



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number HU/02554/2020**

THE IMMIGRATION ACTS

**Heard at George House, Decision & Reasons Promulgated
Edinburgh On 16 February 2022 On the 19 April 2022**

Before

UT JUDGE MACLEMAN

Between

DAVID GABUNIA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with my decision on error of law, issued on 13 January 2022, setting aside the decision of FtT Judge McGrade, promulgated on 22 April 2021.
2. Updating statements from the appellant and his other witnesses were adopted as their evidence-in-chief. There was no dispute on the primary facts. Mr Diwyncz did not seek to cross-examine.
3. Mr Winter provided a supplementary skeleton argument.

4. The relationship between the appellant and his wife is genuine and subsisting. In submissions, representatives agreed that the crucial issue was whether, in terms of paragraph EX.1 of appendix FM of the immigration rules, there were insurmountable obstacles to family life between them continuing in Georgia, in terms of “very significant difficulties which could not be overcome or would entail very serious hardship”.
5. The appellant says that he is from Abkhazia and had a Georgian father and an Abkhazian mother. Although his protection claims have failed, he produces an expert report stating that he would have difficulty in obtaining recognition of his Georgian nationality and is “effectively stateless”.
6. The evidence does not show that the appellant is stateless in law. He has not tested the legal feasibility of return to Georgia; no doubt because that is the outcome he has resisted for many years. The weight to be given to this aspect of his case is limited because it essentially repeats his failed protection claims.
7. It is undisputed that the appellant’s wife was recognised in 2010 as a refugee from Georgia. She later became a UK citizen. Those facts raise a presumption of very serious difficulty in the way of her return to Georgia. That is not irrebuttable. For example, circumstances giving rise to a need for protection might disappear as time goes by, or status might have been acquired by fraud; but an answer is called for.
8. The respondent’s decision on this issue says simply that the appellant “*failed to provide documentary evidence why your wife could not return with you to Georgia*”. That is plainly not an adequate rebuttal.
9. The only further matter on which Mr Diwnycz founded upon was that the appellant’s wife would be returning to Georgia with UK citizenship, which would provide her with some protection not available to her as a Georgian citizen. I consider that the bare fact of UK citizenship does not speak for itself in that respect.
10. Other matters advanced for the appellant are of lesser force.
11. Mr Winter founded upon delay by the respondent, referring to *Agyarko* [2017] 1 WLR 823 at [52]; but that passage approves *EB (Kosovo)* [2008] UKHL 41, [2009] AC 1159, [15 & 37], where there had been delay in decision-making by the SSHD. In this case time has gone by while the appellant declines to comply with decisions made against him. Enforcement is a difficult process, delay in which does little to enhance an appellant’s case.
12. The appellant has genuine relationships with his adult stepdaughter and with her minor children. The children benefit from their relationship with the appellant. His removal would not be in their best interests, but nor would it be to their serious detriment. Those are sympathetic aspects of

the case, but without more, they would not meet the tests in EX.1. or in GEN.3.2. of appendix FM (“unjustifiably harsh consequences”) or render removal disproportionate.

13. The decisive factor is that on all evidence provided by both sides, the appellant’s wife cannot be expected to remove to Georgia, which is an insurmountable obstacle to his family life being continued there.
14. The appeal, as originally brought to the FtT, is **allowed**.
15. There was no application for further anonymity. There is no need for a direction.

Hugh Macleman

17 February 2022
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.