



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

Linked Case Nos.: UI-2023-003607  
UI-2023-003608  
UI-2023-003609

First-tier Tribunal Nos: HU/01350/2022  
HU/01349/2022  
HU/01348/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 09<sup>th</sup> of January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**(1) EK (GEORGIA)**  
**(2) GC (GEORGIA)**  
**(3) NC (GEORGIA)**  
**(ANONYMITY ORDER MADE)**

Appellants

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: In person.

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard at Field House on 12 December 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to**

**identify the appellants. Failure to comply with this order could amount to a contempt of court.**

### **DECISION AND REASONS**

1. The appellants have been granted permission to appeal against the decision of First-tier Tribunal Judge S L Farmer promulgated on 16 February 2023 (“the Decision”). By the Decision, Judge Farmer dismissed the appellants’ appeals against separate decisions made by the respondent on 27 October 2021 to refuse to grant them leave to remain either under Appendix FM of the Immigration Rules or outside the Rules under Article 8 ECHR.

### **Relevant Background**

2. The appellants are citizens of Georgia. The first appellant, “Ms K” (DOB: 28/08/1984) is married to “Mr C”, the second appellant (DOB: 23/08/1972), and the third appellant is their son, “N” (DOB: 27/04/2017).
3. The first and second appellants entered the UK on 1 March 2016 with valid entry clearance as visitors. Their visit visas were valid from 18 February 2016 to 18 August 2016. The first and second appellants overstayed, and the first appellant gave birth to N on 27 April 2017.
4. On 27 December 2020 the appellants applied for a fee waiver on the grounds of destitution, and a fee waiver was granted on this basis as it was accepted that the family was destitute and thereby qualified for a fee waiver.
5. On 21 February 2021, the appellants applied for leave to remain. Mr C (the second appellant) was the lead applicant, with the other two family members being his dependants.
6. In his application form, he acknowledged that he and his wife had arrived in the UK from Tbilisi on a tourist visa. “Thankfully”, both he and his wife had found jobs, which gave them the opportunity to contribute to the UK and to help themselves. In the same year, his wife had got pregnant and the birth of their son on 27 April 2017 had given them more motivation to continue living and working in the UK. In 2018 N had been diagnosed with global delay and the red flags of autism. Thanks to help and assistance from paediatricians, speech and language therapists, and health visitors, N had been improving lately. He was going to nursery, which motivated him and made him extremely happy. N was fully integrated into the local social environment and healthcare. It was rather vital for him to stay in Britain. Benefits for autistic children in Georgia were non-existent, and returning to Georgia might fully destroy the progress that N had thankfully been experiencing here in the UK.

7. His wife had two other sons who were under the age of 18, but they had left them behind in Georgia. They were living with their grandmothers.
8. The application was supported by various professional assessments of N, including an initial multi-disciplinary assessment report from Whittington Health NHS, dated 31 March 2021. The report said that N was referred to the Islington Social Communication Team in January 2020, due to concerns around his attention and listening skills; his social communication; and his understanding and use of language. Their assessment and observation of N indicated that he met the criteria for a diagnosis of autism. They would currently assess N's support needs to be moderate. Autism was a life-long developmental condition which affected how people communicated with other and related to the world around them. Their team also used the term 'autism spectrum condition' (ASC). This was in line with changes in attitudes and the way they understood autism, i.e. as a condition involving a range of strengths and needs. Their plan was to support N within their Team as he started in Reception class, when support would then be passed on to school-based health (e.g. speech and language teams) if needed.
9. In the refusal decision directed to Mr C, it was acknowledged that he had submitted reports confirming that N had a diagnosis of autism and global delay. At the time of application N was 3 years old and was attending a mainstream pre-school setting part-time. He claimed that 20% of families had no access to education in Georgia. But it was noted that "L" (aged 5) and "A" (aged 8) were currently attending a municipal school in Georgia. He has provided no reason why his son N could not also attend school in his home country. It was not accepted from the background information consulted by the Home Office that support for children with autism was not available in Georgia. According to the background information, Georgia had specialist autism provision with specialist trainers and therapists, with programmes funded by the municipality of the City of Tbilisi. They could return to Georgia where N could access appropriate education in order to progress. The educational system and support might not be the same as in the UK, but his desire to remain in the UK to use the education services here was not a reasonable ground on which to grant leave, given that Georgia had an inclusive education system with specific support for children with autism.
10. Mr C reported that at home they spoke Georgian, Russian and some English; and that N attended an English-speaking nursery. On return to Georgia, N could attend a Georgian-speaking school and continue his family life with his siblings who were also of a young age.

### **The Hearing Before, and the Decision of, the First-Tier Tribunal**

11. The hearing before Judge Farmer took place on 8 February 2023 at Taylor House on the Cloud Video Platform. The appellants were not legally represented, but the respondent was represented by a Home Office Presenting Officer.
12. In the Decision at [4], the Judge said that the appeals were all based on the same facts - namely that the third appellant had been diagnosed with global developmental delay and the red flags of autism in 2021.
13. At [6], the Judge said that the appellant's case was set out in the 24 attachments uploaded into the digital file, and in the documents provided in support of the application. Mr C gave oral evidence and was cross-examined. It was agreed that as his evidence was the same as his wife's, only one of them needed to give evidence. She did not set out Mr C's evidence as it was recorded. But she gave a summary of it.
14. Mr C explained that the application was not for him or his wife. It was for N, who benefited enormously from the education and medical provision that was on offer in the UK. N would not have these benefits in Georgia and would suffer as a result. Their wish to stay in the UK was therefore motivated only by N's best interests.
15. The Judge's findings and conclusions began at para [9] of the Decision. At [12], the Judge said that the appellants continued to speak their home language. The appellants were all in good health, apart from the delay in N's development. Both parents were able to work. There was no reason why they could not work in Georgia. It was clear that Mr C was highly educated and highly skilled. At one point he had earned in one year 120,000 USD, working overseas as an Engineer. He had provided his passport to show that he travelled widely for his work. He worked in the oil industry. Although he stated that he could only get low-paid work in Georgia, the Judge was not satisfied that this was the case. Nor had he provided evidence that he had lost his job in 2016 as he claimed. It was not established on a balance of probabilities that he could not find similar work to his previous job - either in Georgia or internationally, as before. His family connections remained there and he had a property there which he continued to fund. N's two brothers were there - the two sons of the adult appellants. Their mothers (the two grandmothers) remained living there - and whilst the oral evidence was that N struggled to adapt to new environments, the Judge found that there was no credible evidence before her that he could not adapt to a move, supported by both his parents, with whom he had a close and loving bond.
16. At [13], the Judge said that she had given careful consideration to the medical and educational evidence before her. She had to establish the best interests of the child as a primary consideration. It was clear that N

had some developmental delay. However, she noted that there was no recent evidence of his progress. Instead, the evidence was that he attended a mainstream pre-school. He was now in Year 1 in a mainstream primary school in Islington. She was told that he was thriving there and had received a certificate of achievement from the Head Teacher. There was no statement of special educational needs; no care plan; and nothing from the school to show that he needed additional support. Although he had attended a school for a child with autism for three months in the spring of last year, that was funded solely by his parents at a cost of £12,000. She was not satisfied that he met the threshold to require a specialist school in the UK, or even a statement to provide additional support within a mainstream school. If this was required, it would be in place.

17. At [14], the Judge said that there was no documentary evidence to support the contention that N would not be able to find a suitable school in Georgia. The evidence was that other parents had told them that education was poor for autistic children, but this was anecdotal and not supported by witness statements. In any event, as was clear from the evidence, N was in a mainstream school, doing well, and he had not had a statement of special educational needs. She was therefore not satisfied that he needed special support in school.
18. At [15], the Judge concluded that she was not satisfied that the medical and educational evidence before her would lead to the conclusion that N would have very significant obstacles to integration into life in Georgia, when he was being supported by his parents who would be returning with him.
19. At [16], she said that, apart from the red flags of autism and delay, there were no other health conditions. N was thriving in a mainstream school. He was too young to form bonds outside his parents, and they were his primary carers. In all the circumstances and viewing the evidence holistically, she found that none of the appellants met the private life Rules, and there were not significant obstacles to their integration back into Georgia.

### **The Grounds of Appeal**

20. The first and second appellants settled the grounds of appeal. They said they believed that the Decision contained numerous misinterpretations and mistakes. They believed that their case had not been thoroughly analysed and that the Decision had been made without considering the main argument that had been made.

21. Two specific criticisms are worthy of note, given the basis upon which the appellants were eventually granted permission to appeal.
22. Firstly, the Judge was criticised for referring to N as being diagnosed with global delay and the red flags of autism, when he had been officially diagnosed with autism on 31 March 2021, as shown in the attached “SCT report”.
23. Secondly, the Judge had misunderstood Mr C’s verbal statement that N was improving and doing better, and on this basis had held that he did not fall under a special educational needs plan. This was diametrically opposite to the actual case. Mr C had asked the School’s Special Educational Needs Coordinator to write up their evaluation and concerns regarding N’s return to Georgia, which were attached. Mr C also relied on the Early Learning Goal Report dated 20 July 2022 (also attached) clearly documenting that all 17 Early Learning Goals of N remained at the emerging phase. The Special Educational Needs Coordinator (“Mr M”) had made a Special Education Plan for N, and all the staff members and teachers of N at his school were strictly following this plan.

### **The Reasons given by the First-tier Tribunal for refusing Permission**

24. On 14 August 2023, First-tier Tribunal Judge Mills gave reasons for refusing permission to appeal. The Judge observed that the grounds relied extensively on a letter from the child’s school which post-dated the hearing of the appeal and was thus not provided to the Judge. Judge Mills found that the application failed to disclose any arguable error of law in the Judge’s decision, which contained adequate reasoning and entirely rational conclusions. It could not be shown that the Judge had erred through reliance upon subsequent evidence that was not provided to her. Such evidence was more appropriately relied upon as the basis for a fresh claim to the respondent.

### **The Reasons for the Eventual Grant of Permission**

25. Following a renewed application for permission to appeal to the Upper Tribunal, on 30 October 2023 Upper Tribunal Judge Rintoul granted permission to appeal for the following reasons:

The renewed grounds are, to a large extent, further submissions, and are attempting to re-argue the case. That said, there is a challenge to the Judge’s findings about the third appellant’s diagnosis which appears to have involved errors of fact as to: a) the actual diagnosis; and b) what the position was at his current school. This may have led to an error in the assessment of the child’s best interests. That said, whether the error was material is something that the appellants will need to address at any hearing.

## **The Hearing in the Upper Tribunal**

26. At the hearing before me to determine whether an error of law was made out, the appellants all appeared in person. N sat at the back of the Court with his mother, while Mr C presented the case on behalf of all of them.
27. As was indicated by the grounds of appeal, Mr C explained that after receiving the Decision he had shown it to N's school, who had then written the letter dated 23 February 2023 in which they implored "the team" assessing the family's case to consider N's "*significant special educational needs and the potentially enormous negative impact of the family having to leave the UK.*" The letter was signed by the Headteacher and by Mr M (the SENCO/Inclusions Lead).
28. Mr C initially maintained that the other report that he had referred to in the grounds of appeal - a progress report from the school dated 20 July 2022 - had been before the Judge. After Mr Wain said that it had not been included amongst the 24 attachments referred to by the Judge in the Decision, Mr C acknowledged that his recollection was at fault and that the progress report had not been shown to the Judge.
29. Mr C explained that he believed that the reports that had been shown to the Judge were sufficient to make out his case before the First-tier Tribunal, and he had not wanted to trouble the school by going back to them to obtain an updated assessment. He acknowledged that in retrospect the failure to obtain from the school a report on the lines of that contained in the letter of 23 February 2023 was a mistake on his part.
30. On behalf of the respondent, Mr Wain submitted that no error of law was made out for the same reasons as those given by the First-tier Tribunal Judge who had refused permission to appeal. Judge Farmer had not been wrong to find against the appellants on the evidence that was before her. He acknowledged that the Judge had based her decision on the premise that N did not have significant special educational needs, whereas the letter of 23 February 2023 stated otherwise. However, as stated by Judge Mills when refusing permission, the only option for the appellants was to make a further application based on what was said in the letter of 23 February 2023.
31. After hearing briefly from Mr C in reply, I reserved my decision.

## **Discussion and Conclusions**

32. Permission to appeal has been granted on two grounds. Ground 1 is that it is arguable that the Judge misdirected herself as to the third appellant's



diagnosis. Ground 2 is that it is arguable that the Judge made an error of fact as to the third appellant's position at his current school.

33. As to Ground 1, it is undoubtedly the case that at para [4] of the Decision, the Judge refers to the initial diagnosis of global developmental delay and the red flags of autism, rather than to the confirmed diagnosis of autism. But I am not persuaded that there is any material difference in the two diagnoses, or that the initial diagnosis referenced by the Judge at para [4] of the Decision contaminated the analysis which she went on to conduct.
34. As is apparent from the report cited earlier, the diagnosis was that N had moderate, not severe, autism. So, in characterising the appellant as having a diagnosis of global developmental delay and the red flags of autism, the Judge was not misrepresenting the nature of N's condition. The Judge went on in the Decision to discuss provision for autistic children in Georgia, and so it is clear that the Judge conducted her analysis on the premise that N was an autistic child.
35. As to Ground 2, Mr C does not dispute that he told the Judge that N was thriving at his mainstream primary school in Islington, and that he had received a certificate of achievement from the Headteacher. On a careful reading of the letter from the school which Mr C obtained after receiving the Judge's decision, the only arguable factual error in the Judge's analysis is her finding towards the end of para [13] that she is not satisfied that N meets the threshold to require "*a statement to provide additional support within the mainstream school.*"
36. On the basis of what she had been told and/or what she could elicit from the reports that were relied upon in support of the application, and the one additional report that was amongst the 24 attachments provided for the appeal hearing, the Judge was correct to say that there was no Statement of Special Educational Needs; no care plan; and nothing from the school to show that N needed additional support.
37. The letter dated 23 February 2023 confirms that the Judge's factual assessment is largely correct. There was, and is, no care plan because an application for an education, health and care plan was made by his previous Nursery in April 2021, but "*unfortunately it was not accepted as there was not enough evidence of support.*" The letter from the school states that they are currently collating evidence and information with a view to re-applying for a care plan. The letter does not in terms state that there has been a Statement of Special Needs in N's case.



38. The signatories are clearly of the view that N has significant special educational needs, and that their assessment has not been taken into account by the Judge in her analysis.
39. However, if and insofar as the Judge can be said to have been mistaken about the current position at N's school, her mistake clearly flows from the fact that Mr C, as he acknowledges, did not obtain an update from the school in advance of the appeal hearing. Accordingly, as I understood him to accept, he is responsible for the Judge's mistaken assessment, insofar as her assessment does not accurately reflect the current position at N's school.
40. In these circumstances, no error of law is made out. The appellants have not been deprived of a fair hearing in the First-tier Tribunal. The Judge has given adequate reasons for dismissing the appeal on the evidence and the arguments that were presented to her.

### **Notice of Decision**

**The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. The appellants' appeal to the Upper Tribunal is dismissed.**

### **Anonymity**

Although the First-tier Tribunal did not make an anonymity order, I consider that it is appropriate to make an anonymity order in favour of the appellants for these proceedings in the Upper Tribunal, as the central issue in the appeals is whether the removal of the family to Georgia will be so inimical to the best interests of a child with autism as to mean that the child qualifies for leave to remain on private life grounds under the Rules, or that the proposed removal of the family constitutes a disproportionate interference with the right to respect for the child's private life.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
December 2023