



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09174/2018

THE IMMIGRATION ACTS

Heard at Field House
On 11 October 2019

Decision & Reasons Promulgated
On 8 November 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

D C (BY HER LITIGATION FRIEND, N C)
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, representative from Evolent Law
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the remaking of the decision in the appellant's appeal following the setting aside of the First-tier Tribunal's decision by Upper Tribunal Judge Kebede on 1 March 2019.
2. The appellant is a citizen of Albania, born in August 1955. She last entered the United Kingdom on 24 August 2016 as a visitor in order to stay with her son, N C ("the sponsor"), his wife, and their children, all of whom are British citizens. Within the

currency of her leave to enter, the appellant made an application for leave to remain. This was refused and the subsequent appeal to the First-tier Tribunal allowed. It transpired that the Tribunal had erred in so doing. The error of law decision is annexed to my remaking decision.

Agreed matters

3. It is accepted that the appellant is a widow, her late husband having passed away in 2012. It is common ground that the appellant is seriously mentally unwell, suffering as she does from psychotic depression. Indeed, during his submissions, Mr Clarke recognised that she is an “incredibly ill woman”. The respondent’s position has, in light of Mr Clarke’s fair and pragmatic stance at the hearing, been further refined. It is accepted that the appellant requires significant long-term personal care from others and that there is “family life” as between the appellant and the sponsor and his wife. It is also acknowledged that there would be, as Mr Clarke described it, a “risk” to the appellant if she were forced to reside in some form of a residential home in Albania.

Disputed matters

4. The two principal matters of dispute between the parties in this case are: first, whether relatives living in Albania would be willing and/or able to provide appropriate care for the appellant; second, the extent to which the appellant’s presence in the United Kingdom would be a drain on public finances.

Preliminary issues

5. In her error of law decision, Upper Tribunal Judge Kebede was of the view that the conclusion of the First-tier Tribunal that there would be no “very significant obstacles” to the appellant reintegrating into Albanian society should be preserved when it came to the remaking decision. However, in light of further expert evidence provided on her behalf, it was apparent to me that the preservation of this particular conclusion would be artificial. Given her serious mental health condition and other relevant circumstances, the issue of whether “very significant obstacles” would have existed (as at the date of her human rights claim made in February 2017) would need to be revisited.
6. Mr Clarke very pragmatically acknowledged this point and found that he was prepared to address paragraph 276ADE(1)(vi) of the Immigration Rules. Having said that, he urged me not to go behind the underlying primary facts as found by the First-tier Tribunal as regards the presence of relatives in Albania, together with the fact that she had a house in some land in that country. I acceded to that invitation, without any opposition from Mr Ahmed.
7. The second matter I must address at this stage regrettably involves criticism of the appellant’s representatives. The comments I set out below were all canvassed at the hearing, but I nonetheless deem it appropriate to commit them to writing as well.

8. Following a case management hearing on 1 May 2019, I issued tailor-made directions to the parties, which were sent out to the parties on 3 May. These included the filing and service of additional evidence and a skeleton argument no later than 14 days before the resumed hearing. In fact, a bundle of new evidence was received by the Upper Tribunal on 8 October 2019, under cover of letter dated 7 October. No explanation was given for the late service. The skeleton argument was only produced on the day of the hearing itself.
9. Two of the expert reports contained in that bundle, the psychiatric assessment by Consultant Psychiatrist Dr R Lawrence and an Independent Social Worker's report by Ms E Palamani, had been produced a relatively significant time before the late service (the former in June 2019, and the latter at the beginning of August of this year). A third report from a country expert, is undated, but is also likely to have been produced sometime beforehand.
10. There is no excuse for the late service of the bundle. Indeed, there was not even an attempt at an explanation for the tardiness. This is wholly unacceptable. Fortunately, the bundle had got through to Mr Clarke in advance of the hearing and he was sufficiently prepared to present the respondent's case. I make it clear that if, due to the late service, the resumed hearing had had to be adjourned, there is a very strong possibility that a costs order against the appellant's representatives would have followed.
11. The final matter is, if anything, more important. The psychiatric report clearly states that the appellant lacked the capacity to, amongst other things, instruct legal representatives. As mentioned above, that report is dated June 2019. At no stage until I raised the issue of my own volition at the hearing, had the appellant's solicitors made any application for the appointment of a Litigation Friend in these proceedings. On the face of it, the representatives were purporting to act on the appellant's behalf between June and October without her having capacity. That is a potentially a serious matter.
12. At the hearing, and in light of the power of the Upper Tribunal to appoint a Litigation Friend (see R (on the application of JS and Others) v Secretary of State for the Home Department (litigation friend - child) [2019] UKUT 64 (IAC)), I invited Mr Ahmed to make an application for the appointment of the sponsor as the appellant's Litigation Friend. I was satisfied that the sponsor was willing and able to act in this way, and that there were no actual or potential conflicts of interest. I granted the application and directed the representatives to file with the Upper Tribunal by the close of business, written confirmation of the sponsor's willingness to act. This direction at least was complied with.

The evidence

13. In making my decision in this appeal I have considered relevant evidence contained in the respondent's original appeal bundle, the appellant's original First-tier Tribunal bundle, indexed and paginated 1-392 (which I refer to as AB 1), and the new bundle, indexed and paginated 1-261 (which I refer to as AB 2).

14. The three most significant sources of evidence in this appeal are contained in AB 2: a psychiatric report prepared by Dr Robin Lawrence, dated 15 June 2019; a report from an Independent Social Worker, Ms E Palamani, dated 11 August 2019; a country report from an Albanian academic, Professor E Haxhiymeri. I will deal with relevant aspects of this evidence when setting out my findings and conclusions, below.
15. Neither the appellant nor the sponsor were called to give oral evidence.

The parties' submissions

16. Mr Ahmed relied on his skeleton argument. He relied on the three expert reports. He acknowledged that there had been no formal assessments for dementia, nor had the appellant been hospitalised. The reference in Dr Lawrence's report to their being no family members in Albania meant, submitted Mr Ahmed, simply that there were no family members who could support the appellant there. In respect of the country report, it was submitted that at most there might be a possibility of private treatment in Albania. Even private institutions would not provide adequate care for the appellant, given her circumstances. Being taken into a private residential home would separate the appellant from her son and daughter-in-law, and this would lead to a deterioration in her mental health.
17. In respect of the public funds issue in the United Kingdom, Mr Ahmed submitted that the Immigration Health Surcharge had been paid by the sponsor and would continue to be so. The sponsor has been contributing to NHS costs over time.
18. As set out earlier in my decision, Mr Clarke's position evolved at the hearing, at least to the extent that certain issues were no longer contested (for example, the existence of "family life", the severity of the appellant's mental health condition, and the need for long-term personal care). He emphasised the lack of evidence from family members in Albania to suggest that they would be unable and/or unwilling to care for the appellant in their own homes. Mr Clarke accepted that the contention that the applicant could live in a residential home in a city, or be transported to and from day-care centres regularly by family members, was problematic. However, the Appellant could reside with one or more family members instead.
19. Significant emphasis was also placed on the cost to the NHS of the applicant's care in this country. The evidence indicated that whilst some of the debt had been paid off by the sponsor, there was still a significant amount outstanding. It was likely that this debt would increase over time, leading to a real drain on the public purse. There was a question mark as to why assets apparently held by the appellant in Albania had not been sold off to pay the NHS debt.

Findings and conclusions

20. There is no real dispute as to the core issue of the appellant's ill-health. On the basis of Dr Lawrence's conclusions (which have not been challenged), together with Mr Clarke's stated position, I find that the appellant is suffering from psychotic depression.

21. Again based on Dr Lawrence's report, I find that the appellant suffers from visual and auditory hallucinations, a powerful example of this being her belief that she is under attack from snails, snakes, and insects. In addition, her overall condition is marked by severe anxiety.
22. Having regard to the evidence as a whole, and taking note of the fact that the appellant was able to give evidence before the First-tier Tribunal in October 2018, I find that her health has significantly deteriorated during the course of 2019.
23. It is unclear whether the appellant in fact also suffers from schizophrenia and/or dementia. Dr Lawrence is of the view that she may be. He had recommended further assessments for these two conditions. However, it appears as though no such follow-up has yet taken place. I am not placed to find as a fact that the appellant does indeed suffer from these two conditions. However, Dr Lawrence's overall impression, combined with the evidence of the sponsor and his wife, is strongly suggestive of enduring cognitive and/or mental health problems.
24. I accept Dr Lawrence's opinion that the appellant is not fit to fly, nor does she have capacity to understand these legal proceedings (hence the appointment of her son as Litigation Friend). Taking the evidence as a whole, I find it to be more likely than not that she currently lacks capacity to have genuine comprehension of most aspects of her life.
25. In summary, I find that Dr Lawrence's view of the appellant's mental health is an accurate one: in his words, it is "extremely poor".
26. I find that the appellant is wholly reliant for her personal care and well-being on the sponsor and his wife in the United Kingdom. Mr Clarke has quite sensibly accepted this to be so. In any event, in light of the evidence as a whole such a conclusion would be almost inevitable. Specifically, I find that the appellant requires 24-hour care and is unable to manage any aspects of day-to-day life, including nutrition, washing, and personal safety. This state of affairs is supported by evidence from sponsor, his wife, and the Independent Social Worker.
27. I turn next to the question of what the consequences would be of the appellant having to leave the United Kingdom and live once again in Albania. Dr Lawrence puts it in stark terms:

"It would be totally impossible for this woman to survive if she was separated from her son and daughter-in-law. Her mental health condition would lead to death from neglect in only a few days or weeks if she was separated from her current support structure."
28. Such a state of affairs is alluded to in the appellant's own witness statement from October 2018. The sponsor takes a similarly bleak view in his witness statement.

29. I find that were the appellant to leave the United Kingdom and have to reside alone in Albania, the consequences stated by Dr Lawrence would be highly likely to materialise within the timeframe stated.
30. However, there is more to be said about the situation that might face the appellant were she to return to Albania (an event that is currently impossible in light of her unfitness to fly). In particular, it would not necessarily be the case that she would be forced to live alone.
31. The first point relates to the sponsor, his wife, and their two children. All four members of this family unit are British citizens. The two children were born in 2012 and 2016. Both parents work. It has not been suggested by the respondent that the unit could reasonably relocate to Albania on a permanent basis. Both the sponsor and his wife have given clear evidence that they would be unable to make such a move. In all the circumstances, I find that it would not be reasonable to expect such an upheaval on their part.
32. The second issue relates to other family members currently residing in Albania. It is right to say that there has been a lack of clarity in the evidence. Dr Lawrence appeared to believe that the Appellant has two sisters in the country. The Independent Social Worker's report lists four individuals, said to be half-siblings of the sponsor (in other words, the appellant's step-children). The author records these individuals as living in either Greece or Germany. The country report states that the appellant has no "immediate" family members in Albania. The decision of the First-tier Tribunal contains a finding that the appellant had a sister and a brother, as well as her in-laws, living there.
33. In the absence of oral evidence on this issue, it is not an easy task to reach a firm finding on the true situation. On balance, I find that the appellant does have certain family members residing in Albania. It is more likely than not that the Appellant has two siblings in that country. It is likely that they are of a broadly similar age to her. I accept that they have their own children, who are likely to be adults. I find it to be more likely than not that members of the appellant's late husband's family continue to live in Albania. It is clear from the evidence I do have that the appellant's daughter-in-law has her parents there as well.
34. A difficulty in the appellant's case is the absence of evidence from any family members living in Albania. I am bound to say that it strikes me as somewhat odd that no such evidence has been obtained over the course of time. This omission was a central feature of Mr Clarke's submissions. Doing the best I can with what I have, I make the following findings.
35. It is highly unlikely that the daughter-in-law's family would be willing (even if they were able) to assume responsibility for the appellant's care if she were to return to Albania. I say this on the basis of the severity of the appellant's condition and care needs, together with the fact that the family concerned are at least one significant

step removed from filial ties to the appellant. In the overall circumstances of this case, mere financial support would be insufficient.

36. I find that the appellant's step-children do indeed live away from Albania and would not be in a position to provide the necessary care for her.
37. It is highly unlikely that the appellant's in-laws would be willing and/or able to take on responsibility for her needs. There is no evidence that she has resided with them during the course of her marriage to her late husband. It is, I find, unlikely that they are aware of her current state of health and the complex and significant care requirements. Not only would these involve effectively maintaining 24-hour supervision and practical assistance to the appellant, but would also very probably require regular transportation to and from appropriate health care centres. In light of the evidence contained in the country report, the only realistic sources of potentially appropriate care are located in the urban areas of Tirana, Elbasan, and Vlora.
38. I turn then to the appellant's siblings and their families. On the face of it, these individuals would represent the most likely source of potential support for the appellant if she were to return. In light of the factors set out in the previous paragraph, I find that the siblings themselves would not be in a position to provide the requisite care and support. It is in my view highly unlikely that the siblings would either willing or able to undertake such a task. Whilst their children may be somewhat better placed by virtue of their younger ages, I also find that the possibility of effective care and support is remote, to say the least. The children have their own families and would be highly unlikely to be willing to commit to the long-term 24-hour care of their aunt, together with the logistical burden of transporting her to and from treatment centres. As Mr Clarke has acknowledged, such arrangements would be problematic. In my view, that is underplaying the practical realities of the situation.
39. Above and beyond the inability and/or unwillingness of family members in Albania to provide care and support, I return to an important aspect of Dr Lawrence's evidence. His view is that a removal of the appellant from her current support structure would have serious consequences for her mental health. I have accepted this to be the case. It follows that the mere fact of being taken out of her current situation and placed in what would be an unfamiliar setting of a relative's house in Albania would, in and of itself, render this possible route not simply unreasonable, but seriously detrimental to her well-being.
40. I find that the appellant still owns a property and some land in Albania. It would, on any view, be impossible for the appellant to go and live by herself in that property.
41. I have considered whether the appellant could, with the financial assistance of the sponsor and other relatives, have live-in carers at the property. I find that this would not be a viable option. First, in light of the medical evidence, it is extremely unlikely that the appellant would engage with strangers. In turn, it is extremely likely that her mental and physical health would rapidly deteriorate. Second, the country report

makes it clear that relevant mental health provision in Albania for those with serious conditions is very thin on the ground. It is highly unlikely that even with sufficient financial resources, appropriately trained live-in carers could be found to reside with the appellant in her own property (or, for that matter, a relative's property). Third, the country report provides clear evidence that the possibility of suitably trained healthcare professionals going out to visit the appellant at her residence is remote. I note from the appellant's witness statement that she spent the entirety of her married life living in a village. I accept this evidence to be accurate, and I have gleaned from other evidence that the village was situated in the north of Albania.

42. Mr Clarke raised the issue of the appellant being able to sell her property and land order to raise funds for private residential treatment. The ability to liquidate the assets would not seem to face any real obstacles. However, being forced to reside in a home would raise two significant problems. First, there is the extremely limited resources in Albania, as highlighted in the country report. Leaving aside the cost, there would in my view be a very real obstacle as to capacity. Second, and in any event, there is the appellant's prevailing mental health condition and the effect on it by having to go and live with strangers, in a strange place, and be cared for by strangers. As I have said previously, this in itself would effectively represent an insurmountable obstacle. I also take account of Mr Clarke's candid acknowledgement that placing the appellant in a residential home would give rise to a risk to her health and well-being.
43. Bringing all of the above together, I find that there are no appropriate alternative care arrangements that could be put in place in Albania, having regard to the very limited resources available in that country, the likely response from relatives there to the possibility of taking responsibility for the appellant, her current mental health condition, and her attachment to and dependence on the sponsor and his wife.
44. I now turn to the issue of public funds in this country, and in particular the resources of the NHS. I find that the sponsor did pay the Immigration Health Surcharge, and it is likely that he would continue to do so in the future as and when required. I find that there is an outstanding NHS debt, as evidenced in AB 1 (this stood at £1800 as at October 2018). Having said that, the evidence also shows that the sponsor has, albeit to a modest extent at present, sought to pay off this debt. I have no reason to doubt the sponsor's commitment to continue paying off the sum.
45. It is likely that the appellant would continue to require NHS treatment if she were to remain in this country. This would have the effect of increasing the debt as time goes on. However, recourse to such treatment would be permitted where the appellant to have leave to remain. Even if such recourse was not permitted, it is likely that the sponsor would continue to contribute to the costs of treatment, and would, I find, continue to care for his mother within the family home, thereby undoubtedly saving the state expenditure in respect of residential care.
46. I now bring the various matters discussed above together and placed them within the applicable legal framework relating to Article 8.

47. There is a strong family life as between the appellant and the sponsor and his wife. The appellant has also established a private life in this country, albeit of a lesser strength than the family life.
48. The appellant's departure from the United Kingdom would, on any view, constitute an interference with the family and private lives.
49. The respondent's decision was undoubtedly in accordance with the law and it pursues the legitimate aim of maintaining effective immigration control.
50. In addressing the issue of proportionality, I direct myself to the guidance recently set out by the Court of Appeal in GM (Sri Lanka) [2019] EWCA Civ 1630.
51. I turn first to the relevant Article 8-related Immigration Rules. I conclude that paragraph 276ADE(1)(vi) cannot be satisfied. This is because of the temporal restriction imposed by that provision, namely that the issue of whether "very significant obstacles" to reintegration exist must be assessed as at the date of the application (deemed to constitute the human rights claim). In this case, the application was made back in February 2017. In light of the evidence before me and my findings thereon, the appellant's health condition was nowhere near as severe as it currently is. In all the circumstances, the high threshold imposed was not met as at that time.
52. The Adult Dependent Relative provisions under Appendix FM to the Rules could never have been met because the appellant had not entered this country with entry clearance in that capacity. Having said that, on my findings as to the appellant's current circumstances and the likely position on return to Albania, I conclude that the stringent requirements under E-ECDR.2.5 of Appendix FM are satisfied. In simple terms, there is no appropriate treatment and/or care arrangements available in Albania. Thus, whilst the appellant cannot satisfy this Rule as a whole, she does meet a core requirement. This accounts in her favour in the overall balancing exercise.
53. The nature of the appellant's total dependency upon the sponsor and his wife, combined with her prevailing very severe mental health illness, go to show a particularly compelling claim.
54. There are course competing factors in play. the appellant entered the United Kingdom as a visitor without any expectation of an extended period of residence. She does not speak English, nor is she financially independent in the sense that she has had recourse to the NHS. Although I have found that the sponsor will endeavour to pay off the debt, it is likely that treatment costs will endure and the appellant will never be economically active. Her private life has a course existed whilst in the United Kingdom on an extremely precarious basis. Whilst section 117B does not expressly deal with the family life relationship with which I am concerned, I do take account of the fact that it has been established during precarious residence in this country. I also factor in the inability of the appellant to satisfy the relevant Rules.

Last, but certainly not least, there is the overarching public interest in maintaining immigration control.

55. These factors combine to provide a weighty counterbalance to the appellant's case.
56. However, on the particular facts of this case, I conclude that the compelling nature of the appellant's Article 8 claim is such that the competing factors on the respondent's side of the balance sheet fail to tip the scales in her favour. This is, I conclude, an example of an exceptional case in which striking the requisite fair balance leads to success for the appellant.

Anonymity

57. Although there has been no direction previously, in light of the appellant's current lack of capacity, it is appropriate to make one at this stage. She is a highly vulnerable individual.

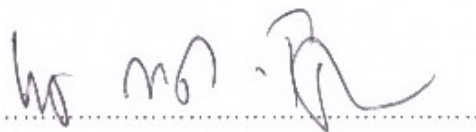
Notice of Decision

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

The decision of the First-tier Tribunal has been set aside.

I re-make the decision by allowing the appellant's appeal on human rights grounds.

Signed

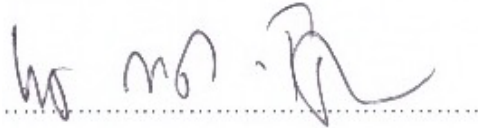


Date: 5 November 2019

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a reduced fee award of £70.00. Although the appellant won her appeal, this was only on the basis of evidence submitted for the remaking hearing and the case clearly required consideration on appeal.

A handwritten signature in black ink, appearing to read 'Ms Norton-Taylor', written over a horizontal dotted line.

Signed
2019

Date: 5 November

Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/09174/2018

THE IMMIGRATION ACTS

**Heard at : Field House
On : 18 February 2019**

Decision Promulgated

.....

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

D C

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Ms G Brown, instructed by Oliver & Hasani Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Ms C's appeal against the respondent's decision to refuse her human rights claim.
2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms C as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The appellant is a citizen of Albania born on 10 August 1955. She entered the United Kingdom on 24 August 2016 with a visitor visa valid until 12 February 2017, having previously visited the UK in 2013 but then been refused entry clearance on 13 January 2014 and unsuccessfully appealed against that decision. On 8 February 2017 she made an application for leave to remain on human rights grounds, on the basis of her family and

private life in the UK. She claimed that she was cared for and supported by her son and daughter-in-law as a result of her medical condition and that she had no one in Albania who could provide her with the necessary support and care.

4. The appellant's application was refused on 4 April 2018. The respondent considered that the appellant could not meet the requirements in Appendix FM or paragraph 276ADE(1) on the basis of her family and private life and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules. The respondent considered that the appellant could access relevant medical care and support in Albania, that her medical circumstances did not engage Article 3 and that the decision to refuse leave to remain was proportionate and did not breach her Article 8 rights.

5. The appellant appealed against that decision. Her appeal was heard on 30 October 2018 by First-tier Tribunal Judge Adio. The appellant gave evidence before the judge, as did her son and daughter-in-law. The judge noted some discrepancies in the evidence about family support in Albania and had regard to the decision of the First-tier Tribunal dismissing the appellant's appeal against an earlier decision refusing entry clearance to the UK. He noted that the appellant had lost her husband in 2012 and had visited the UK in 2013. He noted the evidence that the appellant had fallen down and been rushed to hospital a month after arriving in the UK in 2016. He noted that the appellant had a sister and brother and their children in Albania and found that there were no very significant obstacles to her integration in Albania. However he allowed the appeal outside the immigration rules on the basis of the appellant's complete dependency, since her fall, upon her son and daughter-in-law from whom she received 24 hour care and support. He found that the family members in Albania were unable to offer such support and concluded that her removal from the UK would be disproportionate and in breach of Article 8. He allowed the appellant's appeal.

6. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge could not have made the findings that he did in regard to Article 8 outside the rules without medical evidence of the specific care the appellant required and without evidence of her medical condition; that the judge had failed to consider insurmountable obstacles to the family members returning to Albania with the appellant; and that the judge had failed to consider section 117B of the 2002 Act.

7. Permission to appeal was granted on 28 December 2018 with particular reference to the lack of medical evidence or independent care evidence before the judge.

Appeal Hearing

8. At the hearing, Ms Cunha relied upon the case of Ribeli v Entry Clearance Officer, Pretoria [2018] EWCA Civ 611 and submitted that the judge had failed to consider the limited nature of the medical evidence before the Court, had failed to consider whether there were adequate medical facilities in Albania and had failed to consider the adult dependent relative rules. The judge's findings were inconsistent with the evidence. There was evidence that the sponsors had visited Albania, yet no consideration of how the

appellant managed in their absence. The evidence was that the appellant's son and daughter-in-law worked, but there was no consideration of how they provided the appellant with 24 hour care. There was no consideration of the appellant's property in Albania and no proper consideration of the family members in Albania and why they could not assist her. In addition, the judge failed to consider the public interest factors in section 117B of the 2002 Act and gave no reasons for dismissing the respondent's concerns. There was no proper explanation as to how the judge found that the relationship between the appellant and her son and daughter-in-law met the threshold for establishing family life as set out in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 and no proper assessment of the support the appellant claimed to receive from the sponsors. It was difficult for the respondent to know why the appeal had been allowed and accordingly the decision was not safe and needed to be re-made.

9. Ms Brown submitted that the judge's decision was safe. The respondent's grounds had not included a challenge on the basis of Kugathas. The decision in Ribeli was restricted to the facts. The judge dealt with the medical evidence, which consisted of an up-to-date letter from the appellant's GP, and that was sufficient, when taken together with the appellant's own evidence, to conclude as he did. The factors in section 117B(4) and (5) could be overridden in cases of a special and compelling character and the judge's findings were sufficient in the regard. There was no requirement for evidence to come from a medical source and on the contrary the evidence of the witnesses could be accepted. There was no requirement, in assessing Article 8, to show that there were inadequate facilities available in Albania. The judge's findings were clear and the grounds were simply a disagreement.

Consideration and Findings

10. I am in agreement with Ms Cunha, that the judge's decision lacks a proper assessment of the medical evidence and reasons for concluding that the evidence that was before him was sufficient to lead to the decision made.

11. At [36], the judge went on to consider Article 8 outside the immigration rules, but in so doing appears to have limited his consideration of the immigration rules to paragraph 276ADE(1)(vi) without giving consideration to the requirements of the adult dependent relative rules. Such a consideration would have required a detailed consideration of all the medical evidence and properly made findings on whether the appellant required long-term personal care to perform everyday tasks as a result of her medical condition and the availability of care and support in her own country. However, there was no such assessment. The medical evidence before the judge was limited, consisting of little more than a letter from the appellant's GP, the most recent of which was dated 9 October 2018. I agree with Ms Cunha that there was no diagnosis within that letter and no indication of the severity of the appellant's condition and the required care and treatment. The judge's findings on the appellant requiring 24 hour care, and the sponsors' ability to provide that care, were not based upon any independent evidence and did not involve any analysis of how that fitted in with the evidence of the sponsors' working hours. The judge gave no consideration to the availability of medication and facilities in Albania and did not

consider why the sponsors could not care for the appellant in Albania or arrange care for her there. Ms Brown submitted that the judge was able to accept the oral evidence of the witnesses without any requirement for medical evidence, but I find no merit in such a suggestion, particularly considering the inconsistencies and discrepancies identified in that evidence.

12. In the circumstances I agree with Ms Cunha that the judge's decision lacks adequate reasoning and fails to explain how the evidence supported the conclusions reached. Accordingly I set the decision aside. There has been no cross-appeal by the appellant on the judge's finding on very significant obstacles to integration and accordingly I see no reason why that finding should not stand. However the judge's findings on Article 8 outside the immigration rules are set aside and the decision has to be re-made in that respect. There needs to be a full assessment of the appellant's medical condition, the care she requires, the level of care provided by the sponsors and the treatment, support and care available in Albania. There is no reason why that cannot take place in the Upper Tribunal.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed. The decision is set aside to the extent stated above.

14. The case will be listed for a resumed hearing in the Upper Tribunal.

Directions

No later than 14 days before the hearing:

(1) The appellant is to file with the Upper Tribunal, and serve on the respondent, a consolidated appeal bundle containing the evidence previously submitted and any further medical and other evidence relied upon.

(2) Any request for an interpreter for the appellant is to be made to the Tribunal, should one be required.

Signed:



Upper Tribunal Judge Kebede

Dated: 19 February 2019