



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: HU/12128/2019  
(P)**

THE IMMIGRATION ACTS

**Decision Under Rule 34 Without a hearing  
On 26 October 2020**      **Decision & Reasons Promulgated  
On 29 October 2020**

Before

**UT JUDGE MACLEMAN**

Between

**BELLA KVARTSKHELIA**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Georgia, born on 2 October 1983. She came to the UK as a visitor in 2018. After expiry of her leave, she applied for leave to remain as the wife of a Georgian citizen who has indefinite leave to remain in the UK.
2. The respondent refused that application on 1 July 2019. The respondent declined to accept that there is a genuine and subsisting relationship between the appellant and the sponsor.
3. The application also failed in various respects under the rules, which the appellant does not dispute - immigration status, financial requirements, and English language.

4. The appellant appealed to the FtT, stating in her grounds that removal would end her family life, and that there were insurmountable obstacles or exceptional circumstances, as her previous partner would persecute her if she were to return to Georgia. At the hearing, she argued her case on domestic violence she had suffered from her former husband and risk of such treatment on return.
5. FtT Judge Aula dismissed the appellant's appeal by a decision promulgated on 12 November 2019, because he rejected her account of her personal circumstances.
6. The appellant sought permission to appeal to the UT on the grounds that the judge (a) failed to treat the appellant as a vulnerable witness and (b) failed to adequately consider her evidence of her marriage, and of domestic violence. The FtT refused permission, on the view that the grounds were only disagreement.
7. The appellant sought permission from the UT on the same grounds. On 15 July 2020 UTJ Owens granted permission, on the view that although the judge was properly able to take account of inconsistencies in the appellant's evidence, he might have erred in failing to take account of quite substantial evidence that the relationship did exist. Ground (a) was thought to have less potential merit, given the primary responsibility on the appellant's representative, but was not excluded. It was pointed out that the materiality of any error had to be dealt with.
8. The UT also issued directions with a view to deciding without a hearing (a) whether the FtT erred in law, and, if so (b) whether its decision should be set aside.
9. Both parties have made submissions in response. Neither has suggested that a hearing is required. The UT may now proceed, in terms of rules 2 and 34, to decide (a) and (b).
10. The appellant says that she should have been considered a vulnerable witness due to her experience of domestic violence and that this was "raised at the outset of the hearing". On ground (b), she specifies at [19 - 21] of her submissions the extensive evidence of her relationship with the sponsor, and argues that the judge failed to take account of it, relying solely on discrepancies with her entry clearance application. She submits that this error led to absence of consideration of insurmountable obstacles to family life being carried on in Georgia "because of the interference of her ex-husband and her family" and that the judge "simply failed to carry out a factual enquiry of this sort".
11. The SSHD submits that there is no record of the vulnerable witness aspect being raised, and no statement from counsel to support it; there was no allegation of an impact on her ability to give evidence; primary responsibility to raise the matter was on her side; there was no challenge in the grounds to the numerous [adverse] credibility findings relating to

her ex-husband; there was no challenge to the finding at [30] that even if there was abuse, it was historic; she remained in Georgia for 4 years; there are no exceptional circumstances or reasons preventing her return; it was correct to deal firstly with this issue; and even if there were any errors, they were immaterial.

12. I find that the grounds do not disclose any error on a point of law; and alternatively, if there is any error, that it is not such as to require the decision to be set aside.
13. The grounds and submissions are rather ambiguous on whether it was contended throughout that the appellant was a vulnerable witness, or that she claimed to be a victim of domestic violence; matters which might overlap considerably, but which are not one and the same. It is plain that far from being overlooked, the latter contention was the theme of the case.
14. The appellant did not refer to the guidance; did not ask for any adjustment to be made to the conduct of the hearing; and has not submitted that the discrepancies in her evidence could be explained away by her experiences or vulnerability.
15. What the judge was analysing by reference to the entry clearance application was the appellant's evidence about her relationship in Georgia, not her relationship in the UK.
16. The appellant's evidence about her past relationship in Georgia was hopeless, as explained by the judge at [26 - 30]. There is nothing in ground (a) to disturb that conclusion.
17. The judge at [29] "totally rejects" the appellant's account. However, it is plain from the decision as a whole that the rejection goes to the live issue identified at the hearing by her counsel, [24], alleged domestic violence and problems on return. Although the SSHD doubted the appellant's relationship, that was not the focus in the FtT. The reason for not mentioning the evidence about it is that both representatives treated it as immaterial.
18. The judge's observation at [31] that the appellant had the option of applying from Georgia and meeting the terms of the rules suggests that his rejection of her account did not necessarily extend to her current relationship. Rather, it was beside the point. Her case did not fail because she failed to show that her relationship in the UK is genuine. An explicit finding that it is genuine would not have changed the outcome.
19. There is also force in the respondent's submission that even if the appellant did suffer domestic violence in Georgia, and taking her account at its highest, that is a historic and local matter which does not stand in the way of her return.
20. The decision of the First-tier Tribunal shall stand.

21. No anonymity direction has been requested or made.

Hugh Macleman

26 October 2020  
UT Judge Macleman

#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email.**