



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10369/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 March 2019**

**Decision & Reasons Promulgated  
On 13 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**MS G K K**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F Shaw, Counsel, London Solicitors  
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

**Error of Law Decision**

1. The appellant seeks permission to appeal against a decision of the First-tier Tribunal Judge P S Aujla (FTT), who in a decision and reasons promulgated on 21 December 2018 dismissed the appellant's appeal against the respondent's decision to refuse her claim for international protection and on human rights grounds. The matter was first heard and dismissed by First-tier Tribunal Afako on 4 December 2012.
2. The appellant is a citizen of Uzbekistan and was born on 22 November 1955. She presently lives with her daughter and family. It is claimed that she has strong family ties with her daughter and in particular her

grandson. The First-tier Tribunal in 2012 found that the appellant had established family life with her family in the UK.

3. The grounds of appeal argued firstly that the FTT failed to take into account the finding of family life made by the FTT in 2012 and in addition the new documentary evidence submitted in support of the fresh asylum claim. The grounds of appeal asserted that the judge erred in failing to follow **Devaseelan [2002] UKIAT 0072**. The second ground argued that the FTT made material errors with regard to the assessment of the appellant's family and private life in concluding that the appellant did not enjoy family life with her daughter and grandsons. It was further submitted that material factors were not considered. The FTT further failed to approach the best interests' consideration in the correct way.
4. At the hearing before me this morning Mr Walker for the respondent agreed that there were material errors of law in the First-tier Tribunal Judge's decision as per the grounds of appeal. In addition there was concern that the findings in paragraph [39] were recorded incorrectly.

"I have no reason to doubt that the appellant would not be able to cope on return to Uzbekistan where she spent the first fifty years of her life. She had no physical health problems. The mental health problems identified were not, in my view, serious enough when taken in the context of what the appellant was able to do in connection with her grandchildren. I therefore find that Article 3 would not be engaged on medical grounds if the appellant were removed from the United Kingdom." [39]

Mr Walker submitted that the FTT erred with reference to the word "not"(my underlining) "be able to cope" as this was contrary to the conclusion reached and was in likelihood a typo. The FTT referred to the absence of physical health problems, where there were clearly physical health problems identified. In light of the evidence, which was accepted, the appellant had made at least two attempts at suicide, her mental health issues must be considered as serious.

5. Ms Shaw relied on the grounds of appeal and confirmed that she and Mr Walker had reached an agreement that there were material errors of law and the proposed disposal was a hearing de novo at Taylor House. Ms Shaw submitted the new Tribunal should have the benefit of an independent social worker's report which considered the relationship of the grandchild with his grandmother/the appellant and highlighted this would take three months to obtain.

### **Notice of Decision**

6. I am satisfied that the two grounds of appeal as set out in paragraph 3 above, are made out and that there are material errors of law in the determination which I set aside. The FTT failed to properly assess the family and private life having regard to the previous finding made in 2012

and the evidence before the FTT. There was no consideration made of the new material in support of the asylum claim.

7. The appeal is allowed. The decision set aside. The matter will be remitted for rehearing (not before Judge Aujla) at Taylor House on a date not before three months.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her 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.

Signed  
G A Black

Date 11.3.2019

Deputy Upper Tribunal Judge

**TO THE RESPONDENT  
FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 11.3.2019

G A Black  
Deputy Upper Tribunal Judge