FtT, that was on level of risk, and not on transfer of onus. Mr Haddow submitted that the point was obvious enough for this to be an error of law, even in absence of submission.

16. I doubt whether a judge would be obliged to consider this, unless raised explicitly. However, there is nothing in *Paposhvili* to put the respondent (who did produce evidence) under further obligation, on the facts of this case, so the matter is academic.

17. Ground 3 founds in part on evidence that unemployment in Zimbabwe is around 90%, with particular difficulties for women and for those with HIV. Mr Haddow pointed to the observations of Professor Ferrand and said that while not an expert on employment or the economy, she was well placed to know, which I accept.

18. This ground is advanced as if it must be assumed that the appellant will return with her children to face abject destitution. It overlooks that the children's father (working in the Falklands at the time of the hearing) has supported them throughout their lives. The judge was sceptical of what she was told about the breakdown of the relationship between the appellant and her husband, but even if that was so, it would not follow that he has abdicated responsibility for his three sons. The judge found at [56] that the appellant failed to show she would be returning without family, friends or means of support. No error has been asserted in her findings, yet ground 3 is advanced as if they had not been made. No error is disclosed.

19. The decision of the First-tier Tribunal shall stand.

20. No anonymity direction has been requested or made.

11 March 2019
UT Judge Macleman