IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001368
First-tier Tribunal No: HU/02693/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

BOLA VIVIAN ABIODUN
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr J Dhanji of Counsel
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 1 September 2023

DECISION AND REASONS

Introduction and Background

1. The Appellant challenges a decision of First-tier Tribunal Judge Kaler promulgated on 8 November 2022 dismissing her appeal against a decision dated 8 March 2021 to refuse to grant entry clearance as an 'adult dependent relative' ('ADR').

2. The Appellant is a national of Nigeria born on 15 November 1971. The application was based on her relationship with Ms Oluwatoyin Abiodun (d.o.b. 16 April 1978), a British citizen ('the Sponsor'). It was said that they were sisters.

3. The Appellant, who has, amongst other things, a diagnosis of thyrotoxicosis, had previously entered the UK in February 2020 as a medical visitor; however the impact of the Covid pandemic was such that

she was not able to complete her treatment, and she also ended up overstaying by 1 month. (Entirely appropriately, no issue has been raised in respect of this period of overstaying.) At the date of the instant application the Appellant was staying with the Sponsor in Rwanda where the Sponsor was undertaking a work assignment.

4. On 14 December 2020 the Appellant made an applications for entry clearance for indefinite leave to remain as the adult dependent relative of the Sponsor.

5. The application was refused on 8 March 2021 for reasons set out in a 'reasons for refusal' letter ('RFRL') of that date. In summary, the reasons for refusal were these:

(i) "*[T]he evidence provided does not demonstrate a familial relationship*" - eligibility relationship requirement, Appendix FM paragraph E-ECDR.2.1(c);

(ii) The evidence does not make it clear what health issues there might be and it has not been shown that there is a requirement for long-term personal care to perform everyday tasks (E-ECDR.2.4);

(iii) Necessarily given (ii) above, it has not been shown that if there are any personal care needs they cannot be met in Rwanda (E-ECDR.2.5);

(iv) There were no 'exceptional circumstances' or 'compassionate factors' to warrant the grant of leave outside the Immigration Rules.

6. The Appellant appealed to the IAC on human rights grounds.

7. The appeal was dismissed for reasons set out in the 'Decision and Reasons' of Judge Kaler. In summary:

(i) Judge Kaler was not satisfied that the Appellant and the Sponsor were siblings (paragraph 11-18);

(ii) This conclusion informed Judge Kaler's finding that the requirements of the Immigration Rules in respect of an ADR were not met (paragraph 18);

(iii) It also informed the Judge's conclusion that Article 8 was not engaged – there being no family life between the Appellant and the Sponsor (paragraph 29);

(iv) The Judge found "*that the Appellant requires long-term personal care to perform everyday tasks*" (paragraph 21);

(v) However, it was found that adequate care was available in Nigeria (paragraph 22-25).

8. The Appellant applied for permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal on 23 December 2022, but subsequently granted on renewal by Upper Tribunal Judge Kebede on 16 May 2023. In material part the grant of permission to appeal is in these terms:

> "*The grounds raise arguable concerns about the judge's understanding of the DNA evidence, her consideration of the medical evidence relating to the urgency and accessibility of the appellant's required medical treatment, and her consideration of the appellant's need for the emotional support of the sponsor in the UK. The other grounds are of lesser merit but I do not exclude them. All grounds may be argued.*"

9. The Respondent has not filed a Rule 24 response.

Analysis

10. At the commencement of the hearing before me Mr Clarke on behalf of the Respondent made a number of concessions in respect of the grounds of challenge. In the circumstances I do not propose to set out here full details of the case, or of the decision of the First-tier Tribunal: I confine myself first to setting out sufficient to understand the nature of the grounds conceded. Thereafter I address the remainder of the grounds, specifically the ground in relation to the DNA evidence – and do so in a little more detail. I then proceed to make some observations as to the issues in the appeal, which may be of benefit to the parties and the next Judge tasked with remaking the decision in the appeal.

The Respondent's concessions

11. The Appellant raises 6 grounds of challenge. Mr Clarke's concessions were to the following effect:

> (i) Ground 2: failure properly to consider the evidence in relation to the Appellant's need for radioactive iodine therapy ('RIT'). It was accepted that the Judge's observation at paragraph 22 – "*there is nothing to suggest that [the Appellant] requires [RIT] as a matter of urgency*" – failed adequately to engage with, or offer reasons in respect of, passages in the supporting evidence of a consultant endocrinologist that the Appellant "*will benefit from urgent radioactive iodine therapy*", "*Given the urgency, [the Appellant] is being referred overseas*", and "*has been advised to urgently seek treatment overseas*".

(ii) Ground 3: failure to consider properly evidence about the availability of mental health care in Nigeria. Mr Clarke accepted that in determining that she did not accept that the Appellant would not be able to access professional help for any psychological treatment in Nigeria (paragraph 23), the Judge had not engaged with the contents of the Respondent's own CPIN 'Nigeria: Medical treatment and healthcare' (December 2021), which had been included in the Appellant's bundle before the First-tier Tribunal. In this context Mr Clarke also observed that the Judge had not really engaged with the Respondent's Review on this issue: Mr Clarke wished to emphasise that the Respondent did not concede that the Appellant's case had merit in this regard, but recognised that the Judge had not fully engaged with the arguments and evidence presented by the parties.

(iii) Ground 4: failure adequately to consider the claimed need for emotional support from the Sponsor in addition to any physical care needs and/or medical treatment. In recognition of the observations of the Court of Appeal at paragraph 59 of **Brit Cits v SSHD [2017] EWCA Civ 368**, Mr Clarke accepted that there was merit in the pleading at Ground 4 that the Judge had marginalised the relevance of the Sponsor's emotional support both in the context of the Appellant's mental health problems, and in respect of possibly having to cope with major surgery.

(iv) Ground 5: inconsistent findings and Article 8. Although the Judge concluded that the Appellant and the Sponsor were not blood siblings, she had also found "*the Sponsor has always believed that she and the Appellant are sisters, and they have a very close and loving relationship*" (paragraph 21). Mr Clarke acknowledged that the finding that there was not a blood relationship between the Appellant and the Sponsor did not inevitably deny that family life existed between them in circumstances where they had grown up believing themselves to be siblings – and even now in the context of the appeal maintained that they were half siblings, albeit that the Judge concluded otherwise.

(v) Ground 6: misapplication of law on family life. This ground of challenge was essentially a development of Ground 5, emphasising that one element of the test for family life, pursuant to **Uddin v SSHD [2020] EWCA Civ 338**, was "*one of effective, real or committed support*". In substance, further to a combination of Ground 5 and 6, Mr Clarke accepted that the Judge was in error in finding that Article 8 was not engaged, and thereby not going on to consider the issue of proportionality.

12. It may be seen that the only ground that Mr Clarke did not make a concession upon was Ground 1 – that the Judge had misunderstood the DNA evidence. I return to this below.

13. Given the breadth of the Respondent's concessions it is inevitable that the Tribunal will be circumspect before rejecting them, or otherwise in upholding the decision of the First-tier Tribunal as adequately reasoned in all material respects. In the event, and notwithstanding that there was no concession in this regard – and indeed Mr Clarke resisted the ground with some vigour - for the reasons set out below I am satisfied that the Judge was in fundamental error in her consideration of the DNA evidence. This feature, in isolation, but the more so when taken together with the substance of Grounds 5 and 6 (in respect of which the Respondent has made concessions), is sufficient to justify setting aside the decision of the First-tier Tribunal. In such circumstances analysis of Grounds 2-4 becomes less pertinent.

14. Be that as it may, it is appropriate that I make some brief observations in respect of these Grounds and the Respondent's concessions.

15. Grounds 2 and 3 relate to the availability of medical treatment. The Judge expressly recognised, appropriately, that the ADR Immigration Rules are concerned with care needs, not medical treatment – see paragraph 25 of the First-tier decision, and my further observations below in respect of remaking the decision in the appeal. As such there is a question mark as to the materiality of Grounds 2 and 3 to the appeal at least in so far as the analysis in respect of ADR. However, this does not exclude such matters from an 'in the round' evaluation under Article 8.

16. Mr Clarke's observation in respect of the relevance of the case of **Brit Cits** is germane. However, it is less clear that it can be said that the Judge failed to have regard to the issue of emotional support. The Appellant's emotional needs are seemingly recognised at paragraph 23, with express reference to supporting evidence, and the benefit of being close to relatives – but the Judge finds that any such needs are met by reason of the Appellant living with her mother and the availability of communication with her 'sisters'.

17. Had it not been for the fact that I was ultimately persuaded in respect of Grounds 1, 5, and 6, I would have invited further submissions in respect of Grounds 2-4. In the event it is unnecessary for me to reach any firm conclusion in respect of these latter challenges.

The DNA issue

18. As is alluded to above, the Appellant and the Sponsor grew up believing themselves to be siblings. It seems that it was only in the context of the Respondent's refusal and the appeal proceedings that that this might not be the situation became apparent to them for the first time.

19. The Respondent's refusal in this context went no further than identifying that insufficient evidence of relationship had been produced in support of the application – it seemingly being the case that no more than the passport of the Sponsor had been provided.

20. On appeal, in order to address this issue, the Appellant and the Sponsor commissioned DNA evidence. It was said that the DNA evidence established that they were half siblings – sharing a mother, but with different fathers. In the Sponsor's witness statement it is explained that this situation only became apparent upon DNA testing; further to this it was said that the man that they both believed to be their father had died in 1993, and their mother was too unwell for them to discuss the circumstances – thus the Appellant and the Sponsor were unable to explain the history. It is to be recalled that the Judge accepted that the Sponsor had always believed that they were siblings.

21. The Respondent, by way of the Respondent's Review, disputed that the DNA evidence established that the Appellant and Sponsor were even half siblings. The First-tier Tribunal Judge essentially found for the Respondent in this dispute.

22. In the premises I note the following features of the DNA evidence:

(i) The test provider, Northgene, is acknowledged by the Respondent to be a Home Office approved test provider.

(ii) Northgene's report dated 12 January 2022 contains the following 'Statement':

> "*We have now completed our calculation of the probability of relatedness. The DNA profiles of [the Sponsor] and [the Appellant] have been examined and a calculation of relatedness made. Taking into account the number of shared DNA markers and their frequency within the general population, these results are not supportive of the hypothesis that the tested individuals are related as full siblings as opposed to being half siblings.*"

(iii) The Laboratory Report, also dated 12 January 2022 shows the samples to have been tested were from each of the Appellant, the Sponsor, and Rhoda Edokpolo - the woman said to be the mother of both the Appellant and the Sponsor.

(iv) The Laboratory Report found:

> "*The LR [Likelihood Ratio] in favour of the two individuals sharing the same untested parent is: 0.06*"; and
>
> "*The probability in favour of the two individuals sharing the same untested parent is: 5.76%*".

This led to a 'Summary' conclusion that informed the Statement (above) – "*These results are not supportive of the hypothesis that the test individuals are related as full siblings as opposed to being half siblings*".

(v) An email dated 17 May 2022 from a 'Laboratory Scientist' at Northgene to the Sponsor was in these terms:

> "*Following our phone call, I can confirm that your report supports the relationship of Half Siblings.*
>
> *An LR (Likelihood Ratio) of 0.06 for the untested parent indicates a very low likelihood that you and your siblings share the same father. Since your mother provided a DNA sample, the untested parent in this case is the father(s). If the probability of sharing an untested parent is greater than 90% this indicates full siblingship, a probability of less than 10% indicates half sibling ship. Since your probability is 5.76%, this indicates halfsibling ship in your case.*"

(vi) A letter from Northgene dated 11 October 2022 stated in material part:

> "*The DNA Test Report generated, was a Half Versus Full Siblingship Test, between Oluwatoyin Blessing Abiodun and Bola Vivian Abiodun. The mother of both participants, Rhoda Osaro Edokpolo, partook in the DNA test and was included on the DNA Test Report.*
>
> *NorthGene uses a number of Decision Rules' when undertaking statistical DNA analysis for the purposes of relationship tests. For a Half Versus Full Siblingship Tests, NorthGene will only include the mother of the siblings on the DNA Test Report, if our statistical analysis is consistent with maternity for both siblings participating in the test. Therefore, in regard to C-24092b, we can confirm that Rhoda Osaro Edokpolo was included in this Siblingship Report as our statistical analysis supported the hypothesis that she was the biological mother of both Oluwatoyin Blessing Abiodun and Bola Vivian Abiodun.*"

23. I have considered very carefully the Respondent's Review at paragraphs 8-11, the substance of the Respondent's submissions as summarised in the Decision of the First-tier Tribunal (paragraph 15), and the reasoning of the First-tier Tribunal Judge at paragraphs 11-18. I have also taken into

account Mr Clarke's submissions in this regard. I have little hesitation in concluding that both the Respondent and the Judge have fundamentally misunderstood the nature of the DNA evidence.

24. In my judgement it is adequately clear that both the Respondent and the Judge misunderstood the nature and methodology of the 'Half versus Full Siblingship Test', and the specific hypothesis being tested in the analysis of 12 January 2022. In particular:

(i) It was not recognised that in the premises the Laboratory was already satisfied that the mother/daughter relationship between Ms Edokpoloand each of the Appellant and Sponsor had been established. If it had not been, the analysis in respect of the untested parent(s) (the father/fathers) was a meaningless exercise. That this was the premise of the Laboratory's analysis is plain from the letter of 11 October 2022 – "*For a Half Versus Full Siblingship Tests, NorthGene will only include the mother of the siblings on the DNA Test Report, if our statistical analysis is consistent with maternity for both siblings participating in the test. Therefore, in regard to C-24092b, we can confirm that Rhoda Osaro Edokpolo was included in this Siblingship Report as our statistical analysis supported the hypothesis that she was the biological mother of both Oluwatoyin Blessing Abiodun and Bola Vivian Abiodun.*". (I pause to note that although the Judge has reproduced the contents of this letter, at paragraph 13, it is not apparent that she did so with any understanding.)

(ii) It was not recognised that the hypothesis being tested by the laboratory on 12 January 2022, and the hypothesis to which the Laboratory Report related, was whether the Appellant and the Sponsor shared an untested parent. It was not, as such, an analysis to test the hypothesis that they shared any parent - i.e. it was not testing a hypothesis of half-siblingship; at least half-siblingship was established in the premise – the Laboratory being satisfied on its statistical analysis that Ms Edokpolo was the mother of both the Appellant and the Sponsor. It would seem that the test was characterised as a 'full v half' test because, given the premise of the relationship between the tested parent and the other two testees, if the hypothesis of full siblingship was ruled out (i.e. the analysis did not show that the Appellant and the Sponsor shared an untested parent), it followed that the relationship between the Appellant and the Sponsor was no more than half-siblingship.

25. That the Respondent misunderstood the nature of the DNA evidence is apparent from the Review wherein the Respondent admitted being "*perplexed*", and in a manner wholly inconsistent with the evidence alighted upon the 5.76% figure as being below that of a balance of probabilities. This misconception was taken forward into the submissions before the First-tier Tribunal, see paragraph 15 – "*[The Presenting Officer]*

submitted that since the test results showed a likelihood of only 5.76% of the Appellants being half siblings, this was insufficient to establish the claimed relationship".

26. This submission was to mischaracterise the evidence: the test results showed a likelihood of the Appellants being full siblings to be only 5.76%. It is perhaps this misunderstanding that partly informed the further erroneous submission, recorded at paragraph 15, to the effect that Northgene was applying a test different from other accredited providers - the other explanation being that the Respondent failed to grasp the methodology described above.

27. In this latter context, for completeness, I note the following:

(i) The Respondent's Review contained links to a 'DNACheck' website in respect of DNA testing to prove halfsibling status, and to the website of an approved provider, and reproduced the following statistical guidance:

"*90% or higher: the relationship is supported by DNA testing*

9% – 89%: inconclusive result, and additional parties need to be tested

Below 9%: the relationship is not supported by DNA testing".

(ii) Further to this, at paragraph 15 of the Decision, in submissions the Presenting Officer criticised Northgene's observation that "*a probability of less than 10% indicate half siblingship*" as not being supported by the position of other accredited providers, and argued "*Anything below 9% was not supportive of the Sponsor [and the Appellant] being half siblings*".

(iii) However, it is be noted that Northgene set essentially the same parameters as included in the Respondent's Review: se Northgene's email of 17 May 2022 - "*If the probability of sharing an untested parent is greater than 90% this indicates full siblingship, a probability of less than 10% indicates half sibling ship*".

(iv) The misunderstanding on the part of the Respondent was to fail to recognise that the relationship being tested was full siblingship. The probability of full sibling ship was only 5.76% and therefore not proven. Because of the premise - that the Appellant and the Sponsor shared the same mother (as discussed above) - this meant that the relationship between the Appellant and the Sponsor, having not been shown likely to be full siblingship, was therefore half-siblingship.

28. Unfortunately, I can see no excuse for the Respondent's misunderstanding in this regard. The link included in the Respondent's Review that leads to the source of the "*90% or higher... Below 9%...*" quotation shows that these figures were given in response to a standard question 'How do I understand results for a sibling DNA test?'. The immediately preceding question is 'How does this test work if it is unknown whether the possible sibling is a half or full sibling?', To which the answer is given:

> "*If it is unknown whether the possible sibling is a full or a half, we first test to see if there is a biological relationship. If there is not, then testing is over. If a relationship is determined to exist, then we can do a full-sibling test at the request of the customer*".

29. This is to repeat the methodology I have described above: in the premises it is necessary to establish that there is indeed a relationship between the possible siblings; if there is not, any further testing is meaningless and not undertaken. I repeat again, that it is evident that Northgene were satisfied that the Appellant and the Sponsor were related by sharing the same mother before embarking on the analysis to test the hypothesis of full siblingship.

30. Following the other link in the Review leads to a page that includes the following:

> "***Full Siblings vs. Half Siblings:*** *In this test, the DNA of two individuals with the same biological mother is compared to determine the probability of them sharing the same father, too. For this test, it is usually recommended that the biological parent submits a sample also, as this allows geneticists to examine which genes the children inherited from their biological father, and therefore provides greater conclusiveness.*"

31. Again, it may be seen that the 'full v half' test is premised on it being established that the testees share at least one parent.

32. Given that these passages are included in the materials linked to by the Respondent, it is not readily explicable why the Respondent took the position she did in this appeal. Be that as it may, the Respondent's position was plainly misconceived.

33. The extent to which the Judge was misled by the Respondent's misconception, and/or the extent to which she simply failed to undertake the appropriate analysis independently for herself, is less clear. Nonetheless, it is readily apparent that the Judge fell into substantially the same error.

34. Paragraph 17 of the Decision is, in part, in these terms:

> "*I have considered the evidence and the arguments. It is not common ground that anything less than 10% in the analysis of the samples establishes that there is a half sibling relationship. The Respondent's evidence suggested a match of 25% for half siblings and "below 9%: the relationship is not supported by DNA testing." The match in this case is significantly lower than 5% and so I do not accept the conclusions of Northgene as they are not supported by the position of other analysts.*"

35. This passage makes it plain that the Judge, wrongly, thought that the hypothesis being tested in the analysis of Northgene was that of a half-sibling relationship, whereas, for all the reasons explained above, the actual hypothesis being tested was that of a full sibling relationship. The 5.76% figure was the probability of full siblingship, not the probability of half siblingship. The Judge fundamentally misunderstood the evidence, and to that extent proceeded on a misconception of fact of such gravity as to amount to an error of law.

36. Moreover, whilst the Judge has commented that Northgene is "*not supported by... other analysts*", it is not apparent that the Judge followed the links provided by the Respondent in this regard, or undertook any comparative analysis of the approaches set out in those websites with the methodology of Northgene. Had she done so she would have discovered that Northgene's methodology, and application of probability, was essentially the same.

37. I acknowledge that further to this discussion Mr Clarke made an additional point to the effect that the statistical analysis in respect of the relationship between each of the Appellant and the Sponsor with Ms Edokpolo was not filed before the First-tier Tribunal. It seems to me that this is essentially correct. However, it is not a point that was taken below – probably because of the misconception on the part of the Respondent's advocate as to the purport of the evidence that was available. In any event it is not a matter upon which the First-tier Tribunal Judge relied. Yet further, the simple answer to this point is that it was stated in terms by Northgene that it was satisfied as to the relationships; if it had not been established that Ms Edokpolo was the mother of both the Appellant and the Sponsor it would have been meaningless to conduct the full sibling/half sibling analysis. As such, the un-contradicted evidence before the First-tier Tribunal was to the effect that a Home Office approved testing laboratory was satisfied that Ms Edokpolo was the mother of both the Appellant and the Sponsor. In the absence of anything to contradict such evidence, and given the nature of the testimony of the Sponsor, on any analysis this was

sufficient to discharge the burden of proving that the Appellant and the Sponsor were sisters (albeit half-siblings).

38. The Judge's plain error in respect of the analysis of the DNA evidence was overtly material to the Judge's analysis of Article 8 – "*it has not been established that the Appellant has established family and private life in the UK. She wishes to do so but she is not related as a family member to the Sponsor*" (paragraph 29). The First-tier Tribunal's analysis of Article 8 proceeded thereafter on a fundamental misconception as to the biological relationship between the Appellant and the Sponsor. The Judge found that the first **Razgar** question was to be answered in the negative – "*The application does not meet the first test*" (paragraph 29). The Judge's finding that Article 8(1) was not engaged at all, meant that there was no further analysis of the quality of the family life between the Appellant and the Sponsor, and far less was there any analysis as to the nature of any interference inherent in the Respondent's decision, and the proportionality balance to be struck taking into account the public interest. The repeated observation that the Appellant did not satisfy the requirements of the Immigration Rules – "*I repeat, she does not meet the requirement of the Immigration Rules under which she has applied to come to the UK*" – was not inevitably a complete answer to the fifth **Razgar** question of 'proportionality'.

39. As noted above, Mr Clarke acknowledged that the Judge's analysis of Article 8 was problematic with reference to Grounds 5 and 6.

40. For the reasons given, I find material error of law in the decision of the First-tier Tribunal to an extent that the Decision must be set aside. It is not appropriate to preserve any findings of fact, including the favourable finding in respect of the Appellant requiring long-term personal care to perform everyday tasks. All matters need to be reconsidered. It was common ground before me – and I agree – that the decision in the appeal requires to be remade before the First-tier Tribunal with all issues at large.

Some observations in respect of the issues in the appeal, further to the discussions in respect of the Grounds

41. I have noted above in the context of Grounds 2 and 3 that the ADR Immigration Rules are concerned with care needs, not medical treatment. Under the ADR Rules the test is in respect of a requirement for long-term personal care; it is not a test in respect of medical treatment. Necessarily the ADR Rules are not designed to provide a route for those wishing to come to the UK for medical treatment.

42. As such the medical needs of an applicant – and any associated medical evidence – is primarily only relevant under the Rules in so far as it assists (a) in establishing whether any care needs arise as a result of illness or disability, (b) in understanding any ongoing care needs, and whether such needs are likely to be long-term, and (c) possibly in demonstrating that an applicant is unable to obtain the required level of care in the country where they are living (cf. Appendix FM-SE paragraph 35(c)).

43. In such circumstances the availability of a type of medical treatment in the UK, that might not be available to an applicant in their own country, is not in and of itself a point of merit in determining an application under the Rules. Of course, in determining the issue of long-term personal care needs in respect of everyday tasks a decision-maker will have to have regard to the care needs likely concomitant with the type and level of treatment that the applicant is able to access in his or her own country – but the availability of better treatment in the UK is no part of that analysis.

44. This is not to deny that the availability of a particular type of medical treatment in the UK might not be relevant to an Article 8 balance, rather than to an analysis under the ADR Rules. In this regard, however, there may be scope for considering whether on the facts of any particular case the proportionate response is to expect an applicant to apply for leave to enter as a visitor for the purposes of private medical treatment. (However, on the facts of this particular case, the availability of such a route for the Appellant appears to be problematic – see further below.)

45. A further point to note is that the ADR Rules are a route to settlement: under paragraph D-ECDR.1.1 a successful applicant "*will be granted indefinite leave to enter*". Necessarily in context this is premised on the availability of care from a relative in the UK, in circumstances where the required care is not available in the applicant's country. The indefinite nature of the grant should perhaps inform an analysis of what is meant under the Rules by "*long-term*" personal care. So, for example, care required for a period of post-operative recovery, likely to be limited in time, might not meet the requirements of the Rules.

46. Moreover, a possible conundrum - which may be relevant to the facts of this case - may be envisaged. An applicant unable to access relevant medical treatment in his or her own country, may have long-term care needs because the medical symptoms giving rise to such needs are not alleviated through treatment; however, the same applicant able to access relevant treatment abroad may have no particular care needs post-treatment.

47. The foregoing matters might need some very careful analysis in the context of the instant appeal.

48. The Appellant has previously accessed private healthcare treatment in the UK whilst present pursuant to a visit visa. It is clear that her wish to have further medical treatment in the UK is a significant matter that informed the application and appeal.

49. In broad terms - and with the caveat that it is acknowledged that circumstances may change with time and will require to be evaluated afresh in the remaking of the decision herein - the circumstances before the First-tier Tribunal were as follows in respect of the Appellant's thyrotoxicosis. In terms of curative treatment, beyond mere management, there appeared to be two options: surgery or RIT. Although surgery might be available in Nigeria, it was said that the Appellant did not feel able to avail herself of such an option in the absence of the emotional support provided by the Sponsor and another sister present in the UK: it was argued that the RIT was not available to her in Nigeria. It was argued that in the absence of curative treatment the Appellant would continue to have care needs arising from the symptoms of her thyrotoxicosis, and also in part by reason of her mental health (which was aggravated by the symptoms of thyrotoxicosis).

50. However, in the application the Appellant expressed significant optimism as to the consequences of accessing treatment in the UK – to such an extent that it is difficult to see that any claim of long-term care needs does not become a significant issue. The application form states in part:

> "*We are prioritising my wellbeing and welfare but once I have fully recovered, I will at some point find a school to transfer my credits across to and attend on a part time basis and or in the evenings...*"

51. The extent to which potential recovery post-entry to the UK should inform an evaluation of long-term care needs may be a difficult issue in the context of both the Rules and Article 8, in circumstances where the medical treatment that might aid recovery could potentially be accessed pursuant to a temporary visa such as a visit visa rather than through settlement.

52. A further complication arises in the context of this case in that since the decision under appeal the Appellant has twice been refused a visit visa for medical treatment. The refusal decisions have been included in the Respondent's bundle before the First-tier Tribunal. Notwithstanding that the Appellant complied with the requirements of immigration control when she previously visited for medical treatment (save in respect of the late departure because of the limitations on international travel arising from the pandemic, in respect of which the Respondent has not taken any adverse point), both decisions expressed doubts as to the likelihood of the

Appellant complying with the requirements of immigration control in the future, and in particular indicated that the decision-maker was not satisfied that the Appellant would not seek to remain in the UK beyond her leave and that a genuine visit was not intended – such an approach on the part of the decision-maker being informed by the fact that an application as an ADR had been made and refused. No doubt the Appellant and the Sponsor find themselves musing as to what might have happened had a visit visa application been made instead of the ADR application.

53. There is a lot for the next judicial decision-maker to wrestle with. The parties would be well advised to prepare evidence and argument accordingly. However, the presentation of their respective cases is ultimately a matter for them, and I make no express Directions in this regard.

54. Finally, for completeness: the hearing was conducted as a hybrid hearing - I was present at the Field House hearing centre as was Mr Clarke, whilst Mr Dhanji and the Sponsor joined the hearing on separate remote video connections. The connections were adequate and no issue was raised to suggest a fair hearing had not taken place.

Notice of Decision

55. The decision of the First-tier Tribunal contained material errors of law and is set aside.

56. The decision in the appeal is to be remade before the First-tier Tribunal, with all issues at large, by any Judge other than First-tier Tribunal Judge Kaler.

57. No anonymity order is sought or made.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

4 September 2023