



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00903/2020

**THE IMMIGRATION ACTS**

Decided Without a Hearing  
Under Rule 34 (P)

Decision & Reasons Promulgated  
On 26 October 2020

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ELENA [N]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision 30 December 2019 to refuse a human rights claim.
2. The subsequent decision made by First-tier Tribunal Judge N.M. Paul was found to involve the making of errors of law and was set aside by the Upper Tribunal in a decision promulgated on 01 September 2020 (annexed).
3. At the remote video hearing held on 29 July 2020 the parties agreed that the decision could be remade without a hearing. Directions were made for further submissions from both parties. Mrs [N]'s son, Alexander [N], filed further evidence by email on 14 August 2020. Mr Melvin filed further submissions on behalf of the respondent by email on 25 September 2020.

4. The following documents are before the Upper Tribunal for consideration in this appeal:
- (i) The respondent's bundle before the First-tier Tribunal;
  - (ii) The appellant's bundle before the First-tier Tribunal and miscellaneous documents;
  - (iii) The appellant's skeleton argument before the First-tier Tribunal;
  - (iv) Decision of First-tier Tribunal Judge Kelly promulgated on 13 June 2013;
  - (v) The respondent's rule 24 reply;
  - (vi) Witness statements of Alexander and Elena [N] dated 28 July 2020;
  - (vii) The appellant's further documents including extract from Russian real estate register (04/08/20), updated witness statements of Alexander and Elena [N] (14/08/20), letter from other son's employer in Sri Lanka (31/07/20), letter from Seaside Medical Centre (04/08/20) and appointment letter for Eastbourne x-ray department (04/08/20).
  - (viii) The respondent's written submissions dated 25 September 2020.
5. The appellant is an unrepresented vulnerable witness. Her son has assisted her to put forward her case. On behalf of the respondent Mr Melvin's written submissions are clear, concise and fair. The respondent's submissions state:

"The Respondent has reviewed the new statements and documents submitted by the appellant and on her behalf.

In light of the new/ up to date evidence the Respondent is content that the Upper Tribunal can remake the appeal without the need for a further hearing.

The Respondent will rely on the refusal notice and invite the Upper Tribunal to take full regard to the fact that Mrs [N] has been without leave in the United Kingdom for a number of years (9 years)

That fact will need to be balanced against her diagnosis of Alzheimer's disease/ dementia and lack of support in Russia, a country where she has spent the majority of her life, and a country where she would receive a pension.

The situation in Sri Lanka with her other son has now been clarified and the Respondent does not see her living with that son/ his family as a viable option.

The Respondent takes no issue with the documents from Russia or the medical evidence.

It is accepted that she has a support network in the UK, her son, her deceased husbands' family and friends in the Eastbourne area.

It is also accepted that during her many years in the UK, albeit without leave to remain, she has built a Private life and has dependency on her son, a British citizen.

Balancing all of these facts together the Respondent invites the Upper Tribunal to remake the decision on the papers."

## Decision and reasons

6. In light of the respondent's balanced submissions, and concessions relating to the facts and evidence, it is not necessary to make detailed findings although I will deal with the essential elements required for an assessment under Article 8 of the European Convention.

### *Article 8(1) – private life*

7. The appellant is a 75-year-old Russian national who has lived in the UK since she entered on a visitor visa on 21 December 2011 (a period of nine years). She applied for leave to remain as the spouse of a British citizen in 2012, but the application was refused. The appeal was dismissed by First-tier Tribunal Judge Kelly without a hearing in 2013. The judge did not have the opportunity of hearing from the appellant or her husband, Mr Roger Jones. It seems that Mr Jones may have written a letter to the Home Office that caused the respondent to doubt whether the relationship was subsisting, but by the time of the hearing he had written another letter to confirm that they were still in a relationship. The judge concluded that there was insufficient evidence to show that the relationship was subsisting. In the alternative, the judge found that it would be proportionate to expect the appellant to return to Russia to apply for entry clearance through the proper channels.
8. Mr Rogers died on 03 September 2019. First-tier Tribunal Judge Hall did not have an opportunity to hear from him although he did hear from other witnesses. I have already made findings as to why the First-tier Tribunal decision involved the making of errors of law. Mr Rogers' death certificate names the appellant as his wife. The recent death of the appellant's husband is mentioned in correspondence from independent sources such as her GP and a local support organisation called Steps. In light of this evidence the respondent no longer appears to dispute that the appellant was in a genuine and subsisting relationship with Mr Rogers. Nor is it disputed that she has a support network in the UK. She does not live with her son, Alex, but he provides support, helps her with financial affairs and oversees her welfare. She also has support from her husband's son and his wife, who live close to her in Eastbourne.
9. The appellant was diagnosed with Alzheimer's dementia shortly before her husband died. The evidence supports the diagnosis and it is accepted by the respondent. The recent letter from her GP states that the appellant has a good support network in the UK. In addition to dementia she is being investigated for chest pain. Her GP feels that she would struggle with dementia if she were to move to a different country with no known support network. Her son was concerned about how she would cope if she returned to Russia.
10. A letter from Charlotte Dawes at Steps (a support organisation), which I infer must have been written on 20 December 2019 rather than 2020 as stated on the correspondence, says that she thinks it would be "extremely difficult and upsetting" for the appellant to leave the UK now due to her current mental health state and the

need for everyday support. Miss Dawes considered that it would be detrimental to the appellant's physical and mental health if she had to leave the UK.

11. The respondent accepts that the appellant has established a private life in the UK. I am satisfied that the appellant's support network is sufficiently well established to engage the operation of Article 8. I find that removal in consequence of the decision is likely to interfere with her private life in a sufficiently grave way as to engage the operation of Article 8(1) of the European Convention.

*Article 8(2) – proportionality*

12. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.
13. Part 5A of the Nationality, Immigration and Asylum Act 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to private or family life and as a result is unlawful under the Human Rights Act 1998. In considering the 'public interest question' a court or tribunal must have regard to the issues outlined in section 117B in non-deportation cases. The 'public interest question' means the question of whether interference with a person's right to respect for their private or family life is justified under Article 8(2) of the European Convention.
14. It is in the public interest to maintain an effective system of immigration control. Even if it is accepted that the appellant was in a genuine and subsisting relationship with Mr Rogers she did not meet the requirements of the immigration rules for leave to remain as a spouse because she applied for leave to remain at a time when she was in the UK as a visitor. She remained in the UK in the full knowledge that she did not have permission to do so. She did not leave the UK to apply for entry clearance through the proper channels. However, I am satisfied that she continued to live with her husband until his death in September 2019.
15. I bear in mind that the appellant is unrepresented. I have considered whether she might meet the requirements for leave to remain on grounds of private life in the UK. The appellant falls far short of the 20 year long residence requirement contained in paragraph 276ADE(1)(iii) of the immigration rules. However, in light of the respondent's concession that the appellant has been diagnosed with Alzheimer's dementia and does not have a support network in Russia I find that the position she would face comes within the meaning of the phrase 'very significant obstacles to integration' for the purpose of paragraph 276ADE(1)(vi) of the immigration rules. The essence of the test was outlined by the Court of Appeal in *SSHD v Kamara* [2016] 4 WLR 152 albeit in the context of similar wording used in relation to deportation provisions:

“The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a 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.”

16. The appellant has spent the majority of her life in Russia and is still likely to have linguistic and cultural ties there. It is likely that she understands how life in that society works. However, the appellant is not a young woman who could return, find work and establish new connections there. She is 75 years old. I find that it is reasonable to take judicial notice of the fact that Alzheimer’s dementia is a degenerative disease for which there is currently no effective treatment. Unfortunately, the appellant’s condition is only likely to deteriorate. When coupled with the fact that she has no support network in Russia, I find that it is unlikely that she would be able to build up within a reasonable time a variety of human relationships that would give substance to her private life. In my assessment these combined factors would create very significant obstacles to her integration in Russia within the meaning of Article 8 as set out in the immigration rules.
17. In the alternative I have conducted a broader assessment of Article 8. The appellant speaks English and receives a pension from Russia each month. Little weight should be given to a private or family life that has been established at a time when the person’s immigration status is unlawful or precarious, but some weight can be given to the ties that she has established. The support network she has in the UK is an important factor given her recent bereavement and state of health. There is no evidence of any other factors that might add additional weight to the public interest in maintaining an effective system of immigration control e.g. criminal offences, fraud or deception.
18. The appellant’s age, the extent of the support network she has established in the UK, the compassionate circumstances surrounding her fairly recent bereavement, as well as the difficult diagnosis of Alzheimer’s dementia have a compelling cumulative effect. When this is taken into account with the concession that she does not have a support network in Russia and cannot live with her other son in Sri Lanka, in my assessment, her circumstances come squarely within the observations made by the House of Lords in *Huang* that I cited at [15] of the error of law decision.
19. I note that the respondent only asked the Upper Tribunal to remake the decision and did not even submit that the appeal should be dismissed. Having weighed the public interest considerations against the cumulative effect of the factors on the appellant’s side of the scale I conclude that removal of the appellant at this stage of her life from her current support network in the UK to an isolated and increasingly distressing situation in Russia as her condition progresses would amount to a disproportionate interference with her rights under Article 8 of the European Convention.

20. For the reasons given above, I conclude that removal in consequence of the decision would not be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is ALLOWED on human rights grounds

Signed *M. Canavan* Date 22 October 2020  
Upper Tribunal Judge Canavan

[ANNEX]



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00903/2020

**THE IMMIGRATION ACTS**

Remote hearing heard at  
Field House 29 July 2020

Decision Promulgated

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ELENA [N]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: In person  
Alexander [N] (son) acting as a Mackenzie Friend  
For the respondent: Mr T. Melvin

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 30 December 2019 to refuse a human rights claim.
2. First-tier Tribunal Judge N.M. Paul ("the judge") dismissed the appeal in a decision promulgated on 17 April 2020. The judge noted the appellant's immigration history,

including the fact that earlier applications for leave to remain as a partner were refused and an appeal was dismissed in 2013 [2-4]. He summarised the respondent's reasons for refusal, the oral evidence and the submissions made at the hearing [5-23]. His findings were confined to four paragraphs at the end of the decision:

- “24. This is a human rights appeal. It is for the appellant to show that her human rights are engaged, and then for the SSHD to show that any interference is a proportionate one.
25. The starting point in this case has to be the previous decision, which challenged the nature of the marriage and did not accept that it was subsisting. In my view, the evidence now does not substantially alter that position. The son of the appellant's ex-husband wrote a letter which was in very generic terms and he did not attend the hearing to give positive evidence of the nature of the relationship. Mr Page and the appellant's son also spoke about the relationship. In my view, there must still be a question mark over whether or not there was a genuine and subsisting relationship. In any event, regrettably and tragically, the appellant's husband has now died, and the issue of her private life is based on the fact that she has been in the UK for a number of years.
26. There is no clear medical diagnosis evidence in relation her (sic) Alzheimer's, other than that it appears that she may be displaying the early symptoms of it. In my view, there is nothing there to demonstrate that the medical care that she would received outside the UK would be insufficient. She has a private life with her son, but he is an adult and engaged with his own life, and she also has a private life wither (sic) her son who lives in Sri Lanka.
27. The evidence in this case tended to suggest that the family ties to Sri Lanka are much closer than would appear at first blush. The appellant's step-daughter is married to an English citizen, but it seems spends a large period of time in Sri Lanka, as indeed does her older son and her ex-husband. In my view, the links with Sri Lanka are probably much stronger than have been alluded to in this case. It follows (in my view) that in all probability the strongest element of her private and family life could be enjoyed in Sri Lanka, where she could be both cared for, and be supported in respect of her Russian pension which, of course, would go much further there than it does in the UK.
28. The single biggest factor in favour of the appellant's case is her age. However, the appellant did not present as somebody who would otherwise qualify as an adult dependant relative, and she seemed very spritely in terms of her physical and mental welfare, and in my view there is nothing here to suggest that relocation would be unfair or disproportionate. She came to the UK relatively late in life, and has only been here for a number of years, and in my view subsequent relocation would not in itself (having regard to her age) be unduly harsh or give rise to an argument that there are exceptional or compassionate circumstances militating against it.
29. In my view, the decision of the SSHD in this case is an entirely proportionate one.”



3. The appellant, acting in person, appealed the First-tier Tribunal decision on the following grounds.
  - (i) The judge was wrong to conclude that her marriage was not genuine and subsisting.
  - (ii) The judge erred in finding that there was no clear medical diagnosis of Alzheimer's when there was a letter from her GP confirming the diagnosis.
  - (iii) The judge erred in finding that the appellant could live in Sri Lanka when (i) she is not a citizen of Sri Lanka; (ii) had never been there; (iii) has no cultural ties there and does not speak the language; (iv) her son only has a temporary employment visa; (v) her ex-husband, who lives with her son, would not be willing to live with her; (vi) she could not get a visa due to Covid-19, and even if she could, she could only apply for a visit visa; and (vii) she could not afford the retirement visa that might be available.
4. Designated First-tier Tribunal Judge McClure granted permission to appeal to the Upper Tribunal in an order dated 11 June 2020.
5. A face to face hearing was not held because it was not practicable due to public health measures put in place to control the spread of Covid-19. The appeal was heard by way of a remote hearing by Skype for Business with the parties' consent. All issues could be determined in a remote hearing. The documents before the Upper Tribunal include those that were before the First-tier Tribunal:
  - (i) the respondent's bundle;
  - (ii) the appellant's bundle;
  - (iii) First-tier Tribunal decision (2013);
  - (iv) letter from the appellant's husband (15/12/13);
  - (v) skeleton argument on behalf of the appellant before the FTT;
  - (vi) up to date witness statements of the appellant and her son; and
  - (vii) the respondent's rule 24 response.

### **Decision and reasons**

6. I bear in mind that the appellant is acting in person and does not have legal expertise. Having considered the First-tier Tribunal decision, the grounds of appeal and the submissions made at the hearing, I am satisfied that the First-tier Tribunal decision involved the making of an error of law and must be set aside.
7. The fact that the judge's findings are brief is not in itself problematic, but adequate findings must be made on the relevant issues and should follow a structured approach to demonstrate that the judge has applied the relevant legal framework. Decisions involving protection and human rights claims must be given anxious scrutiny. The reasoning must be adequate to enable those reading the decision to understand how and why the judge came to the conclusion he did.

8. The appellant appealed the respondent's decision to refuse a human rights claim. The relevant ground of appeal under section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002") was whether removal from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 ("HRA 1998"). As a citizen of the Russian Federation, removal would be to the appellant's country of nationality.
9. The skeleton argument before the First-tier Tribunal did not seek to argue that the appellant met any of the family or private life requirements contained in the immigration rules. The appellant fell far short of meeting the long residence requirements contained in paragraph 276B and 276ADE(1)(iii) of the immigration rules. In view of the fact that the appellant has lived a far greater proportion of her life in Russia, those representing her at the time did not seek to argue that there would be 'very significant obstacles' to her integration there for the purpose of the private life requirement contained in paragraph 276ADE(1)(vi).
10. At [24] of the decision the judge outlined a correct statement of the law. However, he failed to make any structured findings thereafter.
11. No findings were made as to whether the appellant's relationship with her adult son, which the judge appeared to accept had some elements of dependency [12], was sufficient to amount to family life within the meaning of Article 8. Although the judge stated that it was likely that the appellant had established a private life in the UK, there was no evaluation of the strength of her family or private life ties.
12. At [25] the judge stated his "view" that there must still be a question mark over the genuine and subsisting nature of the appellant's marriage but failed to give any reasons to explain why he came to that conclusion given that he was assessing the situation many years after the previous First-tier Tribunal and in light of further evidence. There was evidence from several family members and documentary evidence from independent organisations such as her church, her GP and a support organisation, which all mentioned her husband and her recent bereavement. Although the judge recited some of the evidence earlier in the decision, none of the evidence was analysed or weighed. The nature of the relationship with her husband was relevant to the impact that her recent bereavement might have on her overall circumstances although it was not likely to be an overriding factor if taken alone.
13. Other aspects of the appellant's case were not adequately evaluated. The judge's finding that there was "no clear medical diagnosis evidence in relation to her Alzheimer's" [26] was contrary to the evidence from her GP, which he noted earlier in the decision [19]. The letter from the Seaside Medical Centre dated 30 September 2019 was prepared by a qualified doctor who confirmed the appellant had "recently been diagnosed with Alzheimer's dementia". The doctor went on to confirm that "this condition causes problems with your memory and day to day living as you can be forgetful". The doctor went on to say that she "would be very concerned about the impact on you needing to leave a country that you have known very well for a

number of years on both your physical and mental health.” The judge simply failed to engage with or evaluate this evidence.

14. The starkest omission was the failure of the judge to conduct a holistic assessment of the appellant’s circumstances if she were removed to Russia. Nowhere in the brief findings does he consider what conditions she might face in her country of nationality. There is no doubt that the appellant has long standing connections to Russia, where she has lived for most of her life. At the date of the hearing she was 75 years old. She would be returned to a country where she says she has no close relatives and would be separated from the family member with whom she has the closest relationship (her British son). Even if some treatment and support is available for those living with Alzheimer’s in Russia, no consideration was given to the combined effect of her circumstances i.e. a woman her age, who is recently bereaved, being returned to a country where she might face social isolation at the same time as suffering from a degenerative disease, which sadly, is only likely to reduce her ability to live independently over time. The judge failed to consider the opinion of a qualified doctor and instead appeared to form his own opinion about the appellant’s physical and mental health based on her presentation and demeanour at the hearing [28].
15. In light of the above, I find that the judge failed to take into account relevant considerations and failed to evaluate the appellant’s circumstances as a whole. The decision fails to tackle the core elements of a proper Article 8 assessment, which was summarised by the House of Lords in *Huang v SSHD* [2007] UKHL 11 as follows:
 

“18. ... But the main importance of the case law is in illuminating the core value which article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant. The Strasbourg court has repeatedly recognised the general right of states to control the entry and residence of non-nationals, and repeatedly acknowledged that the Convention confers no right on individuals or families to choose where they prefer to live. In most cases where the applicants complain of a violation of their article 8 rights, in a case where the impugned decision is authorised by law for a legitimate object and the interference (or lack of respect) is of sufficient seriousness to engage the operation of article 8, the crucial question is likely to be whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved. Proportionality is a subject of such importance as to require separate treatment.”
16. The fact that the appellant has another son who lives in Sri Lanka was a relevant consideration but was not a core issue given that the appellant would be removed to Russia. Even if the judge considered that she might not need to stay in Russia, he

failed to consider whether the appellant could live with her son in Sri Lanka given that she is not a Sri Lankan citizen and her son is not settled there. Nor did the judge consider whether it was a reasonable option for the appellant given that her ex-husband lives with her son in Sri Lanka.

17. Whatever the judge's views were about the possibility of the appellant living with her son in Sri Lanka, the core task of the judicial decision maker in this case was to assess whether removal to her country of nationality would be unlawful under section 6 HRA 1998. The First-tier Tribunal failed to conduct that task. The decision lacks an evaluative assessment of the appellant's overall circumstances. It also lacks an evaluative assessment of the weight to be given to the public interests considerations with reference to the relevant statutory framework contained in section 117B NIAA 2002. Both elements must be carefully considered before a balancing exercise is carried out.
18. Mr Melvin acknowledged that the judge failed to evaluate the letter from the GP and failed to make any findings relating to removal to Russia. However, he argued that any deficiencies in reasoning would not have made any material difference to the outcome. He asserted that any properly directed judge would be bound to dismiss the appeal.
19. I disagree. If the claim was bound to fail it should have been certified as 'clearly unfounded'. It was not. Undoubtedly, weight would be given to the public interest in maintaining an effective system of immigration control when the appellant does not appear to meet the requirements of the immigration rules and has remained in the UK for many years in the knowledge that she did not have permission to do so. However, it could not be said that the combined effect of the appellant's personal circumstances is so weak that no properly directed judge could allow the appeal. For these reasons I conclude that the errors identified in the First-tier Tribunal decision are material. The decision is set aside and will be remade in the Upper Tribunal.
20. Following a discussion with the appellant and her son, both parties agreed that the decision could be remade based on written submissions.

### **Directions**

21. **The appellant** shall file on the Upper Tribunal and serve on the respondent an electronic copy of the evidence relied upon and any written submissions relating to the remaking of the decision by Friday 14 August 2020.

The appellant and her son might need to consider the guidance note issued by the President of the Upper Tribunal, which outlines the procedures for filing and service of documents during the Covid-19 pandemic. See:

[https://www.judiciary.uk/wp-content/uploads/2020/03/2020\\_03\\_23\\_UTIAC-PRESIDENTIAL-GUIDANCE-NOTE-No-1-2020.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/2020_03_23_UTIAC-PRESIDENTIAL-GUIDANCE-NOTE-No-1-2020.pdf)

I bear in mind that the appellant is acting in person and has been diagnosed with a degenerative disease that affects her memory. In preparing further evidence, the appellant will need to focus on the reasons why her circumstances might be sufficiently compelling to show that they outweigh the public interest in maintaining an effective system of immigration control. Where possible she will need to produce evidence to support any assertions that she makes about (i) what the impact might be on her or her family members if she is removed from the UK; (ii) her health; (iii) the conditions she might face in Russia; (iv) whether she would be able to live with her son in Sri Lanka; and (v) any other matters she wishes to rely on.

22. **The respondent** shall file and serve written submissions by Friday 28 August 2020.
23. **The appellant** shall file and serve any response by Friday 04 September 2020.
24. **The Upper Tribunal** will consider the written submissions, and subject to any submissions made about the mode of hearing, shall then decide the case without a hearing.
25. If the circumstances change and it is thought necessary to have a hearing (probably a remote hearing given the current circumstances surrounding Covid-19), or to amend any of the dates in these instructions because there are significant practical difficulties in complying, then it is open to apply to the Upper Tribunal, giving reasons, to amend the directions.

## DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade in the Upper Tribunal without a hearing

Signed *M. Canavan*                      Date 30 July 2020  
Upper Tribunal Judge Canavan