Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
Case No: UI-2022-005957
First-tier Tribunal No: HU/55702/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29th June 2023	**On 26th July 2023**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'LT' (GEORGIA)
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, LT and any member of her family is granted anonymity. The reason for this is that the judgment contains confidential medical information.

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

Representation:

For the Appellant: Mr R Layne, Counsel, instructed by Visa 24/07 Solicitors
For the Respondent: Mr N Terrell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of her claim under Article 8 ECHR, based on the right to respect for her family life. I remind myself that, as set out in my

decision annexed to these reasons, in which I considered whether Judge Khurram had erred in law, the Judge's decisions in relation to Article 3 and Article 8 (private life) did not contain any errors of law; and I preserved the Judge's findings on those issues.

The issues in this appeal

2. Mr Terrell accepted that family life existed for the purposes of Article 8 between the appellant and her son, who was naturalised as a British citizen in 2022. I canvassed with Mr Layne whether I needed to consider the human rights appeal through the lens of specific rules in the Immigration Rules, such as section GEN.3.2 of Appendix FM. He submitted that I did not, and instead, the sole issue was of proportionality, the fifth limb of the well-known five-stage test in Razgar v SSHD [2004] UKHL 27. Nevertheless, in considering proportionality, much of the case-law (cited most recently in Mobeen v SSHD [2021] EWCA Civ 886, of which I have reminded myself), is reflected in the Immigration Rules.

The hearing

3. The appellant and her son adopted written witness statements and gave oral evidence, on which they were cross-examined. The appellant did so with an interpreter in Georgian, without any discernible difficulty. I do not recite their written or oral evidence except to explain why I have reached my decision. I also considered the documents in the bundle provided by the appellant. I make the general observation that the appellant's son was a credible and candid witness. The appellant herself appeared a little more reticent in answering direct questions and instead reiterated her case she depended entirely on her son, and could depend on no one else, but much of that reticence may be explained by her anxiety. Under specific cross-examination (although not volunteered in her witness statement), she was candid that her son had left the UK in December 2022 until February 2023 for a visit to Georgia, and that arrangements were in place to care for her in his absence. When directly asked, she was willing to provide specific details, about which her son was consistent. I do not draw adverse inferences from her reticence, bearing in mind her potential vulnerability as a witness.

Findings

4. I begin by reflecting on Judge Khurram's preserved findings in relation to the appellant's right to respect for her private life and her ability to integrate in Georgia, which are also relevant to the issue of the right to respect for her family life.

5. The appellant was born on 24th November 1961 and so is now aged 61. She entered the UK on a family visit visa on 4th August 2007, aged 44 and has overstayed, following the expiry of that visa, never returning to Georgia. She has since lived with her son. During that time, she has had expensive NHS treatment, including for cancer, for which she has not been

charged. Since 2010, the appellant's son has caring role when the appellant, after her first operation that year. She continues to be on some form of unspecified, special diet and suffers from anxiety, particularly because her brother died from cancer. From 2017, the appellant's health worsened and in 2019, she developed an aggressive form of breast cancer and also became very depressed, and was reported as thinking about self-harm. In April 2021 she was diagnosed with sepsis and needed hospital admission for five days.

6. Nevertheless, in April 2022, the Judge concluded that the appellant's medical conditions were not of such severity that they met the Article 3 threshold, nor that the impact was such that her return to Georgia would risk breaching Article 8 in respect of the right to respect for her private life. Mr Layne conceded before me that her medical condition has improved since 2022. There was and is no direct evidence that the appellant would be denied medical treatment or lack access to such treatment in Georgia. In respect of her mental ill-health, the Judge noted the lack of evidence of substantive engagement with doctors. A report spoke of recommending counselling or therapy, which the appellant confirmed to me she had not taken up in the UK because she cannot speak English. The Judge accepted the appellant is likely to be anxious about the result of her immigration appeal but was not satisfied that her anxiety reached the threshold of Article 3 (despite the claimed risk of suicide).

7. The Judge also found that the appellant had not lost all social and cultural ties to Georgia. She speaks the Georgian language, and the level of personal care provided by her son could be met by a carer in Georgia. Her son has confirmed that he would always support his mother. Her medical conditions were not life threatening, nor was there any evidence to show any risk from travelling.

8. There is nothing in the appellant's updated evidence to suggest that the medical situation, relevant to family life, has changed since Judge Khurram's analysis. Her last treatment for cancer was in February 2023. Her next appointment is in December 2023 which is by way of monitoring until 2025. She is no longer receiving treatment for cancer, merely medical monitoring. There is no updated evidence in relation to any risk of suicide, despite Mr Layne raising the risk of suicide for the first time in closing submissions. The appellant has a one-month prescription for anxiety medication (Mirtazapene) for March 2023. The appellant thinks that she is still taking medication but is unsure. I am prepared to take her evidence at its highest, namely that she is continuing to take medication, despite the lack of full GP records. I do not, however, find that there is reliable evidence that the appellant is at risk of suicide, as had been referred to in a medical report in 2021, bearing in mind the lack of updated evidence, beyond a brief letter from her GP dated 28th March 2023 which referred to recent increased anxiety and depression, and being on anti-depression therapy. The appellant confirmed that she is not in fact receiving therapy. There are not substantive GP records before me. The

2021 report was not based on such records and the appellant's health has, Mr Layne accepted, generally improved.

9. The appellant's son works full time, typically from 7.30am to 4.30pm, as an electrician and while he is away at work, the appellant is able to look after herself and make occasional meals, albeit she becomes tired. She has a limited social network in the UK but does travel occasionally to attend services at a Georgian church in the UK. While her son was away in Georgia continuously from the beginning of December 2022 until mid February 2023 for an unexpectedly long time (he had fallen ill while away visiting school friends there) a Georgian friend of his who also lives in the UK, with his wife, had visited the appellant to help with cooking and any other needs for the two and a half month period. I accept Mr Terrell's submission that the appellant does not require "round the clock" care. While she becomes tired, she can carry out some basic tasks such as cooking, to look after herself. She is no longer receiving treatment for cancer and the only medical current medical intervention is the anxiety medication, assuming there is a follow-up prescription. She lives in a rented property, paid for by her son and does not work. He accompanies her to any medical visits and translates for her.

10. I find that the relationship between the appellant and her son is a close and loving one, which has developed after they began living together since 2007. During that period, she has had passages of significant illness. He has provided a caring role (albeit not on a 24-hour basis). He provides not only financial and caring support, but she is, at least to some extent, emotionally dependent on him. This is consistent with a background of social isolation (she does not speak English) and anxiety.

11. I also find that were the appellant refused leave to remain, that her son would relocate with her to Georgia. He confirmed in oral evidence, that while reluctant, he would do so. I readily accept that it would be a significant readjustment for him in circumstances where he has lived in the UK since around the age of 19; has made his life here; and as qualified in the UK as an electrician. I accept that despite having a vocational job with potentially transferable skills, the son's ability to work in Georgia would not be immediately straightforward as he would need to establish professional contacts and requalify, but as he also accepted, he speaks Georgian, grew up there and accepted that at least in the short term, his friends would help him while he re established such links.

12. I turn to weigh the factors in the appellant's favour and against her in the proportionality assessment. I remind myself of the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002.

Factors in the appellant's favour

13. The appellant's lack of financial dependence on the UK state is a neutral factor. If the appellant were refused leave to remain and returned to

Georgia without her son, whilst I have no doubt he would visit her regularly, and earns sufficiently to be able to so, it is reasonable to assume that he would not be able to do so more than once or twice a year, at most.

14. As a consequence, in this scenario, where the appellant's son "stays," their face-to-face contact would be naturally limited and would contrast significantly with the close relationship they have enjoyed over many years through their cohabitation, during which time the appellant's emotional, practical and financial dependency has developed. Whilst I also have no doubt that the appellant's son would maintain contact with the appellant through modern communication means, this is no substitute for their current close relationship. I also accept the family life would be impacted by a likely worsening of the appellant's anxiety, at least in the short-term, which in turn would be distressing to her son.

15. In the "go" scenario, where the appellant's son returns with her (which I found is the most likely outcome given his evidence), their face-to-face family life would be maintained, but would naturally be impacted to some extent, at least on a temporary basis, while the appellant's son finds alternative work, accommodation for them both, re-establishes a wider social network and makes any necessary arrangements for the appellant's care. He would also lose the immediate benefits of his recent naturalisation as a UK citizen.

Factors against the appellant

16. The family life developed between the appellant and her son in the UK was at a time when she had no lawful leave, beyond the initial brief visit visa, nor with any legitimate expectation of settlement.

17. Any social isolation that the appellant has encountered is, at least in part, due to her inability to speak English, which has limited her integration in the UK. In contrast, on return to Georgia, she would be returning to a country in which she lived until aged 41, and has maintained cultural and social links through Georgian church attendance in the UK, with an ability to speak Georgian.

18. The appellant's son has confirmed that if the appellant were refused leave to remain, he would leave UK and relocate with her. I accept Mr Terrell's submission that this is relevant for the purposes of the continuation of family life (see Mobeen).

Conclusions

19. The appellant has never had leave to remain in the UK. The weight of the public interest in the maintenance of effective immigration control in this case is overwhelming. The appellant enjoys a close and loving relationship with her son, in the context of emotional, financial and practical

dependency, albeit her recent medical conditions have alleviated. Her son has indicated his willingness to leave the UK to live with her. In the alternative, I have no doubt that if he did remain in the UK, he would continue to visit her regularly and, in the meantime, provide her with emotional and financial support, supplemented by practical support that could be accessed in Georgia. Refusal of leave to remain is proportionate, the consequences of which do not come close to being unjustifiably harsh.

20. On the facts established in this appeal, there are no grounds for believing that the appellant's removal from the UK would result in a breach of the appellant's rights under Article 8, based on the right to respect for her family life.

Decision

21. The appellant's appeal on human rights grounds is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **18th July 2023**

ANNEX: ERROR OF LAW DECISION

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE KEITH

Between

LT (GEORGIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Layne, Counsel, instructed by Visas 24/7 Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 21 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, LT and any member of her family is granted anonymity. The reason for this is that the judgment contains confidential medical information.

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

DECISION AND REASONS

1. These written reasons reflect the decision I gave orally at the end of the hearing.

The FtT's decision

2. The appellant appeals against the decision of First-tier Tribunal Judge Khurram, to whom I will refer in the remainder of these reasons as the 'FtT'. In a decision dated 15th July 2022, the FtT dismissed the appellant's appeal based on Articles 3 and 8 of the ECHR, against the respondent's refusal on 20th September 2021 of her application on 22nd June 2020. Her original Article 3 claim had been based on her breast cancer, but by the time of the FtT's decision, the FtT had also considered the appellant's mental health issues.

3. As the FtT noted at §3 of his decision, no issue was taken in respect of the appellant's suitability under the Immigration Rules and the FtT also considered the appellant's continuous residence, albeit not of 20 years' duration, as might otherwise have met paragraph 276ADE(1)(iii). The respondent had also considered and refused the application based on there not being very significant obstacles to the appellant's integration in her country of origin, Georgia (paragraph 276ADE(1)(vi)). The FtT noted at §5, the evidence, including medical letters, relating to Article 3 ECHR. The FtT noted that the respondent had considered a "UK Visa and Immigration Country of Origin Information Report" dated 11th June 2021, which in the respondent's view confirmed the availability of treatment for the appellant's conditions in Georgia.

4. The FtT went on at §8 to note that the respondent had refused the application because in her view, it would not cause unjustifiably harsh consequences so as to amount to a breach of Article 8 and that her conditions did not meet the threshold of Article 3.

5. The FtT considered the relevant evidence, which I do not recite in full. At §20(e), he referred to an expert psychological report, which confirmed a diagnosis of major depressive disorder, generalised anxiety disorder and secondary symptoms of anxiety and sleep disturbance. The expert was concerned that the appellant might act upon suicidal thoughts impulsively if she were deported, (she was already at high risk) because of increased hopelessness.

6. The FtT recited, at §21, the well-known authority of Paposhvili v Belgium (App no. 41738/10) and at §23, the Supreme Court's decision in AM (Zimbabwe) [2020] UKSC 17, in relation to Article 3. At §24, the FtT directed himself to Savran v Denmark (App no. 57467/15) and also, in the context of assessing the risk of suicide, at §25, the authority of J v SSHD EWCA Civ 629. The appellant does not suggest that the FtT failed to direct himself correctly to the law. The challenge is to its application.

7. At §§28 to 30, the FtT assessed the risk, which he concluded the appellant had not proven. The medical treatment for breast cancer did not support such a conclusion, and there was no direct evidence that she could not access treatment in Georgia. In relation to the appellant's mental ill-health, the FtT consider the psychotherapist's report, at §30. I cite the passage from §30 below, as it forms a central plank of the appellant's challenge to the FtT's decision:

> "….I note this report post-dates the respondent's decision. The appellant's mental health not having been materially raised in the original application. I also note the lack of evidence in regard to the appellant's engagement with the health authorities in the UK in relation to her mental health, since her entry in 2007. I further note that there is no up-to-date evidence

implementing the recommendations of the report, for example by way of accessing psychological support from her GP or treatment by way of sessions as recommended. I have found the oral evidence to be both credible and consistent. However, there is a lack of medical evidence setting out any medication the appellant is receiving for her mental health condition. The appellant has not provided evidence which materially assists in relation to the availability of relevant treatment or medication in Georgia. I accept that the appellant is likely to be anxious about the results of her immigration case, however, in the circumstances I am not satisfied that anxiety reaches the threshold of Article 3".

8. The FtT went on to direct himself at §§31 and 32, in relation to private life, to the well-known authorities of Parveen v SSHD [2018] EWCA Civ 932 and SSHD v Kamara [2016] EWCA Civ 813. He carried out a proportionality assessment at §§37 to 39 and rejected an appeal based on private life. I say more about the FtT's analysis of the appeal based on the right to respect for family life, later in these reasons. The FtT concluded by dismissing the appellant's appeal on human rights grounds.

The appellant's grounds of appeal

9. As Mr Layne explained in commendably clear and succinct submissions, the appellant appeals on three grounds. The first was that the FtT's reasoning in relation to Article 3 was deficient. The appellant had provided credible and consistent evidence with regard to a prima facie case being established and that the FtT had not provided an adequate explanation for rejecting that evidence or the causal link between the appellant's removal and the serious and irreversible harm. It was also a decision that no Tribunal could have reached, on the evidence before it. Second, the FtT had erred in inferring that a lack of treatment meant that the appellant's mental health issues were not serious. Third, in relation to Article 8 ECHR, the errors in relation to the assessment of the appellant's ill-health had undermined the FtT's assessment of very significant obstacles to the appellant's integration in Georgia, for the purposes of her private life, and the FtT had failed to make any findings as to the nature of the appellant's family life.

Discussion and conclusions

10. I do not repeat the representatives' submissions, except where necessary to explain why I have reached my decision. In relation to Article 3, I bore in mind three cases. The first is this Tribunal's decision in AM (Article 3, health cases) Zimbabwe [2022] UKUT 00131 and in particular the requirement for an appellant to adduce evidence capable of demonstrating that substantial grounds have been shown for believing that as a seriously ill person, the appellant would face a real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment of being exposed to a serious, rapid and irreversible decline. In cases involving suicide, J also remains relevant (see: MY (Suicide risk after Paposhvili) [2021] UKUT 00232 (IAC)). I also considered the authority of HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC) and the direct relevance of GP records, particularly where a GP or other medical professionals, may have a broader or more up-to-date picture of a person's health than is available to the expert.

11. In relation to Article 3, I turn to the FtT's analysis in §30. On the one hand, I bear in mind Mr Layne's submission that the FtT had found the appellant's oral evidence to be credible and consistent. Adopting the analysis in AM Article 3, health cases), this answers the question that the appellant has discharged the burden of establishing that she is a seriously ill person. However, setting aside the issue of causation, the FtT went to consider, as he was required to, whether the appellant would face a real risk, on account of the absence of appropriate treatment in Georgia, of a serious, rapid and irreversible decline, as part of assessing whether the appellant had established a prima facie case. The FtT considered the absence of evidence of the appellant's current treatment in the UK, and the absence of any up-to-date GP records, in relation to the accepted serious condition, in the context of effective treatment to mitigate that risk in Georgia. That was a permissible consideration. The FtT did not fall into error in conflating the absence of treatment, with the lack of seriousness of the appellant's condition. The FtT accepted that the condition was serious but was not satisfied that the appellant had established a case that that there was a real risk of relevant decline. This was in the context of the lack of evidence of prior, or follow-up treatment in the UK, which might inform an assessment of such a risk. The FtT did not err in law in reaching his conclusions on Article 3.

12. In relation to Article 8, Mr Layne accepted that the appeal in relation to private life stood or fell with the Article 3 appeal. I agree. The FtT correctly reminded himself of the relevant law and carried out a detailed proportionality assessment. The FtT did not err in making his decision in relation to the appellant's right to respect for his private life.

13. However, I accept the appellant's challenge in relation to the assessment of her claim of a right to respect for her family life. On the one hand, Mr Tufan pointed put that as per §182 of HA (expert evidence; mental health) Sri Lanka, Article 8 is not to be regarded merely as Article 3 with a lower threshold, and an appellant cannot succeed under Article 8 simply because of their mental ill-health and suicide risk, if those are insufficient to meet the high Article 3 test set by Paposhvili and (now) explained by Savran. On the other hand, I also bear in mind §183 of HA, that mental ill-health and suicide risk may be combined with other Article 8 factors, so as to create a cumulative case, which enables an appellant to succeed on Article 8(2) proportionality grounds. The question is whether the FtT had considered the cumulative factors, when assessing the impact on family life.

14. The appellant had clearly put in her family life appeal on the basis of her claimed dependency on her son, who gained indefinite leave to remain in 2019. The FtT's analysis, while under the heading, 'Private and Family Life', deals at §35 and §36 exclusively with private life. There is no analysis of the nature or qualify of the claimed family life between the appellant and her son. The only finding that touches on family life is at §39(b), where the FtT states that the appellant has a son who provides some emotional and practical support along with providing complete financial support, but the FtT also concludes that the appellant is not solely reliant on her son and could be visited and financially supported by him in Georgia. The FtT describes this as a reason for granting the appellant leave to remain, although the opposite appears to be the case.

15. Mr Tufan argues that the appellant would be unlikely to succeed under the adult dependant route of the Immigration Rules, so any deficiency of reasoning was not material. I do not accept that the gap in the FtT's findings about family life are

immaterial. It is accepted that the appellant is a seriously ill person. She claims to be dependent on her adult son. It was incumbent on the FtT to analyse the claimed dependency and whether there was real or effective or committed support, for the purposes of assessing family life, and then carry out a proportionality assessment based on the cumulative factors. Whilst at §39(b), the FtT answers some of those questions, any proportionality assessment is necessarily fact-sensitive and nuanced. Where, as here, the FtT did not make any findings as to the precise nature of the family life relied on, that must undermine the FtT's proportionality assessment.

16. The FtT's analysis in relation to Article 3 does not amount to an error of law and stands, and the FtT's findings in relation to Article 3 are preserved. The FtT's also did not err in law in his decision in relation to the appellant's private life claim under Article 8 ECHR. His findings in relation to private life are preserved.

17. However, the FtT erred in his analysis of the appellant's claim based on the right to respect for her family life, for the purposes of Article 8. The FtT's decision in relation to family life is not safe and cannot stand.

Disposal of the Proceedings

18. I canvassed with the representatives whether it was appropriate to retain re-making in the Upper Tribunal or to remit the matter back to the First-tier Tribunal. I bore in mind §§ 7.2(a) and 7.2(b) of the Senior President's Practice Statement and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC). Mr Layne said that he was happy to leave the matter in my hands, whereas Mr Tufan referred to the scope of the preserved findings, namely in relation to Article 3 and Article 8 private life and therefore the limited scope in relation to family life, much of which was not in dispute. There may possibly be a desire for further updated evidence but in his view the nature and extent of any relevant evidence and fact-finding was limited.

19. I am persuaded that it is appropriate to retain re-making in the Upper Tribunal. §7.2(a) is not relevant. Noting §7.2(b), the Article 3 and Article 8 private life appeals are no longer extant. The only focus for re-making on family life. The appellant will have the opportunity to adduce, if she so wishes, updated evidence in relation to that family life and the proportionality of the respondent's refusal of leave for her to remain in the UK.

20. The following directions shall apply to the future conduct of this appeal:

(a) The Resumed Hearing will be listed at Field House on the first available date, time estimate 2 hours, with an interpreter in Georgian, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

(b) The appellant shall no later than 4pm, 21 days before the Resumed Hearing date, file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. This shall be in hard copy and electronic format. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall

(c) available for the purposes of cross-examination and re-examination only.

(d) The respondent shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 4pm, 14 days before the Resumed Hearing date.

Notice of Decision

The FtT's decisions in relation to Article 3 and Article 8 (private life) do not contain any errors of law and stand. The FtT's findings are preserved.

The FtT erred in the making of his decision in relation to Article 8 (family life). His decision is not safe and cannot stand.

The anonymity directions continue to apply.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber