Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18168/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House (by remote video means)	**Decision & Reasons Promulgated**
On 8th February 2021	**On 1st March 2021**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

ANDREA BLANCHE CYRUS
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Toora of Counsel, instructed by Sabz Solicitors LLP
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype. There were no audio or technical difficulties during the hearing. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained the documents in paper format.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Obhi promulgated on 30 January 2020, in which the Appellant's appeal against the decision to refuse her human rights claim dated 23 October 2019 was dismissed.

3. The Appellant is a national of Grenada, born on 10 January 1978, who came to the United Kingdom with entry clearance as a visitor valid from 24 November 2018 to 24 May 2019. On 27 March 2019, the Appellant applied for leave to remain as a visitor, which was refused by the Respondent on 10 April 2019. The Appellant then applied for leave to remain on the basis of private and family lie on 22 May 2019, the refusal of which is the subject of this appeal. The application was on the basis that the Appellant lived with her brother and his family (his wife and two children, born 2008 and 2016) assisting the family and looking after the children in particular whilst her sister-in-law (who suffers from mental health problems) was in hospital and then following her discharge as additional support continued to be needed. The Appellant's brother was in employment and the Appellant therefore supported the family whilst he was at work, which enabled him to continue in employment.

4. The Respondent refused the application on 23 October 2019 the basis that the Appellant did not meet any of the requirements of the Immigration Rules for a grant of leave to remain (with no parent, partner or dependent children in the United Kingdom) and with no insurmountable obstacles to her reintegration in Grenada where she had spent the majority of her life and had family. The Respondent considered whether there were any exceptional circumstances to warrant a grant of leave to remain, considering in particular the circumstances of the Appellant's brother and his family but found that there were none. The Respondent considered that it was in the best interests of the children to remain with their parents and continue in education in the United Kingdom. The Appellant's sister-in-law was receiving appropriate medical treatment in the United Kingdom and there was a lack of evidence that alternative provision for that provided by the Appellant was not available.

5. Judge Obhi dismissed the appeal in a decision promulgated on 30 January 2020 on all grounds, the detailed reasons for which I return to below.

The appeal

6. The Appellant, in her written grounds of appeal set out the following. There are three points described as 'Brief Grounds' that "(a) the decision was not in accordance with the law; (b) insofar the discretion has not been exercised properly at all; (c) the decision was incompatible with the Appellant's rights under Article 8 ECHR.". It is of note at this stage that these appear to refer back to the old version of grounds of appeal against a decision of the Respondent in section 84 of the Nationality, Immigration and Asylum Act 2002 (amended many years ago) rather than even attempting to identify an error of law in the First-tier Tribunal's decision.

7. What follows in the grounds of appeal are described as 'Detailed Grounds' which do not directly correlate to the brief grounds (or at all). These are that the First-tier Tribunal has erred by (i) not taking into account the Appellant's extensive private life in the United Kingdom; (ii) not attaching sufficient weight to the Appellant's strong ties with family and friends, that she is not a burden on the state, is a valued member of society and has become accustomed to life in the United Kingdom; (iii) not applying the correct test under Article 8 of the European Convention on Human Rights, in particular that the First-tier Tribunal failed to take into account the inevitable establishment of family and private life in the United Kingdom or the immense difficulties her nieces would face if she were returned to Grenada; and (iv) failing to take into account the best interests of the children pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009.

8. One particular paragraph in the grounds is relevant to the grant of permission, which states as follows:

> *"6. The IJ has failed to take into account sufficiently the immense difficulties the children are most likely to face if she was removed from the UK and made to return to Grenada. The children's mother is trying to deal with her mental health problems and the father needs to work to provide for the family which has made the Appellant's stay in the UK vital for the welfare of the children."*

9. The First-tier Tribunal refused permission to appeal on 13 May 2020 on the basis that there were no arguable errors of law in the decision. Identical grounds of appeal were then put to the Upper Tribunal in a further application. The Upper Tribunal granted permission, the reasons for which need to be set out in full:

> *"1. The grounds of appeal are vague and make unnecessary reference to case-law. However, on what might be a generous reading of paragraph 6 of the grounds, it is arguable that the judge might have failed to undertake her Article 8 assessment on a correct footing.*
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> *2. At the heart of the Appellant's case was the position of her sister-in-law's serious mental health condition and the best interests/welfare of the two children. These issues fell to be considered on the evidence, such as it was, as at the date of hearing and in the context of a human rights claim having been made by the Appellant and then refused by the Respondent.*
>
> *3. It is arguable that the Judge engaged in undue speculation as to what the Local Authority may or may not do once the Appellant was no longer in the United Kingdom, rather than focusing on the immediate impact of the family unit (in particular the children) were a departure to take place: see [29], [34], and [38]. In addition, it is arguable that the Judge placed too much emphasis on the fact that*

the Appellant's application to the Respondent had not been for a short extension of her leave as a visitor. [24] and [38] indicate that if such an application had been made, the Judge may have viewed the proportionality assessment differently. The point here is that on appeal the focus of the decision must be the lawfulness of the Respondent's refusal of the human rights claim. Any leave to remain conferred as a result of a successful appeal is a matter for the Respondent (subject to her policy guidance). The question of the appropriate period of leave to remain is arguably not, as a general matter, a relevant consideration for a Judge."

10. In response to the grant of permission, the Respondent filed a rule 24 notice on 1 September 2020, in which the appeal was resisted. In essence, the grounds relied upon by the Appellant in her application for permission to appeal were no more than disagreement with the findings made; the First-tier Tribunal having taken into account all relevant matters as to the best interests of the children and having found family life in the United Kingdom, but ultimately, it was open to the First-tier Tribunal to conclude that the Respondent's decision was not a disproportionate interference with the Appellant's right to respect for private and family life.

11. The Respondent further raised concerns about the additional matters raised by the Upper Tribunal in the grant of permission which were not in accordance with the guidance in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC). These focused on two points which were not arguable errors of law and ones which were not raised in the grounds of appeal lodged, nor did they come even close to raising these particular points. There is further nothing to suggest that these were matters of general importance which needed to be addressed.

12. The Respondent submitted that what was set out in the grounds of appeal amounted only to disagreement with the weight to be afforded to family life in the proportionality assessment in circumstances where weight is a matter for the Judge in the absence of any arguable irrationality. Reliance is also placed on the decision in Durueke (PTA: AZ applied, proper approach) [2019] UKUT 00197 (IAC).

13. On behalf of the Appellant, a skeleton argument was submitted prior to the hearing which identified the procedural issue raised in the rule 24 response and identified the two substantive issues as; (i) did the First-tier Tribunal Judge engage in undue speculation as to what the Local Authority may or may not do once the Appellant was no longer in the UK, rather than focusing on the immediate impact of the family unit were a departure to take place; and (ii) did the First-tier Tribunal Judge place too much emphasis on the fact that the Appellant's application to the Respondent had not been for a short extension of her leave as a visitor, and if so, whether the proportionality assessment would have been viewed differently.

14. The skeleton argument proceeds to rely in more detail only on these issues and made no reference at all to the written grounds of appeal. As to the grant of permission, it was submitted that the Respondent assumed that the Judge granting permission did not have the relevant guidance in AZ available, nor considered whether the grounds identified had a strong prospect of success. The failure to make explicit reference to AZ was not an error of law. Further, it was submitted that the Judge expressly recognised the points to be arguable, meaning that there were in fact arguable errors of law which had strong prospects of success due to their nature and impact on the outcome of the appeal, otherwise permission would not have been granted.

15. On the first issue identified, the Appellant submitted that the First-tier Tribunal prejudiced her own decision making and fettered her discretion by stating that it was for the local authority to make a determination as to whether the Appellant was the only family member able to take care of the children whereas the Judge was required to consider proportionality on the evidence but failed to do so. The possibility of a further local authority assessment was not a sufficient reason upon which to dismiss the appeal, particularly as the Respondent could consider the circumstances of the family on each application for further leave to remain.

16. Further, the First-tier Tribunal's consideration of any local authority intervention assumed that this would only result in a positive impact for the family, without any consideration of the other possibility; nor was there any consideration of the unnecessary expenditure of finance and resources by the local authority in the absence of the Appellant.

17. The Appellant submits that the First-tier Tribunal failed to give sufficient weight to the evidence of the family support worker, with the decision underplaying the serious matters identified. The First-tier Tribunal also underplayed the significance of the Appellant's brother's need to continue in employment to avoid further local authority intervention and continue to provide for his family. There was evidence before the First-tier Tribunal that without the Appellant's assistance, her brother would have lost his job and the family would be unable to financially support themselves. In addition, it is submitted that the First-tier Tribunal over generalised the potential practical difficulties for the family if the Appellant returned to Grenada without considering the specifics of her brother's employment and expenditure (of which there was some evidence in his bank statements which showed a precarious financial position).

18. On the second issue identified, the Appellant submits that the First-tier Tribunal considered the length of leave to remain applied for as a significant factor in the proportionality assessment with the merits of the appeal being conditional, or at least influenced by this and most likely, if this was not taken into account, it can reasonably be concluded that the appeal would have been allowed under Article 8.

19. At the oral hearing, both sides made submissions in accordance with the skeleton argument and rule 24 response; expanding on the same as follows. Mr Toora confirmed that none of the original grounds of appeal as drafted were relied upon by the Appellant.

20. In relation to the grant of permission, Mr Toora accepted that the grant of permission could only have been on grounds which were *Robinson* obvious and with strong prospects of success. He submitted that although this was not expressly identified in the grant of permission, when one looks at the substance of the grounds, the test is satisfied. The issue before the First-tier Tribunal was categorised as whether there were exceptional circumstances resulting in unjustifiably harsh consequences on the Appellant's family caused by her removal. The focus was too much on speculation as to further support rather than actual impact of removal, which was in any event considered too narrowly in relation to the Appellant's brother's working pattern and failed to consider the implications of him losing his employment, which would affect the whole family. Mr Toora accepted that on the last occasion, the local authority had assessed him as being able to look after the children (the evidence about which had not been submitted to the First-tier Tribunal) and there was no evidence as to what would happen if any further assessment was undertaken.

21. Mr Toora accepted that it would be a relevant consideration for the First-tier Tribunal whether any adverse impact on the family from the Appellant's removal would be short or long term, but the nature of the application or period sought in it was not a relevant consideration and it was submitted that this influenced the decision. The issue of a grant of leave and the period of any grant is solely for the Respondent.

22. On behalf of the Respondent, Ms Everett reiterated that this was an erroneous grant of permission as it was not a clear case of a persuasive ground of appeal, nor anything to suggest that the Upper Tribunal Judge approached the application and grant in the right manner in accordance with AZ or Durueke.

23. As to the substance of those two new matters, Ms Everett acknowledged that certain parts of the decision may be unduly speculative, for example as to local authority intervention, but this did not affect het safety of the decision. The only real issue in this case of merit was the impact on the children of the Appellant's removal, it not being claimed that there would be any adverse impact at all on the Appellant herself. The First-tier Tribunal was satisfied on the evidence that the best interests of the children could be met, particularly where the case was presented on the basis of practical assistance being given by the Appellant to the family rather than any evidence of any significant emotional attachment. There was no evidence of the children being at risk and in the context of the case presented, it was relevant for the First-tier Tribunal to consider alternative support for the family. The risk to the Appellant's brother's employment was not sufficient to tip the balance in this case.

24. Ms Everett also accepted that the First-tier Tribunal's consideration of the period of leave applied for was irrelevant, but this did not relate to whether the Appellant's removal would have unjustifiably harsh consequences on the children, nor overall on the proportionality balancing exercise undertaken. This did not amount to a material error of law.

Findings and reasons

25. The preliminary issue in this appeal is as to the grounds of appeal and nature of the grant of permission. As Mr Toora confirmed at the oral hearing, none of the grounds of appeal as drafted in the application to the Upper Tribunal are pursued by the Appellant and rightly so. The brief grounds are wholly inept and the detailed grounds not only fail to identify a material error of law but are unarguable (as shown by the fact that none were pursued). For example, there was little or no evidence of any private life established by the Appellant in the United Kingdom and it is clear that no such case was made on her behalf which relied almost entirely on the impact of her removal on her brother and his family in the United Kingdom. Contrary to the grounds of appeal, the First-tier Tribunal found that family life had been established here and made express findings as to the best interests of the children. The suggestion of the wrong test under Article 8 of the European Convention on Human Rights was not particularised and the reference to what is now fairly old case law on the changes to the Immigration Rules around 2012 was not of any assistance to the Appellant's case. As noted in the grant of permission, the grounds were vague with unnecessary reference to case-law and overall, failed to raise anything of arguable merit.

26. The grant of permission relies on a generous reading of paragraph 6 of the grounds (which refers to insufficient weight being given to the difficulties the children are likely to face if the Appellant was removed from the United Kingdom given the mother's mental health difficulties and father's employment) that it was arguable that the First-tier Tribunal might have failed to undertake the Article 8 assessment on a correct footing. There is however no immediate identification of what that arguable incorrect footing was or whether it was anything identified specifically in the grounds of appeal. Paragraph 2 of the grant of permission does no more than summarise the case and the task of the First-tier Tribunal in the most generic terms, adding nothing of substance to the reasons for the grant of permission.

27. In paragraph 3 of the grant of permission, two matters are raised which are not even indirectly referred to in the grounds of appeal and were not expressly relied upon by the Appellant. These are that it was arguable that the Judge engaged in undue speculation as to what the local authority may do if the Appellant left the UK and arguable that the Judge placed too much emphasis on the nature of the application (in terms of duration of stay sought).

28. In AZ, so far as relevant, to this appeal, the Upper Tribunal stated:

(3) Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:

(a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:

(i) for the original appellant; or

(ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international Treaty obligations; or

(b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address.

29. In Durueke, the Upper Tribunal added the following guidance:

(i) In reaching a decision whether to grant permission to appeal to the Upper Tribunal on a point that has not been raised by the parties but which a judge considering such an application for permission considers is arguably a Robinson obvious point or other point falling within para 3 of the head-note in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC), the evidence necessary to establish the point in question must be apparent from the grounds of appeal to the Upper Tribunal (whether or not the appellant is represented at the time) and/or the decision of the judge who decided the appeal and/or the documents on file. The permission judge should not make any assumptions that such evidence was before the judge who decided the appeal. Furthermore, if permission is granted on a ground that has not been raised by the parties, it is good practice and a useful aid in the exercise of self-restraint for the permission judge to indicate which aspect of head-note 3 of AZ applies.

(ii) Permission should only be granted on the basis that the judge who decided the appeal gave insufficient weight to a particular aspect of the case if it can properly be said that as a consequence the judge who decided the appeal has arguably made an irrational decision. As the Court of Appeal said at para 18 of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.

(iii) Particular care should be taken before granting permission on the ground that the judge who decided the appeal did not "sufficiently consider" or "sufficiently analyse" certain evidence or certain aspects of a case. Such complaints often turn out to be mere disagreements with the reasoning of the judge who decided the appeal because the implication is that the evidence or point in question was considered by the judge who decided the appeal but

> *not to the extent desired by the author of the grounds or the judge considering the application for permission. Permission should usually only be granted on such grounds if it is possible to state precisely how the assessment of the judge who decided the appeal is arguably lacking and why this is arguably material.*

30. The Judge granting permission has not made any reference to AZ nor as to which of the criteria are applied, which whilst in itself is not an error of law, is contrary to good practice. In this case there is nothing to indicate either way whether the Judge had considered this criteria, nor on what basis the grant of permission was being made in relation to paragraph 3 of the decision. There is nothing to suggest that either of these points were *Robinson* obvious errors of law (in my view they are not); nor that the points raised were considered to have strong prospects of success. To the contrary, the wording of the decision refers only to arguability of the points raised with no indication of those points having a strong prospect of success. It can not be inferred from the grant of permission, for which the test is only that there is an arguable error of law; that the Judge granting permission concluded that there were strong prospects of success on either ground.

31. Further, at its absolute highest, paragraph 6 of the grounds, expressly relied upon with a generous reading in the grant of permission, only goes to the weight attached by the First-tier Tribunal of the difficulties the children are likely to face if the Appellant is removed and an assertion that her remaining here is vital for the welfare of the children. The two distinct and separate points raised in paragraph 3 of the grant of permission refer in part, to undue speculation on a particular point and in part, to the weight to be attached to the nature of the application made and/or taking into account an irrelevant consideration. In relation to the weight to be attached to matters, permission should only be granted if it can properly be said that as a consequence the Judge has made an irrational decision. There is no such suggestion of this in the grant of permission, nor does the Appellant rely on any aspect of the First-tier Tribunal's decision being even arguably irrational. These matters all in essence are ones which relate to the consideration and analysis of certain matters and the weight to be attached to them, about which significant caution was expressed in Durueke, running the risk of amounting to no more than disagreement with the decision.

32. On its face, the grant of permission on points not raised at all or relied upon by the Appellant in the grounds of appeal falls far short of meeting the criteria in AZ, as explained further in Durueke and therefore is an erroneous grant of permission. This is particularly so given that it was made by reference to a generous reading of paragraph 6 which at its highest, itself only relies on disagreement with the weight to be attached to certain matters and goes on to raise two distinct matters which also focus primarily on the way in which the First-tier Tribunal has considered matters and the weight attached to them without any arguable irrationality.

33. On behalf of the Appellant, it was submitted that although the relevant points for a grant of permission on grounds not raised by the Appellant were absent on the face of the grant; that as a matter of substance, the points had strong prospects of success. It was on this basis that full argument was heard on both new points, being the only grounds that the Appellant pursued at the hearing. For the reasons set out below, I am not persuaded that either point had a strong prospect of success (although they were, as the Judge granting permission decided, at least arguable) and certainly not a strong prospect on the basis of anything contained in the grounds or on the evidence before the First-tier Tribunal. Nor do I find that in any event, in substance, either amounted to a material error of law.

34. The first point is as to the First-tier Tribunal's consideration of possible alternative support to the Appellant's brother and his family and more specifically, whether there was undue speculation as to what the local authority may or may not do. In consideration of this, it is necessary to set out what the First-tier Tribunal said in the paragraphs referred to in the grant of permission about this, which was as follows:

> *"29. In my view, this application is misconceived. If the family are unable to care for the children then they should seek the assistance of the local authority. If the local authority determine that the only family member who is able to care for the children is the appellant, they will decide whether she cares for them in the UK or Grenada, without such a detailed assessment of all the family's circumstances it is not appropriate for me to find the children will be at risk if she returns to Grenada. I am told that there was a family group meeting but that the members of the maternal family were supportive; however, it is not known what they were asked to do. I note that the children have a maternal aunt and maternal grandmother living very close to them. The appellant is a foreign national who does not have a valid right to remain in the UK, therefore it is not appropriate to rely on her unless there is no other option and in that case, there needs to be a detailed assessment by the local authority of the family situation. I note that there is a letter from the maternal grandmother acknowledging the care provided by the appellant.*
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> *...*
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> *34. My primary consideration is the welfare of the children in this case. I am satisfied that they are under the radar of the local authority. I am further satisfied that they are not at risk of harm, but may be children in need under the Children Act, in which case the local authority owes them a duty of care to provide sufficient services to enable them to be cared for safely within their own homes. I am further satisfied that if that is not possible there are duties upon the local authority to consider whether they can be cared for by, or with the support of other family members. If the local authority determines that their welfare is best met by them living with the appellant or another member of the family, the local authority will*

carry out a detailed assessment of whether that should be in the UK or in Grenada. I am told that the father has been assessed and the local authority have decided that the children are safe in his care and have not invoked their powers under Part IV of the Children Act 1989.

…

38. As I have stated at the outset of this decision, it seems to me that the appellant has made the wrong application to the respondent. This family needs to find permanent solutions to the crisis it found itself in. All the evidence suggested that a further short period would enable the family to sort itself out. However, the application made by the appellant did not reflect that."

35. It is also necessary to consider the context of the application and in particular that there is no particular or significant reliance by the Appellant in her own right to respect for private and family life; nor that there was any suggestion her removal to Grenada would have any specific adverse impact on her. It was expressly accepted that she could not meet the requirements of the Immigration Rules for a grant of leave to remain on private or family life grounds. The focus of the appeal and all of the evidence was directed towards the Appellant's support to family in the United Kingdom and the impact of her removal on them.

36. In relation specifically to the evidence that was before the First-tier Tribunal, the majority of this was as to the practical assistance that the Appellant had given her family here, both in supporting her sister-in-law with taking medication and in getting the children to and from school, feeding them and generally looking after them whilst her brother was at work. There are references in the evidence to the Appellant having provided invaluable support to the family and in her presence helping with the separation anxiety suffered by one of the children (with no detail or medical evidence in support of this). However, there was little, if any evidence as to emotional attachment between the Appellant and the children (as opposed to practical support) nor as to the need for the Appellant personally to be the one providing additional support to the family.

37. There was also a lack of evidence before the First-tier Tribunal as to what the potential impact of the Appellant's removal would be on the family or the children specifically, beyond an inference of what the withdrawal of practical support may mean. The only matter referred to specifically was that the Appellant's brother's employment was at risk if the Appellant were removed, but this appears to be on the assumption that there would be no alternative childcare or flexibility available in working hours, without any evidence of the same. It was also on the assumption that without the Appellant's brother's employment the family would not be able to financially maintain themselves. Counsel submitted that the family's finances were precarious based on bank statements, however there was also evidence before the First-tier Tribunal of not insignificant savings held

by the Appellant's brother. In any event, the First-tier Tribunal expressly took into account potential difficulties with employment and gave appropriate weight to the same. At its highest, the Appellant submitted that this was not considered broadly enough nor sufficient weight attached to it, but there is no error of law in the First-tier Tribunal's approach to this, it amounts to no more than disagreement. The weight to be attached to this, on very limited evidence, was a matter for the First-tier Tribunal.

38. In circumstances where the Article 8 claim was predicated solely on the needs and best interests of other family members, a relevant consideration for the First-tier Tribunal was as to what, if any other support the family had or could have available to it, and/or why the support given by this Appellant (as opposed to another family members or the local authority) was needed. There was an almost complete lack of evidence before the First-tier Tribunal as to this. As referred to in the decision, there were other family members living locally, but no evidence of what they had been asked to do to assist or what they could do and there had been a previous assessment by the local authority concluding that the Appellant's brother was capable of caring for the children and they were not children in need.

39. In all of these circumstances, it was a relevant consideration for the First-tier Tribunal to take into account what, if any support there may be for the family in the Appellant's absence, including from the local authority. It is trite that the local authority has responsibility for children in need and/or at risk but in this case, there were previously no concerns but further assessment could be sought. Although the First-tier Tribunal's decision descends into arguably unnecessary detail as to the local authority's potential responsibility in this case, I do not find any error of law of this material to the outcome of the appeal. In the context of the evidence that was (and was not) before the First-tier Tribunal and the way this case was presented, the possibility of alternative support and/or assessment of the need for this Appellant personally to be the person providing support to the family was a relevant consideration for the First-tier Tribunal to take into account. The weight to be attached to this factor was a matter for the First-tier Tribunal and there is nothing arguably irrational in the consideration of this.

40. On the second point, the nature of the application made by the Appellant, the First-tier Tribunal set out at the beginning of its findings the basis of its assessment in paragraph 24 as follows:

> *"24. The appellant came to the UK as a visitor. She knew when she came that she could only remain in the UK for a short period. In her statement and in her oral evidence to me she said that she did not intend to remain in the UK and that she needed about a year to assist her brother. However, the application which the applicant has made is not for a further short extension to her visit visa but permission to remain for a longer period (10 years initially) which suggests that she intends to move indefinitely to the UK and it is on that basis that I will*

consider her appeal before me. Had this been an application for a short extension of a visit visa, for 6-12 months the circumstances would have been different."

41. I read this paragraph, in the context of the remainder of the decision as a whole, to highlight the discrepancy between the Appellant's claim (and at least some of the supporting evidence of the need for short-term assistance to the family of around 6 months) of needing to remain to provide relatively short-term support for her family and her application being for a much longer period. This point is reiterated in paragraph 38 of the decision (already quoted above) which highlights the need for the family to find a long-term solution for the assistance needed. The discrepancy is essentially relied upon to undermine the nature of the claim and the evidence relied upon relating only to short-term need.

42. Whilst the nature and period of any leave to remain granted is a matter for the Respondent, not the First-tier Tribunal, whether or not leave is sought for a relatively short or a longer period is relevant to the assessment of the best interests of the children and the Article 8 rights of all family members as to whether the Appellant's removal would have a short or long-term adverse impact. Again, however, the difficulty for the Appellant is that there was a significant lack of evidence of the likely impact on the children and wider family of the Appellant's removal even in the short-term, let alone the long-term period applied for.

43. The reference at the end of paragraph 38 to the circumstances being different is not read as any indication of the outcome of the proportionality assessment being different, just that the family circumstances in the round may be different.

44. Although the period of leave which the Respondent may grant if the appeal was successful on human rights grounds is not a relevant consideration to the question of whether the Appellant's removal would be a disproportionate interference with her and her family's Article 8 rights; consideration of the nature of the application made (which was inconsistent with the substance of the claim before the First-tier Tribunal) was relevant to consider as to whether there would be a short-term or long-term adverse impact on family members. For these reasons, there is no material error of law on the second point raised in the grant of permission either.

45. As accepted by the Respondent at the oral hearing, the decision of the First-tier Tribunal strays at points in to greater detail than necessary (as to the possible involvement of the local authority) and considers the period of leave which may be granted; I do not find that these matters are errors of law that could be material to the outcome of the appeal. Undoubtedly the decision could have been much more focused and clearer, but when read as a whole it contains assessment of relevant considerations and reasoned findings on the evidence that was before the First-tier Tribunal, including

an assessment of family life and the best interests of the children; which were open to it to make.

46. I would have reached the same conclusion even if the grounds of appeal raised these additional points originally or if the grant of permission was in accordance with the principles in AZ and Durueke. The significant difficulty for the Appellant in this case is that her claim was based on an adverse impact on her family in the United Kingdom (rather than any adverse impact on her own right to respect for private and family life), particularly on the children but there was little if any evidence of the same which could carry any significant weight before the First-tier Tribunal. Whilst there is no doubt that this is a family in the United Kingdom who have, for genuine medical reasons, been in significant difficulty and who have undoubtedly been assisted by the Appellant's practical support; there was an almost complete lack of evidence as to what, if any alternative support may be available, and specifically, why the removal of this Appellant personally would cause unjustifiably harsh consequences on her family members if alternative support were available.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed G Jackson Date 14th February 2021

Upper Tribunal Judge Jackson