Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: **PA/05180/2020**

[LP-00109-2021]

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On 16 February 2022

Decision & Reason Promulgated
On 25 March 2022

Before

UT JUDGE MACLEMAN

Between

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Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Middleton, of Loughran & Co, Solicitors
For the Respondent: Mr Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision dated 31 March 2021, FtT Judge Doyle dismissed the appellant's appeal " ... on asylum ... on humanitarian protection ... [and] on article 2 3 & 8 ECHR grounds".

2. The appellant applied to the FtT for permission to appeal to the UT. Her grounds are based on failure to assess "the issue of the appellant's access to medical treatment on return, and more specifically the prohibitive costs of medications in *Cote D'Ivoire*".

3. FtT Judge Easterman granted permission on 27 September 2021 on the view that arguably the Judge did not deal with access to insulin or whether the appellant would be able to access drugs needed to save her life, or lesser drugs which apparently will "not lead to a rapid and irreversible decline but may in the long term result in a reduction to health and life expectancy".

4. Mr Middleton submitted that the case turned on the test explained in *AM (Zimbabwe)* [2020] UKSC 17, and that the Judge, in finding that test not to be met, failed to consider the total effect of the evidence. In particular, he failed to reach findings on the availability of insulin to the appellant in context of background evidence to which he was directed in oral submissions and by provision of a "key passages index" to the appellant's second inventory of productions.

5. Mr Middleton referred to *AM* at [23] (setting out the findings of the Grand Chamber in *Paposhvili*) and at [33] as establishing an the obligation on the returning state to verify availability of treatment in the receiving state, including reference to its cost and to existence of a family network.

6. The principal evidence before the FtT on availability of medication was a lengthy report from the World Bank Group. Mr Middleton cited pages 19 and 38 on 90% of medication being financed by households, and page 33 on 45% of health facilities not having electricity and only 10% having supplies of insulin. He submitted that as insulin needs to be kept under temperature-controlled conditions, lack of electricity meant no access to treatment. On the background evidence, the vast majority of health care was financed by family support. The appellant had no family in Ivory Coast. The Judge overlooked this. He made no findings on her access to health care and family support. This was a lack of anxious scrutiny. On identification of the relevant evidence, the test in *AM* was met, and the decision should be reversed.

7. I observed that it was for the appellant in the first place to show her family situation, and that she had been found generally to be not credible. Mr Middleton acknowledged that there were negative findings on the asylum claim, but he said these did not impact on the health care claim, which was made out by "objective evidence" that family help was needed, together with the appellant's evidence that would not be forthcoming.

8. Mr Diwnycz accepted that the gist of the background evidence was as presented for the appellant. The respondent has not published any relevant information note about Ivory Coast. He said that while there is some availability of insulin there, the FtT did not appear to have decided whether the appellant could access it. However, he said that there was a void in the evidence to make the appellant's case, and it was basic that it was for her to show the primary facts.

9. Mr Middleton in reply said that the question of having family members should be separated from the adverse credibility findings, and that the fact

of only 10% of health facilities having insulin showed the great difficulties for the appellant, even before considering cost.

10. I reserved my decision.

11. The FtT's decision says at [25] that the determinative question is access to insulin therapy. The Judge asked for specification on that issue and was referred by Mr Middleton to the report mentioned above. At [27] the Judge found that such resources as exist are concentrated in Abidjan, to where the appellant would return. At [29 – 32] he found evidence to show that insulin was not as readily available as in the UK, but not that it would not be available to the appellant, or that on return her therapy would stop.

12. It does not follow from insulin being available at only 10% of clinics that the appellant cannot access one of those clinics.

13. Leaving aside "family support" for the moment, there is no error of law in the FtT's analysis of the evidence on the first issue.

14. Some confusion arises from the statement at [25] that availability of insulin is "determinative". The FtT goes on at [33 – 35] to find that the appellant "faces the prospect of lesser treatment". The latter passage is clearly correct. The appellant has not referred to any evidence which would preclude her from obtaining (unspecified) treatment other than insulin which would not be equally beneficial, but which would take the case above the stringent *AM* test. There is no error of law in that alternative analysis.

15. On cost of medication and family support, the appellant has simply asserted that she would have no means and no family. I accept that negative asylum findings should not too readily be applied in a heath care analysis. However, the appellant has been found to be a witness of very little credit in successive claims advanced since her arrival in the UK. While found unreliable in other respects, her prior statements refer to numerous relatives. There is no reason to think that their existence was invented. The appellant has said she is at risk from some of her relatives, but those claims have all failed. When her appeal was dismissed in 2015, the Judge said as part of the article 8 outcome, at [59], that there was "no reason why she could not return … to be with her mother, sister and other close relatives … as well as her other long standing friends".

16. Judge Doyle did not make findings on what treatment might cost, how the appellant might pay for it if she had to, and who might help her; but the appellant had not presented any case by which favourable findings on those aspects might have been reached.

17. The appellant suffers from a number of health problems. Her general condition appears to be deteriorating. Mr Middleton has advanced her case as strongly as it could be, both in the FtT and in the UT. However, on each of the key points of (i) access to insulin (ii) access to lesser treatment

and (iii) prohibitive cost in absence of family support, it has not been shown that the FtT erred on any point of law, such that its decision should be set aside. That decision shall stand.

18. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity is maintained herein.

17 February 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.