Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/00683/2018
PA/00684/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th December 2018	**On 25 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

L Z (FIRST APPELLANT)
L Z (SECOND APPELLANT)
(ANONYMITY DIRECTION MAINTAINED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Attendance excused
For the Respondent: Attendance excused

DECISION AND REASONS

1. This is a resumed hearing of the Second Appellant's appeal against the refusal by the Secretary of State to grant her leave to remain on the basis of her human rights. As noted in my previous decision of 14th August 2018 the First Appellant and her son (the Second Appellant's grandson) succeeded in their appeals before the First-tier Tribunal and their protection claims were allowed and were unchallenged by the Respondent. Thus the only appeal that comes before me today is that of the Second

Appellant, namely the mother of the First Appellant and the grandmother of the First Appellant's child.

2. When this matter previously came before me I indicated that I found there was a material error of law in the First-tier Tribunal Judge's assessment of the Second Appellant's human rights appeal. The consequences of those findings were that a discrete portion of the First-tier Tribunal Judge's decision should stand, but that the rest would return for me for remaking irrespective of the Second Appellant's human rights appeal.

3. In light of my previous findings I adopt them herein for the sake of completeness:

> "4. Having heard submissions from both representatives I do find that there is a material error of law in the decision such that the findings made in respect of the Second Appellant in relation to her Article 8 family and/or private life should be set aside. My reasons for so finding are as follows.
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> 5. In respect of the judge's findings in relation to the Article 8 rights of the Second Appellant they are contained primarily in paragraphs 139 to 142 of the decision and it is fair to say that they are robust and concise. As Mr McQuit rightly points out, the judge has set out the jurisprudence concerning Article 8 at paragraphs 140 to 141 however, what is lacking from the decision at paragraph 140 is an application of that jurisprudence to the findings of fact made by the First-tier Tribunal in respect of the protection claim and the shared traumatic history between the First and Second Appellant and the grandchild. To illustrate the materiality of this error Mr McQuit took me to Annex C of the Respondent's bundle before the First-tier Tribunal which mentioned in paragraphs 2, 5 and 8 that the First Appellant (whom I shall refer to interchangeably as the 'daughter') was living with the Second Appellant (whom I shall refer to interchangeably as the 'grandmother') from 2009 since the grandmother's retirement. Thereafter the grandmother looked after the grandson (the daughter's son), whilst the daughter was at work, and their day-to-day activities and life included factors and features such as the grandmother going to collect the grandson from school. Thereafter, as the First-tier Tribunal has found, both the grandmother and daughter believed that they were surveilled by the Chinese authorities, and in any event, the grandson was kidnapped by those authorities and following that kidnapping, the grandmother and daughter were both instrumental in helping the grandson overcome the trauma of that experience.
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> 6. I note for the sake of completeness that there is no challenge to the shared factual history underlying this Article 8 onward appeal and I also note that the grandson has been raised by the daughter and grandmother given that he is a child born out of wedlock and has had no input from his biological father.
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> 7. In light of those facts as gleaned from Annex C of the Respondent's Bundle, it is clear that the assessment by the First-

tier Tribunal of the Second Appellant's Article 8 rights at paragraph 142 of the decision is perfunctory and fails to give a reasoned analysis of whether or not family life, or an extended private life, has been engaged (particularly as family life may exist between a grandparent and grandchild, as established since the decision in the European Court of Human Rights in *Marckx v Belgium* [1979] 2 EHRR 330, which also has been overlooked) and whether the decision would therefore have a disproportionate impact upon that family or private life.

8. In light of the above findings, I set aside paragraphs 139 to 143 of the decision of First-tier Tribunal Judge Shand in their entirety.

9. The preceding findings in relation to the First Appellant and her child and the shared history of the First and Second Appellant are preserved as they are contained in paragraphs 1 to 138."

4. Given that the First-tier Tribunal's findings at paragraphs 1 to 138 are free from legal error, I adopt those paragraphs as part of my decision but do not set them out herein given their length and that their content is not controversial. I however take those paragraphs into account in reaching my decision. I now turn to the Article 8 assessment for the Second Appellant.

5. In light of the facts as set out in the First-tier Tribunal's decision and my previous findings, I find that the Second Appellant's Article 8 rights as a grandmother of the First Appellant's son are engaged by virtue of the shared family life between these three individuals.

6. In light of the findings made by the First-tier Tribunal in respect of the protection claim and the shared traumatic history of the First and Second Appellants and the Second Appellant's grandchild, I turn to Annex C of the Respondent's Bundle which mentions in paragraphs 2, 5 and 8 that the First Appellant was living with the Second Appellant from 2009 since the Second Appellant's retirement. Thereafter the Second Appellant looked after the grandchild whilst the First Appellant was at work and their day-to-day activities and life included factors and features, such as the Second Appellant going to collect the grandchild from school. Thereafter the Second Appellant and First Appellant believed they were surveilled by the Chinese authorities and, in any event, the grandchild was kidnapped, and following that kidnapping the Second Appellant and First Appellant were instrumental in helping the grandchild overcome the trauma of that experience. Thus, given this shared traumatic experience and the instrumental nature of the Second Appellant's unchallenged evidence in helping the grandchild overcome the trauma of the kidnapping, and their shared family life, I find that family life exists between the Second Appellant as a grandparent and with her grandchild, pursuant to the European Court of Human Rights decision in *Marckx v Belgium* [1979] 2 EHRR 330, and also separately between the Second and First Appellant, given that the grandchild has been raised without a father and given that the Second Appellant appears to have adopted the role of a surrogate parent alongside her daughter.

7. It is plain that the Second Appellant's removal will have more than a technical interference with the family life she enjoys with her daughter and grandchild, and indeed I find that the consequence of her removal will be to remove an essential building block of this fragile and traumatised family unit.

8. In respect of the grandchild, he is not a qualified child as according to the evidence before me within the meaning of Section 117D of the Nationality, Immigration and Asylum Act 2002, given that he is not a British child and has not resided in the United Kingdom for seven years continuously.

9. In terms of the public interest I take into account Section 117B of the Nationality, Immigration and Asylum Act 2002 and I note that the Second Appellant previously gave evidence with the assistance of a Mandarin-speaking interpreter and did not give evidence in English, which falls against her. The Second Appellant appears to have been self-sufficient during her time in the United Kingdom which does not fall against her. I further note, however, that the Second Appellant was present in the United Kingdom at a time when her status was precarious and the decision is in accordance with firm, fair and effective immigration control.

10. Notwithstanding the above statutory statement of the public interest, I take into account the position indicated by the Secretary of State's Senior Presenting Officer, Mr S Kotas, whom by way of e-mail dated 25th October 2018 conveyed the following:

> "Further to the error of law decision and directions promulgated on 28 August 2018 in the above appeal, I can confirm I have now had sight of the Appellant's supplementary bundle of evidence, and in light of this and the preserved findings of fact, I do not intend to resist the second Appellant's Article 8 appeal.
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> The SSHD therefore invites the Upper Tribunal to re-make the decision accordingly and without the need for a further hearing".

11. In that light it is plain that the Respondent has implicitly accepted that the supplementary evidence provided by the Second Appellant demonstrates the family life she shares with her grandchild (and her daughter, the First Appellant) and that she is an intrinsic part of this family unit. Given that the Secretary of State does not resist this Article 8 appeal, and given that the First-tier Tribunal has found that it is in the child's best interests to remain with his mother, by virtue of the family life shared between the Second Appellant and the grandchild, I further add that in my view it is in the child's best interests to remain in the care of his grandmother as a surrogate parent, and a key member of this family unit. Thus, given that the child's best interests are served by remaining with his mother whom has retained refugee status, and given that he would undoubtedly remain by his biological mother's side, I can discern no public interest other than the specific statutory interest stated above in the Second Appellant's removal from this family unit. Thus, on balance I find the decision is a disproportionate interference with the family life of the Second Appellant

with her grandchild and daughter and the balance is tipped in favour of the Second Appellant remaining in this family unit.

12. In light of the above findings, I find that the Second Appellant's removal would be a disproportionate interference with her family life.

13. Accordingly, I allow the appeal on human rights grounds.

Notice of Decision

14. I re-make the decision in the above terms and hereby allow the appeal on human rights grounds.

15. The anonymity direction is maintained.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed Date 14 January 2019

Deputy Upper Tribunal Judge Saini