



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11877/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business  
On Wednesday 6 January 2021

Decision & Reasons Promulgated  
On 19 January 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

G C Z N

Appellant

-and-

ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Mr R Solomons, Counsel instructed by Kent Immigration and Visa Advice

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer.

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. The case concerns the medical conditions of the Appellant which is highly personal information. Accordingly, it is appropriate to continue the order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## DECISION AND REASONS

### BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Reid promulgated on 31 December 2019 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 17 June 2019 refusing her human rights claims made in the context of an application for entry as the adult dependent citizen of her daughter who is a British citizen (hereafter “the Sponsor”).
2. The Appellant is a national of Venezuela. She lived in the UK in the 1980s and owned property here. She returned to Venezuela in 1990 with her son. She was issued with a multi-entry visit visa in 2015 valid to 2020 and spent the majority of the time from late 2017 to late 2019 in the UK living with her daughter pursuant to visits made with the benefit of that visa. As an aside, although the Appellant was living in Venezuela at the time of the hearing before the First-tier Tribunal in December 2019, she came to the UK thereafter before the first lockdown measures were imposed in March 2020 (lawfully using her visit visa) and has remained since. Although, strictly, her leave as a visitor will, I assume, have expired, given the current pandemic, she is permitted to remain for the time being on an exceptional basis.
3. The Appellant has a son and other relatives still living in Venezuela. Until 2017, whilst living in Venezuela, she lived with her son and was cared for by her granddaughters. However, following an attack on the house in 2016 during which one of her granddaughters was assaulted, her granddaughters moved to Spain in 2017. Following the Appellant’s return to Venezuela in 2019, she once more lived with her son and his wife. Her son travels away on business within Venezuela. The Appellant does not have a good relationship with her daughter-in-law. She also has a niece in Venezuela who cares for her own mother (the Appellant’s sister). The Appellant suffers from a number of medical conditions.
4. There is no substantial dispute about the facts of this case, the majority of which were accepted as proven by Judge Reid. However, whilst accepting that the Appellant needs some assistance to meet her physical and emotional needs, the Judge did not accept that such care would not be available to her in Venezuela. The Judge therefore concluded that the Appellant could not meet the Immigration Rules (“the Rules”). She went on to consider the human rights claim outside the Rules but concluded that the refusal to grant entry clearance was not a disproportionate interference with the Appellant’s Article 8 ECHR rights. She therefore dismissed the appeal.
5. The Appellant appeals the Decision on four grounds which can be broadly summarised as follows:

Ground one: the Judge erred by deciding the issues as at date of decision rather than date of hearing. Additionally, the Judge erred by failing to take the Sponsor's Article 8 rights as a starting point.

Ground two: the Judge erred by failing properly to consider the evidence in various regards, reaching findings which were not open to her on the evidence or reaching findings which are perverse.

Ground three: in light of the matters raised in ground two, the Judge ought to have found that the Appellant satisfies the Rules. That would be determinative of the human rights claim in the Appellant's favour and the Judge was wrong to conclude that it was not.

Ground four: the Judge erred by considering the Appellant's family life separately from her private life rather than considering both aspects together. The Judge also erred by concluding that the effect of the Decision was not such as to require the Sponsor to leave the UK.

6. Permission to appeal was refused by First-tier Tribunal Judge Povey on 8 April 2020 in the following terms so far as relevant:

"... 4. The Appellant was seeking entry clearance to join her daughter in the UK as an adult dependent relative. The grounds rightly identified that the Judge misdirected herself as to the date of consideration of the issues before her (at [1]). However, it was clear from the body of the determination that the Judge had proper regard to all the evidence and circumstances before her, including that which post-dated the decision. Similarly, any misdirection regarding the impact upon proportionality of meeting the Immigration Rules (at [9]) was of no impact, since the Judge's findings that the Rules were not met in any event is not challenged. To that end, the errors of direction were not material to the outcome of the appeal. The Judge is criticised for speculating as to the existence of paid care in Venezuela in the absence of evidence. The criticism is ill-founded. It was for the Appellant to advance such evidence and, in the absence of the same, it was open to the Judge to find the unavailability of such care not made out. The Judge went on to consider all the relevant evidence and analysed the same in a clear, structured and cogent way (at [19] to [46]). She reached findings open to her on that evidence and provided sufficient reasons for her conclusions. There was nothing inherently flawed in the Judge's approach to how she analysed the Appellant's family and private life (separately, rather than cumulatively). That approach did not, without more, indicate that the Judge had not gone on to determine the proportionality of the Article 8 interference cumulatively.

5. As such, the grounds disclosed no arguable errors of law and permission to appeal is refused."

7. On renewal of the application, permission to appeal was granted by Upper Tribunal Judge Kamara on 21 July 2020 in the following terms so far as relevant:

"... 3. It is arguable that the judge erred in deciding the issues as at the date of the decision rather than the hearing. It is further arguable that the judge erred in

making a finding regarding the availability of paid care without considering the context of the country concerned. The grounds emphasise that the crux of this case is that of the emotional needs of the appellant who lived with the sponsor until 2017 and her distress at being separated from the sponsor.

4. Permission is granted on all grounds.”
8. The hearing before me was conducted via Skype for Business. There were some minor technical issues with Mr Clarke’s connection and when the Sponsor addressed me at the end of the hearing but, overall, that did not affect my understanding of the submissions made. In addition to the representatives for the parties, the hearing was joined remotely by the Sponsor and the Appellant. The parties confirmed that they were able to follow the proceedings throughout. I had before me the Appellant’s bundle for the hearing before the First-tier Tribunal as well as the skeleton argument for that hearing. I refer to documents in the Appellant’s bundle as [AB/xx]. Mr Clarke also provided me with a copy of the Court of Appeal’s judgment in Britcits v Secretary of State for the Home Department [2017] EWCA Civ 368 (“Britcits”) on which reliance was placed by both parties.
9. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. It was accepted by the parties that, if I found an error in the Decision, I could go on to re-make the Decision on the evidence before me. There was no application to adduce further evidence, the facts were not in dispute and there was no challenge to the Judge’s record of the evidence given to her.

## DISCUSSION AND CONCLUSIONS

10. I deal with the grounds in turn but in a different order given the emphasis of the oral submissions.

### Ground 1

11. This ground did not form a major part of the Appellant’s case before me. Mr Clarke accepted that the Judge has misdirected herself at [1] and [17] of the Decision where she said that, as an appeal against an entry clearance decision, the issues have to be decided as at date of the Respondent’s decision rather than date of hearing. The case on which the Judge relies at [17] of the Decision pre-dates the changes in appeal rights brought about by the Immigration Act 2014. The relevant date for determination of all issues including in an entry clearance appeal is date of hearing.
12. As such, Mr Clarke conceded this was an error. However, as he pointed out and as Judge Povey noted when refusing permission, notwithstanding the misdirection, the Judge has in fact gone on to consider the evidence after the date of the Respondent’s decision, in particular the report of Dr De Lima dated December 2019 to which I will need to return. As Mr Clarke also pointed out, the passage of time in this case between the Respondent’s decision (in June 2019) and date of hearing before Judge Reid (in December 2019) is not lengthy and there is no indication that the issues or

evidential position had changed between those dates or, if it had, that later evidence had been considered. As such, either there is not an error in the way in which the Judge approached the issues notwithstanding the erroneous self-direction or the error is not material.

13. I can also deal very shortly with the second sub-set of ground one, concerning the focus of the Article 8 claim. As I pointed out to Mr Solomon (and he did not disagree), the question of the focus of the Article 8 claim depends on the facts. The case relied upon in the grounds (KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC)) is distinguishable on its facts. In that case, the main impact in Article 8 terms was on the family life of a young man who was recognised as a refugee in the UK by reason of the denial of entry clearance to his relatives living abroad. In this case, the main impact complained of is on the Appellant herself who, although living abroad, is unable to come to the UK to join her daughter permanently and be cared for by her. It is the Appellant's rights rather than the Sponsor which are the main focus of both the issues and the evidence. The Judge did not err therefore in dealing with the case as it was presented to her.

### Ground three

14. At [9] of the Decision, the Judge said this about the way in which the Rules interact with the Article 8 issues:

“The decision was made in the context of the family and private life provisions of the Immigration Rules and so consideration of the position under the Rules forms part of the overall consideration of the appeal as regards the claimed breach of Article 8, even though the only ground of appeal available is under s6 Human Rights Act 1998. If however an appellant meets the Rules then the fact that they do so is a weighty (though not determinative) matter in deciding whether the decision is proportionate to the legitimate aim of enforcing immigration control (Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)).”

Whilst the Judge is right to say that whether an appellant meets the Rules may not always be determinative (for example if a person who otherwise meets the Rules has a poor immigration history or there is other reason for refusal falling outside the general grounds), in this case, if the Appellant does meet the Rules, as Mr Clarke accepted, the Appellant would be entitled to succeed. I agree with Judge Povey however that this is immaterial if the Judge's conclusion that the Appellant does not meet the Rules is sound.

### Ground two

15. I therefore turn to ground two which challenges the Judge's conclusion that the Appellant cannot meet the Rules. Ground two is divided into five sections ((a) to (e)). The focus of Mr Solomon's oral submissions was on (c) and (d) which largely overlap and encompass also ground 2(e) and I will therefore take those together at

the outset. Those concern the Judge's findings about the availability and adequacy of care for the Appellant on an emotional level in Venezuela.

16. Before I do so however I set out that part of the Decision dealing with availability and adequacy of care in Venezuela generally in order to set the grounds and submissions in context:

"23. Taking the above findings into account I therefore find that in terms of the physical help day to day the Appellant needs help with washing and dressing (including handwashing) due to the arthritis (or osteoporosis) in her right knee and right shoulder. She also needs some help with cooking for herself though is not totally unable to take any part in cooking for herself or preparing basic food for herself if already pre-cooked for her or if she is helped to cook. Whilst it was said she could not use a kettle I find that her arthritis does not affect her left side or either of her hands and wrists such that she could use a small kettle or simple implements using mostly her left hand if necessary. She also needs support with her medication regime (ie organising it in a way which helps her to remember the doses and timings even if someone is not with her) due to the slowing of her cognitive processes and issues with short-term memory (page A18). It was not suggested that she needed any toilet help. I therefore find that in terms of her physical needs the Appellant does not need round the clock care or supervision (for example in a care home) but needs a visit once a day to help with these tasks. This is consistent with what is currently happening in practice now that the Appellant has returned to Venezuela (thus indicative of the needs of the situation at the time of the decision); based on the Sponsor's oral evidence when the Appellant's son [C] is away for work [L] her niece comes in every day to visit the Appellant. Given the Appellant is financially secure (see findings below) and no issues were raised as to the affordability of daily care visits, I find that the Appellant can afford to pay for that level of care and support. Whilst I accept that some of that involves personal care, and the Appellant would prefer that to come from a female relative, it could be provided by a female paid carer. There may also be adaptations to the annexe where she currently lives (and lived till 2017) which can be made to allow her to be more independent or to make things easier for her.

24. In terms of emotional and psychological support I find that whilst the Appellant has relied on the Sponsor when in the UK for emotional support, and this is important support, since returning to Venezuela recently she has had support of her son (although not apparently also her son's wife who is not very supportive). Whilst the Appellant has spent significant periods of time in the UK since November 2017 (page A10) and has not lived with her son during those periods in the UK, she lived primarily with him until 2017 when her granddaughters left Venezuela. There does not seem to have been any issue with her returning to live with him when she returned to Venezuela in December 2019, taking into account she appears to have helped her son and his wife buy a bigger property (page A2). Because the Appellant says she sold her house to enable her son and his wife to buy a bigger property (which she then also lived in) I find that the plan had been that there be the space for her to live with them in a bigger property, having sold hers (there is an annexe page A2 para 24). There was no suggestion that the annexe was no longer available for her use.

The house holds some bad memories for the family since a frightening incident in 2016 (page A3) but they have not moved. I therefore find that the Appellant needs emotional support but that does not have to come entirely from the Sponsor when physically present (though they would both want it that way). The Sponsor's evidence was that she supported her mother by talking to her (the Sponsor is a qualified therapist) but that does not need to stop if the Appellant is not in the UK. The Sponsor is a British citizen and can travel to visit her mother at any time without any restriction on her ability to return to the UK. The Sponsor is no longer solely responsible for her son D now that he is in supported accommodation. The Appellant is financially secure (see below) and can help with the costs of travel for the Sponsor.

#### Availability of the required level of care for the Appellant in Venezuela

25. I find based on the Sponsor's oral evidence that neither she nor her brother has done any real research into obtaining paid care at the level identified above (ie the level of care which is actually required). Whilst it was said at the hearing that the Appellant's son had made some enquiries there was no witness statement from him identifying what he had researched and the outcome. The Appellant does not need 24 hour care in a care home. In any event the Sponsor (page A10) says that the Appellant's view is that hiring in help is out of the question for the Appellant, from which I find that whether or not care could be arranged, the Appellant would not want to accept it. However I find that the Appellant does not take this attitude when in the UK (page A10 para 26,29).

26. I was provided with newspaper articles setting out the difficult healthcare situation in Venezuela (pages A122-132) and Dr Harris and Dr De Lima commented on the general situation (pages A13, A19). Whilst I accept that the situation as regards public healthcare in general is difficult and that there are shortages in qualified staff, treatment and medication supply, what the Appellant needs is daily care and the evidence provided, when taken in conjunction with the absence of any real enquiries made to obtain such care, does not support the absence of the availability of the relatively basic level of care the Appellant needs. As regards healthcare in general and access to medications the Appellant is in practice in the same position as all citizens of Venezuela, and the key thing for her is the day to day care she needs, which on the evidence before me is not unavailable and not unaffordable. She is not for example awaiting significant surgery she cannot have because it is not available. Her medical needs are those which might be expected in an elderly lady of 85 and not for example complex medical needs arising from a complex or unusual condition or conditions, which needs would be likely to be more severely affected by the current problems across healthcare in Venezuela. She has family in Venezuela who can help her access healthcare."

17. The Appellant's grounds do not challenge the Judge's findings as to the level of physical care which the Appellant requires. The Judge considered the evidence in that regard at [20] of the Decision which, since her findings in that regard are not challenged, I do not need to set out. Although the Judge gave some of the medical evidence less weight for reasons there given, she reached findings about the

Appellant's physical, medical conditions and needs consistent with that evidence and which are not in dispute.

18. The Appellant's grounds also do not challenge the Judge's summary of the evidence about the Appellant emotional needs which evidence is to be found in the report of Dr De Lima (to be found translated at [AB/17-18]). Since it is that aspect of care which formed the major part of the oral submissions, however, I set out the summary of that evidence at [21] of the Decision as follows:

"The Appellant saw a psychiatrist in December 2019 (Dr De Lima, page A17) who diagnosed a mild neurocognitive disorder and an adjustment disorder. Despite reporting forgetfulness and repetitive conversations, there was no diagnosis of dementia type conditions or Alzheimer's. Her cognitive speed is however slowed (page A18). Dr De Lima makes no mention of any physical health conditions also affecting her or making her mood worse. From Dr De Lima's report I find that the primary cause of the Appellant's symptoms was her sadness at being away from her daughter (pages A17-18)."

19. Mr Clarke did not have access to the Appellant's bundle. Mr Solomon took issue with Mr Clarke's submission that the Appellant's condition was described as mild overall, pointing to the reference to "mild neurocognitive disorder" and "an adjustment disorder" (not described as mild) in the report itself. However, since Mr Clarke did not have the report, his mischaracterisation can be forgiven; he was simply intending to refer to the Judge's summary. Although Mr Solomon referred me to the report itself, he was constrained to accept that the grounds do not take issue with the Judge's summary of that report as being accurate.

20. I did not understand the relevant legal test as to adequacy and availability of care to be at issue but for completeness, I set out [59] of the judgment in Britcits on which both parties rely as follows:

"Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be 'reasonably' provided and to 'the required level' in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed"

In relation to that extract, Mr Clarke relied on the fact specific nature of the consideration of what care is reasonably available and adequacy of that care whereas Mr Solomon relied on the reference to the need to consider "emotional and



psychological requirements” alongside physical requirements and pointed to the report of Dr De Lima as satisfying the need for “expert medical evidence”.

21. Returning then to grounds 2(c) to 2(e), it cannot sensibly be said that the Judge did not consider the Appellant’s emotional needs or care available. So much is evident from [25] of the Decision. I have already pointed to the summary of the evidence in that regard at [21] of the Decision which summary is not challenged.
22. The first point made in ground 2(c) is that the Judge’s consideration of the Appellant’s emotional needs in Venezuela is inadequate. The Appellant asserts there and in grounds 2(d) and 2(e) that the Judge fails to take into account relevant factors.
23. In ground 2(c) itself, in addition to the reference to the Appellant’s “sadness at being away from her daughter” ([21]) and that the Appellant “has relied on the Sponsor when in the UK for emotional support, and this is important support” ([24]), the Appellant also relies on the Judge’s finding at [37] of the Decision that the emotional ties between Appellant and Sponsor go beyond the normal emotional ties and amount to family life ([37] of the Decision), that the Appellant and Sponsor have “a good relationship” and are “close” because they have lived together for most of the time since 2017 ([41]) and that the Appellant is distressed at being apart from the Sponsor ([41]). The Judge also acknowledges at [42] of the Decision that the separation is difficult for both the Appellant and the Sponsor as they “miss each other and are very upset by the situation” ([42] of the Decision).
24. The difficulty with the Appellant’s submission that the Judge fails adequately to consider the emotional and psychological needs when assessing the claim under the Rules is however evident from that summary. The references to parts of the Decision which follow the consideration of the needs and adequacy of care under the Rules relate to factors which are already to be found in what is said at [21] and [24] of the Decision. All of those factors are expressly considered. There is no merit to the submission that the Appellant’s emotional needs are not properly considered against the evidence of the report of Dr De Lima.
25. Nor can it sensibly be suggested that the Judge did not take into account all factors when considering the availability and adequacy of care for those emotional needs at [24] of the Decision. Dealing with ground 2(e), the Judge was clearly aware that the Appellant’s son works away ([23] of the Decision). She also made reference to the Appellant’s daughter-in-law being unsupportive ([24]). Although it is suggested at ground 2(e) that the Judge has failed to take into account that the Appellant’s niece also cares for her own mother and “is about to move to Spain”, at [23] of the Decision, the Judge is merely recording what care was actually available at the time of the hearing, according to the Sponsor’s oral evidence.
26. There was no evidence from either the Appellant’s son or niece. The Appellant’s own evidence is that her son “works away for a week at a time” ([[24] at [AB/2]). The Sponsor says that he “needs to travel constantly for his work” ([28] at [AB/10]) but both references are quite vague. As the Judge notes at [24] of the Decision, the

Appellant has lived with her son and his family “primarily ... until 2017” ([24]). The Appellant’s own evidence at [8] to [10] of her statement at [AB/1-2] is that she returned to live in Venezuela in 1990 because her son’s studies in the UK ended and that, at that time, she sold her house in London and invested her money in the UK. She lived with her son in an annexe to his property from then until late 2017 when her granddaughters left Venezuela (as the Judge notes at [24] of the Decision). She then returned to live with her son in late 2019 following a period of two years living with the Sponsor in the UK.

27. The findings at [24] of the Decision are that the Appellant could live in Venezuela as she had done in the past with the support of her son and that the Sponsor could continue to speak to her from the UK and visit her. The Judge recognised that the situation had changed somewhat from that which pertained in 2017 as the Appellant’s granddaughters had left Venezuela and were no longer available to offer her care as they had been prior to that date. However, there was no evidence before the Judge that the Appellant could not continue to live with her son and his wife (even if it is the case that his wife is unsupportive) and would receive support from her son (when he is not away on business). The Judge’s finding is that this, coupled with remote and intermittent physical support from the Sponsor is available and adequate.
28. At ground 2(d), the Appellant refers to the approach taken in LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278 (IAC) and submits that the Judge’s finding regarding remote support runs contrary to that approach. The Appellant’s grounds cite from [21] of that decision which reads as follows:

“We therefore turn to consider the Immigration Judge’s reasoning on the question of proportionality. We confess we find it is wholly absent. This is not a case about physical or mental illness of anybody, but whether the family life that had been enjoyed over eleven years with authority afforded to each member of the family should now be interfered with. The Immigration Judge has wholly failed to grapple with this. We find his reference to maintain contact with his family ‘in the normal manner’ is extraordinary. Families normally live together. Family life consists of the inter-dependent bonds between spouses or stable partners and between parents and children with particular strength being placed upon the interests and welfare of minor children. It is not normal for family life to be enjoyed by correspondence and occasional visits (even assuming that there were no obstacles to such visits following this immigration decision). Although the Immigration Judge has cited the case as Beoku-Betts he appears singularly to have misunderstood the core principles to be applied in this area of the law, as exemplified by the other important House of Lords cases Huang, EB (Kosovo) and numerous decisions in the Court of Appeal noted above as well as the decision in Chikwamba [2008] UKHL 40.”

29. That paragraph does not appear in the headnote for which the case is reported. As the headnote and indeed the cited paragraph make clear, that case involved family life between parents and minor children whose interests are a primary consideration. As such, the reported guidance is that “weighty reasons would be required to justify separating a parent from a lawfully settled minor child or child from a community in

which he or she had grown up and lived for most of his or her life". That is very far from the factual position in this case. Whilst I accept that the finding that there is family life between the Sponsor and the Appellant is not irrelevant to the proportionality assessment (as the Judge accepted), the guidance given in LD (Zimbabwe) is of no relevance to this case. As the headnote makes clear, the guidance is to be read according to the facts of a case and the facts of this case are entirely different to the facts in that case, not least because, here, the Appellant also has family living in Venezuela with whom she has lived for the majority of the past thirty years.

30. I turn then to the second part of ground 2(c) which is a submission that the Judge's conclusion in relation to emotional needs and adequacy of care in that regard is perverse. As Mr Clarke pointed out, a submission that a decision is perverse involves an extremely high threshold. It is to the effect that no Tribunal Judge properly directed could have reached the conclusion which Judge Reid reached on the evidence. That submission is unsustainable in this case. The Judge considered all the evidence and took into account relevant factors. She did not take into account irrelevant factors. Other Judges might have reached a different decision but that is not the test. It cannot be said that her conclusion is so manifestly unreasonable as to be perverse.
31. That then deals with grounds 2(c) to 2(e). I take grounds 2(a) and (b) together as they both concern the findings at [23] of the Decision as to the availability of paid care in Venezuela on the evidence and in light of the general country background evidence. This was a point which appears to have impressed Judge Kamara in her grant of permission.
32. I can deal with ground 2(a) very shortly. It is said that the Judge speculates at [25] and [26] of the Decision when finding that paid care could be obtained in Venezuela because there was no evidence to that effect. As Mr Clarke (and the Judge) pointed out, though, it was for the Appellant to produce that evidence. That no such evidence was provided is the reason why the Judge concluded that such care might be available.
33. The Sponsor addressed me at the end of the hearing and said that although she had not done any research, her brother in Venezuela had done such research and paid care is not available. However, the Judge records at [25] of the Decision that it was said that the Appellant's son had done some research but makes the point that there was no evidence to that effect. There is no statement from the Appellant's son.
34. Further and in any event, the Judge's secondary finding in that regard is that, whether or not paid care is available, the Appellant would not take advantage of it whilst in Venezuela whereas she would in the UK. It is that evidence which led the Judge to note as she did at [40] of the Decision that "[t]here has been little effort made to substantiate the assertion that appropriate care is not available in Venezuela and the Appellant appears to take the approach that this condition should either not be applied to her or that third party daily care in the UK would be acceptable

whereas in Venezuela it would not". That reference is made in the context of the public interest in denial of entry clearance and is not relevant in itself to the findings in relation to adequacy of care as ground 2(a) appears to suggest.

35. I can deal with ground 2(b) even more shortly in light of what I have just said. That challenges the Judge's findings about the healthcare situation in Venezuela in the context of the availability of paid care. However, as the Judge notes at [26] of the Decision the background evidence about the healthcare system was in the context of public healthcare. In any event, as I have already noted, the Appellant's position is that she would not take advantage of paid healthcare whether available or not. As I have already recorded, the Judge was entitled to take into account the lack of specific evidence about the availability of paid (as opposed to public) healthcare.
36. For all of the foregoing reasons, ground two has no merit. There is no error of law disclosed by this ground.

#### Ground Four

37. As I conclude at [14] above, ground three falls away if there is no error of law disclosed by ground two. In light of what I say about ground two therefore, ground three does not identify any error of law.
38. Ground four challenges the Judge's approach to the Appellant's family and private life and the separation of the two in the proportionality assessment. Mr Clarke accepted that this should have been a holistic assessment but submitted that it could make no difference if the Judge was entitled to reach the conclusion she had about the claim under the Rules. He also pointed out that the Judge's finding in relation to private life was that Article 8 was not even engaged so that it could add nothing to the family life assessment.
39. I agree with both submissions. There is a public interest in denying entry to those who do not meet the Rules. The Judge has explained at [37] to [42] of the Decision why she has reached the conclusion that the refusal of entry clearance is proportionate in the context of the Appellant's family life with the Sponsor. She has reached that conclusion having conducted a balancing exercise between the interference and public interest, having regard also to Section 117 Nationality, Immigration and Asylum Act 2002. Although she has gone on at [44] to [46] of the Decision to conduct a further balancing exercise in relation to private life, she does so having made a primary finding that Article 8 is not even engaged in that regard. That is unsurprising on the facts of this case. The Appellant's main ties with the UK, at least recently, are based on her relationship with the Sponsor which the Judge has found to be part of the Appellant's and the Sponsor's family life.
40. For those reasons, even though it would have been better if the Judge had taken the Appellant's family and private life together when conducting the balancing exercise outside the Rules, her approach makes no difference to the outcome of the case. In any event, as Judge Povey pointed out when refusing permission, the Judge, at [47] of the Decision, reaches a cumulative conclusion taking into account both the

Appellant's family and private life. For those reasons, ground four does not disclose any error of law or any error is not material.

Conclusion

41. For the foregoing reasons, I conclude that there is no error of law in the Decision and I uphold it.

DECISION

**The Decision of First-tier Tribunal Judge Reid promulgated on 31 December 2019 does not involve the making of an error on a point of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.**

Signed: *L K Smith*  
Upper Tribunal Judge Smith

Dated: 11 January 2021