IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002985

First-tier Tribunal Nos: HU/51551/2023
LH/04205/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th of October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

Marbella Agustina Luzuriaga Veintimilla
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr. M. Rafiqul Islam, Ascentim Legal Solicitors
For the respondent: Mr. N. Wain, Home Office Presenting Officer

Heard at Field House on 17 September 2024

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of First-tier Tribunal Cotton (the "Judge"), dated 3 December 2023, in which she dismissed the appellant's appeal against the respondent's decision to refuse leave to remain on human rights grounds. The appellant is a national of Ecuador who applied for leave to remain on the basis of her private life, and her family life with her daughters and granddaughter.

2. Permission to appeal was granted by Designated Judge Shaerf in a decision dated 26 June 2024 as follows:

> "The grounds of appeal first challenge the Judge's treatment of the claim under paragraph 276ADE(1)(vi) of the Immigration Rules (very significant obstacles to

reintegration) and second allege he did not have regard to material evidence about the Appellant's social network in the United Kingdom.

At paragraphs 28 to 30 of his decision, the Judge considered the Appellant's likely situation on return to Ecuador. He rightly pointed out he had not been given any background evidence about the cost of living in Ecuador.

He considered that in the UK the Appellant was receiving money from one of her daughters and found that this contribution could continue in Ecuador where she would be able to find employment. He concluded the Appellant's other daughter would also be able to provide additional financial support but did not refer to any evidence upon which that conclusion is based.

The Judge did not expressly take into account the evidence in the letter of 14 November 2021 from the Appellant's sister Enid, at page 33 of the Appellant's bundle, that while the Appellant had been in Ecuador her sister Enid had provided accommodation and financial assistance and had also provided employment for the Appellant in her company. There does not appear to have been any challenge to this evidence or the claim that Enid had left Ecuador for the United States and now had no assets in Ecuador. It is arguable the Judge erred in law by failing to take account of relevant and important evidence before him.

The Judge did take into account the Appellant's social network at paragraph 33 of his decision and gave sustainable reasoning why he attached little weight to it. The second ground discloses no arguable error of law.

Permission to appeal is granted in respect of the first ground based on the judge's assessment of the Appellant's likely circumstances on return to Ecuador, the claim under paragraph 276ADE(1) and so far as relevant to any other aspect of the appeal."

3. In a Rule 24 response the respondent opposed the appeal.

The hearing

4. The appellant and her daughter, Amira, attended the hearing.

5. The extent of the grant of permission was discussed at the outset of the hearing. The Rule 24 response deals only with ground 1, but the grant of permission to appeal is unclear as to whether permission has also been granted on ground 2. At the top of the second page, Judge Shaerf states that it is arguable the Judge erred in law by failing to take account of relevant and important evidence. However, in the following paragraph he states that the second ground discloses no arguable error of law. However, those are both points relevant to ground 2. The final paragraph of the grant states that permission is granted, "based on the judge's assessment of likely circumstances on return to Ecuador and so far as relevant to any other aspect of the appeal, that the grant is not so limited". Mr. Wain accepted that where there is doubt, it goes in favour of the appellant.

6. Mr. Islam submitted that Article 8 should be considered more widely under ground 1. This was not been put forward in the grounds, and would be an application to admit a new ground. However, it was also agreed that paragraph 276ADE(1) has to be considered under the overall remit of Article 8. Although I did not specifically admitting a new ground of appeal, it is clear that any consideration of paragraph 276ADE(1) involves consideration of an appellant's overall Article 8 rights, which is the right of appeal to the Tribunal. An appellant

cannot appeal on the basis that a judge made an error in relation to the immigration rule itself.

7. I heard submissions from both representatives following which I stated the decision involved the making of a material error of law and I set it aside to be remade.

8. There was then an adjournment while an interpreter in Spanish was sought. I heard oral evidence from the appellant. She was assisted by the interpreter, Ms. E. Braithwaite, who attended remotely. She confirmed before proceeding that they both fully understood each other. Both representatives made oral submissions. I reserved my decision.

Error of law

9. The Judge's analysis and decision starts at [24]. At [25] she states:

> "The appellant's case is not a claim for protection. However, I do not think that this prevents me from considering the evidence of violence in Ecuador in relation to whether she would be able to integrate. As a basic starting point, it does seem to me that the less security there would be in Ecuador, the more likely it is that the appellant would not be able to become enough of an insider to be able to operate on a day-to-day basis and to build up a variety of human relationships. I find that there is nothing in the evidence to suggest that she would be especially targeted by criminal elements. I find that the crime levels are likely to inform how people live their day to day lives."

10. Mr. Wain submitted that the penultimate sentence of this paragraph indicated that the Judge had considered that crime would not have an impact on the appellant's ability to reintegrate. However the findings need to be considered holistically. At [26] the Judge finds that the appellant has no accommodation or no job to return to. Mr. Wain submitted that while the grounds submitted that the Judge had not considered all of the risks in the advice from the Foreign & Commonwealth Office (the "FCO"), the evidence referred to at [20] and [22] was the evidence that had been relied on by the appellant. In particular, he submitted that there was no reference in the submissions set out at [22] to the particular problems for women. Overall criminal gang violence had been considered in enough detail at [20] but the Judge had rejected this at [25] because there was no evidence that the appellant would be specifically targeted.

11. I find that whether or not the appellant would be specifically targeted is not relevant to the consideration of whether she would able to reintegrate on return. At [20] the Judge has set out some of the FCO advice and at [22] sets out the appellant's submissions that he should take into account the rampant criminality in Ecuador.

12. Although it is right that there does not appear to be any specific reference to the particular problems faced by women in Ecuador, the appellant had provided a considerable amount of evidence relating to the situation in Ecuador (pages 175 to 237 of the consolidated Upper Tribunal bundle). This evidence includes various news articles which cover the state of emergency, the problems faced by women, the overall situation in Ecuador and its rapid descent to gang violence and crime.

13. I find that to state that the appellant will be able to reintegrate on the basis that she will not be specifically targeted is to fail to take into account the situation of the appellant as a whole and to fail to properly consider the impact of the general crime situation on the appellant's re-integration. It is not sufficient to say that the crime levels are likely to inform how she lives her day-to-day life and that she will be able to reintegrate as she will not be specifically targeted. This is especially the case given that she will not have any accommodation nor employment.

14. I find that [25] is an insufficient consideration of the effect of the current situation in Ecuador on the appellant's ability to reintegrate. It does not involve the consideration of all of the appellant's circumstances as she would experience them on return. I find that this is a material error of law.

15. In relation to ground 2, the Judge states at [24]:

> "In analysing the appellant's evidence I note that, although appellant states that she has a network of friends and acquaintances in the UK, she does not provide any detail about this and I see no evidence from friends and acquaintances on this topic. As a result, her assertion in relation to this area carries little weight."

16. There was evidence before the Judge from the appellant's friends, including letters of support. Mr. Wain submitted that, as her friends had not attended the hearing, the Judge could only have applied limited weight to these letters, which was consistent with the finding at [33] that the Judge applied little weight to the appellant's evidence. However, there was evidence before the Judge of the appellant's social network in the United Kingdom. Irrespective of the fact that the appellant's friends did not attend the hearing, the Judge had that evidence before her. It is not that she has not applied any weight to it, she has simply ignored it, as is clear from [24]. It cannot be said that the appellant's assertion in relation to this area of her life carries little weight on the back of a finding that there was no evidence from friends and acquaintances when the Judge had that evidence before her.

17. I find that the Judge has erred in failing to take into account the evidence before her and has made an adverse finding in relation to the weight she can apply to the appellant's own evidence. I find that this is a material error of law.

Remaking

18. I had before me the evidence in the consolidated Upper Tribunal bundle (281 pages). This includes the additional evidence provided for this hearing, for which an application was made under Rule 152A. I admitted this evidence. Mr. Wain had the opportunity to consider it in the adjournment between the error of law hearing and the remaking hearing.

19. The agreed issues were whether the appellant met the requirements of paragraph 276ADE(1)(vi), and whether the decision was otherwise a breach of the appellant's rights to a private and family life under Article 8. The burden of proof lies on the appellant. The standard of proof is the balance of probabilities.

20. In order to meet the requirements of paragraph 276ADE(1)(vi) the appellant must show that there would be very significant obstacles to her reintegration into Ecuador.

21. I find that the appellant is 59 years old. She came to the United Kingdom in 2016 as a visitor when she was 50 years old. I find that she has spent the majority of her life in Ecuador. I find that the appellant speaks Spanish. I have no evidence of any significant medical problems. I find that she will receive some financial support from her daughter in the United Kingdom.

22. I find that the appellant is single. I find that her daughters live in the United Kingdom. I find that she has no immediate family in Ecuador. I find that prior to coming to the United Kingdom in 2016 the appellant was living with her sister Enid (page 93). I find that Enid provided the appellant with accommodation and employment. Enid stated that, as the appellant lacked any professional qualifications, she assisted her by providing work at her company. The Judge accepted the evidence that Enid no longer lived in Ecuador and so the appellant would not have any accommodation. She also accepted that the appellant would not have any employment waiting for her. Although it appears that there was some confusion, it was found in the First-tier Tribunal that the appellant had three sisters in the USA and one in Spain. The evidence that her siblings are not in Ecuador was not challenged. I find that the appellant's close relatives are no longer living in Ecuador. The only relatives in Ecuador are three nephews. I find that they are renting accommodation and could not accommodate the appellant.

23. I have considered the evidence of the overall situation in Ecuador, and how that would impact on the ability of a 59 year old woman with no family support, no accommodation and no job, to reintegrate into life in Ecuador. I have considered the impact of the situation in Ecuador on her ability to participate in everyday life.

24. I find that the security situation has deteriorated significantly since the appellant left Ecuador in 2016. The current FCO advice is that all but essential travel should be avoided in certain areas. It refers to a state of emergency being declared on 2 July 2024, extended for a further 30 days on 30 August 2024 (page 31). Energy rationing is in place across the country (page 32). Mugging is common, and armed robbery is a threat throughout the country (page 33). Kidnapping rates have risen and are "express kidnappings" are common. The appellant's evidence as recorded in the decision of the First-tier Tribunal was that her nephew was recently kidnapped and his car robbed in the same town where the appellant used to live. The advice also refers to the danger involved in withdrawing money from banks, which is how the appellant would have to access any financial support from the United Kingdom. It states:

> "Take care when withdrawing money from a bank or ATM. Where possible use ATMs inside banks or shopping centres, and avoid withdrawing money after dark. There have been violent robberies outside banks."

25. I have considered the Human Rights Watch World Report 2024 for Ecuador (page 46). This states that homicide rates are at unprecedented levels and that Ecuador is "among the top three most violent Latin American countries". It states that extortion by criminal groups continues to grow. It refers to gang violence "on the streets".

26. The appellant provided a report entitled "How Ecuador descended into gang violence" (page 57). In the bundle provided for the hearing in the First-tier Tribunal there are similar articles referring to the violence, including the assassinations of politicians. The evidence refers to the lack of jobs and security,

and the levels of extortion from the criminal gangs (page 223). There is reference to the "prolonged economic downturn" (page 238).

27. The fact that the appellant was not previously targeted is not relevant to my consideration of whether there are very significant obstacles to her reintegration. There has clearly been a significant deterioration in the security situation since the appellant left Ecuador. Mr. Wain submitted that it could not be said that the security situation alone was enough to meet the high threshold. However I am not considering the security situation alone, but the impact of the security situation on the appellant's particular circumstances. The fact that she has spent most of her life in Ecuador and speaks Spanish does not mean, given the general situation in that country, that she will be able to reintegrate into life in Ecuador.

28. I find that the appellant has no accommodation in Ecuador. I find that she has no job to return to. I find that her sister employed her before as she was finding it hard to work due to her lack of qualifications. The appellant said at the hearing that there was no any work for people her age in Ecuador without qualifications. I find that the evidence provided shows that the economic situation in Ecuador has deteriorated, that extortion is common and leads to closures of businesses, and that there is little support from government. An article from the World Politics Review states (page 238):

> "Meanwhile, a prolonged economic downturn and a shift toward fiscal austerity has resulted in cuts to social spending, which tore at Ecuador's social safety net. Violent mass protests against austerity measures, which erupted in 2019 and 2022, further chipped away at public order and state legitimacy."

29. I find that the appellant will have no family support in Ecuador as her close family are all in the United Kingdom, and her siblings are in the USA and Spain. The only support that she will have from her family is financial, but I find that this will not overcome the difficulties she will face. It was found in the First-tier Tribunal that "the less security there would be in Ecuador, the more likely it is that the appellant would not be able to become enough of an insider to be able to operate on a day-to-day basis and to build up a variety of human relationships". I adopt this finding and further find that the appellant does not have to be specifically targeted for this to be the case.

30. Given the current security and economic situation in Ecuador, and the appellant's lack of support and social network, I find that she would face very significant obstacles to reintegrating into Ecuador. I find that she would struggle to operate on a day-to-day basis, and that she would struggle to build social connections. I find that she meets the requirements of paragraph 276ADE(1)(vi).

Article 8

31. I have considered the appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27 taking into account my findings above. I find that the appellant has a family life with her daughters and granddaughter sufficient to engage the operation of Article 8. The appellant lives with her daughter Valeria and her granddaughter Tayanna, who is 15 years old. She has been living with them since she came to the United Kingdom. I find that the appellant is dependent on Valeria with whom she lives. I find that she is also dependent on her other daughter Amira. I find that the ties between them go over above the normal ties to be found between a mother and her adult daughters owing to the emotional and financial dependency of the appellant on her daughters, and her

daughters emotional dependency on her. I find that the appellant looks after Tayanna and has been doing so since she came to the United Kingdom. I find that the appellant has a family life with her daughters and granddaughter sufficient to engage the operation of Article 8. I find that the appellant has a private life sufficient to engage the operation of Article 8. I find that the decision interferes with her private and family life.

32. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

33. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules so there will be no compromise to effective immigration control by allowing her appeal.

34. Following TZ (Pakistan) [2018] EWCA Civ 1109, I find that the appellant's appeal falls to be allowed. This case states at [34]:-

> "That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

35. In line with this, the headnote to OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC) states:

> "(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

36. I have no evidence of the appellant's English language skills (section 117B(2)). She is financially dependent on her daughters (section 117B(3)). In relation to sections 117B(4) and 117B(5), while these provide that little weight should be given to the appellant's private life, she meets the requirements of paragraph 276ADE(1)(vi), the rule which reflects the respondent's policy of giving greater weight to a private life in circumstances where an individual would face very significant obstacles to reintegrating into their country of origin. Section 117B(6) is not relevant.

37. I have considered the best interests of Tayanna. I find that the appellant has been looking after Tayanna since she came here in 2016. Tayanna was six years old at the time. The appellant has been caring for her while her mother Valeria has been working. Valeria works shifts of 12 hours. I find that she has been Tayanna's main carer while her mother has been working. Tayanna's father does not live with them. It was found in the First-tier Tribunal that "the appellant has undoubtedly enriched the life of her grandchild by living in the UK", and that her removal "would remove, to a great extent, the ongoing positive influence she has on the lives of her daughters and her granddaughter". I find that it would not be in Tayanna's best interests for the appellant to be removed from the United Kingdom given the role she has played and continues to take in her care.

38. Considering the appellant's circumstances in the round, I find that she has shown that the decision is a disproportionate breach of her right to family life, given the impact that her removal would have on Tayanna. It would also be a disproportionate breach of her right to a private life, given that she meets the requirements of paragraph 276AD(1)(vi).

Notice of Decision

39. The appeal is allowed on human rights grounds, Article 8. The appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 October 2024