



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01216/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26 April 2018

Decision & Reasons Promulgated
On 11 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[F B]

[ANONYMITY ORDER MADE]

Respondent

Representation:

For the appellant: Mr David Clarke, a Senior Home Office Presenting Officer
For the respondent: Ms Soraya Pascoe, Counsel instructed by Good Advice UK

DECISION AND DIRECTIONS

Anonymity order

I have made an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 23 January 2017 to

refuse her international protection under the Refugee Convention or humanitarian protection grounds, or leave to remain in the United Kingdom on human rights grounds. The claimant is a 67-year old woman and a Lebanese citizen.

2. The First-tier Tribunal did not make an anonymity order. I consider that it is appropriate for the Upper Tribunal to do so, by reason of the involvement of two children in these proceedings, the claimant's grand-daughters.
2. The following preserved findings have been agreed between the parties. The claimant is a Lebanese citizen born in 1950, married in 1971 and lived in Beirut until she came to the United Kingdom when her marriage failed in 2006. She has three children, two sons in Lebanon, one married and one divorced, both with children. Her husband is estranged and remains in Lebanon. It seems that they are not formally divorced.
3. The claimant came to the United Kingdom as a visitor in March 2006, returned to Lebanon, came again in June 2006 and has been here ever since. Her daughter, son-in-law, and two grand-daughters are all British citizens and it is accepted that it would be unreasonable to expect the children to relocate to Lebanon. The elder grand-daughter was born with liver problems and has had three liver transplants so far, the latest in June 2016, and needs a high level of monitoring. She is now almost an adult but has special needs.
4. The claimant's appeal was allowed in the First-tier Tribunal under Article 8 ECHR outside the Immigration Rules HC395 (as amended), on the basis of her age, her lack of links in Lebanon, but in particular, the assistance she gives her daughter with her grand-daughters, who are now 17 and 10 years old. The elder grand-daughter is said to require a high level of monitoring, careful diet, female-specific personal care, and a lot of support to avoid rejection of the third liver transplant, as occurred with the previous two transplants.

Background

5. The claimant was married in Lebanon in 1971 and lived with her husband in Beirut. She has been a housewife all her life and has never been employed. The claimant's only daughter lives in the United Kingdom: the daughter and her husband, and both the claimant's grand-daughters, are all British citizens. The claimant's husband, sons, and two brothers all live in the Lebanon. One son is married with children, the other is divorced. The claimant says they are all estranged from her.
6. It is the claimant's case that her marriage was an abusive one, that her sons do not wish to have anything to do with her, because their wives dislike her, and that she has not had contact with her own brothers for over 30 years, because after her marriage, her husband forbade her to do so. She says that she does not know where they are now, or if they are alive or dead.
7. In early 2006, her husband rejected the claimant and left her. In February 2006, the claimant telephoned her daughter in the United Kingdom, crying hysterically due to her ongoing anguish in Lebanon as a separated woman. Her daughter suggested a visit: the claimant applied for entry clearance to visit her daughter and grand-

daughters and did so in March 2006. She stayed here for about a month, then went home to Lebanon.

8. The claimant came back to the United Kingdom for a further visit in June 2006: her leave was due to expire on 23 August 2006. Before it expired, a civil war broke out in Lebanon in July 2006 and the claimant called the Home Office, asking what to do. She was advised to complete form FLR(O), and did so. In August 2006, the application was returned as incomplete. The application was resubmitted on 5 September 2006, at which time, public sources confirm that UNIFIL was intervening in Lebanon and the Lebanese army was deployed in Southern Lebanon. Israeli troops continued to occupy Lebanon until October 2006. On 24 November 2006, the asylum application was acknowledged and the fee returned, as no fee was required.
9. The Secretary of State did not make a decision on the claimant's asylum claim for seven years, despite efforts by the claimant's daughter to find out the outcome of the claim. The claimant continued to live with her daughter and the daughter's family. Her daughter chased the Home Office in 2006, 2008, 2009 and 2010, and finally through her Member of Parliament, Glenda Jackson MP. In 2010, the Home Office wrote to say that the claim was in the backlog of older asylum applications which the UKBA was in the process of concluding.
10. In 2013, responding to Glenda Jackson MP, the Secretary of State asserted that she had written to the claimant in 2006 returning the application and telling the claimant to claim asylum in person. The claimant was informed by that letter that she had no basis of stay in the United Kingdom. The claimant disputes that she was sent a letter from the Secretary of State in 2006: that assertion was inconsistent with the 2010 letter which she did receive, saying that her asylum claim was in the backlog and still pending.
11. On 27 July 2016 the claimant made an asylum claim, with advice from Good Advice UK, who continue to represent her. She says she was not adequately advised that she should do so when she made her initial enquiries in 2006. Her asylum claim has failed and she does not challenge the dismissal of her appeal against the Secretary of State's refusal to grant asylum, humanitarian protection or leave to remain under Article 3 ECHR.
12. The claimant relies on her private and family life rights under Article 8 ECHR. She has been living with her daughter and grandchildren for almost 12 years. The daughter has returned to work, and the claimant helps with her grand-daughters, getting them to and from school, and organising food and personal care for the elder grand-daughter, in particular. The claimant's daughter takes over childcare when she gets home from work.

First-tier Tribunal decision

13. On 20 August 2017, the First-tier Tribunal Judge considered that it was likely that there was some degree of exaggeration in relation to the breakdown of the relationship between the claimant and her sons in Lebanon, but that those relationships were of much less significance than her relationships in the United Kingdom. The First-tier Tribunal found that *Kugathas* dependency existed between the claimant and her

daughter and grand-daughters. The Judge took into account the claimant's living in the household of her daughter and son-in-law and her closeness to her grand-daughters, and he held that the claimant had a genuine and subsisting parental relationship with her grandchildren, such that family life existed between them.

14. The Tribunal applied part VA of the Nationality, Immigration and Asylum Act 2002 (as amended), noting that the claimant's grandchildren are British citizens and that therefore, they could not reasonably be expected to go and live in Lebanon with the claimant, if she were returned. Her removal would end her family life with her daughter and grandchildren. Applying section 117B(6) of the 2002 Act, the Judge considered that the public interest did not require the claimant's deportation.
15. The Judge accepted that the claimant could not meet the requirements of the Immigration Rules (paragraph 276ADE and Appendix FM) but considered that there were sufficient exceptional circumstances to make her removal disproportionate. He allowed the appeal under Article 8 ECHR outside the Immigration Rules.
16. All other grounds of appeal were dismissed. The claimant did not cross-appeal against the refusal of refugee protection or humanitarian protection and accordingly, this appeal turns exclusively on Article 8 ECHR outside the Rules. The Secretary of State appealed.

Secretary of State's appeal

17. The Secretary of State's grounds of appeal argued that, applying *R on the application of RK v Secretary of State for the Home Department* (s.117B(6): 'parental relationship') IJR [2016] UKUT 00031 (IAC), the First-tier Tribunal had misdirected itself in law, as the claimant had not 'stepped into the shoes' of her grandchildren's parents and that section 117B(6) was not relevant to this appeal. The claimant lived in the household of her daughter and son-in-law: her role was that of a voluntary carer for her grandchildren.

Permission to appeal

18. On 20 December 2017, Upper Tribunal Judge Grubb granted permission to appeal in the following terms:

"In applying section 117(6) of the Nationality, Immigration and Asylum Act 2002 (as amended), it is arguable that the Judge erred in law in finding that the [claimant] had a genuine and subsisting 'parental relationship' with her grandchildren, given that they lived in the household of the children's parents and so it could not be said that she had 'stepped into the shoes' of a parent (see *R (RK) v Secretary of State for the Home Department* [2016] UKUT 00031 (IAC))."

19. The claimant did not serve a Rule 24 Reply to the grant of permission. That is the basis on which this appeal came before the Upper Tribunal.

Error of law hearing

20. At the error of law hearing, Ms Pascoe agreed that there was a patent error of law in the conflation of parent/grandparent and the section 117B(6) exception. The hearing was adjourned for the decision to be remade in the Upper Tribunal.

Remaking the decision

21. At the resumed hearing, the claimant and her daughter gave evidence, with the assistance of a Lebanese Arabic interpreter. There was also a bundle of additional documents.

Documentary evidence

22. The claimant's bundle contains a letter translated on 21 December 2016, written from the claimant's husband to her daughter. It is undated, both in the original and in translation. It says this:

"Dear Daughter,

I would like that your mother [the claimant] stays with you because I cannot fulfil all my requirements as my financial situation is totally ruined and I even cannot afford the rent of a house in order to live together, after I was forced to leave our house located in the southern suburb of Beirut, and after all our house items were stolen. This made us go to my father's house in Beirut and this caused a dispute between the siblings and aggravated the dispute with your mother and caused our separation.

You know that your brother H was shot as a result of an assault from Hezbollah, who controls the State, and the government authorities could not do anything to protect him or deter them. He now moves with great care as a result of control of Amal and Hezbollah on the country. Excuse me for this move because I cannot bear any more.

Best regards, your father [name supplied]."

23. There is a lease for what was presumably the family home in Lebanon; a letter from Middle East Airlines confirming the daughter's employment; and a quantity of medical documents about the claimant's grand-daughter L, beginning in 2014 before her third transplant. A letter of 11 June 2014 confirmed that L's menses began when she was 11. From 2013/2014, she suffered menorrhagia (abnormally heavy uterine bleeding during menstrual periods), and very irregular menses. She was also getting nosebleeds every 2-3 days, though that was improving, and in December 2013 she had blood in her stools. Insertion of an endometrial coil had been unsuccessful, and the coil had been removed. Other treatments for heavy bleeding had been tried, after the claimant's elder grand-daughter lost consciousness and was hospitalised with anaemia. The claimant's elder grand-daughter had low energy levels and was often tired and sleepy. Her appetite varied; sometimes she was unwilling to eat, while at other times, she ate every 2 hours, and became bloated and vomited. Stopping dairy foods had helped with a constipation problem.

24. At an assessment meeting at Kings College Hospital in September 2014, during the pre-transplant assessment for the third transplant, there was a description of the child's complex learning difficulties: information needed to be presented in small chunks and time given to process it before a response was required. Her mother reported that it was becoming increasingly difficult to enable the child to retain a good understanding of her medical conditions. Sometimes she became distressed and it could take an hour to persuade her to take her medication. The child had missed a lot of schooling due to being unwell. With the help of individual psychological work and a personalised book to enable the child to retain understanding of her medical and nutritional needs, her resistance to medication had been reduced to 15 minutes.
25. A speech and language report in November 2014 noted that the claimant's elder grand-daughter has microcephaly (small head) and a moderate learning disability, including difficulties with her understanding and use of language and some auditory memory difficulties. English and Arabic were spoken at home and she had been attending Swiss Cottage School, a school for special needs, since 2011. She needed simplified spoken instruction and information, supported by cue cards with pictures and symbols, or written instructions. She had difficulty answering complex questions. Her communication difficulties were assessed as likely to impact on her ability to access all aspects of the National Curriculum, including literacy development, and she continued to need a classroom environment adapted to support her learning needs.
26. A further report in 2015 from the Thomas Cook Children's Critical Care Paediatric High Dependency Unit at King's College Hospital (the Thomas Cook Unit) recorded that the child continued to have episodes of big upper gastrointestinal bleeds. She was found to have a large haematoma in the lumen of the stomach and had been bleeding persistently, although it was becoming less severe. She had developed unprovoked tonic clonic seizures and was in poor general condition, with recurrent fever, leucocytosis and basal consolidation (a lung condition which causes patients to feel short of breath or fatigued). In September 2015 the child was admitted to hospital again with blood in her stools; she was treated and eventually stabilised. In March 2016 she was seen again and was much better, though still having very heavy periods. On 5 October 2016, her periods were reported as getting worse. On 31 January 2017, she had been experiencing a prolonged period for 3 weeks. The child was still taking anticoagulant therapy because of her liver transplant, to reduce the risk of rejection.
27. On 12 July 2017, a letter from Anne-Marie Sworak, a family liaison nurse at the Thomas Cook Unit, summarised the claimant's elder grand-daughter's history as follows:

“[This child] was recently admitted to children's intensive care on 28 May [2016] and was in intensive care until October 2016. She was incredibly sick and critical throughout most of her stay. Although [she] is stable at present, she has the potential to become ill quite quickly and need intensive care again. The grandmother, [the claimant] has been the primary carer for [her younger sister] all this time, making sure that she has the care that she needs, from food to education, and making sure that she keeps that strong bond going through the family.

Although most of the time [the claimant's daughter] cared for [this child] when she was in hospital and stayed by her bedside all day and all night, sometimes [the

claimant] would take over and look after [her grand-daughter] whilst [the daughter] took a break. The bond between [the child] and her grandmother is very obvious as [the child] refuses to have anyone apart from her mother or her grandmother do her personal cares when she is in hospital. [The claimant] always cooked for the whole family and brought the food to the hospital which encouraged [her grand-daughter] to eat, as she only ate [the claimant's] home cooked food and this helped her recovery. Emotionally, [the claimant] was the one who kept everyone's spirits up, especially when [her grand-daughter] was very critical and the family had to be separated for months at a time. [The child's father] was working and trying to support the family financially. It was also nice for him to come home to prepared meals but more importantly, the real updates about his daughter which he got from [the claimant].

As I mentioned previously, [the child] is currently well, she still has numerous appointments to attend in the hospital, and she has to take her essential medications in order not to reject the liver, and eat particular foods, to encourage recuperation. She also goes to school, which is a different school from [her younger sister], and needs extra support as her learning at the crucial time of her GCSEs was affected by long periods in hospital.

The support that [the claimant] has given in the past has ensured that [the daughter] is able to concentrate on [the child's] recovery, and she has kept the family going. The support that [the claimant] is currently giving the family is in my opinion the only way that this family unit will repair itself and come back together as a stable family to ensure the best recuperation and stable family unit. She is an incredible mother and grandmother and in my opinion she is a vital member of the family here in the United Kingdom."

28. There is a letter from the elder grand-daughter dated 14 July 2017, confirming the strong bond she has with the claimant, and one from the younger grand-daughter, saying that the claimant 'cooks me yummy foods' and that she cannot go to sleep without the claimant telling her a fairy tale, and that 'my grandma is the best'.
29. As recently as January 2018, the elder grand-daughter was still reported as having poor appetite and feeding difficulties, and on 18 February 2018, King's College Hospital noted that the heavy periods continued, despite various treatments to reduce them.

Claimant's evidence

30. The claimant had prepared a witness statement dated 16 April 2018 as her evidence in chief. In answer to a question from me, the claimant said that her daughter had read and translated the witness statement to her and she was happy to adopt it as true and correct.
31. The claimant's statement said that she was born in Tripoli, Lebanon, and was a Sunni Muslim, as were all her family members. The claimant's husband was also a Lebanese citizen and was now 88 years old and retired. Before his retirement, he worked as a wholesaler, buying used clothes from factory outlets and selling them on to smaller shops. Despite the length of their marriage (since 1971), there had always been problems in the relationship. The claimant was very unhappy in the marriage and her

husband and she had drifted far apart. The claimant spent many years trying to keep the family together and to let her children live their lives. Her husband had abandoned the claimant in 2006: she had not heard from him directly since then. The claimant accepted that her marriage had irretrievably broken down.

32. The claimant's two sons were grown up and had married and moved to live with their wives in Beirut. The elder son married a woman who hated the claimant's presence and would not allow her to stay with them. That couple had two sons, but the marriage had ended. Despite his divorce, her elder son maintained his distance from the claimant and had made no attempt to contact or stay in touch with her. The younger son was still happily married, with one son. He worked in a Hajj and Umrah travel agency, but the couple did not wish the claimant to be part of their lives. The claimant said that before she left Lebanon, her relationship with her sons was close to breakdown due to the daughters-in-law's dislike of her. She never saw her grandchildren in Beirut, due to their parents' dislike of her.
33. The claimant found the situation heart-breaking. In her old age, she felt very vulnerable living alone in Lebanon, in an unsafe area, where the community looked down on her as her husband had left her. The claimant felt as though she had wasted her life on people (her husband and two sons) who had never really loved her and, as soon as she could do nothing further for them, left her to 'rot on my own' because she was a liability. While in Lebanon, the claimant had made many attempts over the years to reach out to her sons, but without success. She considered that her sons must be happy to have finally got rid of her: certainly, they had made no efforts to see how she was since she had come to the United Kingdom, and she did not expect to be able to rely on them if she were returned to Lebanon.
34. The claimant's daughter is a British citizen and the relationship is good between them. The claimant now regards her daughter and the daughter's family as her only family. The daughter has 'two beautiful daughters who are the light of [the claimant's] life'.
35. The claimant's elder grand-daughter required constant care following her three liver transplants, the most recent in 2016. Even at 17, she needed all the love and support she could get from family members. Her condition had yet to improve, despite the liver transplants, and she still required constant care and attention. The elder grand-daughter preferred the claimant's cooking, which was healthy: she was reluctant even to eat her mother's cooking. It would mentally and emotionally be very difficult for this child to accept that the claimant would no longer be part of her life.
36. The claimant was happy to lighten her daughter's load by helping with her grandchildren, and the elder grand-daughter in particular. She had been helping with the elder grand-daughter since the child was 6 years old, and with the younger grand-daughter since her birth. The claimant ensured that her elder grand-daughter took her medications on time during the day, while her daughter was at work. She also helped to bathe the child, and made sure she ate properly and drank lots of fluids.
37. In cross-examination, the claimant was asked about the letter which her husband wrote to her daughter in approximately 2010, which was mentioned in the decision of the First-tier Tribunal. The claimant understood that the letter said her husband wanted

no more to do with her and was no longer prepared to take responsibility for the claimant. She could not remember when the letter arrived. The claimant denied that the letter from her husband was fabricated to support her claim. The claimant and her husband had been having marital problems for a long while. Her husband was a hard man who cut her off from her family. She had suffered. She had supported her husband for a long time, just to bring up the children, and she felt upset that they had rejected her.

38. The claimant confirmed her evidence about her estrangement from her sons and their families. Her elder son was divorced: his wife took the children. She could not remember when, but it was after she came to the United Kingdom. The claimant could not explain why he was still not contacting her, even though his marriage was over. It was the claimant's daughter who told her about her son's divorce: they still had people who worked at the airport who knew him. As she was not in contact with her sons, she simply had no idea why they were not speaking to her.
39. The claimant explained that during the marriage, her husband restricted her contact with her brothers. She felt that they had grown to hate her and taken their own way in life. She did not know where they were, or even if they were still alive. The claimant did not know if her daughter was in contact with her uncles: her daughter would not wish to hurt the claimant. The claimant said it was not unusual for families to be cut off in this way in Lebanon: it could be caused by economic circumstances, the war, or other reasons.
40. After her husband rejected her, the claimant had lost her home and had gone to live with a cousin, in her uncle and aunt's home. Her sons had not been willing to help her then and she had no reason to think that they would be willing now. Her uncle and aunt had died since she came to the United Kingdom, but she did not know when.
41. Her family now was her daughter and the daughter's husband, and her grand-daughters. She had no other relatives in the United Kingdom, nor did her son-in-law. Her son-in-law was born outside the United Kingdom, probably in Lebanon: he had brothers and sisters there, but his parents had died.
42. Her son-in-law had a job, but she was unsure what it was. Sometimes he was home, sometimes he went out. His work appeared to be flexible, depending on when he got jobs. She did not interact much with him in case anything went wrong between them. Her daughter worked for an airline, and together the couple supported the claimant financially. Her daughter did everything for the claimant, supporting her financially and emotionally, shopping for her, whatever she wanted. The claimant did not know the couple's income: she did not ask. They used to send her small amounts of money even before she came to the United Kingdom, when she was living in Lebanon. She did not know if they would do so again, if she were returned there.
43. Regarding her relationship with her grand-daughters, the claimant said that the elder child had already had two liver surgeries before she came to the United Kingdom. Her daughter had not been able to work, because the child was very ill. Since the claimant came to the United Kingdom, her daughter had been able to return to work. Her grand-daughter went to a special school, which the claimant's daughter had chosen,

because she was having special education. The claimant had no input into the choice of doctor: that was dealt with by the hospital. The claimant took her grand-daughters to and from their schools, but did not interact with the teachers, because she did not know how to talk in English. She would drop off both children, but if they needed to talk to teachers, they did it themselves. Her elder grand-daughter did not like interacting with others, or mixing socially, because of her condition. The child did not have friends.

44. In the morning, the claimant would help her elder grand-daughter choose what to wear and then help her to dress. Sometimes she helped the child shower, if her mother was at work. In the morning and the afternoon, the claimant would prepare the child's medicine and give it to her. Her elder grand-daughter had to drink 3 litres a day because of her liver problems, and the claimant made sure she did so. The claimant cooked healthy food for her grandchildren, particularly her elder grand-daughter, with no spices and lots of water to drink: the claimant was very careful about the child's diet. The claimant also fed the child, during the day, before her mother got home. Once the claimant's daughter was home, it was she who looked after the children, not the claimant. Her daughter got home late, and usually did not cook, unless she was off work. The claimant's daughter bought the few clothes the elder child needed, mainly trousers and t-shirts.
45. Even when her elder grand-daughter was in hospital, the claimant would bring food in from home, because the child would not eat hospital food, saying that it did not taste like her grandmother's food. The claimant said that her elder grand-daughter loved her very much, and she felt the same. She had taught both her grand-daughters the Arabic language, and read them stories. Sometimes, her elder grand-daughter would say, 'Grandma, I'd like you to live a long time, you won't die because I need you in my life'.
46. Mr Clarke asked the claimant whether the real reason for her coming to the United Kingdom was to help with the day-to-day care of her elder grand-daughter so that her daughter could return to work. The claimant explained the sequence of events, and how war had broken out during her second visit in July 2006. She had not worked, while in Lebanon. The claimant said she had not investigated accommodation in Lebanon: she wanted to stay in the United Kingdom so that she would not lose the love of her United Kingdom family members.

47. There was no re-examination.

Evidence of claimant's daughter

48. The claimant's daughter had also prepared a witness statement, which she adopted. In answer to a question from me, the claimant's daughter confirmed that she had written her statement herself and that it was true and correct. She wished the statement to stand as her evidence in chief.
49. The claimant's daughter said she worked 8.5 hours a day for Middle Eastern Airlines as a ticketing and reservations officer. Her husband was a self-employed driver, working an 8-hour shift each day. Both of them worked hard to support the family, especially to accommodate the elder child's medical condition. She said that the

claimant had been through a lot, over the years, and that it was rather unfortunate that in her old age, she lacked the support of her husband and sons. Her father had abandoned the claimant and had not been in touch with her for more than 10 years. The claimant's daughter was disappointed that her brothers thought they were entitled to enjoy their family lives, while excluding the claimant, and to leave the claimant to fend for herself.

50. The claimant's daughter said that her mother had a total breakdown while in Lebanon after her husband's desertion: life alone was far too difficult for her and with all the conflicts going on in Lebanon, the daughter had been really worried. It was entirely unjust and unreasonable to return an elderly woman to a war zone, where there would be nobody to support and look after her, and Hezbollah would be able to target her, due to her Sunni Muslim background. If the claimant were to be returned to Lebanon, and then became ill, her daughter would be unable to travel to Lebanon and stay to look after her mother, as she would wish to do, because of the complexity of her elder daughter's needs.
51. The claimant had all the moral and financial support she needed, here in the United Kingdom, and her grandchildren shared a close bond with her. The claimant's daughter was aware that she was now all her mother had. It was both her duty and her desire to provide the best care she could for her mother, and to repay the claimant for the struggle she endured and the sacrifices she made to provide for and raise her daughter.
52. The claimant's daughter confirmed that her elder child had suffered liver failure from birth: her first liver transplant was in 2001, when she was a year old, and the most recent in 2015. It was a day to day struggle for the child to maintain stable health. She suffered from multiple side effects, including severe bleeding from her womb, much heavier than a normal period, which lasted for days on end. The child had learning difficulties and still required constant supervision. The absence of the claimant would detrimentally affect her grand-daughter's health and wellbeing.
53. The claimant's daughter said she did not know how she would manage without the claimant. The younger child started school each day at 0900 hours, and the elder child's school began at 0930, on days when she was well enough to attend. Most of the time, the elder child stayed home because she was not well enough for school. Her elder daughter's medication had to be administered 11 times a day, at 30-minute intervals between 0800 and 0930, then at 11 am, 3 p.m., 6 p.m., and half hourly between 2000 and 2130. The claimant also gave both physical and emotional support to her grand-daughters: caring for the elder child could be overwhelming, and at times of crisis when that child was in hospital, the family's life would turn upside down and they would need someone to look after the younger child. Her support was essential to the younger daughter's emotional wellbeing too.
54. In cross-examination, the daughter said that she earned £20/21000 per annum, considerably less than the £24000 she told the First-tier Tribunal. She said her income varied up and down, dependant on sickness, or the circumstances of the company where she worked at different times. She said that she was not lying about the

reduction in her pay, and could produce payroll information if required. The daughter's husband worked part time as a driver for a family, and then they would give him money. She never asked him how much he earned.

55. The daughter's husband would accompany his elder daughter to hospital appointments but not stay home all day with her. He said that he had done his job and left it to the daughter and the claimant to care for his children. There was no witness statement from the husband, as nobody had ever suggested to the daughter that it would be useful or appropriate, nor had they asked what he did for a living. The daughter's had two sisters, and she thought, one brother who were still in Beirut.
56. Mr Clarke asked whether the United Kingdom family and the husband's family in Beirut could not jointly support the claimant if she was returned to Lebanon. The daughter explained that it did not work like that: the claimant was not related to her husband's family and they had no responsibility for her. They would have their own lives and problems.
57. The daughter said that it had been very hard for her mother to believe that her husband just did not want her any more. She thought that was why the letter had been sent. Her parents had a lot of problems when she was growing up in Lebanon, they were always arguing, from when she was small, but getting worse and worse over time.
58. Mr Clarke asked about the letter from the claimant's father, which was recorded in the First-tier Tribunal decision as dating from 2010. On reflection, the daughter thought that the letter was 2008 or earlier. She said she was not very good with exact dates, but knew that the letter came after the war in Lebanon. The daughter had a disagreement with her father on the telephone about the claimant's situation, arguing that now the war was over, her mother could return home. She asked her father repeatedly not to desert her mother, but he refused to change his mind.
59. After that conversation, her father had sent the letter by hand to his daughter, through a family friend, to make it clear that he expected the daughter to have the claimant live with her. The letter confirmed that her father did not need his wife any more, and did not want the responsibility of her now. When the letter arrived, the daughter was very angry with her father and very disappointed in him. Her father then stopped talking to the daughter and her family, and she no longer knew either his telephone number or where he was.
60. The daughter was not in touch with her brothers in Lebanon. She was very cross with her brothers: the claimant cared about everyone and had sacrificed for everybody in the family. The family did not know the younger one's wife at all, as she never got in touch with them and put pressure on him not to do so either. The elder of her brothers was divorced, a long time ago. She had heard that he left his wife in 2007/2008 but could not remember exactly. Dates were not her strong point. Although he was now free of his marriage, her elder brother was still not prepared to be involved with the claimant.

61. The claimant thought that the problems were caused by the sons' wives, but her daughter was not so sure. The claimant did not want to believe the problem was her sons, but the daughter thought it was. If they wanted to be in touch, the brothers could and would be, but they were not. She was sure there was a reason, but did not understand what it was: perhaps the sons had taken their father's side, and maybe their father had put ideas in their head. The daughter denied vigorously saying that the family had no contact with family members in Lebanon just so that her mother could stay; God was watching her and she was telling the truth.
62. The daughter said that she was on the claimant's side: she would die for the claimant if necessary. The claimant had nobody to look after her, so how could the daughter throw her on the street. The daughter observed that she had been very surprised by the social, medical and educational support in the United Kingdom. If her elder daughter had been born in Lebanon, she would not be alive now. She did not want to lose her mother either.
63. In re-examination, the daughter said that the division of care for the elder daughter was that her husband did the hospital appointments, the daughter worked all day and cared for the child in the evenings, and that the claimant covered the daytime. The child could hardly walk, and sometimes she did not have enough energy to go to the lavatory; the claimant cooked her healthy food, helped her bathe (particularly important in view of the recurrent heavy bleeding) and ensured that she ate, took fluid, and received appropriate medication at the right time. The physical care for their daughter was not her husband's responsibility culturally: when asked, he said 'I am not a woman, to do this job'. The claimant was her mother, and her life: the daughter could not survive and face all of these problems without her.

Submissions

64. In submissions for the respondent, Mr Clarke reminded me that the claimant cannot meet the provisions of the Immigration Rules. He argued that nevertheless, Article 8 outside the Rules should be considered through the prism of the Rules: there was a very high threshold in the Rules for adult dependant relatives. Mr Clarke acknowledged the existence of family life between the claimant and her daughter and grand-daughters, but reminded me that there was evidence that the daughter also cooked, but no corroboration of the daughter's assertion that the husband said that helping out with his daughters was not his responsibility as a man.
65. Mr Clarke relied on *RK* at [42]-[44] and observed that the claimant's relationship with her grandchildren was not parental. She helped out, but the grand-daughters had parents and she was not stepping into their shoes. He suggested that the real situation was that the claimant had come to the United Kingdom to provide care for her grand-daughters so that her daughter could return to work. The claimant spoke no English and was not self-supporting, so all of the family life relied upon was precarious and should be given little weight. The claimant had made no enquiry regarding accommodation in the Lebanon and it was not in the public interest to allow the family

to present the Tribunal with a *fait accompli* without making the proper application for leave to enter or remain and meeting the requirements of the Rules.

66. Mr Clarke invited me to disbelieve the claimant and her daughter's evidence of the circumstances in Lebanon and the lack of family support there for the claimant. In particular, he asked me to put weight on the differences in the date given by the claimant's daughter for her father's letter (2010 in the First-tier Tribunal and 2008 or before in the Upper Tribunal); to reject her explanation why the letter had been written and treat it as a fabrication in support of the present claim; to disbelieve the account of the family rift with the sons and their wives; to disbelieve the daughter's explanation why her husband's family would not be required to assist; to disbelieve the daughter's account that she did not know how much her husband earned; and to draw an adverse inference from the lack of any witness statement or oral evidence from the husband. In addition, Mr Clarke asked me to place no weight on the evidence of the nurse, Ms Slovak, who had only observed the family while the elder grand-daughter was in hospital.
67. Mr Clarke asked me to substitute a decision dismissing the appeal.
68. For the claimant, Ms Pascoe relied on her skeleton argument, and on the schedule of preserved findings agreed between the parties. Her skeleton argument sets out the evidence from the claimant and her daughter, and the medical evidence about her elder grand-daughter. Ms Pascoe contended that the elder child's needs and dependency on her grandmother must be taken into account when considering Article 8 ECHR; 'whilst the claimant is not [her grand-daughter's] parent, her role in caring for [the child] has been significant'. Ms Pascoe's further contended that in respect of Article 8 ECHR outside the Rules, the proposed interference would engage Article 8 ECHR and be disproportionate. The claimant is financially dependent on her daughter and son-in-law in the United Kingdom, and her presence her obviates the need to spend public funds on a carer.
69. In her oral submissions, Ms Pascoe submitted that the evidence of the witnesses should be treated as credible, despite some minor inconsistencies, and also to place weight on the evidence of Ms Sworak, who had worked with the family over a long period.
70. In particular, although the claimant blamed her sons' wives for the breakdown of the mother-son relationship with them, her daughter considered that the issue might be more related to loyalty to their father. There was evidence of a dispute between the daughter and her father. It was right that there was no evidence from the son-in-law, but the Tribunal should accept the daughter's evidence that she had not asked him: the family were not legal experts and it was unreasonable to speculate what his evidence might have been.
71. The claimant was now of retirement age, a woman who had never worked and who had nobody to turn to in Lebanon. If she were sent back to re-establish herself there, she would have an uphill struggle and it would be extremely difficult. Ms Pascoe suggested that reintegration of this claimant in Lebanon would be a practical impossibility.

72. On the other hand, the claimant had a unique place in her daughter's family in the United Kingdom, who were supportive of her, financially and emotionally. She was very much needed by her elder grand-daughter: the child's needs could not easily be managed by carers, or her father, because of their intimacy. It would be extremely harsh, after 12 years, to expect her to leave, nor would it be in the child's best interest. Ms Pascoe asked me to allow the appeal.

Discussion

73. There is no parental relationship between the claimant and her grandchildren. The test in *RK* is not met, as the biological parents continue to care for them. The only question, therefore, is whether there are here exceptional circumstances for which leave to remain ought to be given outside the Rules.

74. As regards credibility, I note that the First-tier Tribunal treated the claimant and her daughter as credible witnesses, and that this is not challenged in the grounds of appeal. I have heard and seen them give evidence at the hearing, including under cross-examination, and I am satisfied that they should be treated as witnesses of truth. I also give weight to the evidence of Ms Sworak, who is a bereavement and family liaison nurse specialist in paediatrics at the Thomas Cook Unit. I remind myself that the elder grand-daughter has spent many long months in hospital, and that Ms Sworak has had plenty of opportunity to observe the family interaction.

75. I therefore find that the claimant is a woman of retirement age, who has never worked, and who has no family support in Lebanon. When she tried to survive as a single woman after her husband abandoned her in 2006, a time when she was significantly younger than she is now, she had no home and did not cope at all well. I note that she came to the United Kingdom as a visitor in March and July 2006, and that the reason she tried to remain was the outbreak of war in Lebanon that summer, which would have made her difficult circumstances even worse. I do not approach this as a case where the claimant lacked the intention to return, on the second such visit.

76. I have regard to the best interests of the claimant's grand-daughters, the elder one, who although she will shortly be legally an adult, has microcephaly, can hardly walk, needs constant dietary supervision, 11 doses of medication a day which she is unwilling to take, and has intimate bleeding problems which require trusted female care. The child's liver problems may recur: the third transplant has not solved her health issues. There is also the question of the support which the claimant gives to the younger child, at times when her elder sister is in hospital.

77. Taking all of the facts together, and having regard in particular to the length of time (12 years) the claimant has spent in the United Kingdom, including 7 years when she was waiting for an asylum decision from the respondent, her age and lack of social support in Lebanon, her daughter's financial and emotional support for the claimant, and the exceptional needs of her elder grand-daughter, I am satisfied that the claimant has discharged the burden of showing that in this particular case, there are exceptional circumstances for which leave to remain ought to be granted outside the Rules.

78. I therefore substitute a decision allowing this appeal pursuant to Article 8 ECHR.

DECISION

79. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. I remake the decision by dismissing the appeal on asylum, humanitarian protection and Article 3 ECHR grounds but allowing the appeal under Article 8 ECHR.

Date: 1 June 2018

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson