



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

Appeal No: HU/17436/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 4 January 2019

Decision & Reasons Promulgated  
**On 16 January 2019**

Before

**UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**JUSTINA ODOM**

Appellant

and

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

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by McGlashan MacKay,  
Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals against the decision of FtT Judge Doyle, promulgated on 26 March 2018.
2. The grant of permission was not restricted, but it was based in particular on ground 3, headed "error in relation to private life / best interests of the children", which challenges [30] of the decision:

"After considering all of the evidence I still do not know enough about the appellant's home, her habits and activities of daily living, her significant friendships, any integration into UK society, or any contribution to our local community. There is no reliable evidence of

the component parts of private life within the meaning of article 8 of the 1950 Convention before. The appellant fails to establish that she has created article 8 private life within the UK.”

3. Ground 3 says that:
  - (i) even if the FtT was right about the appellant not having family life with her daughter and grandchildren, those relationships were part of her private life;
  - (ii) [30] is not adequately supported by the evidence, which disclosed significant relationships among the appellant, her daughter and her grandchildren; and
  - (iii) the FtT failed to consider the best interest of the children and to undertake a proportionality assessment.
4. The judge granting permission thought those matters arguable, even on the judge’s own findings at [10 (a) – (j)].
5. On those findings, the appellant’s life is overwhelmingly based around her daughter and grandchildren.
6. Mr Winter referred to the opinion of Lady Wise in *MSA* [2018] CSOH 92, 2018 SLT 1313, in which a certification decision of the respondent was reduced on judicial review, at paragraph 16:

“It may be convenient first to consider the characterisation of the petitioner's claim as one of private life or family life. While the petitioner initially complained about the decision maker's alleged failure to acknowledge that the petitioner had established family life in this country, it was ultimately accepted that it did not matter that the claim had been characterised as one of Private Life rather than Family Life. In *Pun (Nepal) v SSHD* [2017] EWCA Civ 2106 the Court of Appeal, under reference to *AA v United Kingdom* [2012] Imm AR 1, accepted that any debate about whether someone has family life rather than private life in this context is academic because “...the factors to be examined in order to assess proportionality are the same regardless of whether family life or private life is engaged”. Accordingly, what is important in the present case is whether the Secretary of State has identified and taken account of the relevant factors, not what label has been placed upon them. I accept Mr Caskie's submission that the approach must be to consider the facts carefully and then decide what weight should be given to a relationship falling within a category normally protected by [article 8 ECHR](#) . While there must be something compelling to allow an [article 8](#) claim outside the Rules, I agree also with the submission that, as the petitioner could never place herself in one of the categories afforded protection by the Rules, it cannot be regarded as an adverse factor in assessing her [article 8](#) claim that she does not qualify within them. It is not in doubt, as a matter of law, that grandparents with whom a child has lived in family can engage the rights protected by [article 8](#) — *Bronda v Italy* (1988) 33 EHRR 4 and *Principal Reporter v K* [2011] 1 WLR 18 at paragraph 38. The sharp issue is whether, the petitioner's grandson having been identified by the decision maker as a relevant child for the purpose of her [article 8](#)

claim outside the Rules, there was then a material error in failing to consider that child's particular needs and best interests.”

7. Mr Winter referred also to the opinion of Lord Beckett in VY [2016] CSOH 139, to similar effect.
8. Mr Govan was unable to resist that line of submission.
9. The FtT judge fell into the trap of taking it that the appellant's relationships with her daughter and grandchildren, and their best interests, were irrelevant once he turned to private life. Ground 3 is well founded.
10. The decision of the First-tier Tribunal was set aside. It was agreed that there was no dispute about the primary facts.
11. Mr Govan submitted, somewhat faintly, that the finding of no family life should not be disturbed. However, I thought it would be artificial and unworkable to try to divide the decision into parts affected and unaffected by legal error.
12. It is unnecessary to look further into grounds 1 and 2.
13. The hearing proceeded to submissions about remaking the decision.
14. The children were born in 2003, 2005 and 2008. Their parents separated in 2009. Their father lives in Ghana and has had little contact with them since the separation. The appellant has provided support since she came to the UK as a visitor in 2005. She has lived with her daughter and grandchildren (all citizens of the UK) in Edinburgh since 2009. Her daughter is enabled to work. The appellant plays a major part in the children's care, such as taking the youngest to and from school, and cooking the family meal.
15. The bond between the appellant and her daughter may not exceed the norm between adult relatives, but given the closeness of their lives together, it is a strong example of such a bond.
16. It is obviously in the children's best interests to continue to benefit from the appellant's love and care, rather than being separated from her through removal to Ghana, which would reduce their contact to occasional visits, at most.
17. Even close involvement of grandparents in the lives of their grandchildren may not fall within article 8 protection, where the grandchildren have the care of both parents, or even of one. The paradigm case where family life is constituted between grandparent and grandchild is where the grandparent has been compelled (on the demise of both parents, or for some other drastic reason) to take on the role of a primary carer. This appellant has not entirely assumed the role of a parent, and does not have legal responsibility as such, but she at least comes close.

18. The respondent's decision on exceptional circumstances is based in part on the appellant's daughter not being unable to provide for herself and her children without the appellant. That is true, but not enough to justify removal; and the appellant's role does make a big difference.
19. I find the appellant's role closer to a parental one than that of a relative only in the second degree. On the evidence, the unit of grandmother, daughter and grandchildren qualifies for protection within article 8 under the heading of family life.
20. It is not in dispute that it would not be reasonable to expect the children to leave the UK. As I have found the relationships in this case to cross the borderline into parental territory, it follows in term of section 117B (6) of the 2002 Act that the public interest does not require the removal of the appellant.
21. The availability of an alternative legal route is illustrated by *Rhuppiah* [2018] UKSC 58 at paragraphs 49, 50 and 58. Section 117A(2)(a) provides a limited degree of flexibility from the results indicated by section 117B(5). If this case were to be limited to private life, its particularly strong features, set out above, are such that departure from those results would be justified.
22. The appeal, as brought to the FtT, is allowed.
23. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

8 January 2019  
UT Judge Macleman