Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02897/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 February 2018	**On 05 March 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

G G
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr J Collins, instructed by J McCarthy Solicitors

DECISION AND REASONS

1. The respondent (to whom I shall refer hereafter as the appellant, as she was before the First-tier Tribunal) appealed to the First-tier Tribunal against the decision of the Secretary of State (to whom I shall refer hereafter as the respondent, as she was before the First-tier Judge) dated 15 January 2016 refusing her application for leave to remain in the United Kingdom on the basis of established private and family life.

2. The appellant is a national of Armenia who was born in 1952. She had previously been in the United Kingdom on visit visas in 2008, and again from October 2013 to October 2015 and it seems made the current application in time. She seeks to remain in the United Kingdom on the basis of her relationship with her daughters, LG, who is married with a son, and HG. The judge noted that the appellant has lived with LG and her

husband and child since the appellant arrived in the United Kingdom in May 2015. She also sees HG two to three times a week.

3. There was evidence before the judge of health problems experienced by the appellant. She had had some healthcare in the United Kingdom as well. The appellant was in receipt of a pension in Armenia but it did not cover her expenses and money had to be sent from the United Kingdom. HG gave evidence to the effect that her mother could not live on her own and she herself had constantly to call neighbours when her mother did not pick up the phone and her mother would forget to take her medication. On the last occasion when she had gone back to Armenia she had refused to eat and had to be hospitalised. She had never lived in a care home. She had previously had a carer who beat her and as a consequence HG said her mother would refuse to have another carer. The incident had been reported to the police.

4. LG's husband AT gave evidence. In a letter he had said his mother-in-law would lapse into long term depression as a result of the separation from her grandson and might well attempt to self-harm.

5. In her evidence LG was unsure whether there was in fact any paid Social Service care in Armenia. She had had contact with the Armenian Association of Social Workers and spoke to the deputy head who said that they dealt exclusively with children. LG referred to episodes of extreme depression which her mother experienced and the medication her mother had taken and her contact with the Compass Wellbeing Centre to which she had been referred by her GP to seek psychological support. She said that her mother had cataracts and needed surgery in both eyes and had extreme fluctuations in her blood pressure and she believed that the stress of permanent return to Armenia would send her mother's pressure into dangerous levels. Following her rushing her mother to the hospital after she was found bleeding at home she was advised that her mother had to be vigilant and stay at home alone.

6. There were also issues relating to the appellant from LG's work. She is employed as an analyst covering economics and politics of former Soviet states including Armenia. She had been critical of Armenian politics and had received a veiled threat from a panel member at a conference and was contacted by the Armenian Embassy in London asking if she had written or commented on Armenia in a negative way. She believed that she had been labelled as a western spy. She had been warned to be careful of criticising Armenia as times had changed. She did not think she would be able to travel freely to Armenia on account of these incidents.

7. The judge found that the appellant suffers from diabetes, blood pressure, a heart condition and depression. She had been awaiting an appointment with a psychiatrist. The witnesses were all found to be credible. (It is worthy of note in passing that the appellant did not give evidence). The judge accepted that appellant had had home care which resulted in her being abused in her own home and that she was desperate for this situation not to recur. The judge found she was unable to live on her own now that she had her ailments, particularly if there is a removal which is

seen as permanent as she was likely to lose the will to live and there was a risk of self-harm. She had previously starved herself and had to be hospitalised for the same.

8. The judge accepted that LG had attracted adverse interest as a result of the views she had expressed in the media and there had been pressure brought to bear on her and her reluctance to travel to Armenia was completely justified. The judge found that she would not be able to visit the appellant should the appellant be required to leave the United Kingdom and nor would it be appropriate for the same reasons for her to travel to Russia in order to facilitate visits with her mother. The judge found that the appellant would be a target for the adverse interest in her daughter by the state. The judge found that the appellant would be socially and emotionally isolated. Though she might well have her daughter's house to continue living in and she spoke the language and was culturally connected with Armenia, she was vulnerable, old and reliant upon others to administer medicines to her and within her particular circumstances there were very significant obstacles to her integrating into life in Armenia as she could not manage to live on her own which would be the position there. The judge found that she is a vulnerable person and susceptible to abuse and adverse targeting by state authorities. As a consequence the appeal was allowed under the Immigration Rules.

9. The judge went on to consider Article 8, considering the Razgar guidance, and accepting there was dependency on her daughters over and above that normally anticipated between parents and their adult children. The judge found that the appellant has established family life with her daughters and grandson in the United Kingdom. With regard to the issue of proportionality the judge took into account section 117B of the 2002 Act. He noted that the appellant speaks no English and is not fully integrated into life in the United Kingdom but into the life of her family. She is not of independent means and is completely dependent on her daughters. Her family and private life had been established during a time when her immigration status was clearly precarious, but on arrival she already had family life with her daughters and grandson. There was no support available for her in Armenia. Her distress was apparent and this was a genuine fear of being sent to Armenia to die on her own because there was no one for her there and she was completely dependent on her daughters.

10. The judge found that the system was not abused in this case. The appellant and her daughters were fully aware of the Immigration Rules and that she had been sent back to Armenia previously. There had been a change of intention only following her arrival and the extent of her depression was fully appreciated and the significant issue of the adverse interest in LG arose much after the appellant's arrival in the United Kingdom. He found that the balancing exercise was overwhelmingly in the appellant's favour and that her removal to Armenia would amount to a disproportionate interference in her private and family life. The appeal was accordingly allowed.

11. The respondent sought, and was granted, permission to appeal essentially on the basis as summarised by the judge who granted permission that it was alleged that he had made findings as to the appellant's medical conditions which were unsupported by any appropriate evidence; he had not properly applied the factors referred to in Part 5A of the Nationality, Immigration and Asylum Act 2002, and the judge had been too quick to accept the appellant's case as to why continuing to live in Armenia was not feasible for her.

12. In addition a respondent's Rule 24 notice was received challenging the arguments made in the grounds and contending that the judge had approached all the issues before him lawfully and the Secretary of State's appeal should be dismissed.

13. In his submissions Mr Clarke noted that the medical evidence did not exclusively deal with the appellant's physical ailments. The fact that the letter at G1 referred to her losing her appetite did not mean that she was a victim of self-harm. That appeared to come from the son-in-law's evidence. There was not enough to show a risk of self-harm as a material fact to be taken into account.

14. As regards the claimed adverse interest on the part of the Armenian authorities, it seemed that the work of LG had led to problems. The judge referred to a risk of targeting of the appellant as a consequence. This was analogous to a finding in respect of asylum, and on the authorities where such distinct matters were raised this amounted to a new matter, and this was in effect an asylum claim although not asylum findings but it was allowed in a factual matrix relevant to Article 8. It was unclear what standard of proof had been applied. It was not open to the judge to make findings such as those at paragraph 28 as it was a new matter.

15. There was no corroborating evidence concerning the claimed assault by the carer, for example, a report to the police. This would be material to the reasonableness of finding other care in Armenia and has also led on to the oddity of what the judge said at paragraph 36 about the system not being abused. The appellant had had NHS treatment but it was known she had come on a visit visa. In an in-time Article 8 application there was a requirement of no recourse to public funds for five years and there was a lot of medical evidence about her use of the NHS. It was odd therefore to find the judge's conclusion that the system had not been abused. The determination was lacking in reasoning. The determination was unsafe.

16. In his submissions Mr Collins argued that the grounds were misleading. The judge had made findings on the oral and written evidence. It was not a matter of an asylum claim in respect of LG but evidence of developments. The judge had found the evidence to be credible.

17. There had been medical evidence before the judge including evidence from a hospital stay in Armenia. The abuse by the carer was accepted by the respondent in the decision letter. There was no challenge to any Article 8 findings beyond what was said in the grounds about paragraph

276ADE(1)(vi). The judge carried out the proper balancing exercise. The medical evidence was all to be found in the respondent's bundle together with the statements from the daughters and a further statement from LG. The judge set out the burden and standard of proof at paragraph 19 and made findings thereafter. The judge had carefully balanced the relevant factors in the Article 8 evaluation. The findings under paragraph 276ADE(1)(vi) were fully open to the judge.

18. By way of reply Mr Clarke argued that although it was the case that the abuse was not challenged, another person could be employed. As regards risk to LG, she had not said that she could not go back to Armenia but that she could not visit regularly. This contrasted with the judge's findings.

19. I reserved my determination.

Discussion

20. On the issue of the medical evidence, a number of items of evidence can be seen in the respondent's bundle. There is a medical report on the appellant referring to hospital treatment received between 20 and 27 January 2015 in Armenia including diagnoses of bronchial asthma, Type 2 diabetes and cardiac hypertension. There is an account of her medical history at G1 referring to a diagnosis of retrograde depressive disorder medium severity episode and depressive anxiety symptoms. This followed admittance to hospital on 11 December 2014 and release on 2 January 2015. There is also at G8 an excerpt from an ambulatory card dated 6 May 2015 concerning deteriorations in her conditions and treatment for astheno-depressive symptom and the need for assistance of her relatives and continuous treatment. There are also cardiographic results from 21 January 2015 referring to such matters as sclerotic aorta, enlarged left ventricular concentrated overgrowth and hyperkinesis of the anterioseptal wall of the left ventricle. The judge accepted that she was awaiting an appointment with a psychiatrist in the UK.

21. In light of this evidence it is perhaps surprising to see reference in the grounds of appeal to the absence of any medical evidence provided by the appellant to demonstrate her claims of ill health. Quite apart from all this documentary evidence it was open to the judge to accept the oral evidence of the witnesses, which he did. It is relevant also to note LG's evidence that she was not sure that there was paid Social Service care in Armenia, although the fact that a carer was employed previously suggests that some form of care is available. However, the evidence was that the appellant refused to have another carer in light of her earlier experience, and again it was open to the judge to accept this. I agree with the point made in the response that it was not necessary for the appellant to institute legal proceedings against the former carer to prove that that harm had occurred. It was again open to the judge to accept the evidence in this regard. It is clearly right that there is medical assistance available in Armenia, and the judge did not suggest that that was not the case, but concentrated with regard to the paragraph 287ADE(1)(vi) issue on the question whether there are very significant obstacles to the appellant

integrating into life in Armenia. In that regard clearly the health problems of the appellant were relevant and also her psychological state.

22. Of further relevance to that is the issue of the problems being experienced by LG and the potential implications of that for the appellant. It is right to note as Mr Clarke pointed out that LG did not say that she would be unable to visit the appellant in Armenia but rather that she would not be able to visit regularly. Nevertheless, it is clear from her evidence that because of the concerns she has about the adverse interest in her that this would be relevant to the frequency of her visits to Armenia and her ability therefore to support her mother. This is quite apart from the fact that of course she is the mother of a young child.

23. I do not think that the judge can properly be described as having wrongly interpreted the appellant's case through the lens of an asylum claim as is suggested in the grounds. If it was a new matter, as suggested by Mr Clarke no objection was taken by the Presenting Officer at the hearing. It was a piece of relevant evidence which the judge was entitled to take into account when assessing whether or not there were very significant obstacles to the appellant's integration into Armenia. Clearly if the appellant's daughter was either not able to visit or only able to visit less frequently than might otherwise be the case, that is relevant to the evaluation of the appellant's ability to meet the requirements of this particular test.

24. Bringing these matters together, although it is not a conclusion that I think every judge would have come to, I consider that the evidence before the judge and which was found credible, was such as to justify the conclusion that there would be very significant obstacles to the appellant's integration into Armenia bearing in mind the factors in particular set out at paragraph 27 of the judge's decision, which contains a balanced evaluation of the relevant points.

25. In the alternative, I think it was open to the judge also to allow the appeal under Article 8. Appropriate consideration was given to the relevant issues with regard to proportionality, the judge having found that there was family life between the appellant and her daughters and grandson in the United Kingdom. Though it is right to point out, as Mr Clarke does, that it seems slightly curious to say the system was not abused in a situation where there has been use of National Health facilities by a person without status in the United Kingdom, overall I consider it was open to the judge to find that the proportionality side of the balance fell in the appellant's favour and as a consequence that the appeal fell to be allowed under Article 8 also.

26. For these reasons therefore I conclude that the judge did not err in law in his decision, and the decision allowing the appeal stands.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 01 March 2018
Upper Tribunal Judge Allen