IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002622
UI-2022-002633
First-tier Tribunal No:
PA/51512/2020
PA/51513/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of November 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AT
RD
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Imamovic, instructed by Tann Law Solicitors Ltd.
For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 25 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. Following a hearing at Birmingham on 1 November 2022 it was found a judge of the First-tier Tribunal had materially erred in law in allowing the appeal pursuant

to Article 8 ECHR, as insufficient consideration had been given to the public interest.

2. The First-tier Tribunal's dismissal of the Appellants' appeals on international protection grounds and Article 3 ECHR medical grounds were not challenged and are preserved findings.

3. The earlier determination was set aside pursuant to Article 8 ECHR on the basis it was not clear from the determination how the Judge factored the public interest into the assessment of the proportionality of the decision, as a reader of the determination was unable to understand (a) whether this had occurred, and, (b) what weight the Judge had given to this aspect.

4. The matter comes back before me today for the purposes of substituting a decision to either allow or dismiss the appeal. It was accepted by the advocates that the issues to be considered are paragraph 276 ADE of the Immigration Rules and Article 8 ECHR outside the Rules.

5. Following directions having been given in the error of law decision, additional evidence has been received from the Appellants. All the material provided has been taken into account together with oral evidence and submissions, even if not specifically referred to below.

6. Both Appellants are citizens in Zimbabwe. AT, who was born on 18 December 1954, is the grandmother of RD who was born on 13 February 2002.

7. Their immigration history, as recorded by the First-tier Tribunal, is that they left Zimbabwe on 19 January 2019 and flew directly to the UK, arriving on 20 January 2019 as visitors.

8. Prior to that AT had travelled back and forth between Zimbabwe and the UK to visit her three adult children all of whom reside in the UK and support these appeals.

9. AT and RD's applications for international protection were based on claims they have a credible well-founded fear of persecution in Zimbabwe on the basis of an imputed political opinion, their race, and membership of a particular social group - lone female fearing gender-based violence.

10. Although permission to appeal was not sought in relation to the rejection of the protection claim some aspects of that original claim were raised again in the hearing before me, in particular that whilst neither Appellant claims to have been physically harmed when living in Harare, their previous place of residence, AT claims to have had cattle stolen from her land previously and RD claims that further theft and vandalism of property had occurred in previous years.

11. It is not disputed that both Appellants had lived together in Harare for a number of years. Another of AT's daughter, who was RT's mother, died a number of years ago and AT is the legal guardian of RD. RD has a brother who at the time of the hearing before the First-tier Tribunal was studying in Turkey, but who is now in the UK as noted below.

12. AT owns a property in Zimbabwe and at the date of the earlier hearing she confirmed that she was able to earn rental income from the property that she owns. That is an issue discussed further below in light of subsequent developments.

13. It is also recorded that there is a land dispute. The First-tier Tribunal Judge noted that the disputed land, which was a central part of the appeal, was said to belong to RD's mother, that legal proceedings had been ongoing for years in relation to the land, and that the authorities had seized the land and that the dispute was with the authorities rather than an individual.

14. As the land issue was also raised before me. I set out the First-tier Tribunal Judge's findings at [40 – 42]:

> 40. Even though five witnesses gave oral evidence, I was not clear as to whether the dispute regarding the land had in fact been settled in the favour of the Appellants family or not. Appellant 1 was initially adamant in her oral evidence that proceedings had now ended, and the land had been returned to the family. However later on in her evidence, she then changed her position and reiterated that proceedings were still ongoing, and the ownership of the land remained in dispute.
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> 41. It is difficult to accept that either Appellant have a well-founded fear of persecution from the authorities seeing as a land dispute has been ongoing for a number of years with the authorities and as a result, I accept Mr Aigbokie's submission that it is difficult to see where a convention reason has been established even to the lower standard on this basis.
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> 42. Neither Appellant claim to have been personally harmed by the authorities or any other individual acting on behalf of the state whilst they resided in Zimbabwe. Examples of general vandalism and theft were cited, however no specific detail was adduced which led me to conclude that the authorities were responsible for these activities.

15. The Appellants had also claimed that the army were positioned outside their home between 15 to 19 January 2019 and were chanting and armed. In relation to the events it is alleged occurred on 14 January 2019, the First-tier Tribunal Judge recorded some discrepancies between the version of events given between the Appellants in their screening interviews, that it was apparent there was general unrest in Zimbabwe occurring around that time, and that if both Appellants claim they had no other option but to leave the country because they personally had a well-founded fear for their safety due to the adverse attention from the authorities, it is not explained how it was they were not questioned, nor faced any opposition at the airport, and were able to leave the country freely using their own identity documents.

16. The First-tier Tribunal Judge concluded not being satisfied to the lower standard that the Appellants are of interest to the authorities in Zimbabwe or will be on return. The First-tier Tribunal was unable to conclude that there is a risk of persecution from either the adverse attention from the authorities, from being a woman, or from being a member of the Shona tribe. These are preserved protection findings which it was not shown before me it is appropriate to depart from on the facts.

17. In relation to the Article 3 medical claim, which I refer to as medical issues formed a substantial part of the Article 8 claim as discussed below, the First-tier Tribunal Judge wrote at [46]:

> 46. In relation to the health of Appellant 1, I do not accept on the basis of the evidence before me that the high threshold for Article 3 (medical) is met. From the submissions made by Mr Mahmood it was apparent that this point was not being particularly pressed in any event.

18. The Secretary of State's published policy in relation to medical claims is to balance the needs of a claimant with a serious medical condition with the wider public interest by:

(a) Properly considering medical claims with sensitivity and granting leave outside the Immigration Rules in very exceptional cases, where there is strong medical evidence that removal will breach Article 3 or 8 of the ECHR.
(b) Protect finite NHS resources by removing those who have no right to remain here even where they have a medical condition, if that does not meet the very high threshold that applies in such cases.

(c) Ensuring that access to health services does not act as an incentive for migrants to come to the UK legally for medical treatment (health tourism).

19. It is this aspect of the public interest that was not adequately dealt with in the previous decision.

20. The leading case in relation to Article 3 medical, which confirmed the Article 3 medical threshold as held in Paposhvilli v Belgium [2017] Imm AR 867, which set out the two elements to determining an article medical claim being (a) the substantive test stand (b) the procedural obligations, is AM (Zimbabwe) [2020] UKSC 17.

21. The European Court of Human Rights in Paposhvilli set the threshold for a person to succeed on Article 3 grounds in terms of medical needs, as a need to show those affected by illness would face a serious, rapid and irreversible decline in their health, leading to intense suffering and/or a significant reduction in their life expectancy because of the absence of treatment and/or inaccessibility of treatment in the country of return. That is the threshold test that neither Appellant has been found to be able to satisfy, which is a preserved finding and which it has not been shown warrants a different outcome today, on the facts.

22. It was submitted that although the issues before me relate to paragraph 276ADE and Article 8 ECHR the medical issues, which are discussed further below, are material.

23. The relationship of the application of Article 3 and Article 8 to a case where it is sought to compare the availability of medical treatment in the UK and the country in which it is to propose to deport an applicant was considered by the Court of Appeal in MM (Zimbabwe) v Secretary of State the Home Department [2012] EWCA Civ 279 which recorded at [17] that the essential principle is that the ECHR does not impose any obligation on the contracting state to provide those liable to deportation with medical treatment lacking in the country to which they are to be removed.

24. It is not disputed, however, that medical issues can be raised in an Article 8 ECHR claim. At [19] – 24] of MM (Zimbabwe) the Court find:

> 19. Despite that clear-cut principle, the courts in the United Kingdom have declined to say that Article 8 can never be engaged by the health consequences of removal from the United Kingdom. In *R(Razgar) v Home Secretary* [2004] 2 AC 368, the question of principle was whether the rights protected by Article 8 could be engaged by the foreseeable consequences for health or welfare of removal of the United Kingdom pursuant to an immigration decision, where such removal does not violate Article 3 [1]. Lord Bingham's answer was that such rights could be engaged by the foreseeable consequences for health of removal from the United Kingdom, even where such removal does not violate Article 3, "if the facts relied on by the applicant are sufficiently strong" [10]. Lord Steyn agreed with Lord Bingham. Lord Walker agreed with Lord Bingham's observation and Lord Carswell considered the question to be whether removal would amount to a "flagrant denial of the appellant's Article 8 rights to the preservation of his mental stability" [74].
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> 20. Baroness Hale admitted of the possibility that in a case where removal will lead to a violation of a person's convention rights in the country to which he is to be removed (a "foreign case") a case could fail under Article 3 but succeed under Article 8. But she acknowledged: -
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> "Although the possibility cannot be excluded, it is not easy to think of a foreign health care case which would fail under Article 3 but succeed under Article 8. There clearly must be a strong case before the Article is even engaged and then a fair balance must be struck under Article 8(2). In striking that balance, only the most compelling humanitarian considerations are likely to prevail over legitimate aims of immigration control or public safety. The expelling state is required to assess the strength of the threat and strike that balance. It is not required to compare the

adequacy of the health care available in the two countries. The question is whether removal to the foreign country will have a sufficiently adverse effect upon the applicant. Nor can the expelling state be required to assume a more favourable status in its own territory than the applicant is currently entitled to. The applicant remains to be treated as someone who is liable to expulsion, not as someone who is entitled to remain." [59]

None of the other members of the Committee expressly refer to this passage.

21. Since *Razgar* this court has reiterated the principle expressed in *Bensaid (q.v. supra)* that if removal would have sufficiently adverse effect upon mental health, it is capable of engaging Article 8 (see *AJ (Liberia) v Secretary of State for the Home Department* [2006] EWCA Civ 1736 [17]). But again, the court pointed out that legitimate immigration control would ordinarily meet the test of necessity under Article 8(2) and decisions taken "*bona fide* in the exercise of such control would be proportionate in all but a small minority of truly exceptional cases, in which the imperative of proportionality demands an outcome in the claimant's favour" [18].
22. Thus, the courts have declined to close the door on the possibility of establishing a breach of Article 8 but they have never found such a breach and have not been able to postulate circumstances in which such a breach is likely to be established. Since *Bensaid* in 2001 there has been no example of a successful Article 8 claim in a mental health case. The courts and tribunals have merely been left with the difficulty of identifying a "flagrant denial" or a "truly exceptional" case, neither of which provide any standard of measurement.
23. The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighed in the balance, with other factors which by themselves engage Article 8. Suppose in this case, the appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding would not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the appellant is to be deported.
24. But the question remains whether the appellant has established that deportation would infringe his rights enshrined in Article 8.

25. There was discussion during the hearing in relation to the moral and physical integrity argument, and for many who cannot succeed pursuant to Article 3 ECHR, the right to family or private life, including moral and physical integrity, may provide better protection. Whether it does, however, is an intently fact specific question.

26. That still takes us back to the need to strike a balance between the humanitarian considerations raised by Article 8 and the public interest in maintaining immigration control, public safety, and the Secretary of States policy referred to above.

The evidence

27. As with many cases in this jurisdiction a considerable volume of evidence has been provided. This includes statements not only from the Appellants but also from FM, AT's daughter and the aunt of RD with whom they live in the UK, from RD's cousin ST, RD's sibling RuD, the granddaughter of AT, AT son PT, and from other sources. Those statements express their support for the Appellants being permitted to remain in the UK should they be allowed to do so. It is clear from reading all the evidence filed on the Appellant's behalf that the family cannot

countenance any circumstances in which AT and RD should be expected to return to Zimbabwe.

28. I have also been provided with a document described as an expert report dated 30 November 2022 written by Professor Mario I Aguilar.

29. Professor Aguilar summarises the case as being one relating to appellants who are a grandmother who has medical conditions and the granddaughter who is in education in the UK. His instructions are stated to be to provide his opinion with regard to treatment and support available in Zimbabwe and whether it was durable to send both appellants back to Zimbabwe.

30. To put the report in context it is necessary to consider the cases of the Appellants, both individually and cumulatively with the other evidence.

31. In relation to AT, her witness statement was written on her behalf by her daughter FM. A number of statements have been provided. The first statement, in which AT comments upon the Reasons for Refusal letter, is dated 31 December 2021.

32. In her statement AT confirms that she was widowed in 2005 following the death of her husband on 25 December 2005. She was a social justice advocate and a pastor in Zimbabwe. In relation to the farm and the question of whether there is a dispute, a matter referred to by Ms Imamovic in her submissions, AT writes:

> 5. Paragraph 41 – 42 is disputed - the Wiltshire farm was inherited when my husband passed away. The farm has been in the family name since generations and has no disputes going on. The Chegutu farm, was previously owned by my deceased daughter (FD) this is the farm with ongoing disputes with the Zanu-PF officials. I continued to receive adverse attention from the ZANU PF militia and ongoing intimidation from the police due to a land dispute. There is dispute with the property in Harare that was reported to the police on several occasions, which has not been investigated.

33. The statement refers to AT's general health condition, claiming continuing deterioration between April and December 2019 including severe back and lateral back pain, neuropathy worsening to both legs, impacting her balance and resulting in several episodes of falls, double incontinence (urinary and faecal) worsening due to loss of sensation into her rectum and bladder. It is stated that due to the pain and incontinence AT requires assistance with personal care and mobility, and that as a result of a head injury caused by a fall AT suffers from short-term memory loss which has resulted in several safety concerns, including multiple occasions the flooding of the house, overfilling the kettle and forgetting to turn off the cooker/oven, meaning she require support and supervision with activities of daily living.

34. The statement refers to a referral to a neurosurgeon in January 2020 which was the first occasion on which her spinal cord compression was noticed. The statement refers to the fact that the spinal-cord compression was noticed from the same MRI scan performed in April 2019. The neurosurgeon recommended emergency surgery for spinal decompression, highlighting and noting AT's deteriorating and worsening condition, and explaining that she was at risk of becoming permanently paralysed if surgery did not take place immediately. It was also explained that due to the extended period of no intervention there might be limited improvement to both faecal and urinary incontinence, but also that the risk of surgery included possible risk of failure which could lead to paralysis.

35. In her statement dated 24 November 2022 the earlier history, including medical intervention is repeated. There is reference to AT previously being independent but stating she is no longer independent and is heavily reliant upon her family for her care.

36. It is claimed that returning to Zimbabwe would greatly disadvantage AT as:

- She has no more family connections in Zimbabwe to provide the same level of care.
- Getting a carer for AT in Zimbabwe would not be viable ether, due to her vulnerability physical and psychological, social and economical.
- AT's forgetfulness as there will be no family or friends looking out for her who could provide the best possible care.
- the high risk of abuse and mismanagement of her health, finances and her estate by the carers
- the additional cost of care compared to that provided in the UK from her family which is free, including accommodation and living expenses.
- Zimbabwe's failing health system resulting in fear she will not be able to get the healthcare education she needs to meet her complex healthcare of multiple comorbidities.
- Lack of basic amenities such as electricity and water in Zimbabwe would make it difficult to care, especially continence care to be given to AT, food preparation and hydration needs.

37. It is suggested AT cannot return to Zimbabwe and resume her life as it was before as she is no longer independent, is wholly dependent on her children and family, not able to drive, not able to work or pay bills or buy groceries, not able to perform tasks of daily living without support and will not be able to manage. She also claims it will be more difficult for her family to support her in Zimbabwe, especially due to her complex health needs and safeguarding concerns.

38. In her most recent statement dated 27 August 2024 AT again refers to her medical history and an ongoing pain issue, stating she suffers severe back, bilateral shoulder, and bilateral leg pain, which she states remains poorly controlled in spite of interventions. She states the pain interferes with her daily activities and that she requires ongoing care and pain management, it impacts on activities of daily living and her ability to socialise. She states it is currently being managed through a course of acupuncture that she has received for over a year, initially on a weekly basis and then every month on her back and legs, alongside pain medication.

39. Pain management, including acupuncture, within the NHS commenced in August 2023. In mid- July 2024 there was a review with a pain management nurse with the intention of enrolling AT onto a nurse led virtual pain management program including six support sessions with the pain management team, but that she was told she would not be eligible as a result of how complex and poorly controlled her pain is, which resulted in a referral to the specialist pain consultant which at the date of the statement was said to be an appointment pending.

40. AT refers to pain management provided by her GP by way of prescribed medication and states that her pain is reducing her mobility and that she remains at high risk of falls.

41. AT states her neuropathy is worsening in both legs due to damage to the nerves which impacts her balance resulting in falls, that she is experiencing excruciating back pain, shooting pains down her legs, which she states is believed to be referred pain from her spinal surgery. She also records having sharp stabbing pains on the top of her head which is believed to be as a result of referred pain from her back and neck resulting from injury sustained from the spinal injury. In October 2022 AT was referred to the emergency department for pain review and subsequently re-referred to the pain management team for additional support with holistic pain management such as acupuncture as the pain was poorly managed.

42. AT records having double incontinence due to loss of sensation to her rectum and bladder, a type of incontinence which is indicated in a more serious underlying condition such as spinal injury. She states that is managed using absorbent products, bed protection, skincare, and hygiene products, and a prescription of creams to manage related rashes.

43. AT states she also has severe arthritis resulting in debilitating chronic back pain, bilateral knee and leg pain, and that her arthritis also continues to affect both shoulders as well. This gives rise to the need for continuing support with personal care, mobility, and daily care, as the arthritis causes her constant pain, reduce mobility, and the need for assistance with personal care and daily activities.

44. AT has also been diagnosed with complete hearing loss in one ear, with the other ear performing at less than half the expected range. Following a review in July 2024 it was found she requires a hearing aid to help her with her hearing. There is also a reference in the statement to tinnitus and raised blood sugar levels since 2019 giving rise to concerns of a high risk of diabetes. AT also has cataracts in both eyes which will need surgery for removal and refers to a recent eye test in July 2024.

45. Memory problems are also referred to, including problems with short-term memory loss and forgetfulness which have resulted in flooding of the property at her daughters' houses as well as being forgetful and leaving the cooker and oven unattended. The statement speaks of memory deterioration between 2019 and the present, with AT's understanding and coherence being impacted. A memory assessment undertaken in August 2024 is said to have resulted in a diagnosis of concern that as a result of AT's poor health the result was below the expected standard, but there could also be other things such as dementia, which has resulted in a referral to the memory clinic for further assessment and management.

46. There is also reference in the statement to episodes of depression, anxiety, increased worry, and fear which are claimed impacts of pain management and overall quality-of-life and difficulty sleeping.

47. The statement refers to reliance on family for personal care, hygiene, continence care, meal preparation, medication management, holistic well-being support including mindfulness, meditation, complimentary therapy, and physical therapy and that her daughters and granddaughter RD are her primary caregivers. It also said the family provide essential emotional and psychological support and help in managing her episodes of depression, anxiety, and increased worry, and absorb the costs of her keep and bills into their family budget.

48. AT states that despite her poor health she remains actively involved in church life, providing counselling and prayers for church members, which is a source of strength and community for both her and her family.

49. AT claims that the families themselves face economic challenges in supporting her and would do so if she was relocated to Zimbabwe where the healthcare system is failing, the cost of healthcare will be prohibitive, and that in the UK her family who could provide care for free, including accommodation and living expenses.

50. AT claims that RD does not have a driving licence which would inhibit her ability to dispense care, travel to and from medical appointments, or source essential everyday activities.

51. AT states the estimated cost of private healthcare in Zimbabwe for someone with her medical needs was difficult to determine precisely, although notes private facilities in Harare charge significantly high fees, such as $2500 for admission, and that private clinics will be reluctant to outline costs without a medical examination, making it challenging to secure a concrete estimate. AT states that this prohibitive cost, combined with the failing health care system and

lack of family support, would make it financially unviable for her to receive the necessary care in Zimbabwe.

52. AT claims that when they arrived in the UK RD was 16 years of age, had never worked and does not have experience/knowledge of professional work. It is claimed as a result she would only be able to access informal work, if at all, due to the care responsibilities she would have towards AT, limiting access to work opportunities within Zimbabwe. It is claimed RD has neither lived independently as an adult, either in the UK or in Zimbabwe, which would impact on social and economic opportunities and overall well-being.

53. The statement refers to the Chegutu farm remaining in dispute and that since the last decision to temporarily halt the overtaking of the farm by the courts in Zimbabwe, there continue to be no resolution as the farm had not been handed over to date, meaning it was unresolved. AT states at present the farm remains non-functional and non-productive and although they could neither access nor actively farm the land they have not, in any event, engaged new lawyers in Zimbabwe.

54. In relation to the rental property owned by RT in Zimbabwe, it is claimed it is now uninhabitable and requires extensive work on it. AT claims the tenant who resided in the property did not pay the rent regularly and has deliberately vandalised the property to an extent that it requires major renovation. The property has been vacant since January 2024, was left without water and electricity supply as well as outstanding arrears for utilities, there is no rental income coming, no one lives there, it is derelict, and will be extremely expensive to repair.

55. AT states that RD's brother who was previously living in Turkey has relocated to the UK in January 2023 with a skilled worker visa as a healthcare assistant, valid until June 2026, and lives in the UK legally.

56. AT states she could not return to a rural area as she will be more isolated, with no medical centres nearby and worse access to healthcare and education. She claimed lack of amenities such as water and electricity would make it more difficult to receive the care she requires and refers to lack of job opportunities for RD.

57. AT refers to having previously travelled to and from the UK when her husband was alive and with RD in 2017 to visit their family, although claims that would not be possible now due to her current health condition and alleged intimidation from the militia, Zanu-PF and plainclothes policeman, although so far as they relate to her protection claim that has been resolved as per the preserved findings.

58. I have also seen a very detailed witness statement from AT's daughter FM, with whom she lives, dated 10 September 2024 confirming AT's medical difficulties, the support received from both the NHS and within the family, and her family's beliefs that she should be permitted to remain in the UK.

59. In FM's opinion in Zimbabwe AT does not have the same family access and will not be provided with the same level of care and support. It is claimed AT has become increasingly reliant on spending time with her family or grandchildren, especially in light of her incontinence and mobility limitations. The family are not confident AT will be able to manage with her current health conditions and needs in Zimbabwe as there will be no family support to care for her or provide safeguarding support for her vulnerabilities. They also fear she will not be able to access medication, healthcare facilities or support in Zimbabwe which will cause a greater and faster deterioration of her health conditions.

60. It is in the context of AT medical conditions that Professor Aguilar was asked to provide his opinion. He sets out four conclusions based upon the material provided which are summarised at [53] of the report in the following terms:

53. Conclusions:

Conclusion 1: The general political and economic situation in Zimbabwe is that of an unstable country, impoverished by natural disasters, and by administrative laundering of money abroad without respect for ordinary citizens. I have outlined such instability and financial crisis before I explore the medical health treatments available for the appellant simply because political and financial stability tend to deliver good health provisions, something which is not present in Zimbabwe. Zimbabwe remains as one of the poorest countries in Africa. Such poverty and money laundering creates a situation where US dollars are not necessarily available to purchase medicine and medical equipment abroad that is not made in Zimbabwe.

Conclusion 2: The health system in Zimbabwe is grossly underfunded. The current budgetary allocation works out to approximately US$7 per capita per annum against the WHO recommendation of at least US$34. There are no sufficient medical personnel, and the system does not provide for the care of complex medical situations being geared towards the control of communicable diseases and the reduction of infant mortality. In my opinion as a therapist and medication available in the UK are not available in Zimbabwe; those who can afford private care go to South Africa or come to Europe. This applies particularly to the availability in his case of medication for very complex medical conditions which in most African countries needs to be imported from South Africa, India, or China as well as the almost non-availability of specialist medical doctors.

Conclusion 3: In my opinion state health provisions in Zimbabwe are vastly in adequate and the country neither has the infrastructure nor the medical personnel as to care for most of its population. The reasons are political and financial as well as cultural because health issues such as chronic illnesses are also associated with witchcraft. Within such shortage or medications are imported from South Africa and therefore it is most likely that the Appellant will not have access to the medication she requires and that she currently receives in the UK as well as the medical guidance by a consultant medical doctor.

Conclusion 4: The key to social and financial survival in Zimbabwe is the help of a family network. Because the appellant does not have such network, she will not be able to integrate into the life of Zimbabwe, particularly because of the lack of an extended family. She will not get a job in Zimbabwe not only because of age discrimination. Thus, the fact that she has not lived in Zimbabwe for some time, that she has no family in Zimbabwe and that she has chronic medical conditions constitute grounds for insurmountable obstacles to her reintegration back in Zimbabwe.

61. In relation to RD, she has filed a number of witness statements, the most recent of which is dated 1 August 2024. She has resided in the UK since January 2019 living with her adoptive mother, AT, her maternal aunt FM and other family members, including cousins.

62. RD states her biological father died on 18 April 2003 a few months after her first birthday. She herself was born on 13 February 2002. She claims after his death she never heard from his side of the family and continued to live with her mother, with support from her grandmother AT. RD states that her mother passed away on 22 January 2008, following a period of illness, when she was five years of age. Following her mother's death her grandmother moved in and started living with them permanently. Her maternal aunt JG was also present in their lives and assisted her grandmother with care of her and her brother RuD. She states, however, that JG died when she was nine years of age after which she and her brother returned to the sole care of AT.

63. She describes the care provided by AT as being everything a parent would have done for her and that together with support from family in the UK her school fees and other monetary support was provided. In 2015 her brother went to Turkey to study at university after which she remained living with AT and describes them as forming an inseparable bond.

64. RD states in January 2019 she and AT fled Zimbabwe after she claims that she was accosted threatened and intimidated by plainclothes policeman as well as having soldiers surround the house. She states that when they arrived in the UK AT became ill which delayed their return and led them to seeking advice and guidance from immigration lawyers who advised them to seek asylum, which she claims provides an explanation for why there was a delay between their arrival in the UK and the date the asylum claim was made.

65. RD repeats the evidence in relation to AT's health needs and concerns should they be returned to Zimbabwe. There is reference to a subjective fear of problems from the authorities, but it is a preserved finding that there is no entitlement to a grant of international protection on any basis.

66. In relation to RD's educational background, she was unable to gain admission to a state school as a result of her immigration status, and so applied to independent schools for a place to start in September 2019. She secured a placement at Hull Collegiate School and started her sixth form studies on 3 September 2019. RD was awarded a nominal non-financial academic scholarship and did well, including in year 13 being appointed as the school's Head Girl and receiving awards for her academic achievements.

67. RD applied to various universities as an asylum seeker during her sixth form, initially for medicine, but was not offered a place which she claims was due to a shortage of available places, after which she enrolled in a four-year Pharmacy MPharm degree at De Montford University in Leicester which she started in October 2021 as an international student, paying international fees, She will be starting her fourth year in September 2024. RD's intention is to graduate, undertake a training year to be registered as a pharmacist, and work as a clinical pharmacist within the NHS and healthcare sector.

68. RD refers to engaging in the community during her time in the UK, being part of various social societies and activities whilst at university, including being involved and part of the committees of the Pharmacy Society and the Christian Union Societies.

69. RD states that if she was returned to Zimbabwe, she will be unable to finish her degree in pharmacy as a result of the difficulties in transferring the courses. She claims that would mean she will be unable to continue with her education at all as she would have to undertake the role of a full-time sole carer for AT. RD claims this means she would not be able to pursue any career path as she could not commit to work life due to the care needs of AT. In the UK such needs are shared as a family which gives her the opportunity to pursue her education.

70. The statement refers to family life and support in the UK, including friends who have written letters in support in the bundle which I have read, states that since becoming an adult she has not lived independently and has been very dependent on the family for their support. RD fears return to Zimbabwe will be isolating, take great toll on her mental health, and she would struggle to cope without support from family or friends.

71. RD states the De Montford University are aware she is an asylum seeker and that she is enrolled as an international student paying international fees. Consultation with a company dealing in university transfers, University Direct, have advised her it would be very difficult to transfer her pharmacy course to Zimbabwe which RD claims would result in a loss of three years of education and financial investments. It is not indicated in the statement that RD believed she had entered the UK to study lawfully as she did not have a visa for that purpose.

72. The statement refers to health and well-being issues, claiming AT's health has deteriorated since they arrived in the UK and setting out the concerns reflected in the other witness statements.

73. RD speaks of the value to her of involvement with the church in the UK and support she has received for her own mental health needs.

74. RD writes "*I fear, returning to Zimbabwe would impact on my grandmother's health. I fear that accessing the medication she uses would be difficult, and also, as I am unable to drive, I would not be able to facilitate taking her to appointments, or emergency services, should she require them. Furthermore, our return would mean I will become the sole carer for my grandmother, with no respite. This would be increasingly challenging, as it would mean, I would have to let go of my dreams of a career and commit to full-time support and care for my grandmother. Without a job, this would make it increasingly difficult to sustain the needs for my grandmother or myself, as well as bills and other requirements of upkeep, making it increasingly difficult for us.*"

75. RD, in conclusion, asks the Tribunal to consider the evidence and statements provided and grant her the right to remain in the UK to continue her education and live with the family who she states have been her primary source of support and stability.

Discussion and analysis

76. The Appellants previous home address before coming to the UK was in Harare, the capital of Zimbabwe. There is little credible evidence of the accommodation being lost that she previously had with RD or to show alternative accommodation will not be available in the city if it was.

77. The claim AT will return as a lone female is not made out as she could return with RD or RuD.

78. Potential financial support from family in the UK has not shown to be inadequate to meet her needs on return. Although it is claimed they were unable to provide a concrete estimate of the costs of returning the evidence, there is sufficient available to establish the costs of residential care in Zimbabwe which, on the basis of the evidence disclosed in the appeal bundles, it has not been shown could not be met by family in the UK or elsewhere. I do not find it has been made out their resources are so limited or that they would be unwilling or unable to provide such financial resources as would be required. The costs of RD's studies as in international student have been met to date and will not be ongoing.

79. Whilst the rental property shows evidence of damage in the photographs insufficient evidence of the cost of repair has been provided, or anything to show that it would be unachievable or disproportionate. It is not made out that if repaired the property could not be rented out to generate an income.

80. The land dispute relates to one farm premises, that of AT's deceased daughter. The evidence is that the courts are willing to become involved, indicating access to justice for AT, and that favourable orders have been obtained. Whist it may be necessary to instruct fresh legal advisers to recover possession of that farm there is nothing to show that cannot be achieved, or that it cannot be a productive or saleable asset in the future, with hired farmhands if required.

81. The second farm has been in AT's family for generations is said not to be subject to the land dispute. Insufficient evidence has been provided to show it is not a saleable assert, could not produce a rental income, or it could not continue to be farmed productively.

82. Reference is made to difficulties AT may experience living in a rural environment but it is clear that prior to coming to the UK she lived in the capital city. It is not made out she could not do so again.

83. It is accepted AT has health needs but whilst the treatment/interventions she has benefited from the UK may not be available in Zimbabwe, that is not the

required test. The UK has no obligation to medicate the world as it equally has no obligation to educate the world.

84. AT speaks of shortages within the health service in Zimbabwe but availability of treatment/medication, even if it has to be obtained from South Africa or imported from elsewhere, does not establish there will not be sufficient resources available, or funds generated within Zimbabwe or from family overseas, including in the UK, to ensure that such medication as required can be provided.

85. RD will not be required to live in a rural area if AT lives in Harare. RD is undertaking degree level studies to qualify as a pharmacist. Even if she could not transfer that qualification or her experience obtained to date, it has not been made out it would not be proportionate for her to restart her studies within Zimbabwe where she could qualify as a pharmacist and seek employment if required. It is not made out that she would not be able to provide some care for AT whilst undertaking such studies.

86. If AT lives in an urban environment it is not made out she would not have ample accommodation, gas, electricity, water, or shops for the provision of essentials to meet her needs. It is not made out that items such as incontinence pads, creams, or items that may assist with her general health and hygiene could not be sourced locally or sent to her by family in the UK.

87. The witness statements received clearly show there is a strong, stable, genuine, and committed body of family support for AT and RD in the UK. Indeed, it appears that nearly all the family members have relocated to the UK from Zimbabwe for work purposes and otherwise.

88. The resources available to the UK families are reflected in the evidence provided. I accept the submissions that shows that AT's need for care at home will, at the moment, be met within the family environment at no cost to the public purse, but there is merit in Mrs Arif's submission that there is a very strong public interest in protecting the NHS and the cost to the public purse of the treatment needed by AT now and in the future. There has already been extensive cost, with indications being that there is likely to be in the future too. It is not made out the family will have the resources to enable them to meet such costs privately, meaning substantial ongoing cost to the public purse.

89. Paragraph 276ADE of the Immigration Rules, which has now been replaced by Appendix Private Life but was in force at the date of the decision, and is therefore relevant to the issues in this appeal, reads:

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

90. The submissions focused upon 276ADE(1)(vi) and the question of whether there are insurmountable obstacles to integration into Zimbabwe.

91. The guidance provided by case law shows that the idea of integration calls for a broad evaluative judgement to be made as to whether individual will be enough of an insider in terms of understanding of how life in the society in that country is carried on and has the capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life : see Secretary of State for the Home Department v. Kamara [2016] EWCA Civ 813 (11 August 2016) [2016] 4 WLR 152, as explained at [70] to [72] and applied at [83] to [91] of CI (Nigeria) v The Secretary of State for the Home Department [2019] EWCA Civ 2027 (22 November 2019) [2020] Imm AR 503. NB. [86].

92. Whether a person has knowledge of the cultural norms is a question of fact. It is clear that AT lived in and was involved within society in Zimbabwe for the majority of her adult life until she came to the UK, returning there regularly after visits to the UK when her husband was alive. It is clear that she had involvement with the church, as a prison visitor, and in other capacities, and has continued to attend her church and provide support for others whilst in the UK. RD was born and brought up in Zimbabwe where she lived until she came to the UK with AT and has remained pending the outcome of her applications.

93. It was not made out on the evidence that either appellant lacks knowledge of the cultural norms sufficient to enable them to integrate into society in Zimbabwe once more. They have only been absent from the country since 2019 with insufficient evidence that their knowledge of cultural norms and ability to reintegrate into the same is such that insurmountable obstacles exist preventing them from doing so to the required standard.

94. Apart from the health issues, the matters put forward as practical obstacles have not been shown to be insurmountable. It is also important, where the ability to integrate is a question of fact, to note that there are likely to be a number of citizens in Zimbabwe with similar or worse health needs than AT. Some of those may be in residential care such as nursing homes, with a live-in carer, or places such as or Nazareth House in Harare which provides for assisted living with medical support, emotional support, help with nutrition, personal care, social recreation, and a safe environment, despite the limitations on the general healthcare system in Zimbabwe. It is not established AT will not be able to avail herself of such care if needed on a practical or cost basis.

95. Whilst there is no in-depth detailed analysis of the availability of facilities to meet AT's specific needs, as opposed to Professor Aguilars country assessment of the overall state of the health system in Zimbabwe, I find this is more likely to be because she wants to stay with her family in the UK rather than focus upon all the available resources. I accept that whether access to private healthcare can be achieved will be a question of cost, but it was not made out on the evidence that the necessary resources will not be available.

96. It is noted the letter from De Montford University offering RD her place, dated June 2021, states her tuition fees were £14,750 per annum for 2021/2022 indicating the availability of resources available, one assumes within the family, to meet such expenses. It is a four-year course indicating fees for another three years in addition.

97. I have also seen within the bundle emails between RD and the Immigration Compliance Officer at the De Montford University seeking an update on her asylum application to ensure they have up-to-date information on all their students. The request is dated 21 December 2022 but RD's reply, dated 22 December 2022 and found at page 29 of the updated supplementary bundle, is hard to read. The First-tier Tribunal dismissed the asylum claim against which there was no appeal. It is not clear whether this information was made known to the Compliance Officer or whether, as neither RD nor AT can claim to be asylum seekers, it would mean RD will be unable to study in Leicester in any event.

98. I have also seen the email sent on 28 February 2024 by RD asking University-Direct.Com whether it will be possible to transfer her pharmacy course to Zimbabwe and continue her degree there to which their reply reads "I would advise you to stay where you are. It will be very difficult to transfer in that subject area". No reasons are given, there is no explanation, and even if it might be difficult, it does not say it is impossible. I do not find it has been established that RD could not continue her studies in Zimbabwe or, if not, whether she will be able to gain exemptions even if she had to restart a course in Zimbabwe.

99. Institutions such as the University of Zimbabwe have a School of Pharmacy and offer degrees in pharmacy. There is no indication that any enquiry was made directly of an appropriate academic institution in relation to whether credits could be provided based upon academic achievement in the course in the UK, or the attainments to date transferred. I do not find the email to the organisation mentioned is sufficient to establish that RD would not be able to continue her education in her chosen subject area if she is returned to Zimbabwe.

100. The University-Direct website states it was established to provide independent, professional and specialist advice and support to help applicants make the right degree choice and submit successful applications to universities, helping students to understand university entry requirements and how to apply for university study around the world. That does not establish that it is specialist organisation dealing with course transfers, or has any particular knowledge relevant to the question asked of it by RD.

101. I accept that the care provided in Zimbabwe may not be the same as that in the UK but that is not the required test. I accept there may be a culture shock in having to go into residential care but do not find it made out that would be the same as a very significant obstacle. Indeed, a very real culture shock was not found to satisfy the relevant test in Secretary of State for the Home Department v Olarewaju [2018] EWCA Civ 557 at [26], albeit in slightly different context.

102. Having taken into account the alleged obstacles to integration relied upon by both AT and RD, whether characterised as hardship or difficult or anything else, and whilst accepting that some are properly characterised as being significant, I do not find on the facts they satisfy the requirements of being 'very significant' or matters that cannot be overcome.

103. The family clearly want AT and RD to remain in the UK and I accept they have put forward the best case that they believe will enable this to be achieved. I accept there is family recognised by Article 8 between AT and her daughter with whom she lives who provides the assistance as set out in the witness statement. There is the required degree of dependency but it is one formed of necessity.

104. I accept there is a private life between AT and RD in relation to the other family members. Part of RD's private life will also be her friends and associates formed during the course of her university studies and schooling in the UK, but her status has always been precarious and Article 8 does not create a right to education in a country of an individual's choice. RD did not apply for leave to enter the UK as a student and her status and that of AT has always been precarious as they entered as visitors but overstayed.

105. I find the weight to be given to the private life of both AT and RD has to be reduced as a result of the circumstances within which it has been created.

106. The claim that AT cannot be returned as she will be without support cannot be right, as she will be returned with RD. It was also not made out that if RD is studying, and there is a general need for full time care, that there will not be adequate care available in Zimbabwe even if it had to be paid for privately with the assistance of UK based family or from any income generated within Zimbabwe from the farm, rental income, or capital from the sale of relevant assets.

107. Article 8 ECHR provides:

> Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> There should be no interference by a public authority with the accept such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

108. The Appellants must appreciate, and have no doubt been advised, that a right to private and family life is not an absolute right and that the Respondent is entitled to infringe on that right so long as it is for a legitimate aim and proportionate.

109. Also, Article 8 does not give a person the right to choose whether they wish to live.

110. The approach to Article 8 cases was considered by the House of Lords in R (Razgar) v Secretary of State for the Department [2004] UKHL 27 from which what is commonly referred to as the 'Razgar test' emerged. That test, of five questions, is as follows:

- Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his or her private and/or family life?
- If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- If so, is such an interference in accordance with the law?
- If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- If so, is such interference proportionate to the legitimate aim sought to be achieved?

111. The Immigration Rules were changed to incorporate Article 8 considerations, family life now being considered under Appendix FM and, at the relevant date, private life claims pursuant to paragraph 276ADE.

112. I find neither AT nor RD can satisfy the requirements for leave to remain on the private life route.

113. I find this is not a case in which either Appellant has a genuine and subsisting parental relationship with a child under the age of 18, or a genuine and subsisting relationship with a partner who is in the UK, or that the other requirements of EX.1 can be satisfied.

114. AT did not apply from Zimbabwe under the Adult Dependent Relative route for settlement and is unlikely to succeed if she did, as on the evidence it is not established that she will be unable, even if with the practical and financial help of

her daughter who would be a sponsor, to obtain the required level of care in Zimbabwe because it is not available or not affordable.

115. The public interest is also reflected in section 117 A-D of the Nationality, Immigration and Asylum At 2002. Section 117C relates to deportations and so is not relevant and section 117D is the definition section.

116. Section 117A(1) states that section applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts (a) breaches a person's right to respect for private and family life under Article 8, and (b) as a result will be unlawful under section 6 of the Human Rights act 1998.

117. Section 117 A(2) states that in considering the public interest, defined as meaning the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2), regard must be had in all cases to the considerations listed in section 117B.

118. Section 117 B reads:

Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and
(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and
(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or
(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and
(b) it would not be reasonable to expect the child to leave the United Kingdom.

119. Although AT had the assistance of a Shona interpreter for the purpose of the appeal hearing RD clearly speaks very good English, has been educated to a high standard in the English language, and it was not made out AT will be unable to communicate in English. This is, however, a neutral factor.

120. Similarly, it was not established that AT or RD have been dependent on the public purse in relation to their accommodation, day-to-day needs, or in home personal care, as such has been provided by family members within the

environment of their family homes. In that respect they have not been a burden on the taxpayer although AT has benefited from a considerable degree of intervention by the NHS, which it is highly likely will have to continue for the foreseeable future, especially in light of the possible future problems identified in her witness statements and those of other family members, meaning in that respect she will be a considerable financial burden on the NHS and its limited resources, and therefore the British taxpayer.

121. The provision of section 117B(5) in relation to the weight to be given to their private life has been commented on above.

122. This is not a case where there is a genuine and subsisting parental relationship with a qualifying child.

123. In relation to the weight to be given to the family life that has been developed between AT and RD and family members in the UK, as found by the Court of Appeal in TZ (Pakistan) and PG (India) v Secretary State the Home Department [2018] EWCA Civ 1109, '*Under the settled jurisprudence of the ECtHR it is likely to be only in an exceptional case that article 8 will necessitate a grant of leave to remain where a non-settled migrant commenced family life in the United Kingdom at a time when their immigration status was precarious. That general principle applies to considerations of article 8 both within and outside the Rules where precariousness exists, it affects the weight to be attached to family life in the balancing exercise. Article 8 does not guarantee a right to choose one's country of residence'*.

124. I find the weight to be given to the family life that exists within the UK between AT and RD is therefore less than that which would have been given had they entered the UK lawfully for the purposes being able to enjoy family life with a family member, rather than entering as a visitor and family life being established as a matter of necessity thereafter. The weight that it is appropriate to give to such a relationship in the proportionality assessment depends on the particular circumstances. They of course include the duration of the relationship, immigration history and status when the relationship was formed and when the application was made.

125. A point raised during the course of the hearing was the medical evidence suggesting that the diagnosis of AT's spinal injuries, and the need for urgent surgical intervention, arose from the incorrect consideration of an earlier scan taken in 2019 when such matters should have been properly identified then. The question was whether there was a misdiagnosis/failure to diagnose resulted in an impact upon AT such that the weight given to public interest should be reduced, on the basis of the State's responsibility for whatever occurred, is a question of fact.

126. On the facts of this case I do not find that it has been made out, as there is no medical evidence specifically dealing with this point or to show what the impact of any misdiagnosis is, or even if it can be categorised as such. It is not made out the consequences would have been materially different had an operation been conducted previously such as to fix the State with responsibility. It is also relevant to note that an investigation in 2019 would have been unlikely to have resulted in an admission to hospital and any form of in-patient treatment in light of the Covid pandemic and resulting lockdown, the first of which occurred in March 2020, and impact upon vulnerable members of the population and the NHS, which created havoc with routine medical appointments such as operations, a situation that in some divisions of the NHS still seems to exist. I do not find the public interest should be reduced as a result of this fact when the relevant evidence is considered as a whole.

127. In relation to the physical and moral integrity argument, in Botta v Italy (Application No. 21439/93), in their judgement of 24 February 1998, the European

Court established that private life encompasses the physical, moral and psychological integrity of a person. That was further confirmed in Bensaid v The United Kingdom (Application No. 44599/1998) in the judgement dated 6 February 2021.

128. In Bensaid the applicant, a person undergoing treatment for schizophrenia, complained that his expulsion to Algeria would leave him without adequate medical treatment, threatening his physical and moral integrity. The court found no violation of Article 8 as it was not sufficiently established that the moral integrity of the applicant will be affected to the degrees at Article 8 will be applicable, the interference being deemed as being 'in accordance with the law' and 'necessary in a democratic society'.

129. In that same case the ECtHR iterated that "not every outdoor measure which adversely affects moral or physical integrity would interfere with the right to respect for private life guaranteed by article 8". In light of the finding that it is not made out that there is not suitable assistance available to meet AT's needs, it is not made out that there will be a sufficiently disproportionate impact upon either Appellants physical or moral integrity if they had to return to Zimbabwe.

130. The competing arguments can be summarised as follows:

Points in favour of AT and RD remaining in the UK	**Points in favour of SSHD removing AT and RD**
AT is unwell and is receiving medical treatment in the UK to meet her medical needs. It is claimed the treatment AT is receiving in the UK is not available in Zimbabwe.	AT is unable to meet the AM (Zimbabwe) test for leave to remain on medical grounds. AT has no lawful leave to remain on medical grounds under the Immigration Rules. A comparison between the treatment available in the UK and Zimbabwe is not the correct test. Even if the treatment in Zimbabwe is not as good as that AT receives in the UK, it has not been shown that which is available will not meet her needs, even if not to the same degree.
AT's care is provided by her family in the UK at no cost to the public purse. Such care will not be available in Zimbabwe.	It has not been shown adequate care is not available in Zimbabwe, even if not to the same standard as that provided by the UK based family, in a residential setting if required, which will also allow RD to continue her studies in Zimbabwe. RD does not say she cannot provide care in Zimbabwe, but that if she has to provide full time case, she will be unable to study or work. It is not made out there is no respite care in Zimbabwe or the ability of this family to employ a live-in carer if preferred to residential care. Although

	the family have expressed their view and choice in relation to this issue, it not made out it is unreasonable to expect the same or that AT will suffer harm as a result. Even though the family provide care within their home without cost to the public purse there has been considerable cost to the NHS to date with very realistic prospects of additional considerable cost to the NHS in the future in light of AT's medical needs, for GP or hospital-based services. It has not been shown such costs can be fully supported by the family and no evidence that the costs to date have been met other than by the public purse. Whilst medical care is provided to asylum seekers, that aspect of their cases was dismissed by the First-tier Tribunal. In light of the precarious state of NHS's finances, considerable weight is given to this issue. AT neither applied for nor was granted leave to enter for the purposes of receiving NHS treatment or as an adult dependent relative.
The family have a history of migration from Zimbabwe	Noted, but that confers no right to settle in the UK per se, unless by lawful means.
AT will return as a lone female.	No. RD has no leave to remain and can be returned with AT. They lived together in Zimbabwe before and it is not made out they could not do so again. Also, RD's brother RuD is in the UK as a Carer with temporary leave. It is not made out he could not return to Zimbabwe and use his skills to assist in AT's care together with RD. [An observation – NO MORE - it is noted RD is in the 4th year of her four-year university course at De Montford University. The academic year ends on 13 June 2025. Graduating may be of benefit to the healthcare sector in Zimbabwe and there may be a value in

	letting her complete the course and graduate with removal after graduation. That will also allow the family time to make the necessary arrangements for accommodation and health needs for when both Appellants are returned.]
No accommodation in Zimbabwe	There was evidence in the Visa application form of their accommodation prior to coming to the UK which they must have satisfied an Entry Clearance Officer they could, and would, return to at the end of their visit. Insufficient evidence has been provided to show that suitable accommodation would not be available. Insufficient evidence has been provided to show the property damaged by previous tenants cannot be made habitable. It is not made out the land dispute in relation to one of the farms cannot be resolved or would prevent AT and RD returning to Zimbabwe.
Both AT, RD, and their family want them to remain in the UK.	Neither has leave to remain under the Immigration Rules. They entered the UK as visitors and overstayed. Article 8 does not give them a right to choose where they wish to live.
There are insurmountable obstacles to AT returning to live in Zimbabwe.	It is not disputed there will be obstacles but it has not been shown that they are insurmountable. The health issues relate mainly to AT not RD.
Prospect of damage to RD's educational prospects and loss of investment in education to date in the UK. The assertion RD's degree cannot be transferred to Zimbabwe.	It is not made out RD cannot continue her studies in Zimbabwe. It is not made out it is disproportionate if RD has to start her studies afresh in Zimbabwe. RD neither applied for nor was granted leave to enter or remain in the UK as a student. RD has no right to study in the UK. Her status in the UK has always been precarious which is relevant to the weight to be given to this aspect of her private life. Article 8 does not give a person the right to choose where they wish to be

	educated per se. Costs incurred to date in relation to her education clearly demonstrates the availability of substantial financial resources available to this family unit. Such costs were incurred, in any event, without leave to remain.
Both Appellants have are family life with family in the UK and a private life here.	The same was developed when their status is precarious reducing the weight to be attached to the same.
Lack of personal financial resources in Zimbabwe	It has not been made out necessary funds could not be provided, including from family members in the UK and elsewhere. It is not made out RD will not be able to obtain employment and contribute. It is not made out there will not be support available from resources within Zimbabwe.
Compassionate circumstances	Such issues are considered but are not sufficient to outweigh strong public interest when all matters are considered cumulatively.
Return will expose AT to intense suffering as per Paposhvili/AM (Zimbabwe)	It is a preserved finding that the Article 3 medical threshold is not met on the facts.

131. Returning to the Secretary States policy set out above, as it is for her to establish any interference with a protected right is proportionate, I find as follows:

(a) Having properly considered the medical claims it has not been established this is one of those very exceptional cases where there is strong medical evidence that removal will breach Article 3 or 8 of the ECHR.

(b) That in light of there being a strong public interest in protecting the NHS's resources which are finite and, according to recent announcements by the government in a parlous state requiring substantial capital investment to meet current needs, that as AT has no right to remain in the UK even with a medical condition under the Immigration Rules, that AT's past and ongoing medical needs has resulted in and will continue to result in considerable cost to the NHS, the fact she cannot satisfy the requirements of Article 3 ECHR in relation to her medical needs, and has failed to counter the Respondent's arguments by establishing that the decision is disproportionate by a reference to her physical and moral integrity, that there is a strong public interest in removal.

(c) That although AT did not claim she came to the UK as a health tourist, and some of her conditions can be attributable to old-age, in relation to the others and her health generally, there is a strong public interest in ensuring there is no incentive for migrants to come to the UK for medical treatment as health tourists. If they wish to enter for this

purpose, they can make an application to enter lawfully in such capacity under the Immigration Rules.

(d) Whilst there is evidence of migration of members of this family from Zimbabwe, including to the UK and Canada, choice is not sufficient without and individual having a lawful right to enter and remain within another nation state.

(e) In conclusion, having balanced up those points relied upon by AT and RD in support of their claims that removal will be disproportionate, I find the Secretary of State has discharged the burden of proof upon her to the required standard to show that in the circumstances of this case, considered cumulatively, that the weight to be given to the public interest outweighs the weight to be given to AT and RD's claims or those of the other family members. I find the Secretary of State has proved the impugned decisions are 'in accordance with the law' and 'necessary in a democratic society'.

Notice of Decision

132. The appeals of AT and RD are dismissed.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 November 2024