IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001599
First Tier No's: PA/50425/2021
IA/03708/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 August 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
UPPER TRIBUNAL JUDGE LANDES

Between

Antho Mayani
(no anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Coleman, Counsel instructed by Caveat Solicitors
For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 6 August 2024

DECISION AND REASONS

1. The Appellant is a national of the Democratic Republic of Congo born in 1952. She seeks leave to remain in the United Kingdom on human rights grounds. In particular she seeks leave to remain here with her 5 adult children and their descendants, all of whom are British citizens.

Background and Case History

2. The Appellant arrived the UK on the 23rd January 2016 with leave to enter as a visitor. She came here to visit her family, that is to say her five adult children who are all settled in the UK along with their families. The Appellant had visited them before, and returned to the DRC, but this time she stayed. On the 4th May 2016 she made an application for leave to remain on discretionary

grounds. A central feature of this application was that the Appellant wished to stay in the UK in order to help care for one of her children who was at that time suffering from mental ill-health.

3. When this was refused she appealed, and the matter came before First-tier Tribunal Judge Aujla, who on the 4th April 2018 dismissed the appeal, having found *inter alia* that the evidence of the Appellant and her family members was not credible.

4. The Appellant did not return to the DRC, and no attempt was made to remove her. On the 7th October 2019 she made a claim for asylum, and a further application for leave to remain on Article 8 grounds. The Respondent refused to grant leave on any ground on the 21st January 2021. It is against this decision that the Appellant brought an appeal before the First-tier Tribunal for a second time.

5. The second appeal was heard by First-tier Tribunal Judge Burnett on the 1st February 2023. The Appellant was not called to give evidence. Her case rather rested on the evidence of four of her adult children who were called and cross-examined. Having considered this testimony, and the written material before him, Judge Burnett found there to be nothing in the protection claim and this was dismissed. He found the account of the Appellant being targeted by an aggrieved business associate to be untrue, and concluded that the Appellant faced no risk of harm should she be returned to the DRC. Nor was he satisfied that she faced any significant obstacles in returning to a country where she had spent most of her adult life: he therefore dismissed the appeal with reference to (what was then) paragraph 276ADE(1)(vi) of the Immigration Rules. An argument that the Appellant was now so ill that she her removal would place the UK in breach of its obligations under Article 3 was similarly rejected. Turning finally to Article 8 'outside of the rules' Judge Burnett found there to be a 'family life' between the Appellant and her family members in the UK, but found any interference that might be caused by her removal from the UK to be proportionate and lawful.

6. The Appellant appealed to this Tribunal and on the 8th May 2024 the matter came before Upper Tribunal Judge Norton-Taylor sitting with Deputy Upper Tribunal Judge Saini. No challenge was brought in respect of Judge Burnett's findings on the protection claim, or on Article 3 grounds. Those findings are therefore undisturbed. The Appellant's appeal to the Upper Tribunal was wholly concerned with Article 8. It was argued on her behalf that it was irrational to conclude, as the Judge had, that there were not 'very significant obstacles' to her integration in the DRC, and that the Judge had failed to have regard to material evidence in his overall proportionality balancing exercise 'outside of the rules'. By their written decision dated the 30th May 2024 Judges Norton-Taylor and Saini dismissed the perversity challenge. Noting the high threshold to be surmounted, they concluded that on the facts it was reasonably open to the Judge to conclude that the test in 276ADE(1)(vi) was not met. Those findings too are therefore preserved.

7. The panel were however satisfied that the Appellant's grounds in respect of the wider Article 8 assessment were made out. There were numerous family members living here, and although the Judge was not required to make findings about each and every individual involved in this case, it was not clear from the judgment the extent to which the evidence about the family as whole had been taken into account. Further it was not clear what weight the First-tier Tribunal might have given to the best interests or Article 8 family lives of the Appellant's minor grandchildren, two of whom had particular care needs. Accordingly the

Upper Tribunal concluded that the First-tier Tribunal's reasoning, insofar as it related to Article 8 'outside of the rules', had to be set aside.

8. Unfortunately it was not possible to reconvene the hearing before the same panel within a reasonable time frame. Principal Resident Judge Blum therefore signed a transfer order on the 17th June 2024 and that is how the matter came before us.

9. In their decision of the 30th May 2024 Judges Norton-Taylor and Saini had directed that "the re-making decision would be confined to impact of the appellant's removal on her adult children and minor grandchildren in the United Kingdom". As we indicated to the parties at hearing, we did not read this as a limitation on our Article 8 assessment: for the reasons explained in Beoku-Betts (FC) v Secretary of State for the Home Department [2008] UKHL 39 it would simply not be possible to evaluate the strength of these relationships from only one perspective. Furthermore we were satisfied that we were also entitled to take into account matters of fact relating to the Appellant's health and any difficulties she might face in returning to the DRC: although she had not been able to surmount the high thresholds in either Article 3 or paragraph 276ADE(1)(vi), there may in these areas of enquiry still be matters relevant to the global appraisal of the circumstances that we are required to make.

10. At the hearing before us Mr Coleman proposed to call 8 witnesses, all close family members of the Appellant. Having reviewed the witness statements Ms Lecointe helpfully indicated that this was not necessary, and that the evidence of the last four witnesses would stand as agreed. She did however have extensive cross-examination for the remaining witnesses, whose evidence we heard between 10.30am and 1.10pm. We heard from Muya Matiku, the Appellant's son, and her adult daughters Olivia Matiku Sobeya, Victorine Salina and Yvette Matiku. The Appellant herself was not called. We reconvened the hearing after lunch to hear submissions from the parties, and we reserved our decision, which we now give.

The Re-Made Decision: Article 8

11. This appeal is brought under s82 (1)(b) of the Nationality Immigration and Asylum Act 2002, because the Secretary of State has decided to refuse a human rights claim made by the Appellant. The ground of appeal is set out at s84(2) of the NIAA 2002:

> 84. Grounds of appeal
>
> ...
>
> (2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.

12. The introductory text of the Human Rights Act 1998 explains that it is an Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights. Section 6(1) of reads:

> 6. Acts of public authorities.

> (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

13. The Convention right invoked in this appeal is Article 8:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

14. In undisturbed findings Judge Burnett found that the Appellant does enjoy an Article 8(1) 'family life' in the UK [FTT §39]. For the avoidance of doubt we can say that we are wholly satisfied that in the circumstances of the case, that was a finding properly made. The Appellant lives with her son Muya Matiku, and has done since she last arrived in the UK in 2016. She is entirely dependent upon him financially, and as we shall set out below, her daughters and grandchildren also play a significant role in caring for her, taking her to hospital appointments, encouraging her to eat and take her medicines, and generally supporting her. We find that this amounts to something greater than mere affection. The Appellant's children and grandchildren offer her real, committed and effective support.

15. It is not disputed that the Respondent has the power in law to make the decision, or that the decision would result in an interference with the family life shared between the parties. The Respondent proposes that the Appellant be returned to the DRC whilst her British family members remain settled here: this is therefore a 'family split' case.

16. The only question for this Tribunal is whether the interference is, in all the circumstances, proportionate.

17. In any matter concerning Article 8 in this Tribunal, we must have regard to the public interest considerations set out in s117B of Nationality Immigration and Asylum Act 2002.

18. We begin by reminding ourselves, in accordance with section 117B(1), of the public interest in refusing to grant leave to those who cannot meet the requirements of the Immigration Rules. Mr Coleman accepts that the Appellant does not qualify for leave under any rule. She has been an overstayer since 2016 and that must weigh against her in the balancing exercise.

19. Section 117B (2) of the NIAA 2002 is provides that 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 able to speak English, because persons who can speak English are less of a burden on taxpayers, and are better able to integrate into society. We were not told to what degree if any the Appellant is able to speak English, and there was no evidence adduced before us that she has passed any of the relevant tests. This is therefore a public interest consideration that weighs against her.

20. Section 117B(3) provides that 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 person are not a burden on taxpayers, and are better able to integrate into society. The Appellant does not work, and has not done so since she came to the UK. As far as we are aware, she does not have private means. We accept that she is entirely dependent on her son Muya Matiku for her day to day maintenance and we accept that she will continue to be so. There is no issue as to overcrowding and this household is, through Mr Matiku's work as a long-distance lorry driver, financially independent. In Rhuppiah v SSHD [2018] UKSC 58 the Supreme Court held that dependence on family income can constitute financial independence for the purpose of this sub-section. To that extent this is therefore a neutral factor in our consideration. We are however asked to mark that the Appellant appears to have made extensive use of the NHS, a service to which she has not been entitled (except during the period between 2021-2023 when she was an asylum seeker). We note that she registered with the family GP as long ago as 2011 when she was here on a previous visit visa, and as well as visiting the GP on a regular basis has made use of a variety of specialist services. We accept Ms Lecointe's invitation to weigh this matter in the balance against the Appellant.

21. Insofar as it is relevant here, we note that sub-sections 117B(4) and (5) stipulate that little weight should be given to a private life that is established by a person when that person is in the UK unlawfully or has precarious immigration status. The Appellant has lived in the UK for some 8 years, and we accept that she will have established a private life in this country during that time. This includes her relationship with a Mr Philippe Nzaou who has written to the Tribunal to say that he and the Appellant care about each other and offer each other support. In accordance with the Act we can only attach a little weight to that private life, since the Appellant has been an overstayer for virtually the entire period, with a short time of precarious leave as a visitor.

22. Section 117B(6) is of no application in this appeal.

23. Ms Lecointe identified no other particular public interest considerations weighing against the Appellant – she does not, for instance, have any criminal convictions. She did however ask us to take into account the fact that the Appellant, and indeed her family, were found by Judge Aujla and Judge Burnett to lack credibility as witnesses. She asked us to endorse these findings, and to treat the evidence before us with caution. She highlighted several inconsistencies and implausibilities in the evidence that the witnesses gave before us.

24. In two key respects, we agree with Ms Lecointe's characterisation of the evidence.

25. First, we do not accept that the Appellant's material situation upon return to the DRC would be as the family portray it. Broadly her claim was that she had fallen into dispute with a man she owed money to, who had responded by vandalising and setting fire to her home and business; she now had nowhere to live as a result. As we have noted, Judge Burnett firmly rejected this evidence. There had been no mention of this in the 2018 appeal, and the claim for asylum was therefore very late. There had been inconsistencies in the account and no corroborative proof had been offered. He further found that as a fluent Lingala/French speaker, who had lived in that country until she was 63 years old, she would be able to return there. In embarking on hearing this appeal it was

never our intention to go behind those findings. We were nevertheless mindful that there may be some credible aspect of the Appellant's situation on return which could be relevant to an overall balancing exercise, and as a result we permitted Ms Lecointe to cross-examine on the point.

26. The evidence of each of the witnesses about the conditions in the DRC was vague and evasive. Mr Matiku said that his mother's house had been burned down, as had the business premises that she had once rented. Only the land remained and he had not yet determined what should be done with it. He had discussed it with his mother and she said just to do what's best. He knew nothing about the additional house she had claimed to own in her visit visa application. His sister Olivia Sobeya believed that her mother had also owned her business premises and that her brother had already sold everything. Victorine Matiku did not know, and when pressed, deferred to her brother. Yvette Matiku seemed fairly adamant that the land had been sold, but when asked who by, did not know; nor had she ever enquired what had happed to the money from the sale. We did not find any of this evidence to be credible. It was clear to us that this is an extremely close family with each of the witnesses playing an important role in their mother's life. The claim that there had been no discussion or resolution in respect of their inheritance in Kinshasa was incongruent with this picture.

27. Second, we found the witness' denials that they would support their mother if she returned to the DRC to be entirely lacking in credibility. Mr Matiku, who currently accommodates and maintains her in the UK, flatly denied that he would have the means to do so in Kinshasa. Each witness denied having any capacity to assist their mother financially should she leave the UK. We found this hard to accept given the level of devotion that every member of this family displays towards the Appellant. Ms Lecointe's suggestion that the four siblings, perhaps joined by the four adult grandchildren, could pool their resources to be able to send her a modest monthly remittance, was without any coherent answer. We are quite satisfied that if she were to return to the DRC the family would do everything it could to provide for her there, including renting her somewhere to live and sending her regular money. We accept that this may not be somewhere particularly comfortable, but it is possible.

28. The evidence on the existence of family members in the DRC was less problematic in that each witness stuck to the same story: their mother's siblings had passed away and their children are all far away in villages near Goma, in the Eastern region from where the family originally came. None of them are known well to the family members here. They are themselves in straightened circumstances as a result of the ongoing conflict in that region and would not be in a position to help the Appellant. Notwithstanding our concerns about the evidence on the DRC generally, we were prepared to accept that this evidence, given consistently by each witness, was likely to be true. All of the Appellant's children have lived in this country a long time and we accept that they could well have become distant to their cousins. Although they have each visited the country in the past 20 years we accept that the women all stayed with their in-laws and that none of them had any contact with their mother's relatives. As Mr Matiku explained, the journey to Goma is long and dangerous: we take judicial notice of the fact that it is 2600km from the capital.

29. Turning to those matters weighing in the Appellant's favour, Mr Coleman's case rests on two central features of the evidence: the Appellant's own health, and her relationship with her family.

30. In assessing the Appellant's mental ill health we note the observation of Judge Burnett, undisturbed by the decision of Judges Norton-Taylor and Saini, that there was something of a tension between the claims made about the extent of the Appellant's illness, and her ability to simultaneously look after her grandchildren. We agree that it was unlikely that any of the Appellant's children would entrust her to look after their children when she was, for instance, suicidal or hearing voices. The evidence of the family today is that what has actually happened over the past few years is simply that the care needs within this family have shifted. When the Appellant first arrived she was, very largely, the caregiver. She helped out her daughters, and her single-parent son, by looking after their children so that they could work. She also played a role in caring for her other son, who had mental health problems himself in the years following her arrival. As the years have gone by she has become increasingly unwell so that it is she who is the now the recipient of care. Whilst we agree with the past observations made by our colleagues, we find nothing inherently suspicious in this claim: it is often the way of things. We noted the striking contrast in the witness' demeanour when speaking about the situation in the DRC, and when talking about the family's current life in the UK. Where the former was vague and evasive, the latter was unhesitant, clear and at times compelling.

31. The expert medical evidence in this case was not what it could have been. Judge Burnett dismissed the Article 3 appeal on the basis of a lack of evidence and he was certainly entitled to do. What is nevertheless clear from the evidence placed before us is that the Appellant has been unwell for some time, and that her doctors have considered it necessary to treat her, for at least the past four years, with powerful anti-psychotic medication alongside anti-anxiety/anti-depressants. We have been provided with the following evidence, all of which we are prepared to attach significant weight to:

    i) The earliest reference to any mental ill health appears in the Appellant's GP notes on the 25th May 2018 when the record shows that she was diagnosed with Generalised Anxiety Disorder and prescribed Pregabalin, Olanzapine and Mirtazapine;

    ii) She was evidently referred to mental health services since on the 13th August 2018 the Easling Crisis Assessment and Treatment Team wrote to the Appellant's GP confirming the working diagnosis was "psychotic disorder" and that she would be prescribed anti-psychotic medications to address her symptoms, primarily auditory hallucinations;

    iii) On the 20th December 2018 Dr Christopher Bench, Consultant Psychiatrist with the NHS Ealing Recovery Team East, wrote to the Appellant's GP to say that he had added Venlafaxine to her drug regime;

    iv) A letter dated 14th April 2020 from Dr Ayda Barakat, Specialist in General Adult Psychiatry. Dr Barakat records reports from the family that the Appellant had twice tried to harm herself, first by drinking bleach and then by attempting to slit her own throat. She was diagnosed with severe depression with psychotic symptoms and prescribed daily medications including Olanzapine 20mg, Pregabalin

150mg, Venlafaxine 375mg (this having been increased when 300mg was deemed not sufficient);

v) A letter dated 6th January 2022 from Dorners Wells Medical Centre which confirms that the Appellant has been diagnosed with severe depression with psychotic features. At that time she is recorded as being under the care of a psychiatrist who has prescribed daily medications including Olanzapine 20mg, Pregabalin 150mg, Venlafaxine 75mg;

vi) A letter dated the 14th October 2022 from the West London NHS Trust which maintains the diagnosis of severe depression with psychotic features and records that her pharmaceutical regime remained unchanged from January of that year. The letter records that the Appellant had initially been compliant but had become "mentally aggressive" after she spontaneously stopped taking her medications for about a week;

vii) A letter dated the 23rd May 2024 to the family GP from Dr Kola, Associate Specialist Psychiatrist from Ealing NHS Specialist Older Adult Mental Health Services. Dr Kola writes that he had been considering discharging the Appellant back to primary care but decided against it when her daughter told him about concerning behaviours, such as threatening to harm herself. He was told that the Appellant is preoccupied with money and only becomes calm when reassured by her son. She will generally not eat at the table with adults; she sits on the floor with a plate of food that she shares with her grandchildren. Dr Kola confirms that the Appellant's prescription, insofar as it relates to psychiatric medications, has remained the same.

32. This evidence establishes that the Appellant has been receiving treatment on the NHS for significant mental illness for some time. That treatment includes 20mg daily of Olanzapine: a significant dose of an anti-psychotic. We do not consider that it is likely that the Appellant has managed to feign that level of illness over such a prolonged period of time, nor that her family would in any way seek to exaggerate the extent of her illness given the treatment that she is receiving. Ms Lecointe did not seek to persuade us otherwise. She did however suggest that the Appellant may be getting better: specifically she asked us to note that some of the Appellant's doses have decreased. The only medication that has, as far as we can see, been reduced is the Venlafaxine, which was in 2020 prescribed at the maximum dose. It does not seem to us that this clinical management decision is a basis for inferring that the Appellant is better. Such a conclusion was not supported in the evidence before us. We accept that the Appellant is suffering from severe depressive disorder, and that when she is not receiving appropriate care, this can manifest with psychotic symptoms.

33. There is one other item of medical evidence that we must address. That is a report prepared by Consultant Psychiatrist Dr Raj Persaud dated the 27th June 2024. Dr Persaud sets out his qualifications in some detail. We note that he was suspended by the GMC for a period of three months for plagiarism, but we are satisfied that this does not negate his expertise. We further accept, because he says so, that he "saw the patient", although the circumstances of that meeting are unclear. No one in the family could recall accompanying the Appellant to a meeting with him, he does not say where or when this meeting took place, how long he saw her for, or whether he was assisted by an interpreter. We do not

know, for instance, if he had a lengthy meeting with her, or if he simply "saw" her sitting in his consulting rooms. This lack of clarity obviously diminishes the overall weight that we can attach to the opinion he goes on to offer, since it is impossible for us to tell whether he formed that opinion on the basis of his own clinical observations, measured against the diagnostic criteria set out in DSM V.

34. Dr Persaud also notes that he saw "various medical records". Again, he does not elaborate on what medical records these might have been. He appears to be aware that she received "intensive home treatment" twice a week for an extended period after "two serious suicide attempts". We do not doubt that he has got that information from somewhere; it just would have been helpful to know where.

35. Dr Persaud confirms that he concurs with the diagnosis that the Appellant already has from the NHS clinicians who have been treating her for a number of years: she has severe recurrent depressive disorder. He confirms that she is taking the medications we already know about. Insofar as this information is consistent with the information provided by others, we accept it.

36. What we are unable to attach any weight to are Dr Persaud's opinions about what care might be available to the Appellant if she were removed: as far as we are aware he has no expertise on health services in the DRC. Nor do we attach any weight to his opinion that she has no family support in that country, since he evidently has no means of knowing whether or not that is true. His recitation of the basis of the Appellant's asylum claim, and his conclusion that she is suffering "trauma", we must of course disregard since it is evidently inconsistent with the undisturbed conclusions of First-tier Tribunal Judge Burnett. This is important. It is important because these 'facts' appear to be taken into account by Dr Persaud in forming his opinion that the Appellant is "extremely hopeless" with a moderate to high risk of suicide. Similarly his opinion that "her removal will result in a serious deterioration in her mental health" cannot attract any weight since it is tainted by Dr Persaud's unjustified conclusions about the situation that might face her on return.

37. Drawing all of this together the sum total of the benefit of Dr Persaud's report was zero. In terms of diagnosis he repeats what others have already told us, which we unreservedly accept. Beyond that, he has added nothing. This is regrettable, since we would have been greatly assisted by a detailed opinion offered by someone who is currently involved in the Appellant's care.

38. We now turn to consider the evidence relating to the Appellant's family relationships.

39. We heard extensive evidence from the witnesses about the day to day life of this family. We came to this evidence with the negative credibility findings reached by previous Tribunals firmly in mind, but having seen the witnesses ourselves, and having had regard to the written evidence, much of it agreed, we are satisfied that insofar as that evidence relates to the current situation in the UK, it is accurate. The picture that emerges is as follows.

40. The Appellant lives in the West London home of her eldest son Muya Matiku. He is 54 and has lived in the UK for over 30 years. He is separated from his wife, and although she lives nearby and the children see her regularly, he is a single father. Four of his six children still live with him, and two of those are still minors. J is a 9 year old boy, who is too young to remember life without his

grandmother being around. M is now 15, and was only 7 when she arrived in the UK. These children obviously see her on a daily basis. M has submitted a written statement, agreed by Ms Lecointe. M writes how his grandmother used to look after him all the time and that she was like a mother to him when his father was away working. Now she is too ill this makes him very sad, although she still helps him when she is well enough, for instance by helping lay out football training equipment for him in the garden or helping him clean his room. He feels very close to her and speaks of how she "can not be sent to Congo" because she is like his mother. The statements of Mr Matiku's adult children were also agreed by Ms Lecointe. Atlanta Matiku sheds some light on the particular role that the Appellant plays in this family when she explains how she taught her grandchildren how to cook, how to dress appropriately and how to "develop into good people". Her sister Celisha Matiku echoes this and explains that her grandmother assisted her in childbirth, and that her expertise and experience was important to her after her son was born. Sharnay states that her grandmother was instrumental in her transition from being a teenager to the "big woman" that she is today: she too highlights the moral guidance that her grandmother gave her in respect of how to conduct herself as an adult. Their brother Billy Matiku also speaks of the formative role that the Appellant played in their lives, describing her as like a mother to him: he stresses how frightened they all are of the prospect of her living alone in the DRC because of the poor security situation there.

41. The Appellant's daughter Olivia Matiku Sobeya is 36 years old. She has lived in the UK since approximately 2006/7. She has two young boys aged 10 and 2, and at the hearing before us was heavily pregnant with a third child. Ms Sobeya, like her sisters, lives a short driving distance away from her brother's house and sees her mother virtually ever day. She picks up the kids and goes round there every day after school. Ms Sobeya averred that her eldest son, R, is particularly close to his grandmother. In the years after the Appellant arrived in the UK she looked after him on a regular basis while Ms Sobeya was at work, although this does not happen now: she is no longer left alone with any of the children because she is herself too unwell. R has sickle cell anaemia and requires regular medical attention. He has a full blood transfusion once a month. As a result of his condition it would be very dangerous for him to ever travel to the DRC because he is vulnerable to infection. When Ms Sobeya visited her in-laws there in 2022 she did not take R. Ms Sobeya told us that having her mother around is important to her and to her son, and that this is why they go there every day.

42. Victorine Salina is 42, and has lived in the UK since 2005. Victorine has only one child, D, who is now 10. D is autistic; he is non-verbal, is not potty trained and has high care needs. He attends a particular school that is able to meet his educational needs. It is not envisaged that he will ever be able to cope with mainstream education. On the 20th October 2020 his class teacher made a referral to clinical psychology in which she described how challenging D's behaviour can be: he climbs on furniture, has no conception of danger and in fact finds it funny to run away from adults who are trying to prevent him doing dangerous things; he eats inedible objects such as crayons or play dough and can be violent: there have been instances of him biting, hitting and throwing objects at people including small items of furniture. D was only a baby when his grandmother arrived in the UK, and Ms Salina told us that at that time he spent a lot of time with her. The Appellant would look after him and help with his care. As he grew older however, his behaviour became more challenging and the family

became aware that he was missing developmental milestones. It was then that he was referred for assessment. Ms Salina gave credible and compelling evidence about her son's relationship with his grandmother. Most days when she picks him up from school they go together to her brother's house to see her. Asked how the Appellant copes with D's behaviour Ms Salina unhesitatingly explained that his behaviour is calm when he is with her – at this point in her evidence she crossed her arms as if to hug herself and said "this is where he is safe". He is very used to her being there and she is a comfort to him. Autistic children are "very up and down" during the day so when they see someone they know they are calm and relaxed. If she picks him up from school and he is "high" they go straight over to the house because she knows he will be comforted when he sees the Appellant. Much like her sister with R, Ms Salina is unable to travel to the DRC with D. He "does not travel well" and finds it distressing and difficult to cope with change. She last visited the country before he was born.

43. The final live witness was Yvette Matiku. She is the mother of four children, boys aged 14 and 10, and girls aged 7 and 4. All of her children's names begin with the same letter. We therefore refer to them herein as Y1-Y4. Y1 is 14. He attended court and was willing to give evidence, but his statement was agreed and so admitted into evidence without the need for him to be called. Y1 writes that he has a very good relationship with the Appellant, who is the only grandmother he has ever known. He sees her every week and more in the holidays, and "can't imagine how it would be to be without her" because they are so close. He is worried about her being sent to Congo because he would not be able to visit her there because security is a big issue. He loves his grandma and would love to keep her here in the UK with him. Yvette Matiku told us in live evidence that all of children are used to being around their grandmother – she is part of their daily lives. Yvette plays a significant role in the Appellant's care in that it tends to be her who mainly takes her to medical appointments etc, although she was at pains to say that this is a role shared with her siblings. They feed her, give her medicine, and her children make her eat. The Appellant can be reluctant to eat so the younger children, J2, J3 and J4 sit with her on the floor and coax her to eat with them. Yvette and her sisters also attend to their mother's personal care by ensuring that she washes herself properly and uses creams etc: she can manage on her own but needs encouragement and sometimes help.

44. We begin our assessment of the weight to be attached to these family relationships by directing ourselves to s55 of the Borders, Citizenship and Immigration Act 2009 which provides that in discharging her function in maintaining immigration law the Secretary of State must make arrangements to safeguard and promote the welfare of children who are in the UK. This reflects the UK's obligations under Article 3(1) of the United Nations' Convention on the Rights of the Child:

> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

45. In ZH (Tanzania) v SSHD [2011] UKSC 4 the Secretary of State acknowledged that any decision taken without regard for these principles will not be "in accordance with the law" for the purpose of Article 8(2) [at §24]. The Court held that in the immigration context, the best interests of the child must be a primary consideration in any decision affecting children. Relevant to this will be

the level of the child's integration in this country; where and with whom the child is to live; and the strength of the child's relationships with parents or other family members which will be severed if a member of the family has to move away. Although nationality is not a "trump card" it is of particular importance in assessing the best interests of any child.

46. In Zoumbas v SSHD [2023] UKSC 74 the Supreme Court were asked to apply these principles. The Court adopted this agreed position of the parties as an accurate distillation of the law after ZH (Tanzania):

(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;

(2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

(4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;

(5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

(6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

(7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.

47. Having reminded ourselves of these applicable principles, we turn to consider the evidence relating to children in this appeal. The Appellant has twenty-one grandchildren living in the UK today, and one more one the way. She has four great-grandchildren. Of these descendants, 21 are minors as of the date of this appeal. She is not of course a parent to any of these children, nor even, today at least, taking on a quasi-parental role. They are nevertheless an important part of her life in the UK, and she of theirs. Their best interests are a primary consideration.

48. We are satisfied that it is generally in the best interests of the Appellant's minor grandchildren and great-grandchildren that she remains here with them. It is the evidence of her adult granddaughters Celisha, Atlanta and Sharnay that she has been an important influence on them, particularly in their transition to adulthood. She has been a moral compass for them, but has also guided them in how to cook, dress and "behave": for their younger siblings and cousins, all born

in this country, we accept that this kind of cultural knowledge is an important facet of their Congolese heritage. We accept that of all the adults in this family, most of whom have spent most of their adult lives in this country, the Appellant is the best placed to offer this instruction. We further accept that for those grandchildren who see her regularly (ie the children of the witnesses) she has been a central figure in their lives, and that they all love her very much. They are used to having her around, and we accept the evidence given by, for instance, Yvette, that even the younger children are playing their part in this extended family, by sitting on the floor with their grandmother and coaxing her to eat, even feeding her. This vignette of the intimacy of communal living was in our view a good illustration of the nature of these relationships.

49. We are satisfied that it is very strongly in the best interests of D that his grandmother remains in the UK. We accept the unchallenged evidence of his mother Victorine Salina that as a child with autism and high care needs, D finds change very distressing. He cannot remember a time before his grandmother came to this country: as far as he is aware, she has always been part of his life. We found Ms Salina's evidence about his behaviour around his grandmother to be credible and compelling. She makes him feel calm, and safe. This is in itself unremarkable: it is something that many of us might say about our grandmothers. For a child with autism, however, it is an important part in our balancing exercise. Whilst D no doubt loves all of his family, and derives a sense of security generally from people and environments that he is used to, we see no reason to doubt his mother's evidence that the Appellant is at the heart of that. We are satisfied that D would find her departure from the family home exceptionally distressing and difficult to understand: unlike his cousins he will have no conception of the law, or government. All he will know is that his grandmother has disappeared, and that everyone around him is very upset. We do not think we need expert evidence to deduce that this is likely to have a severe and lasting impact upon him.

50. Drawing all of this together, we confirm that we have attached significant weight to the public interest in refusing the Appellant leave to remain. She has been an overstayer for eight years and has compounded this disregard for immigration control by pursuing an unmeritorious asylum claim and giving evidence before Judge Aujla that was not true. It is clear to us from her medical records that she registered with a GP in this country when she was still a visitor and we consider that over the years she has probably cost the taxpayer a very large amount of money by her unauthorised use of the health service. If she is successful in this appeal she will continue to do so. She does not speak English, and so this again is likely to increase the burden on public funds and to inhibit her integration. We do not believe that her circumstances on return to the DRC will be as bleak as the family contend. Whilst we are prepared to accept that she has no one to assist her there at present, we are quite satisfied that if they had to, this family would pull out all the stops to make sure that their mother/grandmother was looked after, including finding her somewhere to live, paying for a carer and taking it in turns to spend time with her in Kinshasa. The question is whether it would be proportionate to expect them to do so.

51. This appeal concerns not only the Appellant, but her 5 children, 21 grandchildren and 4 great-grandchildren, all of whom are British citizens, and all of whom are settled in this country with their own homes, jobs, schools, friends, responsibilities and lives. Ms Lecointe suggested that it would be reasonable for the 5 children, and possibly their adult children, to take it in turns and 'tag-team'

going to the DRC to live with the Appellant on a rota basis. If that is the solution to this proposed interference, we find it to be wholly disproportionate. Mr Matiku is supporting not only his minor sons J (aged 9) and M (15), but also Atlanta (19) and Sharnay (21) who remain living at home. He does this by working upwards of 40 hours per week as a long distance lorry driver. Although we were not given a detailed breakdown of his finances, we accept his evidence that he is generally, with such a large family, just managing. If he were to take any length of time off work to stay with his mother in Congo this would have an immediate and obvious knock-on effect on the family finances, and more generally on the wellbeing of his minor sons and older girls. It is, we accept without hesitation, going to be extremely difficult for either Victorine or Olivia to spend any significant periods of time in the DRC. We accept Victorine's evidence that D finds change, and travel, very upsetting, and that to take a child with such high care needs to the DRC would be extremely challenging. We accept that he would find it equally upsetting and disruptive for his mother to be absent for more than a few days, particularly if he had already 'lost' his grandmother. We accept, as far as R is concerned, that he requires regular blood transfusions and as such travel out of the UK is not possible. He needs his mum to be here with him and so Olivia cannot reasonably be expected to travel without him. Yvette, who has played such an important role in looking after her mother here, could theoretically go to stay with her, but this would obviously be at the significant expense of her children, the youngest of whom is only 4. Similarly the Appellant's adult grandchildren Billy and Celisha have very young families of their own, whom they cannot be expected to leave behind. Overall we do not find this suggested solution to the proposed interference to be in any way reasonable or proportionate.

52. We accept that without the kind of family support envisaged by Ms Lecointe it is going to be very difficult for the Appellant to live in the DRC. It is clear from the medical evidence before us that she continues to be very unwell and can descend into psychosis without her medications being properly managed. We accept the evidence that it is her children, and in particular Yvette and her sisters, who are ensuring that the regime is adhered to, that she eats, and sees to her own personal care. Whilst we think that it would be *possible* for the family to find her somewhere to live in Kinshasa, and perhaps to employ some kind of carer, we accept that this would be a very poor substitute for the round the clock love, support and care that this family collectively provide at present. It seems to us a matter of common sense that she would likely become significantly more depressed than she is at present. This in turn would be very distressing for the family here. This is a matter that weighs significantly in favour of the Appellant.

53. We further recognise, and give significant weight to, our findings that it would be contrary to the best interests of the children in this family to be separated from their grandmother, and that this is particularly so in the cases of R and D, for whom the possibility of ever seeing her again would be remote in the extreme. As we have found, D would find her removal impossible to understand and difficult to cope with. The other grandchildren might, if circumstances permit, be able to visit her in the DRC during school holidays, but find that this will do little to ameliorate the impact on them of her removal from the UK.

54. Even taking into account the very weighty public interest in refusing leave in this case, we are satisfied that the impact on this family would, in all the circumstances, be unjustifiably harsh. It follows that the appeal must be allowed.

Notice of Decision

55. The appeal is allowed.

56. There is no order for anonymity in respect of the Appellant.

Upper Tribunal Judge Bruce
13th August 2024