



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case Nos: UI-2023-005139**  
**UI-2023-005140**  
**UI-2023-005141**

**First-tier Tribunal Nos:**  
**HU/56475/2022 HU/56476/2022**  
**HU/56478/2022**  
**IA/09255/2022**  
**IA/09263/2022**  
**IA/09269/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**(i) Mrs Claudia Patricia Iriarte De Price**  
**(ii) Mr Christian Raul Azcona**  
**(iii) Mr Thiago Natanael Azcona**

**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr Subramanian (LR)

For the Respondent: Mr Melvin (Senior Home Office Presenting Officer)

**Heard at Field House on 18 January 2024**

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Shand KC, promulgated on 25<sup>th</sup> July 2023, following a hearing at Hatton Cross on 6<sup>th</sup> June 2023. In the determination, the judge dismissed the appeal of the Appellants, whereupon they subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellants**

2. The Appellants are citizens of Argentina. The first and second Appellants are wife and husband respectively. The third Appellant is their son. The first Appellant's date of birth is 9<sup>th</sup> July 1969 and the second Appellant's date of birth is 8<sup>th</sup> September 1972. Their son's date of birth is 1<sup>st</sup> July 2011. They appeal against the decision of the Respondent dated 22<sup>nd</sup> September 2022 refusing their applications for leave to remain in the UK on the basis of their family life.

### **The Appellants' Claim**

3. The first Appellant was previously married to a Mr Price, who was a British national, but who has since died. On 8<sup>th</sup> April 1997 she gave birth to her son, Kevin Allen Price, who is the first Sponsor, and himself a British citizen. The first Appellant, Claudia Patricia Iriarte De Price, already has indefinite leave to remain granted to her in the UK since 30<sup>th</sup> August 2001. Given that she, on 24<sup>th</sup> May 2002 gave birth to a daughter, Stephanie Evelyn Price, this daughter is the second Sponsor, being the British citizen daughter of the deceased Mr Price. However, around 2003/2004, the first Appellant returned to Argentina, taking the first and second Sponsors with her. On 21<sup>st</sup> December 2021 she applied in Argentina for a UK student visa, which was issued and valid until 11<sup>th</sup> December 2022. Thereafter on 23<sup>rd</sup> January 2022, the first, second and third Appellants, together with the first and second Sponsors, entered the UK. However, the border force officers were not satisfied that the first Appellant was a genuine student. On 6<sup>th</sup> February 2022 the Appellants applied for leave to remain on the basis of their family life with each other and with the Sponsors. It was that decision against them made by the Respondent on 22<sup>nd</sup> September 2022, which is the subject matter of the appeals, because it led to the refusal of their applications. The basis of the refusal was that the eligibility relationship requirements could not be met as the Sponsors were both over the age of 18, and the third Appellant was not a British citizen and had not been residing in the UK for seven years. Moreover, they had been in breach of the Immigration Rules.

### **The Judge's Findings**

4. The judge held (at paragraph 39) that, "I am satisfied that at the time when the appellants and the sponsors came to the UK family life existed between the appellant and the sponsors" and that "They were living in family and the sponsors were students and whilst they had work experience they were not in full time employment". However, the judge in the same paragraph went on to say that, "I do not find that there exists in this case family life between the appellants on the one hand and the sponsors on the other".
5. The appeal was dismissed.

### **Grounds of Application**

6. The grounds of application state that the judge adopted a flawed approach to the existence of family life; failed to consider the impact of the declining health of grandparents; and failed to consider the first Appellant's earlier settled status in the UK. The judge also made a flawed decision on proportionality and overlooked the best interests of the third Appellant.
7. Permission to appeal was granted by the First-tier Tribunal on 30<sup>th</sup> November 2023 on the basis that it was arguable that the findings, as to the existence of family life were not adequately reasoned in view of the fact that the Appellants

and the Sponsors, who are young adults, living together at the date of the hearing, subsequently were said to have had their family life ties broken by the judge.

### **Submissions**

8. At the hearing before me on 18<sup>th</sup> January 2024, Mr Subramanian appeared on behalf of the Appellant and placed reliance on his skeleton argument and the uploaded bundle of documents. He submitted that the judge had made it clear (at paragraph 39) that family life existed between the Appellant and the Sponsors, but had then gone on to say that just because the adult children were working, that this broke the family tie that was previously known to have been in existence. Second, the relationship of the grandparents to their grandchildren had not been considered by the judge and that this too was an error of law. Third, the judge had said that there was no evidence of terminal illness of the grandfather. It was necessary to consider the situation in the context of the entire family life (see **Mobeen [2021] EWCA Civ 886**).
9. For his part, Mr Melvin relied upon his own skeleton argument and submitted that the finding of the family life having been disrupted was one which was open to the judge. In addition, the judge had covered himself by stating (at paragraph 50) that, “Even if he was wrong in holding that there was no family life between the appellants and the sponsors for the purposes of Article 8 of the ECHR”, “and if family life exists between the appellants and the sponsors, I would answer each of the third, fourth and fifth Razgar questions in the same way as I have done and for the same reasons”. This was a case, submitted Mr Melvin where the Entry Clearance Officer had cancelled the student visa of the principal Appellant on the basis that she was not a genuine entrant in that capacity. Her husband, the second Appellant was dependent on her. Once in the UK, they applied as dependants of the Sponsors. They were here without lawful leave. Furthermore, there was no evidence as to when the family had returned back to Argentina, but this seems to have been twenty years ago, which means that they could not be now coming back as “returning residents”. As for the terminal illness of the grandfather, whilst it was accepted that he has been diagnosed as medically ill, it is not accepted that this illness is terminal. All in all, submitted Mr Melvin, there was no error of law.
10. In reply, Mr Subramanian submitted that if one looks at the Home Office’s own policy on “Returning residents (Version 5.0), published on 12<sup>th</sup> April 2023, in the Appellants’ bundle at page 338, it is clear that there is a section there headed “Any other circumstances” (at page 350). This goes on to explain that there are “Other more specific circumstances which would support an application”, and that although there are six stipulated instances of this, the list is not exhaustive because this section ends with the observation that “Additionally, there may be other compelling or compassionate circumstances not mentioned above which need to be considered”, so that “Each case must be considered on its individual merits”. It was therefore wrong, submitted Mr Subramanian, to simply dismiss out of hand the application of the Appellants on the basis they had been too long gone away from this country, when there had been evidence of their having been settled prior to that time.

### **Error of Law**

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. First, the judge had found as a fact, that “at the time when the appellants and the sponsors came to the UK family life existed between the appellant and the sponsors” and that, “They were living in family and the sponsors were students and whilst they had work experience they were not in full time employment”. However, in the next breath, the judge points out that even now, “the appellants and the sponsors continue to live with each other” it is now the case that “the sponsors have both obtained full time employment”. Given that the sponsors, “are now age 26 and 21 respectively, the judge, whilst still noting that “Notwithstanding that the family is close” nevertheless came to the erroneous conclusion that “I do not find that there exists in this case family life between the appellants on the one hand and the sponsors on the other” (at paragraph 39). The mere fact of the Sponsors now working does not in itself lead to the conclusion that family life has ceased to exist.
12. Second, the judge gave inadequate consideration to the ill-health of Mr David Price, who is the grandfather of the children and has been diagnosed with cancer, whose close relationship with the children has not been adequately analysed.
13. Third, the first Appellant had indefinite leave to remain a long time ago before she left to go to Argentina, and although this was as long ago as some twenty years, consideration still needs to be properly given to whether she can qualify as a returning citizen. This too has not been adequately undertaken.

### **Notice of Decision**

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal under Practice Statement 7.2.(b) because the nature and extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal to be heard by a judge other than Judge Shand KC.

**Satvinder S. Juss**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18<sup>th</sup> March 2024**