OUTER HOUSE, COURT OF SESSION

[2018] CSOH 50

P650/17

OPINION OF LORD MULHOLLAND

In the cause

S O

Petitioner

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner: Caskie; Drummond Miller LLP
Respondent: Anderson; Office of the Advocate General for Scotland

18 May 2018

Introduction

[1] This is a Judicial Review of a decision of the respondent dated 20 April 2017 that the petitioner has not made a fresh claim to remain in the United Kingdom (UK). The petitioner seeks reduction of that decision.

Immigration history

[2] The petitioner is a citizen of Cote D'Ivoire (hereinafter referred to as the Ivory Coast). He arrived in the UK on 9 March 2011. He sought asylum. This was refused on 8 April 2011. He appealed, and the first-tier hearing was dismissed on 24 May 2011. He appealed to the Upper Tribunal who dismissed the appeal on 14 October 2011. He sought to challenge that decision, but his appeal rights ended on 11 July 2012. On 22 August 2012 he lodged further submissions which were refused on 5 September 2012. On 28 September 2012 he lodged further submissions which were also refused on 17 October 2012 (6/3 of the inventory of process). On 12 December 2012 and 10 July 2015, he lodged more further submissions which were refused (6/2 of the inventory of process). A judicial review was raised challenging this decision. On 15 February 2016 permission to proceed was refused. An oral hearing was requested and heard on 10 March 2016 when permission to proceed was refused. This decision was reclaimed but subsequently abandoned (6/4 of the inventory of productions is the reclaiming print). On 2 March 2017 the petitioner lodged more further submissions (6/3 of the inventory of process) which were refused on 20 April 2017 (6/1 of the inventory of process). The refusal is the subject of this review.

The petition for judicial review

[3] The representations considered by the respondent in her previous decisions related to the petitioner's mental state and indicated that the petitioner suffers from a major depressive disorder with psychotic symptoms and Post Traumatic Stress Disorder (PTSD). It was submitted that there was a risk of suicide if removal was to be instigated. It was also submitted that on-going appropriate medical treatment was essential for the petitioner's mental health (statement 10). The facilities available to treat mental health in the Ivory Coast

were said to be 'dire' (statement 11). It was accepted by the petitioner that the respondent in refusing the petitioner's claims dealt appropriately with the claims in terms of articles 3 and 8 of the European Convention on Human Rights (the convention) (statement 12). The petitioner's challenge was directed at the respondent's consideration of the petitioner's case in terms of immigration rule 276ADE. It was averred that rule 276ADE, which is designed to reflect the UK's article 8 private and family life obligations, is distinct and stands apart from articles 3 and 8 convention jurisprudence (statements 13 and 14) and may be more generous to claimants than article 8 requires (statement 15). An assessment under the immigration rules and article 8 can overlap, but the rules are not coterminous with article 8 (statement 15). A separate assessment is required as the tests being applied are different (statement 38). In terms of immigration rule 276ADE(1)(vi) the requirements to be met for leave to remain on the grounds of private life in the UK are (in addition to the age and residence qualification) that there would be 'very significant obstacles to an applicant's integration into the country to which he would have to go' if required to leave the UK (statement 17). The tests against which such evidence are measured are quite different in respect of article 8 claims and consideration under the rules (rule 276ADE) (statement 34). Leave to appeal was refused in respect of a previous petition for judicial review which was reclaimed but abandoned as the petitioner accepted legal advice that the appeal was bound to fail as the medical evidence was three years out of date and there was no prospect of success without more recent evidence (statement 18). As a result, more up to date medical evidence was obtained and submitted as a fresh claim (statement 20). The petitioner founded on his medical conditions, the interruption to his ongoing treatment and support in the UK caused by his removal, the lack of facilities available in the Ivory Coast for the management and treatment of his conditions, the impact caused by his removal predicted by the professionals

who deal with him in the UK and an alteration of the petitioner's drug regime (statements 22 and 24). The fresh claim was rejected on 20 April 2017. The petitioner accepts that his fresh claim will not succeed outside the rules (statement 22). The petitioner asserts that he could succeed under the rules (276ADE(vi)) and that the respondent in reaching her decision did not properly take into account the factors in support of the petitioner's claim and has failed to provide adequate reasons in reaching the decision. As a result, the respondent reached her decision on a distorted view (statement 22) leaving out of account relevant matters which an immigration judge would not leave out of account (statements 25, 28 and 38). Further, in reaching her decision, the respondent has taken account of an irrelevant matter, namely the petitioner's unlawful immigration status in the UK which albeit was relevant to an article 8 assessment, was irrelevant in an assessment under the rules (rule 276ADE) (statement 28). The respondent conflated the convention tests with the immigration rule 276ADE test and erred in law in doing so (statement 38).

[4] The fact referred to by the respondent in her decision letter, that there are treatment facilities for mental health available in the Ivory Coast, does not go far enough. To be relevant to the respondent's decision, the treatment available must treat the respondent's conditions and be available to the petitioner or at least an immigration judge may so conclude in assessing whether the petitioner could integrate (statement 30). An immigration judge could conclude that the withdrawal and alteration of treatment would take the cumulative obstacles faced by the petitioner in integrating in the Ivory Coast into the 'very significant' category.

The petitioner's fresh claims of 2 March 2017

[5] The petitioner's fresh claim was made in writing. It was explicit that it was made in terms of rule 276ADE(vi). The basis of the fresh claim was as follows:

> " This is because of a combination of his medical conditions, the interruption to his ongoing treatment and support in the United Kingdom, the lack of facilities available in Cote D'Ivoire for the management and treatment of his conditions, the fact that he would be potentially forced to live on the street in terms of paragraph 6 of the US State Department Report and the impact caused by his removal predicted by his Consultant Psychiatrist who states in his conclusion that he is unable to even travel safely from Glasgow to another city, let alone to his country of origin mean that there is a realistic prospect of a Judge allowing his appeal under the above Immigration Rule." (page 2, para one of 6/3 of the inventory of productions).

The fresh claim also submitted that his removal would be a disproportionate breach of his private life in terms of article 8 of the convention. That part of the petitioner's claim is not subject to this review. In support of the fresh claim the petitioner enclosed a number of documents (psychiatric report, fresh claim form, previous refusal letter from the respondent dated 17 October 2012, e mail correspondence principally relating to the petitioner's inability to travel to Liverpool to present the fresh claim in person and the 2015 US Department of State country report on human rights practices for the Ivory Coast). With regard to the psychiatric report on the petitioner dated 4 January 2017 by Dr Khairubahri Idris (an enclosure of 6/3 of the inventory of productions), the report was based on the re-examination of the petitioner on 23 December 2016, perusal of his medical records and consultation with a community psychiatric nurse. This was the third psychiatric report on the petitioner submitted to the respondent. The first dated 16 November 2012 is produced in the reclaiming print (6/4 of the inventory of productions). The second issued on 10 July 2015 was not produced to me but is extracted in the decision letter dated 20 April 2017.

[6] The report dated 4 January 2017 confirmed that the petitioner's symptoms of PTSD appeared to have responded partially to his medication. However, the residual symptoms

continued to limit his ability to function in his daily life. The need to avoid loud sudden noises and seeing uniformed officers made it difficult for him to leave his home. He suffered from extreme startle reflex that was caused by the sudden noise of a siren from an emergency service vehicle or the sight of a uniformed person. He was fearful of his ongoing voices that told him to harm himself and other people whilst in public. He was attending a clinical psychologist for trauma focused therapy. With regard to his medication regime, specifically the quetiapine which is associated with weight gain and the development of diabetes and heart problems, there will be a time when he would have to consider gradual discontinuation of his medication which will require to be managed. The petitioner's trauma had occurred in 2004 and as reported by him he had not had treatment until his contact with his GP in Glasgow in 2012 when a referral to the Mental Health Services had been made. The petitioner advised Dr Idris that it is likely that he would have no treatment should he return to the Ivory Coast. He had discussed with Dr Idris how he would be ostracised and persecuted for witchcraft if he were to return to the Ivory Coast as symptoms of mental illness, like hearing voices, are associated with malevolent spirits and this was the cultural belief common to West Africa. There may also be the increased risk of suicide and harm to himself and others as distress may cause a chain reaction with the resultant worsening of his voices and suicidal ideation. With regard to the 2015 US Department of State country report on human rights practices, it dealt with a cross section of human rights issues. Perhaps the most pertinent to the petitioner was the section on persons with disabilities. It recorded that the law prohibits acts of violence against persons with disabilities (including mental) and the abandonment of such persons, but there were no reports that the government enforced these laws. Many persons with disabilities begged on urban streets and in commercial zones. There was a lack of economic opportunities. These submissions supplemented the previous

submissions made to the respondent which was recognised by the respondent in the decision letter. Previous submissions included information on the limited availability and quality of mental health treatment facilities in the Ivory Coast. These were re-produced in the reclaiming print.

The decision letter

[7] The respondent refused the petitioner's fresh claim. This was intimated in letters to the petitioner's solicitors and the petitioner dated 20 April 2017. The full reasons for the refusal were contained in the document named 'consideration of submissions' attached to the letters. For ease of reference, I will refer to this as the decision letter. The decision letter commences with the petitioner's immigration history and a summary of his fresh claim and list of documents submitted in support thereof. It was noted that his previous claim was that removal to the Ivory Coast would be in breach of articles 3 and 8 of the convention. The letter then summarises the submissions that had previously been considered and rejected. The psychiatric report dated 10 July 2015 was referred to and extracted. This included reference to his mental condition and medication prescribed in the UK and its availability in the Ivory Coast, including the availability of substitute medication. It was noted that the report confirms that the medication was not a long-term solution and would need to be phased out over time (page 4) and his symptoms had responded well to treatment, he was currently being treated at an outpatient clinic (he had previously been an inpatient) and his condition was not so severe that he required inpatient care. With regard to the facilities in the Ivory Coast, it was noted that in accordance with relevant case law, it was not a requirement that treatment in the Ivory Coast should be of the same standard as that in the UK. There were a number of sites (which were listed), in addition to Bingerville Psychiatric

Hospital, in the Ivory Coast where he could be treated on his return. It was concluded that the petitioner's removal to the Ivory Coast would not breach the high threshold of 'Article 3 medical'. It was also acknowledged that the care for medical illness in the Ivory Coast was unlikely to match that available in the UK, however it was noted that there was an availability of care.

[8] Consideration of the fresh claim commenced at page five of the decision letter. With regard to consideration under the immigration rules, the respondent considered the application in terms of rule 276ADE(1)(vi) in respect of whether there are 'very significant obstacles' to integration into the Ivory Coast, if required to leave the UK. It was noted that the petitioner was aged 46 years at the time of the application and had been in the UK since 2011 (less than 20 years). The respondent concluded that the petitioner had failed to show that there would be 'very significant obstacles' to his integration into the Ivory Coast as his wife, daughter and family reside there and can provide family support and emotional assistance; there are psychiatrists and facilities in the Ivory Coast to treat people with PTSD and suicidal tendencies (from Country of Information (COI) November 2014); he would have the assistance of the assisted voluntary return (AVR) scheme to negate any hardships that may occur along with medical escorts to ensure his safe travel to the Ivory Coast and ensure that he continues to receive appropriate treatment throughout his removal; he is familiar with the language and culture having lived in the Ivory Coast for 40 years and the political situation is much more favourable than at the time of his departure (2011). The respondent then considered whether there were exceptional circumstances consistent with article 8 private and family life of the ECHR. The application was refused for broadly the same reasons as it was refused under the rules. This section of the decision letter concluded

with the respondent noting that the petitioner's further submissions would have no realistic prospect of success before an immigration judge.

[9] The respondent then considered the non-protection based submissions not previously considered. She concluded that taken together with the previously considered material it did not create a realistic prospect of success before an immigration judge. Consideration was given to the latest psychiatric report dated 4 January 2017 from Dr Idris. The petitioner's current medication was listed in the report. The respondent then noted that, from information obtained from Medical Country of Origin Information (MedCOI), this medication or equivalent substitute was available in the Ivory Coast. Further, there are psychiatrists and facilities available in the Ivory Coast to treat people with PTSD and who have suicidal tendencies (MedCOI). The respondent concludes:

> "The objective information above highlights that there are services and treatment available in the Ivory Coast which you could access. Whilst it is accepted that the availability of treatment in the Ivory Coast might not be as easily accessible or to the standard of that in the UK, it is not accepted that removal to the Ivory Coast would cause the United Kingdom to breach its obligations under Article 3 (medical) of ECHR."

The respondent concluded that the extremely high threshold for article 3 medical was not met. The test would only apply in 'very exceptional cases' and was that the medical condition was critical and there were compelling humanitarian grounds for not removing to a place where the lack of services would lead to acute suffering (*N* v *SSHD* [2005] 2 AC 296). I note that the respondent's counsel did not submit that the application of any refinement or alteration of this test, following the Grand Chamber case of *Paposhvilli* v *Belgium (Application No. 41738/10)* at paragraph 183, to the petitioner's application would result in success on an article 3 medical claim (*AM (Zimbabwe) & Anor* v *Secretary of State for the Home Department* [2018] EWCA Civ 64) or an article 8 claim. The psychiatric report also indicated that there

will be a time when consideration would require to be given to the gradual discontinuation of the petitioner's medication and that he had responded to the period of inpatient care. The respondent concluded:

> "As a result, it appears that you have responded well to treatment, and that there appear to be no significant obstacles which would prevent further recovery. It is noted that you are currently treated at an outpatient clinic, and your condition is not so severe that you require inpatient care."

With regard to the risk of suicide, the respondent noted that in accordance with the relevant caselaw the threshold of ill treatment is higher because it is a foreign case and is even higher when the ill treatment feared is not the direct result of actions by the receiving state. It was also noted that the immigration judge (paragraph 21 of the decision in the appeal dismissed on 24 May 2011) found that the regime from which the petitioner feared persecution had been ousted and the party he supported was in power. The respondent concluded that the petitioner did not have a well-founded fear of mistreatment from the authorities in the Ivory Coast and that there were mechanisms, including mental health care and support mechanisms, available to reduce the risk of suicide in the Ivory Coast. The respondent concluded:

> "It is accepted that your return and the wait pending your return to the Ivory Coast would cause you real anxiety. However, it is not accepted that you would be without genuine protection from suicide or self-harm attempt whilst in detention or during your removal where you would have medical escorts. It is also not accepted that the conditions you would experience on return to the Ivory Coast would breach Article 3 of the ECHR. It is also noted that your wife and daughter are still believed to be in the Ivory Coast along with your brothers and sisters. It is therefore considered that you would have the potential to draw upon them for emotional support. You would also have the assistance of the AVR and medical escorts who will take into account any difficulties you may have with travel and put in place a plan appropriate to assist you. This will ensure your wellbeing. Furthermore, as shown above there is treatment available in the Ivory Coast which you could access."

[10] With regard to the US Department of State country report on human rights practices, this was considered by the respondent at page 12 of the decision letter including section 6 of

the report which referred to many persons with disabilities living and begging on urban streets in the Ivory Coast. The respondent observed that no evidence had been provided that this would happen to the petitioner and his family would be unable to support him and force him to live on the streets. As a result, the respondent concluded that the petitioner could not be considered to come within the 'very exceptional' category, the article 8 threshold was not met and there would be no realistic prospect of success before an immigration judge.

Submissions for the Petitioner

[11] With regard to the respondent's submission that an appeal to a tribunal is limited to breaches of section 6 of the Human Rights Act 1998, this would be contrary to the respondent's own policy and contrary to the dicta of the court in *Mostafa* [article 8 in entry clearance] [2015] UKUT 00112 [IAC] where it was held that a factor to be taken into account in an article 8 assessment was where an individual met the terms of the relevant immigration rule. As the headnote of the case report states:

> "In the case of appeals brought against refusal of entry clearance under Article 8 ECHR, the claimant's ability to satisfy the Immigration Rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control."

The petitioner does not challenge the respondent's conclusions in respect of the relevant factual or legal matters, with the exception of her conclusion as to what a tribunal judge could do with an appeal by the petitioner. The petitioner argues that a tribunal judge could conclude on the material that there are very significant obstacles to integration into the Ivory Coast. The test under rule 353 of the Immigration Rules was a modest hurdle to allow cases where there is a realistic prospect of success to have that tested before an immigration judge

(*ABC* v *SSHD* [2013] CSOH 32 per Lord Bannatyne at para 11). Anxious scrutiny was not applied to the petitioner's application in respect of his mental health problems, his need for ongoing medical treatment and the impact of that upon his ability to integrate into the Ivory Coast. The respondent has not set out any reasons why a tribunal judge could not reach a different conclusion to her own. Her failure to do so is a failure to apply anxious scrutiny. The legal tests for consideration of article 8 and immigration rule 276ADE claims are different. It is not a comparative test between the life an individual would have in the UK and the life that the individual would have in the country overseas. It is an assessment of the ability of the individual to integrate into the society they are sent to. The petitioner bases his claim upon immigration rule 276ADE and not the convention. The decision letter errs in conflating those different tests. Consideration of whether or not the petitioner would succeed under articles 3 and 8 is irrelevant. In doing the contrary the respondent has not applied anxious scrutiny and has applied the wrong test. The respondent in her assessment improperly concentrated only on factors adverse to his claim and has resulted in a distorted view. Further, in consideration of whether or not there are 'very significant obstacles' to the petitioner's integration, she has left out of account the impact on the petitioner predicted by medical professionals as a result of the interruption and alteration of his treatment. The respondent's statement that there are some medical facilities in the Ivory Coast which can treat the petitioner does not mean that this will facilitate the petitioner's integration into society. The respondent has failed to assess the impact on the petitioner's mental illness and the limited treatment available for mental illness in the Ivory Coast in his ability to integrate.

Submissions for the Respondent

[12] The respondent's counsel submitted that in terms of the dicta in *GS [India]* v *SSHD* [2015] 1 WLR 3312, including and in particular at paragraphs 106 and 111, and *MM [Zimbabwe]* v *SSHD* [2012] EWCA Civ 279, including and in particular, at paragraphs 17 – 18 and 23, a very high bar has been set by the courts in respect of convention claims based on the inadequacy of medical treatment in the country of return to the extent that no case has been identified where such a claim has succeeded. As a result, the petitioner's case is not based on the convention but on the immigration rules. With regard to the rules, following amendments (per the Immigration Act 2014) to the relevant appellate statutory provisions (sections 82(1)(b) and 84(2) of the Nationality, Immigration and Asylum Act 2002), an appeal that the respondent's decision was not in accordance with the immigration rules is not a relevant ground of appeal (*Mostafa* (art 8 in entry clearance) [2015] UKUT 00112 [IAC]). The grounds of appeal under section 82(1)(b) are set out in section 84(2). For an appeal to be competent the appeal must be brought on the ground that the respondent's decision is unlawful under section 6 of the Human Rights Act 1998. It is the rules in force at the time the application is considered that are relevant (*Odelola* v *SSHD* [2009] 1 WLR 1230 at para 39 per Lord Brown). The petitioner must be able to demonstrate a stateable article 8 claim in order to succeed and a breach of the immigration rules will not found an article 8 claim (*Mostafa supra*). He has failed to do so. As a result, the averments in the petition to the effect that the respondent did not comply with the immigration rules would be entirely irrelevant to any appeal to an immigration judge and as a result could never provide a realistic prospect of success before an immigration judge. *Esto* the petitioner's averments in relation to a failure properly to consider the rules are relevant, mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even when multiplied, will generally be insufficient

to establish 'very significant obstacles' to an applicant's integration into the country to which he would have to go if required to leave the UK (*Treebhawon* (NIAA Part 5A – compelling circumstances test) [2017] UKUT 00013 (IAC) paragraphs 37 – 38 per McCloskey J at paragraphs 37 – 38). The petitioner has failed to set out a specific risk to him, rather than a generic risk (referred to in the US State Department Report) that those with mental health problems may be forced to live on the streets. Having regard to the facts that the petitioner's family live in the Ivory Coast and could support him (there is no averment that they would not support him) there is no basis for the generic risk being applicable to the petitioner. The respondent has given extensive, detailed and careful consideration over successive decision letters to the petitioner's claims. This has been done in terms of the convention on the basis of the petitioner's submissions. Any failure to address each and every stage under the rules is irrelevant and immaterial. The respondent has provided her reasons why she does not consider that there are 'very significant obstacles' to the petitioner's integration. Each of the issues raised by the petitioner in the petition have been considered by the respondent and her decision is one that was open to her. The submissions upon which the petition is founded were not significantly different from what had previously been considered and rejected. As a result, there was no fresh claim.

Decision

[13] Section 15 of the Immigration Act 2014 amends section 82 (rights of appeal) and section 84 (grounds of appeal) of the Nationality, Immigration and Asylum Act 2002. The amendments to section 82 now focus on the type of claim made rather than on the decision made. Under the new section 82, a right of appeal occurs only where:

(i) A Protection Claim is refused;

(ii) A Human Rights Claim is refused; or

(iii) Protection status is revoked.

A Protection Claim is one in which a person claims that their removal from the UK would breach the Refugee Convention or their right to humanitarian protection, so essentially a claim for asylum or humanitarian protection. A Human Rights Claim is a claim that a decision would be unlawful under the Human Rights Act 1998, for example because it would breach a person's right to a private and family life in the UK under article 8 of the convention. Previously grounds of appeal included the ground that a decision was not in accordance with the law, that discretion ought to have been exercised differently and that a decision breached a person's rights under the Refugee Convention and/or the Human Rights Act 1998. Under the new provisions, grounds of appeal are limited to these last two provisions. As the petitioner's fresh claim was lodged after 6 April 2015, (it was lodged on 2 March 2017 and refused on 20 April 2017) the new rights of appeal provisions apply. The provisions do not allow an appeal on the basis that a decision was not in accordance with the immigration rules (*Mostafa, supra,* paragraph 13). In determining whether a tribunal judge could allow an appeal against the respondent's decision, it is self-evident that the issue of competency would be a factor which the tribunal judge would be duty bound to consider. On that basis the tribunal judge would be bound to conclude that an appeal based on the immigration rules was not available in terms of sections 82 and 84 and as a result could never provide a realistic prospect of success before an immigration judge. The petitioner cites the case of *Mostafa, supra,* in support of his argument that a tribunal judge could adjudicate on a breach of the immigration rules. However, in *Mostafa, supra,* the claimant's appeal included an article 8 challenge (paragraph 4) so the appeal was clearly competent. However, the appeal also included grounds that the decision was not in

accordance with the law or the immigration rules (paragraph 4). The court stated at paragraph 9 that there could be no question of entertaining an appeal on grounds alleging that the decision was not in accordance with the immigration rules as this was not a permissible ground. As the first-tier tribunal judge had not dealt with the human rights ground (paragraph 13) it required to be resolved by the upper tribunal, which it proceeded to do. In considering the human rights ground the upper tribunal considered that a relevant factor would be whether or not the claimant was able to satisfy the immigration rules. This was relevant to an assessment of proportionality. As the upper tribunal put it (at paragraph 18),

> "a decision on whether the claimant satisfied the requirements of the rules would illuminate the Article 8 balancing exercise."

Further, the upper tribunal stated at paragraph 23 that,

> "We have considered carefully the effect that this decision could have in other cases. Plainly this will mean that the underlying merits of an application and the ability to satisfy the Immigration Rules, although not the question before the Tribunal, may be capable of being a weighty factor in an appeal based on human rights but they will not be determinative. They will only become relevant if the interference is such as to engage Article 8(1) ECHR and a finding by the Tribunal that an appellant does satisfy the requirements of the rules will not necessarily lead to a finding that the decision to refuse entry clearance is disproportionate to the proper purpose of enforcing immigration control. However, it may be capable of being a strong reason for allowing the appeal that must be weighed with the others facts in the case."

This is not the situation here. The petitioner does not challenge the decision on human rights grounds and the ability to satisfy the immigration rules is not being used to determine proportionality. Applying *Mostafa*, *supra*, a tribunal judge would have no power to entertain a ground of appeal alleging that the decision was not in accordance with the Immigration Rules and there would clearly be no prospects of success for such an appeal before an immigration judge. The petitioner also submitted that this was contrary to policy. I know of no policy and none was placed before me to the effect that the respondent was bound to

consider what a tribunal judge would make of the merits of a decision where no appeal against that decision was competent. For all these reasons, I agree with the respondent's submissions on this point and sustain the second plea in law of the respondent.

[14] In the event that I was required to decide whether the respondent had erred in concluding that the petitioner did not have a realistic prospect of success if his appeal was considered by a tribunal judge, I would have concluded that the respondent did not err. The petitioner submitted a fresh claim based on article 8 private life and under the rules (276ADE(1)). This was considered by the respondent in the decision letter (commencing at page 5 of the consideration of submissions section). At page 6 the respondent sets out the terms of rule 276ADE(1), including the requirement that there must 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 (276ADE(1)(vi)). The respondent at pages 6 and 7 then proceeds through the various legs of the 276ADE(1) test as applied to the petitioner. At page 7 the respondent sets out the reasoning in rejecting the petitioner's fresh claim under the rules. There the respondent states the following:

> "It is not accepted that there would be very significant obstacles to your integration into the Ivory Coast. It is noted that your wife and daughter reside in the Ivory Coast, who can provide support and emotional assistance upon your return to the Ivory Coast. It is also of note that you have brothers and sisters there too. It is therefore considered that you have family support. It is also noted from a response to a COI request dated the 24 November 2014 that there are psychiatrists and facilities to treat people with PTSD and suicidal tendencies. You would also have the assistance of the AVR scheme to negate any hardships that may occur along with medical escorts to ensure your safe travel to your home country and ensure that you continue to receive the appropriate treatment throughout your removal. The medical escorts will also take into account any difficulties you may have with travel and put in place a plan appropriate to you. This will ensure your wellbeing. You have also lived in the Ivory Coast for 40 years and are therefore familiar with the language and culture. It is also noted that the political situation in the Ivory Coast is much more favourable for you compared with the situation at the time of your departure. Consequently you fail to meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules."

This is a clear and concise statement of the reasons why the respondent rejected the petitioner's claim under the rules. The correct test was applied and the respondent's reasoning demonstrates to the reader that she applied the test to the petitioner's circumstances as set out in the fresh claim letter. The petitioner could be left in no doubt as to the reasons why she refused the fresh claim under the rules. It is therefore the case that the respondent did not apply the wrong test by conflating the convention tests with the test for the relevant rule.

[15] With regard to whether or not the respondent left relevant matters out of account in reaching her decision, the matters upon which the fresh claim is founded are the petitioner's mental health, the treatment available in the Ivory Coast, that removal would interrupt the ongoing treatment and support in the UK, his vulnerability and inability to travel to the Ivory Coast and the potential that he would be forced to live on the streets there. The respondent in reaching her decision dealt with all these matters in the decision letter. With regard to the petitioner's mental health, his medication is referred to at page 8; his PTSD and suicidal tendencies are dealt with at pages 8 and 11 and his anxiety is dealt with at page 12. The availability of treatment in the Ivory Coast is dealt with at pages 7 - 9 of the decision letter. There the respondent notes from a MedCOI response that there are psychiatrists and facilities available (inpatient and outpatient and follow up by psychiatrists) to treat people with PTSD and suicidal tendencies. The respondent also notes (at page 12) that albeit the quality of treatment there may not be of the same standard as that in the UK, any disparity would not be substantial enough to cause serious harm to his physical or moral integrity. The decision letter also notes, from a MedCOI response, the availability of appropriate medication. The arrangements for his removal to the Ivory Coast are dealt with at pages 7, 10 and 12. At page 12 the respondent notes that:

> "You would also have the assistance of the AVR and medical escorts who will take into account any difficulties you may have with travel and put in place a plan appropriate to assist you. This will ensure your wellbeing."

The potential for him to live in the streets if returned is dealt with at page 12. The respondent notes that no evidence, beyond a generic risk, was submitted of petitioner applicability. The respondent noted that the petitioner's family (wife, daughter and other siblings) live in the Ivory Coast and would be available to support the petitioner. Finally, the interruption of his treatment in the UK is also dealt with at page 12 of the decision letter. The decision letter is detailed and covers all the points made by the petitioner in his fresh claim. It is certainly the case that there is cross fertilisation in respect of the petitioner's convention and immigration rules claims, but it is clear to me from the terms of the decision letter that all this information was properly taken into account in reaching the decision on the rules and the decision letter makes this clear. For these reasons I reject the petitioner's submissions on this point also.

[16] With regard to the assessment of what a hypothetical immigration judge could make of the fresh claim, an immigration judge would have regard to *inter alia* all the information in the fresh claim, the information presented in support of previous claims, the respondent's previous decisions and the respondent's rejection of the fresh claim as set out in the decision letter. In relation to the fresh claim, the petitioner accepts that the conclusions of the respondent in relation to the relevant factual matters and the legal conclusions drawn from the facts are not unreasonable (combined statement of issues and note of argument for the petitioner at paragraph 5). I would endorse that concession. With regard to the way in which the respondent has dealt with the fresh claim, her reasoning is sound, she has not left out of account any relevant matters, she has not taken into account any irrelevant matters, her analysis is sound and the conclusions drawn, both factual and legal, are not unreasonable or

irrational. That led her to conclude that there was no prospect of success before an immigration judge (pages 7 and 12 of the decision letter). The test is a 'modest hurdle' but a hurdle nonetheless. The respondent's conclusion that the hurdle has not been met and there would be no realistic prospect of success before an immigration judge is reasonable and rational and soundly based on the information and evidence presented to her.

[17] For the foregoing reasons I would repel the petitioner's plea in law and also sustain the respondent's third and fourth pleas in law, and refuse the petition.