**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/16081/2016

**THE IMMIGRATION ACTS**

**Heard at Field House** **Decision & Reasons Promulgated**
**on 28 September 2018** **On 10 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**NILSA [R]**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr B Hawkin, Counsel, instructed by Raffles Haig Solicitors
For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Jerromes (the judge), promulgated on 7 December 2017, in which she dismissed the appellant's appeal against the respondent's decision dated 23 June 2016 refusing her human rights claim.

**Background**

2. The appellant is a national of Brazil, date of birth 6 December 1940. She entered the United Kingdom as a visitor on 31 January 2015 before returning to Brazil in June 2015. On 16 September 2015 she

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again entered the UK as a visitor. On 15 March 2016 she made an application for leave to remain on the basis of her family and private life and because of her medical issues. The covering letter accompanying her application claimed that the appellant's health had deteriorated to a significant degree and that she was unable to live on her own and was being cared for by her daughter. The letter stated that, prior to coming to the UK, the appellant "*was living on her own*." The letter stated that, although she had 3 adult children in Brazil, she could not rely on them to look after her. Her oldest son had mental health issues having battled drug addiction for much of his adult life, and her other son was now estranged from her due to quarrels between her and her son's wife. The appellant's daughter was said to be a single mother who suffered from depression and was not capable of looking after the appellant.

3. The respondent did not accept that the appellant met the requirements of the immigration rules relating to private life (paragraph 276ADE). It was not accepted that the appellant would face 'very significant obstacles' to her integration into Brazil because she spent the vast majority of her life there and because she had not lost her ties. Nor did the respondent accept that there were exceptional circumstances which, consistent with Art 8, might warrant a grant of leave to remain outside the immigration rules. The respondent acknowledged the claimant's medical conditions, which included diabetes, high blood pressure and an irregular heartbeat, but noted that she had suffered from diabetes for 5 years and had received treatment for hypertension and that a letter from a Consultant Cardiac Surgeon advised that she have a follow-up appointment with a cardiologist on her return to Brazil. The doctor stated that surgery was not necessary and medical management would be his treatment of choice. The refusal attracted a right of appeal under s.82 of the Nationality, Immigration and Asylum Act 2002.

## The decision of the First-tier Tribunal

4. The judge had before her a bundle of documents including statements from the appellant and her daughter, [M], a manuscript statement from [SR], and medical documents including a letter from the Messina Clinic dated 15 November 2017. The judge heard oral evidence from the appellant, her daughter and [MA], a friend of the appellant, and considered a written statement from [TS], the paternal grandfather of [M]'s son.

5. The judge accurately set out the relevant law, including the burden and standard of proof, and summarised the appellant's claim and the evidence from the appellant and her witnesses.

6. The judge noted that [M]'s son was born on [ ~ ] 2014 and that both [M] and her son were British citizens. In setting out the appellant's evidence the judge noted in particular her claim that she was

estranged from her son [F] because of his wife, and that [F] and his wife had told the appellant to stay in the UK. At [17] the judge recorded that, during cross examination, the appellant said she previously lived in a room in Brazil and worked as a cleaner, and that although she was not earning much it paid for the room. When asked who she lived with in Brazil the appellant said she lived on her own and paid her own rent with the help of money sent to her by [M]. [M] however indicated in her statement and her oral evidence that the appellant previously lived with [F] and his family and had done so for a period of 10 years.

7. The judge noted the appellant's claim that she had "emergency health issues", that she could no longer live on her own and that she also had sight problems and was due to have cataract surgery on both eyes. The judge noted that [M] had been caring for the appellant for the last 2 years and cooked for her to ensure limited fat and salt intake as the appellant's cooking was "*a bit fatty and salty*". The judge set out the evidence relating to the appellant's medical conditions including her heart condition, the existence of ulcers on her toes, a requirement for regular diabetes checks, and the risk of water entering her lungs which may necessitate emergency hospital treatment. The judge noted that [M] ensured the appellant took her medicine as the appellant could neither read nor write. The judge noted the claim that the appellant was fully dependent on [M] for her daily needs both physically and emotionally. The judge set out the medical evidence including a letter from a Consultant Cardiac Surgeon dated 25 November 2015, and set out in detail the content of a letter from Dr Flavio Messina GP of the Messina Clinic Ltd dated 15 November 2017 (at [25.6]).

8. The judge noted the evidence that [M] could not afford to keep the appellant in a care home in Brazil. Doctors and medical treatment was expensive in Brazil and the appellant previously obtained treatment for her diabetes and heart problems from money sent by [M]. [M] would be able to care for the appellant in the UK with the help of her son's paternal grandfather, but he would stop supporting the appellant if she returned to Brazil because he only provided support as she was looking after her grandson.

9. The judge also noted that [M] worked for 3 or 4 hours a day and that during this time the appellant looked after her grandson and that [MA] sometimes helped her.

10. Under the heading 'Findings of Fact' the judge again reminded herself of the standard and burden of proof and indicated that she had taken account of all the evidence 'in the round'. At [29] the judge rejected the appellant's claim that she had lived on her own in Brazil and that she had not received any financial support from her children in that country. In reaching this conclusion the judge identified contradictory evidence given by [M] who indicated that the appellant had been living with [F] in his flat when she returned to Brazil in June 2015 and

that prior to her visit to the UK in January 2015 she had been living with him for 10 years, and that he had contributed towards the cost of her medical care. At [30] the judge rejected the appellant's claim that [F] had refused to allow her to resume living with him. The judge found the appellant's claim to have had a big quarrel with [F] and his wife to be vague and unsupported with any evidence from [F] or his wife. The judge accepted that neither of the appellant's other 2 children living in Brazil were able to provide her with care.

11. At [32] the judge rejected the appellant's claim that she required long-term personal care to perform everyday tasks. In support of her conclusion the judge referred to the lack of an up-to-date medical report from her consultant or even her current GP. The judge noted that the various medical letters and other documents only provided information relating to treatments and referrals in 2015 and 2016. Given that the burden of proof was on the appellant the judge did not find her claim to need long-term personal care to perform everyday tasks to be credible. The judge additionally noted that, despite [M] cooking for the appellant, she was capable of cooking herself and that the appellant was left with her grandchild for 3 or 4 hours a day without any other care being arranged for either of them other than [MA] visiting twice a week. The judge found that [F] would be able to assist the appellant in any event with the medication for her diabetes and heart condition and that he would also be able to take her to hospital if required. Whilst accepting that [M] be unable to pay for full-time residential care in Brazil the judge found that the appellant could live with [F] and that he could continue to contribute towards the cost of her medical treatment and medication as he did so in the past. The judge additionally noted that the letter from [TS] was silent on the point of financial support stopping if the appellant returned to Brazil.

12. In her conclusions the judge accepted that the respondent's decision interfered with the family life of the appellant and her daughter, but found that the decision was not contrary to her grandson's best interests as he was only 3 years old and his world was very much focused on his mother, and that the appellant did not meet the requirements of the immigration rules giving expression to family and private life considerations. In particular, the judge found there were no 'very significant obstacles' to her reintegration into Brazil because she could live with [F] and be supported by him and he could continue to be supported by [M], and because she had lived there until 74 years of age and would be familiar with the language and culture. The judge took into account the factors contained in s.117B of the Nationality, Immigration and Asylum Act 2002 and was not persuaded that the appellant would be able to make a successful entry clearance application under the Adult Dependants Relative provisions of Appendix FM as the judge had not found that she required long-term personal care to perform everyday tasks or that the required level of care was in any event unavailable in Brazil or unaffordable. The judge consequently dismissed the appeal.

## The grounds of appeal and the parties' submissions

13. The grounds contend that the judge gave no clear or proper reason why she did not accept that [F] had refused to allow her to resume living with him and his wife. Contrary to the judge's description of the evidence being "vague and not supported" the grounds contend that the witness statements and oral evidence was clear and consistent on this issue, that it was plausible that the appellant had a big quarrel with her daughter-in-law and that her son felt compelled to take his wife's side, and that no supporting evidence had been produced as the appellant was now estranged from [F].

14. The grounds further contend that the judge was not entitled to conclude that the appellant did not require long-term personal care to perform everyday tasks because she suffered from type II diabetes, hypertension, hyperlipidaemia, symptomatic peripheral vascular disease, ischaemic heart disease, bilateral foot ulceration, and atrial fibrillation. The grounds additionally submit that the judge failed to take into account the letter from Dr Messina dated 15 November 2017 which indicated that the appellant required "special medical care" and that, "due to the patient's age and medical conditions, also her living circumstances (where there is no one to look after her in Brazil), she can't live or take care of herself alone", and that he failed to consider [M]'s oral evidence that the appellant had glaucoma/cataracts and could hardly see and that [M] cooked for the appellant to limit her fat and salt intake.

15. Most of the appellant's remaining grounds were essentially premised on what was said to be the judge's unlawful assessment of the evidence relating to [F]'s estrangement and whether the appellant required long-term personal care to perform everyday tasks. It was however also submitted that the judge's finding in relation to the grandson's best interests was contrary to the evidence that she cared for him 3 to 4 hours a day, and that if the appellant met the substantive requirements of the Adult Dependent Relative immigration rules, this would be highly relevant to any article 8 assessment.

16. Permission was granted by Upper Tribunal Judge Plimmer on the basis that the judge failed to take relevant evidence into account when she found that the appellant could reside with her son in Brazil.

17. In his oral submissions Mr Hawkin relied upon and expanded his grounds of appeal submitting that the appellant made it clear in her witness statement that she was now estranged from her son [F] and that the evidence of the quarrel was plausible. He submitted that it was unrealistic and unreasonable to expect evidence from [F] and his wife in the circumstances. Mr Hawkin submitted that the judge had not taken into account the 15 November 2017 letter from Dr Messina and that the medical evidence was both serious and compelling and was inextricably bound up with whether [F] could look after the

appellant. I was invited to find that if the appellant could meet the requirements for entry clearance under the Adult Dependent Relative provisions then this would be pivotal to any assessment of proportionality. It was further submitted that there was a significant emotional component to the requirement of long-term personal care and that [M] provided this care.

18. In her submissions Ms Kelly submitted that the judge found the appellant to be an unreliable witness and that the judge was entitled to approach her claimed estrangement with caution. If there had been a quarrel with [F]'s wife, then he could have provided a statement or some other evidence as it would be preferable for him to provide evidence that the appellant should remain in the UK. Furthermore, no details were provided as to the nature of the quarrel. The judge had considered the letter from Dr Messina but this only referred to earlier evidence and made assumptions that had been already rejected by the judge (such as whether the appellant would be living by herself in Brazil). If the appellant required such high degree of care it was very unusual that she was left for 3 or 4 hours alone each day with her 3-year-old grandson. It was submitted that the judge was entitled to her conclusions in relation to the best interests of her grandson as his primary focus given his young age was on his mother.

19. I reserved my decision.

20. After the decision I received a written note from Mr Hawkin noting that [M] had no choice but to work and the 3 to 4 hours a day that the appellant looked after her grandson did not detract from the fact that she still required long-term personal care from [M].

**Discussion**

21. The judge did not accept that the appellant was estranged from her son [F]. This finding was central to the judge's conclusions as, if it was one she was rationally entitled to reach on the evidence before her and for the reasons given, then the appellant would be able to re-join her son with whom she previously lived and who previously contributed to her medical expenses and her upkeep generally and who, presumably, would continue to care for her.

22. The evidence advanced by and on behalf of the appellant concerning her estrangement from [F] was, on any view, vague and lacking in detail. The covering letter accompanying the appellant's human rights claim made a bare assertion that the appellant was estranged from her son "*due to quarrels between our client and her son's wife*" (I note in passing that the covering letter wrongly referred to the relevant son as [D] and not [F]). The appellant's statement itself merely indicated that she was estranged from [F] because of his wife. No explanation for this significant estrangement was proffered. In her statements [M] merely stated that [F] had refused to take their mother back on the instigation of his wife, and that the appellant and her son's wife had a big quarrel and were not on speaking terms. No

further explanation for the estrangement or details of the nature of the quarrel(s) was advanced by the appellant or her daughter at the appeal hearing. It is, at the very least, surprising that no further explanation or description of a serious family dispute that allegedly had very significant ramifications for the appellant was provided. In these circumstances the judge was an arguably entitled to conclude that the evidence was vague. Nor was it unreasonable for the judge to conclude that, despite the alleged estrangement, there was no form of statement or other evidence from either [F] or his wife. As pointed out by Ms Kenny, if [F] and his wife no longer wished to support the appellant it would have been in their interests to have provided some evidence of their position. Nor was there any evidence of any attempt by the appellant or [M] to obtain a statement from [F]. In these circumstances it cannot be said that the judge’s conclusion was outside the range of reasonable conclusions open to her.

23. The judge’s conclusion must also be properly contextualised. In the preceding paragraph the judge gave rational reasons for rejecting the appellant’s claim that she had lived on her own in Brazil and that none of her children in Brazil provided her with any financial support. While the appellant claimed to have lived on her own in Brazil (a claim supported in her covering letter) and to have earned enough money to pay the rent on her room, her daughter contradicted this evidence in her statement and at the hearing when explaining that the appellant had in fact lived with [F] for 10 years and that [F] had contributed towards the cost of the appellant’s medical care. In these circumstances the judge would have approached the appellant’s alleged estrangement from her son with a considerable degree of caution and the inconsistencies reinforced her entitlement to reject the evidence relating to any estrangement.

24. For the reasons given above I find that the judge was entitled to reject the appellant’s claim that she was estranged from [F]. This being so, the judge was entitled to find that the appellant would be able to continue living with [F] and that he would be able to contribute towards the costs of her upkeep and the cost of her medication. The rejection of the family estrangement also undermines the ground that the judge failed to consider the emotional component of the provision of long-term personal care as [F] could reasonably be expected to duplicate any emotional care provided by [M].

25. Nor am I persuaded that the judge failed to take into account the letter from Dr Messina dated 15 November 2017. The judge made reference to the letter at [2] and at [25.6], where she set out in four paragraphs (a) to (d) the content of the letter. At [32.1] the judge referred to the absence of an up-to-date medical report and noted that the various medical letters and other documents only provided information about treatment in 2015 and the appellant’s referral in 2016 to the Department of Metabolic Medicine and Multi-Disciplinary Diabetes Foot Clinic. The letter dated 15 November 2017 noted that the appellant came for a consultation on 23 March 2015 and that she

had three more follow up appointments, all in 2015, and that in 2016 she was in the care of the Department of Metabolic Medicine and Multi-Disciplinary Diabetes Foot Clinic. The letter did not therefore give any details of her current state of health and the judge's assessment at [32.1] was accurate. There is nothing in the decision to indicate that the judge failed to take this medical letter into account. In any event, the doctor lists a number of diagnosis, replicated in the grounds of appeal, but does not provide any satisfactory explanation as to how they impact on the appellant's life and, in particular, whether the diagnoses are such as to render her someone who requires long-term personal care to perform everyday tasks. The letter states that the appellant requires 'special medical care' but this is not explained. Although the letter then states that, due to the appellant's age and medical conditions she cannot live or take care of herself alone (no detailed explanation is given to support this assertion), it is apparent that the doctor based his conclusion on a belief that there is no-one to look after the appellant in Brazil. This however was lawfully rejected by the judge. On the judge's findings the appellant will have someone to take care of her in Brazil. In these circumstances the judge was entitled to conclude that the appellant did not meet the requirements of paragraph 276ADE(1)(vi), and the judge's assessment of the possibility of the appellant meeting the requirements of the Adult Dependent Relative provisions of the immigration rules at [37.6] cannot be faulted.

26. Nor am I persuaded that the judge erred in her assessment of the best interests of the appellant's grandson. The judge was demonstrably aware of the relationship between the appellant and her grandson (see, for example, [15] and [32.3]) and she was entitled to find that the grandson's best interests was not undermined by the respondent's decision given his very young age and his principle focus on his mother. There was nothing in the evidence to suggest that the grandchild's primary support relationship was other than that between him and his mother. Although a child may develop a strong substitute relationship with a grandparent, it would otherwise require strong evidence to show that the child-grandparent relationship is as strong or significant as that between a child and his parent(s). Family life in Art 8 (1) is certainly broad enough to include the ties between grandparents and grandchildren (see **Marckx v. Belgium** [1979] ECHR 2). However, the relationship between grandparents and grandchildren by its very nature generally calls for a lesser degree of protection than that between natural parents and their children (**G.H.B. v UK** Application no. 42455/98). There was little in the way of independent evidence before the First-tier Tribunal relating to the appellant's relationship with her grandson or relating to the impact of the appellant's removal on the child's physical or emotional well-being.

27. For these reasons I find that the judge did not materially err in law.

**Notice of Decision**

**The First-tier Tribunal decision does the making of an error on a point of law.**

**The appellant's appeal is dismissed.**

Signed
Upper Tribunal Judge Blum

1 October 2018
Date