



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

Case No: UI-2023-000477  
UI-2023-000478

First-tier Tribunal No:  
HU/54838/2021 HU/54840/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

3<sup>rd</sup> November 2023

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**  
**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**HESET KRIVENJEVA**  
**NISRETE KRINJEVA**  
(NO ANONYMITY ORDER MADE)

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms J Fisher, counsel instructed by Malik & Malik Solicitors  
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 18 October 2023**

**DECISION AND REASONS**

Introduction

1. Following a hearing which took place on 6 June 2023, the decision of First-tier Tribunal Judge Beg dismissing the appeals was set aside as having contained a material error of law. The matter was set down for a remaking hearing on a future date.

2. Sadly, Mr Heset Krivenjeva (the first appellant) died on 31 August 2023 and consequently, his appeal comes to an end, FZ (human rights appeal: death: effect) Afghanistan [2022] UKUT 71 (IAC) considered.

### Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

### Factual Background

4. The appellant, who is aged in her seventies, and her late husband were previously resident in Kosovo and had visited their family members in the United Kingdom on several occasions. They last entered the United Kingdom on 10 December 2019 with leave to enter to visit their two sons, daughters in law and grandchildren. Their stay was extended until 31 July 2020 owing to the pandemic. On 30 July 2020, the appellant and her late husband sought further leave to remain in the United Kingdom on a basis outside the Immigration Rules. In short, Mr Krivenjeva had become seriously unwell, and the appellant was unable to care for him in Kosovo. The Secretary of State refused those applications by way of decision letters dated 9 August 2021. In essence, the respondent noted that there were health and care facilities in Kosovo as well as the presence of the appellants' daughters.

### The error of law hearing

5. The respondent did not oppose the appeal, and following a short hearing, the decision of the First-tier Tribunal was set aside, save for the findings at [25] which were preserved. Those findings are reproduced below.

I accept that the appellants' son and daughter-in-law provide a good level of support and care for them. They have a close relationship with their sons and their families. Albina Krivenjeva said that she makes breakfast for the appellants, helps them to wash and takes them for walks. The family also take them for their medical appointments.

### The remaking hearing

6. In advance of the hearing, those representing the appellant applied under 15(2)a of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the admission of further evidence which was not before the First-tier Tribunal. The Upper Tribunal agreed to admit that evidence which included hospital letters regarding the appellant's various conditions as well evidence relating to the appellant's grandchild, Tiara, who was born prematurely earlier this year.
7. The appellant's case is that there are very significant obstacles to her reintegration in Kosovo, and therefore she meets the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules which was in force at the time she made her human rights application. The panel heard oral

evidence from the appellant, Mrs Nisrete Krivenjeva her sons, Valon Krivenjeva and Driton Krivenjeva and submissions from both representatives.

8. We do not rehearse the evidence and submissions here but have taken them into consideration in reaching our decision and will address them when giving our reasons.
9. At the end of the hearing, we informed the parties that the appeal was allowed and give our reasons below.

### Discussion

10. We found the appellant and her sons to be credible witnesses. All gave their evidence in detail, without hesitation and consistently with their previous accounts as well as the documentary evidence before us. Indeed, Ms Nolan made no challenge to the credibility of the witness evidence, rather her challenge was to the submission that the appellant's daughter, Drita, who lives in Kosovo, could not take over the appellant's care.
11. Given our acceptance of the witness evidence we make the following findings. Prior to the appellant's visit to the United Kingdom in 2019, Valon and Driton were both taking it in turns to travel to Kosovo once a month to assist the appellant and their sister Drita in caring for their father as his health declined and as he struggled with mobility. It is a cultural expectation that the sons have the responsibility of caring for parents as they age and the presence of their sisters in Kosovo did not absolve them of that responsibility.
12. The health of Mr Krivenjeva declined sharply after his arrival in the United Kingdom in that he suffered from chronic kidney disease, chronic pain, and loss of mobility among other ailments. The death certificate indicates that the cause of death was an intracranial haemorrhage because of a head injury following a fall. The health of the appellant has also deteriorated since her arrival in the United Kingdom. She suffers from heart problems which need valve surgery, requires both knee and hip surgeries and uses a wheelchair. The various hospital letters from the cardiology, knee and hip clinics provide supportive evidence in this regard.
13. The appellant's primary carer is her daughter-in-law, Albina, who provides her with personal care including with bathing, dressing, giving daily medication, the preparation of meals and dealing with medical appointments. The medical care of the appellant and her late husband both in Kosovo and the United Kingdom has been paid for by her sons. In addition, Valon and Albina have three children, the youngest of whom was recently born at 23 weeks and has required constant medical care which is ongoing. The appellant's daughters are unable to replicate the care the appellant receives in the United Kingdom because they are married, work, have their own health problems and have, for cultural reasons, responsibilities in respect of their respective parents-in-law.

14. Ms Nolan confirmed that the Secretary of State did not dispute the existence of family life between the appellant, her sons, and their families. Given the level of dependency of the appellant on her relatives in the United Kingdom, we consider the concession that Article 8 was engaged to be rightly made.
15. We find that the appellant's health has deteriorated significantly since her arrival in December 2019. She faces returning alone to Kosovo since her bereavement and in circumstances where she is unable to get around independently. She requires round the clock care and assistance in accessing medical treatment including the three major operations she needs.
16. During examination-in-chief, Valon Krivenjeva informed the panel that there was no professional help available, and that the appellant would not be able to access a care home. There was no cross-examination on this point, however, we have had regard to the 2021 ESPN Thematic Report on long-term care for older people in Kosovo 2021 was provided in the appellant's First-tier Tribunal bundle and find that it supports the oral evidence. In particular, it is reported that the care sector in Kosovo is unregulated, that there is a lack of carers and that the few care homes in Kosovo are available only for those elderly people with no biological children.
17. We have carefully considered Ms Nolan's submission that the appellant's daughter Drita assisted in the past and could do so again. While there was no evidence to suggest that Drita and her husband would be prepared to accommodate the appellant, the evidence of the witnesses was that Drita lives on the fourth floor of a building which has no lift. We note that Drita was the only one of the three daughters in Kosovo who assisted previously. However, we find that the circumstances have changed in that Drita is unwell, she is now self-employed, and the appellant's care and medical needs have increased. We further consider that even when Drita was able to provide assistance, the appellant's sons still needed to routinely travel to Kosovo to attend to their parents' wellbeing.
18. A further change in circumstances is that Valon now has a vulnerable premature baby that he is responsible for and thus we accept that he would be unable to travel to Kosovo as he did previously. The evidence of Driton was that he would not be able to visit as frequently now that his own children were older and owing to difficulty in arranging time off work. In any event, the appellant's needs have increased markedly, and we accept that visits alone will not suffice.
19. For all the reasons above we are satisfied on the witness and documentary evidence that no family, commercial, or other provision is available to provide the long-term personal care to perform everyday tasks necessary for the appellant as a result of her age, illness and disabilities, reflected in her being a wheelchair user with significant

deteriorating health and mobility issues, and requiring assistance with personal hygiene and daily living.

20. Taking all the circumstances, into consideration we find that the appellant would be facing a grim, lonely existence in her former family home where she would be entirely unable to take care of her personal care needs or access medical care.
21. We have been assisted in our task by the conclusions of Sales LJ on the issue of integration in *Kamara* [2016] EWCA Civ 813 at [14]

The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

22. In this case, we have taken into account that the appellant has lived for decades in Kosovo and was previously integrated there but we find that her altered circumstances mean that she will be unable to participate in society in Kosovo as she did before.
23. In *CI* (Nigeria) [2019] EWCA Civ 2027, it was said that in addressing the question of reintegration, a judge ought to consider the impact that any likely medical condition would have on an appellant's ability to participate normally in society. We emphasise that there was no argument put forward on the appellant's behalf to suggest that there was an unavailability of medical treatment in Kosovo, the point being made, which we accept, is that the appellant would be unable to practically access that care owing to her disability. In addition, were the appellant to undergo the operations she needs in Kosovo, she would be faced with recovering from surgery alone without a carer.
24. For the foregoing reasons, we conclude that the removal of the appellant to Kosovo will result in very significant obstacles to her integration, with reference to paragraph 276ADE (1) (vi) of the Immigration Rules.
25. Applying *OA and Others* (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC), the fact that we find that the appellant meets the requirements of the Rules means that the importance of maintaining an effective system of immigration control is not a factor weighing in the respondent's favour in the proportionality balance. Nor is this a case where there is a discrete public interest factor which would make the appellant's removal proportionate. It follows that we conclude that the removal of the appellant would be a disproportionate outcome and consequently allow her appeal.

### Summary of Decision

The appeal is allowed on human rights grounds (Article 8).

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**26 October 2023**