Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08704/2014
IA/08733/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12 October 2015

Decision & Reasons Promulgated
On 16 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MS ANNAMMA THOMAS
MISS ESMI XAVIER
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, Counsel, instructed by Paul John and Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. By a decision promulgated on 4 September 2015, I found that the First-tier Tribunal had erred in law when dismissing the Appellants' appeals against the Respondent's refusal to vary their respective leave to remain and to remove them from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

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2. My error of law decision is annexed to the current decision.

3. In summary, I found that the First-tier Tribunal Judge had erred in refusing to carry out an assessment of the Appellants' Article 8 claim outside of the Immigration Rules (the Rules). Further, she had failed to take account of evidence from the first Appellant, which she herself had deemed credible.

4. Having found the errors of law to be material and setting the judge's decision aside, I adjourned the appeals with directions. The favourable credibility finding made by the judge in respect of the first Appellant was preserved (see paragraph 19 of the judge's original decision and paragraph 13 of my error of law decision).

<u>The remaking of the decision</u>

The evidence before me

5. In remaking the decision I have had careful regard to the following evidence:
    a) The Respondent's appeal bundle;
    b) Appellant's bundle 1 (AB1), indexed 1-38 and then 1-18 (incorporating two bundles before the First-tier Tribunal);
    c) Appellant's bundle 2 (AB2), indexed 1-60;
    d) Appellant's bundle 3 (AB3), indexed 1-17.

6. Both Appellants and the sponsor, Mrs Animascrene Xavier, attended the hearing, but none were called to give oral evidence.

Submissions

7. Ms Allen provided Mr Tufan and myself with a skeleton argument. In line with the error of law decision, she confirmed that the sole issue for determination in these appeals was Article 8 outside the Rules. She submitted there had been a change in the circumstances of the Appellants since their arrival in the United Kingdom, however Appendix FM did not provide for an application to switch categories of status. The substantive requirements of Appendix FM (ILRDR.2.4 and 2.5) were met. The second Appellant has significant care needs, and, relying on the preserved findings and the social worker's report in AB2, the first Appellant is no longer able to provide the required level of care.

8. Ms Allen submitted that if returned to India, the second Appellant would require either residential care or live-in care: the costs of which would be financially prohibitive. Ms Allen acknowledged, however, that there was no evidence of the availability or costs of such care. Even if the second Appellant could be placed in residential care, this would break the bond between her and the first Appellant. In terms of the scope of what is meant by "required level of care", Ms Allen submitted that it was broad, and went beyond simple bodily functions. It included emotional aspects, going out and engaging in daily life.

9. The issue of live-in care was addressed. It was submitted that both Appellants required substantial care. The rhetorical question was posed: could one carer provide adequate care for them? Ms Allen suggested the answer must be no. The cost of having two carers would be too great a burden on the family. The sponsor could not go to live in India alone. It would be unreasonable for her husband to follow her. Their ages and ties to the United Kingdom made it unreasonable to relocate. There was no one else in India, as the sponsor's son living and working in Malta. There was no evidence of other relatives providing any financial assistance. It was unlikely they would help in the future. Finally, it would not be proportionate for the Appellants to return and make an entry clearance application from India. Their care needs were immediate and constant. Any period of insufficient care would be detrimental.

10. Mr Tufan suggested that the First-tier Tribunal Judge had made an adverse credibility finding against the sponsor at paragraph 22 of her decision. It was accepted by the Appellants that they could not meet the Rules and this counted against them. In light of case-law, the Appellants need to show that "compelling circumstances" exist in order to succeed outside the Rules. In reality, these appeals were health cases, and the threshold was therefore very high. In respect of familial support in India, the sponsor's son in Malta was not settled there and could return to assist his sister and grandmother. There was no evidence on the costs of care in India, or the provision of residential care. It was submitted that both Appellants could go into residential care together. It was accepted that there is currently no guidance from the Respondent as to the meaning of "required level of care".

11. The sponsor and her husband could go and live in India: it was a matter of choice for them. In respect of section 117B of the Nationality, Immigration and Asylum Act 2002, Mr Tufan accepted that the English language issue was irrelevant in these appeals. Although the Appellants could be maintained, there was usage of the NHS by the first Appellant and the possibility of a future burden on public finds in this regard. Both Appellant's had always been in this country on a precarious basis.

12. Ms Allen responded by submitting that there was in fact no adverse finding in paragraph 22 of the First-tier Tribunal's decision. The relative in Malta was male and could not provide the type of care required by the Appellants. Although the Appellants came as visitors, there had been a genuine change of circumstances.

Findings of primary fact

13. There has never been a dispute about the second Appellant's significant cognitive impairments and the functional limitations resulting therefrom. On the basis of the unchallenged medical evidence at 30 AB1, I find that she has global developmental delay and is blind.

14. It is clear from the unchallenged evidence of the GP (30 AB1), the Occupational Therapist's report (13-14 part 2 of AB1), and the Social Worker's report (10-13 AB2) that the second Appellant has very significant care needs as a direct result of her conditions. These include: washing, dressing, accessing the toilet, taking adequate

nutrition, and moving around both in and out of doors. There is no suggestion that her ability to care for herself will ever materially improve, and I find that it will not.

15. In respect of the scope of the phrase “required level of care”, I agree that a broad interpretation can properly be applied, in the absence of authority or a natural and ordinary meaning of the words suggesting the contrary. On the basis of the independent evidence cited previously, and the sponsor’s witness statements, I find that the required level of care from another person and appropriate to the second Appellant is effectively twenty-four hour. It involves both intimate and non-intimate aspects. The intimate aspects are obvious. Beyond that, I would agree that emotional support and assistance in being able to go out and, to a greater or lesser extent, socially interact with others. I fully bear in mind that the “required level of care” is not to be used as a means of equating the quality of life with that of someone unaffected by health conditions, or to that which may be achievable in the United Kingdom as opposed to their country of origin. However, the requisite level must be informed by a concept of what is necessary to allow for a reasonable existence in the context of the individual’s circumstances, including medical advice/diagnosis, cultural norms and living standards in the home country.

16. Bearing this in mind, I find that the care required could not be provided by a man, whether he was a relative or not. This therefore precludes the sponsor’s son (whom I accept is living and working in Malta) from stepping in to assist.

17. I find that the first Appellant suffers from foot pain, lethargy, microalbuminiria, hypertension, and type II diabetes (see 14 AB2). From the evidence before me, it appears as though all of these conditions existed prior to her arrival in the United Kingdom in early 2013. It is accepted by the Appellants that back in India, the first Appellant had been able to provide the necessary care for her granddaughter (see, for example, 3 part 2 of AB1).

18. Based upon the first Appellant’s witness statement and the preserved credibility finding of Judge Black, I find that there has been a genuine change in circumstances since the Appellants’ arrival in the United Kingdom. Although the medical evidence is somewhat thin, the first Appellant stated that she was getting frailer and this had led to an inability to provide the care to the second Appellant. This is supported by the sponsor’s evidence. I accept that this change in the first Appellant’s health and overall ability to provide what is, after all, significant care for the second Appellant has materially reduced. I find that she cannot now provide by herself the overall required level of care to the second Appellant.

19. On the evidence before me, I find that a return to India would not of itself run contrary to the Appellants’ interests. I appreciate that the Social Worker states in her report that they should remain in this country (13 AB3). However, this conclusion is not accompanied by reasoning connected in any way to the possibility of care provision in India. The author may not have been asked to comment on this point, and of course she is unlikely to have had any expertise on the position in India. It is relevant though that there is no express evidence (whether from the Social Worker or

any other source) to say that a return to India would be inherently adverse to the Appellants even if care could be arranged.

20. Contrary to Mr Tufan's suggestion, there was no adverse finding at paragraph 22 of Judge Black's decision. On a proper reading, the passage in question simply states that the sponsor had "considered" bringing the Appellants to the United Kingdom on a long-term basis, not that this was in fact her intention at the point of application or arrival here.

21. I find that the first and second Appellants have a particularly strong bond, resulting from the status of the former as primary carer for the latter over the course of time. This link is perfectly plausible, and is supported by the Occupational Therapist's report and that of the Social Worker (14 AB1 and 7, 11 AB2). I accept that whilst some caring duties have now been taken on by the sponsor, the close bond between the Appellants subsists. I find that it would be contrary to the interests of the second Appellant in particular for her to be separated from her grandmother.

22. As I have said, the sponsor does now undertake some of the care required by the second Appellant. However, she works, as does her husband. Therefore, the Appellants at home alone for periods of the day, and there is no evidence to suggest that this is an unworkable or unsafe state of affairs. Thus, my previous finding that the first Appellant cannot provide the totality of care required, she can and does provide a degree of on going emotional and practical assistance during weekdays.

23. The picture of what if any relatives remain in India is not entirely clear. There seems to have been suggestions to the effect that there are some and none. Taking the evidence as a whole, I am prepared to accept that there are no relatives in India would have in the past provided or would be likely in the future to provide assistance to the Appellants. I find that there are two sons of the first Appellant (brothers of the second) working in the Middle East (5 part 2 AB1). Although Ms Allen submitted that any support from relatives was unlikely, I have no evidence to suggest that they would be either unable or unwilling to assist their mother and sister. It must be more likely than not that they would in fact offer at least some financial support, if called upon.

24. There is a very distinct absence of evidence from the Appellants as to the availability and costs of either residential or live-in care provision in India. There is nothing from a local authority, medical professional or relevant non-governmental organisation, for example. Ms Allen has submitted that the nature of the care required by both Appellants would be financially prohibitive for the family. This submission is made in something of an evidential vacuum, however.

25. I accept that the sponsor and her husband work, with a combined household income of approximately £1800 a month (2 part 2 AB1 and 2 AB3). Yet because of the lack of information about the availability and costs of residential or live-in care for both Appellants in India, it cannot be said that the Appellants have shown that such care (at a required level of course) is unavailable, on the balance of probabilities. It is the

case, I find, that the Appellants have, understandably on a human level at least, sought to base their cases on remaining with the sponsor in this country because of the obvious familial connection. Perhaps because of this, there has not been the investigation into alternative possibilities in India. Overall, I find that there is likely to be either appropriate residential or live-in care for both Appellants in India on the premise that they remain living together.

26. On the financial side, I take into account that both the sponsor and her husband work. I have no evidence about the costs of care. It follows that I have no evidence to suggest that they would be unable to afford what I have found to be the existence of available care. I therefore find that they could. Whilst not essential to this finding, I note that additional support is available from the relatives in the Middle East.

27. I find that the sponsor and her husband are British citizens. She obtained citizenship in 2010 through time spent here as a domestic worker (having left India in 2003). I find that they have no other children or relatives in the United Kingdom. I find that they live in rented accommodation. There is no other evidence of significant ties in this country, and I find that there are none. Both are healthy.

Conclusions on the Immigration Rules

28. It has been conceded by the Appellants that they cannot satisfy the Rules. In respect of the Adult Dependent Relative route under Appendix FM, the sole difficulty is said to be the fact that the Appellants arrived here as visitors. This meant that they fell foul of E-ILRDR.1.2 (the prohibition on switching). That is right as far as it goes.

29. However, if one were to hypothetically take a step back and assume that the Appellants had applied for entry clearance as Adult Dependent Relatives, on my findings of fact they still would not have met the Rules. This is because they have not shown that the required level of care was unavailable in India (E-ECDR.2.5).

30. In terms of Paragraph 276ADE, this was found by the First-tier Tribunal not to be satisfied, and nothing has been said about this provision since. It has been conceded that the Appellants cannot meet the requirements set out therein. This includes, of course, the test of whether very significant obstacles stand in the path of reintegration into Indian society (Paragraph 276ADE(vi)).

Conclusions on Article 8 outside the Rules

31. I direct myself that the Rules in question are not a complete code, and therefore I should, indeed must, consider Article 8 outwith their ambit. The nature and extent of that consideration and the relevance of the Rules are of course relevant matters.

32. I find that the Appellants enjoy family life with each other and with the sponsor. The ties between the two Appellants clearly go beyond those to be expected in relation to close adult relatives. The ties between the Appellants and the sponsor are less strong. However in the circumstances of these appeals, I find that there is family life in accordance with the threshold set out in Kugathas [2003] EWCA Civ 31, and recently

approved in Singh and Singh [2015] EWCA Civ 630. There is a dependency now on the sponsor in light of the first Appellant's deteriorating health.

33. I find that the Appellants both have a private life in the United Kingdom to the extent that this encompasses their health and relationships with the sponsor and her husband.

34. I find that the Respondent's decisions will interfere with the protected rights to a sufficiently serious extent so to engage Article 8.

35. There is no suggestion that the Respondent's decisions are not in accordance with the law, or fail to pursue a legitimate aim.

36. Proportionality is, as is often the case, the key issue in these appeals. In conducting the balancing exercise, I take into account and weigh up the following matters.

37. The first Appellant is getting older and her health is in general deteriorating, although she is not significantly incapacitated and her conditions are not of a particularly unusual or serious nature.

38. The second Appellant is fully dependent upon others for care. She is vulnerable and significantly disabled. Her required levels of care are high. Having said that, I have found that appropriate care is potentially available in India, whether that is residential or live-in. She would not be returning to a country she had left many years ago, having lived in India until 2013. She is not receiving specialist medical intervention here. There is no need, on my findings, for the Appellants to be separated from one another.

39. I find that a separation of the Appellants from the sponsor would not have significant detrimental impact on them in emotional terms. They have lived apart from the sponsor for many years prior to arriving in the United Kingdom in early 2013. In addition, as set out previously, the second Appellant's bond is particularly strong with her grandmother. Even in this country, on balance they spend more of their waking time as a couple, than they do with the sponsor. There is nothing in the Social Worker's report to indicate a material detriment arising from a separation of this kind.

40. Contrary to Mr Tufan's submission, these cases are not to be categorised as 'health cases', and thus attracting a higher threshold. In truth they are about care in a broader sense. To a large extent, the issues are reflected in the Rules themselves, and Mr Tufan's argument seems rather to have ignored this fact. Whilst Mr Tufan's submission is misplaced, this does not in fact take the Appellants' cases any further.

41. The effective control of immigration is in the public interest and I attach significant weight to this factor. The Appellants came as visitors and have only ever been in the United Kingdom on a highly precarious basis. This too counts against them.

42. The fact that the Appellant's do not meet the relevant Rules is significant. It is not simply a starting point for considering an Article 8 claim outside of the Rules, but a matter that must now be accorded greater weight in light of legislative policy (see paragraph 47 of Haleemudeen [2014] EWCA Civ 558 and paragraph 32 of SS (Congo) [2015] EWCA Civ 387).

43. In the present appeals, it is conceded that the Appellants cannot satisfy Paragraph 276ADE(vi), a provision that to my mind encompasses a wide range of potential considerations relevant to the issue of an individual's circumstances both in the United Kingdom and upon return to their home country. Thus, the gap between Paragraph 276ADE(vi) and a proportionality assessment which is "more at large" is in reality a small one. Given that I have found that appropriate care can be provided in India and that a return of the Appellants together would not in and of itself cause material harm to them, I cannot see any compelling circumstances in respect of this aspect of the Article 8 claims.

44. In terms of Appendix FM and the Adult Dependent Relative route, the inability of the Appellants to switch may possibly be described as a 'technical' matter. The point made by Ms Allen that there is a 'near miss' element is not entirely misconceived. At paragraph 56 of SS (Congo), the Court of Appeal commented that a 'near miss' was not "wholly irrelevant" to the issue of proportionality. However, it takes a "good deal" more than this to make out a case of compelling circumstances (see paragraph 55). In these appeals, I have found that even if an entry clearance application had been made, the substantive provision relating to the availability of care in India would not have been satisfied. Thus, applying the intention behind the Adult Dependent Relative route, the miss was in reality one of somewhat more substance. Further, even the 'no-switching' prohibition is remains relevant. This is because the Rules reflect legislative policy that deems it necessary for a particular class of persons to obtain entry clearance in a specified category prior to arrival in the United Kingdom. This was a change from the old Paragraph 317 provisions. It seems to me as though this change must be afforded due weight.

45. The English language issue does not arise in these appeals by virtue of Mr Tufan's sensible recognition of the Appellants' particular circumstances.

46. It has never been argued that the Appellants cannot be accommodated and maintained by the sponsor and her husband. It right to note however that both Appellants have accessed NHS treatment. Whilst this is no criticism of them, the public purse must be taken to include NHS health care. I conclude that the Appellants, in particular that first, is very likely to require such treatment, and this is relevant to the Respondent's aim of ensuring the economic wellbeing of the United Kingdom.

47. Based on my primary findings of fact, I conclude that the sponsor and her husband could reasonably move to India to assist in the care of the Appellants as an alternative to the provision of care by others. Their British nationality is of course relevant, but it is not a trump card. Their ties to the United Kingdom are, aside from

citizenship, not particularly strong. There is nothing to indicate that employment in India would be unlikely. The recipients of the care are two of their closest relatives: a mother and a daughter. There is a reasonable choice to be made here.

48. Taking everything into account, I conclude that the Appellant's interests are outweighed by those favouring the Respondent, and that removal would be proportionate. There are no compelling circumstances in these appeals, by which I mean none as seen in the context of the Rules that the Appellants have failed to meet. The disabilities and care needs of the Appellants cannot in and of themselves amount to compelling circumstances where care provision is available in the country of origin, as this situation is covered by the Rules. I have sympathy for the Appellants and their family, but I apply the law as I see it to be.

49. The appeals fail on all grounds.

Anonymity

50. No direction has been sought and I do not make one.

Decision

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

I set aside the decision of the First-tier Tribunal.

I re-make the decision by dismissing the appeals under the Immigration Rules and on human rights grounds.

Signed Date: 26 October 2015

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeals and therefore there can be no fee award.

Signed Date: 26 October 2015

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal

Annex A: Error of Law Decision

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08704/2014
IA/08733/2014

THE IMMIGRATION ACTS

Heard at Field House
On 26 August 2015

Decision & Reasons Promulgated
On 16 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MS ANNAMMA THOMAS
MISS ESMI XAVIER
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms F Allen, Counsel, instructed by Paul John and Co Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge G A Black (Judge Black), promulgated on 7 October 2014, in which she dismissed the Appellants' linked appeals. The appeals were against the Respondent's decisions of

28 January 2014, refusing to vary their respective leave to remain, and to remove them from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The first Appellant is the mother of the second. Both are nationals of India. The first Appellant was born on 15 February 1936, and the second on 18 January 1982. Their applications to the Respondent were essentially made on the basis that they were adult dependent relatives of the United Kingdom sponsor, Mrs Animascrene Xavier, a British citizen. She is the daughter of the first Appellant and the mother of the second. The applications, made on 18 February 2013, were rejected after consideration under Appendix FM to and Paragraph 276ADE of the Immigration Rules.

3. Judge Black heard the linked appeals on 23 September 2014. At paragraph 19 of her decision she found the first Appellant's evidence to be "entirely reliable and truthful." She then found that neither Appellant could satisfy the Rules. In particular, she found that the Eligibility criteria were not met as the Appellants had been in the United Kingdom only as visitors rather than as pre-existing adult dependent relatives (paragraph 20).

4. Importantly, at paragraphs 21 and 23 Judge Black states that there were "no good arguable grounds" to warrant consideration of Article 8 outside of the Rules. She finds that the relevant medical conditions of each Appellant was pre-existing from when they were last in India in 2012. There is a finding that the first Appellant could still care for herself. It is said that there was "no evidence" that the first Appellant was unable to care for the second Appellant, as she had done in the past. There was a male relative in India who could help with care needs. A fresh application could be made from India. It is said that the sponsor could go to India and care for the Appellants there. At paragraph 25 it is said that there had been no significant change on medical grounds for either Appellant and that the Rules covered the issues of age and illness. The appeals were dismissed under the Rules and, apparently, on Article 8 grounds.

5. The Appellants sought permission to appeal on the grounds that Judge Black had failed to take relevant evidence into account (namely that of the first Appellant), and that she should have made an assessment of Article 8 outside of the Rules. Permission was refused by the First-tier Tribunal but granted on renewal by Upper Tribunal Judge Lindsay on 5 May 2015.

<u>The hearing before me</u>

6. Ms Allen relied on the grounds of appeal. Judge Black should have considered the claims outside of the Rules. There had been a relevant change of circumstances, namely the deterioration in the first Appellant's health, as set out in her witness statement. She stated that the male relative had not in fact been living at the family home, and in any event there were difficulties with a male relative giving intimate personal care to a female.

7. Mr Melvin relied on the Respondent's rule 24 notice. In addition there was no real medical evidence before Judge Black, the issue of the male relative's whereabouts

was not in the grounds, and the Judge's findings on a lack of change in circumstances were sustainable.

Decision on error of law

8. I find that there are errors of law in the decision of Judge Black which in combination lead me to the conclusion that her decision must be set aside.

9. The first error is her refusal to carry out an assessment of proportionality outside of the Rules. Although this issue had previously been left somewhat uncertain in light of Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC), the position has been clarified in several decisions since, including MM (Lebanon) [2014] EWCA Civ 985, paragraphs 134-135, Ganesabalan [2014] EWHC 2712 Admin, paragraphs 9 and 29, and Singh [2015] EWCA Civ 74). Where, as in a case such as the present, the Rules are not a complete code, a 'second-stage' Article assessment outside of the Rules is required. The extent and nature of that assessment will depend on the scope of the Rules in question. But an assessment there must nonetheless be.

10. In light of the preceding paragraph there has been an error in approach. Is this error material? In my view it is. This is so primarily because of Judge Black's second error of law. I have already noted that she found the first Appellant's evidence to be wholly credible. That evidence was contained largely in a witness statement in the Appellant's bundle. In paragraphs 3 and 5 of that statement the first Appellant clearly states that her health had deteriorated in recent times and that she could no longer care for the second Appellant (whose needs were substantial, as evidenced by unchallenged medical reports). Once this evidence was accepted by Judge Black, she was bound to take account of it and apply it to her conclusions, or give clear reasons for not doing do. However, as noted by Upper Tribunal Judge Lindsay in her grant of permission, this has not been done. There is, I find, a genuine inconsistency between the acceptance of the first Appellant's evidence in paragraph 19 on the one hand and the other hand the conclusion in paragraph 23 that the first Appellant could still look after the second Appellant. The second error lies in failing to take account of material evidence which had been accepted as being reliable. In turn, if the accepted evidence had been taken into account, this was in itself a platform upon which to start the necessary balancing exercise outside of the Rules. The absence of what Mr Melvin described as "real" medical evidence did not somehow automatically deprive the first Appellant's own evidence of weight.

11. There are two additional matters which go to disclose the materiality of the failure to consider Article 8 outside of the Rules. Whilst the section of Appendix FM dealing with adult dependent relatives does cover age and illness, these matter were not substantively addressed by Judge Black because the Appellants failed at the eligibility stage (based on their status as visitors). Finally, although it is said that the sponsor could return to India, there is no reasoning around this point, and from what I can see in the papers before me this issue was not fully canvassed at the hearing.

12. As the errors are material, I have decided to exercise my discretion and set aside Judge Black's decision.

Disposal of the appeals

13. I have concluded that I should re-make the decisions in these appeals. It is agreed by the parties that the only issue is Article 8 outside of the Rules. In addition, there is no reason to disturb the clear finding of Judge Black that the first Appellant's evidence is credible. I therefore specifically preserve the positive credibility findings in respect of the first Appellant.

14. It was suggested by both representatives that I could not go on and re-make the decisions purely on the evidence currently before me. I agreed that I could not proceed to re-make the decisions in these appeals without both parties having the opportunity to adduce further evidence and/or for considered submissions. Therefore, a continuation hearing will take place before me on a date to be fixed.

Anonymity

15. There has been no direction previously, and none has been sought from me. I make no direction.

Decision

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

I set aside the decision of the First-tier Tribunal.

The appeals are adjourned for a continuation hearing.

Directions

1. **The appeals shall be re-listed before Deputy Upper Tribunal Judge Norton-Taylor at Field House on a date not before 1 October 2015;**
2. **The only issue to be considered at the continuation hearing will be Article 8 outside of the Immigration Rules;**
3. **Any further evidence to be relied on by either party shall be filed and served with the Upper Tribunal and the other side no later than 14 days prior to the next hearing;**
4. **Oral evidence may be taken at the next hearing. As stated in this Decision, the first Appellant's previous evidence has been accepted and this is preserved. If the Appellant's representatives wish her to give additional oral evidence, they must contact the Upper Tribunal immediately to confirm the need for an interpreter.**

Signed Date:

H B Norton-Taylor
Deputy Judge of the Upper Tribunal