Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/13012/2015

THE IMMIGRATION ACTS

Heard at Field House
On 18th September 2017

Determination & Reasons Promulgated
On 29th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

DM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Mahmood, Counsel
For the Respondent: Ms Z Ahmad, Senior Presenting Officer

DETERMINATION AND REASONS

1. Following a hearing which took place on 4 July 2016, I previously found errors of law in the decision of the First-tier Tribunal such that it was set aside. A copy of the decision is appended. The appeal was adjourned for a resumed hearing which, for one reason or another eventually took place on 18 September 2017. The purpose of the resumed hearing was to call further evidence in relation to the Appellant's appeal which was commenced before the First-tier Tribunal but upon which errors of law that were material to the findings of fact were found by me, consequent to which the

© CROWN COPYRIGHT 2017

findings and reasons from paragraph 69 onwards of the determination of First-tier Tribunal Judge Lang were set aside. In respect of the issues on appeal, they are as they therefore appear in First-tier Tribunal Judge Lang's decision and reasons, and I do not repeat the immigration history nor the Appellant's account as set out in that document from paragraphs 1 through to 25 but hereby acknowledge the same.

2. The documents before me in this appeal consisted of the following. I had before me a supplementary bundle from the Appellant's solicitors which as I understand it was to replace the core bundle that was before the First-tier Tribunal. That bundle contains some fourteen items and numbers 82 pages. I also had before me an additional bundle which numbers some 41 pages and contains six items which is self-titled 'an additional bundle'. I was also given a loose letter from the British Red Cross dated 3rd April 2017. For the Respondent the original Respondent's bundle was before me on file. That contained annexes ranging from A to E and the Reasons for Refusal Letter dated 23rd October 2015 which the Appellant is appealing against.

3. The Appellant was called and gave evidence in English by way of adopting her witness statements and was cross-examined by Ms Ahmad for the Respondent. Similarly the Appellant's daughter was also called and adopted her witness statement and was cross-examined by the Respondent's Presenting Officer. I asked a handful of questions in clarification through Mr Mahmood. A full record of these proceedings and the evidence given is contained on file and I do not seek to set out that evidence other than I see it as relevant to my findings of fact which shall follow in due course.

Issues on Appeal

4. The agreed issues on the appeal before me are in relation to the Appellant's claim for asylum based upon her political opinion and in relation to her alleged sexuality as a lesbian and a member of a particular social group, both of those independently giving rise to risk on return to Zimbabwe.

5. The Appellant also pursued a family life claim and a private life claim on the basis of Article 8 outside the Immigration Rules pursuant to the European Convention on Human Rights.

Closing Submissions

6. In closing, Ms Ahmad relied upon the Reasons for Refusal Letter and upon the determination of First-tier Tribunal Judge Wood promulgated on 7th July 2009, in particular paragraph 35 (specifically subparagraphs 2, 3, 4 and 8 of paragraph 35) and paragraphs 36 and 37. Ms Ahmad's position was that Judge Ford had not found the Appellant credible and only believed her to be a local organiser. This, Ms Ahmad submitted, was the starting point for consideration of her political claim. Ms Ahmad

accepted that the Reasons for Refusal Letter of 23rd October 2015 now made clear that it could not be argued that the Appellant could safely re-enter or return alternately to South Africa instead of Zimbabwe as she no longer held any valid leave to enter or reside there.

7. In relation to the secondary aspect of the Appellant's asylum claim, Ms Ahmad submitted that the determination of Judge Ford reflected the starting point given that her determination promulgated on 17th May 2012 was the last word on this matter as it was found at paragraphs 27, 29, 30, 46 and 50 that the Appellant's sexuality claim and membership of a particular social group was not accepted on that occasion. Ms Ahmad made reference to an inconsistency in the cross-examination between the Appellant's evidence and that of her daughter, in essence as to whether the daughter had ever met the Appellant's former partner known as Cheryl Simmons. Ms Ahmad further submitted that in relation to the country guidance case of *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 59 (IAC) that ratio of *CM* was contained at paragraph 215 which made clear that according to the European Commission there are very few, if any, gross violations of human rights in terms of assaults, murders etc but there is a threat of repetition if the violence remains. It also further confirms that the police have not generally taken steps to protect victims and in some cases the police have been perpetrators themselves and further that the Zimbabwean human rights' objective information shows that the police do nothing to protect victims and there are regular reports of discrimination. It is also said that there are signs of hate speech and continued reports of beatings and torture by MDC supporters around the country. Ms Ahmad further highlighted paragraph 9 of *CM* and noted the decision of *RN* in 2008 and the Supreme Court Authority of *RT (Zimbabwe)* [2012] UKSC 38 and the conclusion that *EM* is no longer generally applicable. Ms Ahmad submitted that the Appellant is from Bulawayo and is not broadly at risk and does not have a significant profile such that she would be at risk on return.

8. Ms Ahmad also submitted that the Appellant's daughter was aware of her sexuality but not her grandchildren and to that extent it would be relevant as to whether she would live openly as a lesbian on return to Zimbabwe if I were to accept her sexuality as claimed.

9. In relation to Article 8 Ms Ahmad submitted that the starting point was whether a family life was engaged or not and as to whether there were more than ordinary adult emotional ties. In her submission the dependency was not strong and was not more than might pertain between an adult child and a mother.

10. In terms of Section 117B of the Nationality, Immigration and Asylum Act 2002 Ms Ahmad relied on *Rajendran (s117B - family life)* [2016] UKUT 138 (IAC) which confirms that precariousness is relevant to family life as well as it is to private life. She highlighted that the Appellant was not financially independent and that she was not working and as such this factor would fall against her in terms of Section 117B also.

11. In respect of the public interest Ms Ahmad confirmed that the public interest was quantified by a firm and fair immigration control alongside the Section 117B factors already noted.

12. In terms of pre-empting the Appellant's reliance on *UE (Nigeria) v Secretary of State for the Home Department* [2010] EWCA Civ 975 Ms Ahmad relied upon paragraph 36 and stated that even if paragraph 35 made clear that it is open to the court to find that loss of a public benefit is capable of being the relevant consideration to proportionality it would only make a difference if there was very significant contribution to the country as was said by Lord Bridge in the case of *Bakhtaur Singh*.

13. For the Appellant, whilst making formal submissions regarding the protection claim, it was pragmatically acknowledged by Mr Mahmood that even if the Appellant's claimed sexuality and her MDC connections independently and/or through her daughter were to be accepted by the Tribunal the protection claim might still not be established on the current authorities concerning risk on return to Zimbabwe. However, Mr Mahmood still pursued the protection claim and submitted that the Appellant and her daughter had given credible evidence and that even accepting Judge Wood and Ford's determinations as a starting point for the protection claims pursuant to *Devaseelan*, a great deal had changed in the evidence before the Tribunal in that the Appellant had now given evidence about her previous relationship with Ms Simmons.

14. The Tribunal heard the evidence from the Appellant's daughter and the evidence in the bundles at pages 45 to 47 from the UK Gay and Lesbian Group dated 11th October 2011, specifically at paragraph 6. Mr Mahmood submitted that times had moved on since those determinations and the relationship which the Appellant had enjoyed and which had now ended was such that she had established her sexuality which would place her at risk on return. Mr Mahmood further submitted that taking Judge Wood's decision, particularly at paragraphs 36 and 37 into account, a key distinction to be drawn between the previous status quo at the date of the First-tier Tribunal decisions in 2009 and 2012 was that the Appellant had now established, and the Respondent had accepted, that she could not return to South Africa contrary to the previous findings in the First-tier Tribunal which were errors in fact. Mr Mahmood submitted that as the Appellant had left in January 2006 and given that she was absent for three years or more, by January 2009 she would have not been able to return to South Africa and thus Judge Wood's decision in June 2009 following her appeal was factually incorrect, one could see, in hindsight.

15. Mr Mahmood further made submissions upon the delay between the fresh claim which was made on 19th December 2012 and the decision which is the subject of this appeal issued on 23rd October 2015 which took just under three years to come about. Mr Mahmood submitted that the Appellant had suffered injustice in that she was unable to rely upon the former positions which prevailed at the time of *RN* in 2009 and 2012 and consequently the errors made in the previous determinations of her status would have an effect on the proportionality outcome alongside the delay in the fresh claim decision being issued. To this extent Mr Mahmood relied upon the

judgment of *EV (Kosovo)*. Mr Mahmood submitted that the delay had strengthened the bond between the Appellant and her daughter and her grandchildren. Mr Mahmood highlighted that the Respondent had failed to perform a Section 55 assessment of the children's best interests and submitted that there was strong cogent evidence regarding the way in which the boys were being looked after by the Appellant and drew my attention to the letter from the older child who had framed his view on his grandmother's situation in his own words (see pages 24 to 26 of the supplementary bundle). Mr Mahmood submitted that this was a case where there was more than normal adult emotional ties and that the removal of the Appellant would have a massive impact on the daughter's life as well as the grandchildren's and that their lives would be infinitely worse without the Appellant. Mr Mahmood submitted that the effect on the British daughter and the two British grandchildren was not required in respect of the public interest as on the evidence before me the Appellant would have been granted asylum in 2009 and 2012 and she could not return to South Africa as the Tribunal believed.

16. Finally, in terms of *UE (Nigeria)* Mr Mahmood submitted that the British Red Cross letter of 3rd April 2017 was significant in terms of evidence in the Appellant's private life and the evidence of participation in that charity from 2013 onwards and also in terms of the bundle substantiating her service to Oxfam since 2011 onwards. Thus Mr Mahmood submitted that albeit the Appellant was not financially independent and was not entitled to work she was still nonetheless undertaking voluntary work and was of service and benefit to her community.

17. At the close of those submissions I reserved my decision, which I shall now give along with my reasons.

Findings

18. Having already read and adopted the First-tier Tribunal Judge's uncontroversial summary at paragraphs 1 through to 25 of that decision, I also comment that I have noted the evidence in the hearing before the First-tier Tribunal Judge at paragraph 29 through to 57. The applicable law as set out by the First-tier Tribunal Judge at paragraphs 58 to 61 was not the subject of challenge and is of course correct in respect of the burden of proof. The Appellant needs to show at the date of hearing that there are substantial grounds or a real risk that she meets the requirements of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or that she is entitled to be granted humanitarian protection in accordance with paragraph 339C of HC 395 and that returning her to Zimbabwe would cause the United Kingdom to be in breach thereof.

19. The Appellant must also establish that she enjoys a private and/or family life in the United Kingdom pursuant to Article 8 ECHR which will be interfered with by the decision of 23 October 2015 under appeal in respect of which any consideration of Article 8 issues outside of the Rules are to be gauged by virtue of a fair balance and

proportionality assessment as espoused in the House of Lords' case of *Razgar v Secretary of State for the Home Department* [2004] UKHL 27.

20. In respect of the Appellant's protection claim, my starting point as I have previously rehearsed is that set out in the determinations of First-tier Tribunal Judge Ward dated 29th June 2009 and that of First-tier Tribunal Judge Ford dated 15th May 2012 in accordance with *Devaseelan* UKIAT [2002] 000702 Starred principles. I confirm I have taken the determination of the previous two judges as a starting point for my findings of fact and I have taken account of the evidence submitted by the Appellant and the evidence which is now before me before making the following findings.

21. I acknowledge that at paragraph 46 of Judge Ford's determination he did not accept that the Appellant is a lesbian and at paragraph 47 stated that he did not accept that the entire family rejected her because they believed her to be a lesbian. He found that the reason for the Appellant coming to the UK was to give support to his daughter who was unwell at the time in September 2008 and that the Appellant made a false claim in relation to being a lesbian purely in order to justify a fresh claim for asylum.

22. In respect of the Appellant's evidence before me today I note Ms Ahmad's criticism that the Appellant and her daughter conflicted in whether the daughter had met Ms Simmons, the Appellant's former partner. However, to my mind the Appellant's daughter was not giving evidence that there was a formal meeting accompanied by a full introduction and acquaintance being established between Ms Simmons and her but moreover that the former partner had been seen by the daughter at the daughter's house.

23. Furthermore, I also note the new evidence in terms of the UK Lesbian and Gay Immigration Group letter which states in particular at paragraphs 6 and 7 that the Appellant fears if she is returned to Zimbabwe or South Africa she would live a life of fear and would not be able to live life as she chooses to and that it has taken her years to admit she is a lesbian and she says she could not return to live in the closet, amongst other matters. It is also said that since February 2011 Ms Moyo has been part of the women's discussion group and their meetings were set up to offer peer support for women clients who experience different attitudes towards the experiences they have suffered. This evidence by itself is adequate, however having heard the evidence of the Appellant's daughter I am *just* persuaded to the lower standard of proof that the Appellant is a lesbian and a member of a particular social group notwithstanding the previous findings of Judge Ford. I say this primarily due to the manner in which the Appellant's daughter delivered her evidence in respect of the shock and mixed feelings she experienced when learning that her mother was a lesbian. My interpretation of the Appellant's daughter's evidence was that she was uncomfortable discussing this matter and although appeared to have come to terms with it was still unable to understand her mother's choice of sexuality. Equally, there was no effective cross-examination from Ms Ahmad to this aspect of the claim such that I was not given sufficient reason now to doubt her word other than the solitary discrepancy in cross-examination that I have already dealt with. However, even if

the Appellant is a member of that particular social group owing to her sexuality, that does not of itself establish that the Appellant will necessarily be at risk on return to Zimbabwe as accepted by Mr Mahmood. Indeed, Mr Mahmood stated candidly that even if the entirety of the protection claim were accepted, she arguably may not be at risk on return due to the current country guidance, authorities and objective evidence.

24. In respect of the Appellant's claim to be at risk due to her own MDC connections and those of her daughter, having considered Judge Wood's decision in this regard I note that at paragraph 36 of his decision Judge Wood accepted that persecution may be possible on return to Zimbabwe but did not consider that asylum should be granted as the Appellant had a residence permit in South Africa at the time which led to the consequence of the appeal having failed. I have already discussed this matter at length in my previous error of law decision and reasons but for the sake of completeness I note that the position now is beyond question that the Appellant cannot return to South Africa having obtained the letter from the South African Embassy dated 20 September 2012 confirming that she does not have a right of residence. This is an important matter which I will return to later in the context of the Appellant's Article 8 claim.

25. In respect of the Appellant's return to Zimbabwe (not South Africa), and her own links, the starting point must be that she is merely a supporter as found by Judge Wood even if she were to be at risk. There is an associated risk that would attach to her by virtue of her daughter's own connections to the MDC pursuant to *NN (teachers: Matabeleland/Bulawayo: risk) Zimbabwe CG* [2013] UKUT 00198 (IAC) which confirms that a teacher will generally not face a heightened risk on return on account of her occupation or former occupation if her destination is rural Matabeleland or north or south or Bulawayo. However, as I summarised previously, the consequence of *NN* is that a person is not automatically able to return if a teacher is not at heightened risk and the Tribunal will need to assess the individual risk that an applicant may face notwithstanding that a teacher is not at a heightened risk.

26. I do accept that the daughter is at risk having previously been granted asylum and having obtained refugee status (*Nota Bene*: thereafter she became a British citizen). Thus I do find that the Appellant may be at a somewhat elevated risk due to her daughter's previous grant of refugee status. However, from the evidence before me, I do not see that the Appellant has a heightened risk in her own capacity. My reason for finding that the Appellant has an indirect elevated risk as a consequence of her daughter is due to the grant of asylum to the daughter which was noted in a minute from a subject access request dated 29 July 2012 that was on file and which stated as follows under the heading 'consideration':

> "Applicant was very credible at interview and her entire appearance was that of a person who had endured some bad experiences. At interview she had a walking frame to help her as she had recently tried to commit suicide by jumping from a window, this resulted in breaks to both of her legs. She was very softly spoken and subdued throughout the interview. Although it is very easy to disregard her claims to have been an MDC member, it would not be so easy to dispute what had happened to her.

Given the high percentage of rapes that occur in Zimbabwe I found the applicant to be credible and had no reason to disbelieve what she was saying. Basically, the only reason why she was raped, criminality aside, was due to her MDC membership. Minor credibility issues but nothing that would sustain a refusal of her application."

27. This is followed by a decision which states based on political opinion the Appellant's daughter was granted full asylum in line with then current guidelines on MDC members in Zimbabwe in 2002.

28. However, where does that leave the Appellant? Having considered the matter at length and in light of the evidence before me it is my view that the Appellant has not established against the current authorities, in particular in respect of *CM* from 2013. As mentioned earlier, even if the Appellant were to be accepted to be an MDC member or supporter, she would be highly unlikely to face significant difficulties, given that the evidence does not point to her being an MDC member or supporter with a significant profile. I find that she would not be at risk on return to Zimbabwe on this basis. Similarly, even though I accept the Appellant's claim as to her sexuality and her being a member of a particular social group, the current authorities and objective evidence dictate that her appeal cannot succeed on this basis either, nor can her protection claim succeed taken cumulatively with her indirect MDC connections through her daughter and her daughter's previous grant of asylum and status as a former teacher in Zimbabwe.

<u>Article 8</u>

29. Turning to the Article 8 issues and following the *Razgar* approach, I do find however that Article 8 family life has been quite clearly established between the Appellant, her daughter and her grandchildren on the premise that I accept the Appellant's evidence and her daughter's evidence and find that the Appellant has been living with her daughter in Milton Keynes and supporting her for several years past, since approximately 2008, I am told. There is to my mind more here than normal adult emotional ties. That is clear to me because the Appellant's evidence is that she looks after her daughter and she takes care of her when she is unwell which is said to be a seasonal occurrence, but one which is still frequent enough that it occurs often enough for the Appellant's daughter to only work part-time.

30. The source of the daughter's health concerns is connected to lumps in her breast for which she has undergone multiple surgeries to have those tumours removed to avoid their becoming cancerous. More importantly and of far more concern than that is the fact that the daughter is suffering from depression and has been for many years past and is currently taking medication in the form of Zopiclone to help her sleep and Mirtazapine for her anxiety and depression. As already noted by way of the grant of protection status to the daughter she previously tried to commit suicide in 2002 due to her rape having been an MDC member; and having noted the daughter's oral evidence and her manner and tone and the medical evidence before me, I accept that the daughter is suffering from anxiety that emanates in the form of

depression and results in hallucinations which render her unable to look after her children. Indeed, I accept the Appellant's evidence that she is responsible for looking after and caring for the grandchildren on an almost daily basis. This is characterised by the fact that the Appellant takes the grandchildren to and from school and often attends parents' meetings in her daughter's stead. I also note the nuanced evidence that the Appellant's daughter stated that her children will approach the Appellant for advice before considering turning to her at all. Thus it appears to me from the evidence that the Appellant is the primary carer of her British grandchildren and is an essential and intrinsic part of their daily lives.

31. Thus having found that family life is engaged as there are more than normal adult emotional ties between the Appellant and her daughter and pursuant to *Ghising (family life - adults - Gurkha policy) Nepal* [2012] UKUT 160 (IAC) and *Marckx v Belgium* (1979) 2 EHRR 330, as there are family ties more than one might normally expect from a grandparent between the Appellant and her two grandchildren, it is clear that the removal of the Appellant from this *status quo* will result in more than a technical interference in the family life between this frail and unusual family unit.

32. As to what the public interest demands that question must be engaged by virtue of firm and fair immigration control as Ms Ahmad accepted. This is confirmed by section 117B(1) of the Nationality, Immigration and Asylum Act 2002 and I indicate that I have paid due regard to all of the sections cited below in reaching my decision:

> (1) The maintenance of effective immigration controls is in the public interest.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to—
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner,
>
> that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

33. To my mind, the above subsections of 117B of the 2002 Act are applicable to this Appellant and fall in favour of her removal in respect of the public interest. Furthermore, I accept and take into consideration that the Appellant is not financially independent, given that she is not working and is unable to work. The public interest is further fortified by the fact that the Appellant has a precarious status and that status affects her family life that she enjoys as well as her private life pursuant to *Rajendran (s117B - family life)* [2016] UKUT 138 (IAC). Little weight should be given to her private life in the above regards.

34. On the other side of the balance, the public interest is tempered by the fact that the Appellant performs community work as I have already noted in the form of her voluntary work with both the British Red Cross and Oxfam which has continued for, in the latter case, some six years. Pursuant to the authority of *UE (Nigeria) v Secretary of State for the Home Department* [2010] EWCA Civ 975, albeit that it was stated by Sir David Keene in his judgment at paragraph 36 that it will make a difference to the outcome of cases in a relatively few instances, I do consider that it will make a difference not to the outcome of this appeal but to the weight to be given to the public interest in respect of the potential loss to these charities and the community of the benefit that the Appellant has brought, which is relevant to the consideration of my assessment of the public interest when assessing the proportionality of the decision taken. I pause to note that the letter from the British Red Cross is framed in what one could only describe as 'glowing' terms in respect of the Appellant's contribution to the charity.

35. The public interest is also to be tempered by virtue of factors such as delay as espoused in the judgment of *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41 wherein Lord Bingham stated at paragraph 16 that delay may be relevant in reducing the weight to be accorded to the requirements of firm and fair immigration control if it was the result of a dysfunctional system which yielded unpredictable, inconsistent or unfair outcomes. In my view the outcome that has beset the Appellant in a historical sense is what one could describe as unpredictable, inconsistent and unfair in several respects.

36. Firstly, in respect of Judge Wood's determination in 2009 it is clear from Judge Wood's decision at paragraph 36 that he stated that "*it may be that (the Appellant) is identified as the mother of a teacher. In light of the regime in Zimbabwe, that might well lead to the kind of treatment that she has described in her account*", but due to the Appellant being able to return to South Africa in his view his determination promulgated on 3 July 2009 resulted in the conclusion that there was no reason why she required refugee status or humanitarian protection. However, as I have already rehearsed previously, according to the submissions of Mr Mahmood which I accept, on the basis of the letter from the South African Embassy, her ability to return to South Africa would have expired in January 2009 by which time the First-tier Tribunal would have been confronted with the desire that she would have had to return to Zimbabwe and may have been identified as the mother of a teacher and given the authorities which prevailed at that time the Appellant may have been given refugee status and humanitarian protection in accordance with *RN (Zimbabwe) CG* [2008] UKAIT 00083. However, that evidence was not before Judge Wood and consequently the appeal was dismissed; but nonetheless the fact remains that the Appellant may have obtained refugee status or humanitarian protection such that she would not have been an Appellant at today's date had her inability to enter South Africa been known to Judge Wood.

37. Secondly, as Mr Mahmood submitted, the Appellant's application was a fresh claim which resulted in the decision of 23 October 2015 made on 19 December 2012 such that the delay in processing her fresh claim was almost three years in length. This in

my view contributes to the appearance of an administrative and dysfunctional system that was described by Lord Bingham in *EB (Kosovo)*. Thus, for those reasons it is my view that the delay is relevant alongside the historic inaccuracy in Judge Wood's conclusion such that the requirements of a firm and fair immigration control are moderately reduced in this appeal.

38. Taking all of the above factors into consideration I also take into account the best interests of the children which have remained at the forefront of my mind when making this assessment. I note the letter in particular from the Appellant's grandson, Quincy, which appears at pages 24 and 25 of the Appellant's supplementary bundle which describes the fact that the Appellant has been there for the grandchildren for most of their lives, and reflects the evidence which I have heard today and which I have accepted, that the Appellant's daughter could not attend certain events and thus the Appellant attended in her stead as a parent figure and also assists the grandchildren as a parent might do with their homework etc. The letters also confirm and corroborate that the Appellant's daughter is often sick and that the grandmother does look after the grandchildren and puts them to bed also. This day-to-day routine of looking after the children in every way, such as cleaning their bedrooms, ironing, taking them to and from school, making food and putting them to bed alongside looking after the daughter whenever she is ill, demonstrates that the Appellant is the linchpin to this family unit and it is clearly in the best interests of her grandchildren that she remains in that place holding this family together.

39. Given that the children's father only sees them a handful of times a year and has not demonstrated any support for the children other than that infrequent contact, it is clear that there is no alternate person whom the daughter and grandchildren can turn to for support even if that were to be a sufficient remedy for this scenario, which it is not.

40. Taking all of the above factors into consideration, I conclude that the decision of the Respondent to remove the Appellant would result in a disproportionate interference in the family life enjoyed between the Appellant, her daughter and her grandchildren. As I have said the Appellant is essential to the day-to-day operation of this family unit and also provides essential emotional support for the Appellant's daughter as well as ensuring the continued wellbeing of her grandchildren. As such the absence of the Appellant would jeopardise the lives of the daughter and the grandchildren, and the public interest in removing her is outweighed by the disruptive effect that her removal would have upon all members of this family unit.

<u>Notice of Decision</u>

41. The Appellant's appeal in respect of her asylum and humanitarian protection claims is dismissed.

42. The Appellant's appeal in respect of her human rights claim is allowed.

<u>Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008</u>

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

<u>TO THE RESPONDENT</u>

<u>FEE AWARD</u>

No fee is paid or payable and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge Saini