Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04299/2017**

PA/04145/2017

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 11 October 2017 **On 13 October 2017**

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

GK & EB

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D. Paxton of counsel, instructed by Virgo Consultancy Services
For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

DECISION

1. The appellants, who are nationals of Georgia, have been granted permission to appeal against the decision of First-tier Tribunal Judge Povey who, by a determination promulgated on 21 June 2017, dismissed their appeal against refusal of their asylum and human right claim.

2. The judge recorded the immigration history of the appellants as follows. The first appellant arrived in the United Kingdom in 2002 and was

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admitted as a visitor for six months. He overstayed that leave and has remained unlawfully ever since. The second appellant:

> "… by her own admission, submitted false information to secure her visa to enter the UK in 2006. She was not, as claimed, married and the information relating to her claimed husband was all false. As such, when she entered the UK in 2007, her entry was unlawful and she has remained in the UK without immigration status ever since"

The parties are, of course, aware of the detail of the case advanced in support of the appellants' claim and, for present purposes, the following summary provided by the judge will suffice:

> "The first appellant is Ossetian and was threatened whilst living in Georgia in 1993. He believes he would be at risk on return to Georgia by reason of his ethnicity"

Pausing there, the judge rejected that claim and as Mr Paxon makes clear that he does not pursue that aspect of the first appellant's claim, I need say no more about it. The claim that is pursued was summarised thus:

> "The appellants are first cousins and in a relationship akin to marriage. That relationship is against Georgian law and has led to death threats from the second appellant's family. Those threats would be carried out if they returned to Georgia and the state would not protect them.
>
> The appellants have established family and private lives in the UK and the respondent's decisions unlawfully interfere with the same, contrary to article 8 of the ECHR."

3. The respondent refused the claim because she did not accept that the appellants were in a relationship together as they claimed to be and did not accept they had been threatened by their families as a consequence. The claim on the basis or rights protected by article 8 ECHR was refused because the appellants did not meet the requirements of the rules and the respondent saw nothing disclosed by their application that called for a grant of leave outside the rules to secure an outcome compatible with article 8.

4. Although the judge accepted that the appellant were, as they claimed to be, in a relationship together, he dismissed the appeal on asylum grounds because, for the detailed reasons set out in his determination, he did not accept to be true any part of their account of being at risk on return from their respective families or from the consequences of societal disapproval of such a relationship between first cousins. He reached that conclusion because, as he explained in some detail at paragraph 40 of his determination, the appellants had given a significantly contradictory and inconsistent account of the threats that were claimed to have been

made by family members whereas, if those threats had been made, it would be reasonable to expect a consistent account to have been given. He drew together his conclusion on the protection claim at paragraph 52, saying this:

> “The appellants are not at risk on return to Georgia by reason of their relationship. There was insufficient evidence of either legal or societal opposition to relationships between first cousins. As found, any threats from the second appellant’s family were speculative and, in any event, there was evidence of sufficiency of protection available from the Georgian authorities. I was not satisfied to the required standard that the second appellant’s brother had any influence over anyone else in Georgia or had any influence in any area of Georgia. There is no reason advanced (other than the brother’s claimed influence) as to why the appellants could not live in a part of Georgia away from their families, if they so wished.”

5. As for the article 8 claim, the judge said that as the appellants would return to Georgia together, there would be no interference with their enjoyment of the family life he accepted existed between them. The judge made a specific finding of fact that they would not be “prohibited from continuing their relationship in Georgia … either by the state or the community…”.

6. The first appellant’s article 8 claim was cast wider than the relationship with the second appellant:

> “The first appellant has two children. One lives in Georgia, the other in Birmingham with her mother and step-father. Both children are Georgian nationals. The first appellant has contact with both children (albeit remotely regarding his child in Georgia). He claimed to try to see his daughter in the UK most weekends, which was confirmed by the second appellant. However, there was little detailed information about his relationship with his daughter and there was no evidence from his daughter (who is 14 years old) or her mother. …. No reasons were given that would prevent his daughter travelling to Georgia without restriction (whether to visit or settle).
>
> …
>
> I was also provided with little detail of the appellants’ claimed private lives in the UK, save that they have some friends in the UK and have attended social gatherings of fellow Georgians.”

7. Having assembled all the relevant information and evidence relied upon by the appellants in respect of their article 8 claim, the judge concluded that there would be no impermissible infringement of article 8 if the appellants were required to leave the United Kingdom. The nature of the contact between the first appellant and his daughter would have to change but, as the judge pointed out:

> "The first appellant has been able to maintain a relationship with his other child, despite being in a different country from her for 15 years."

   The second appellant's nephew came to the United Kingdom in 2016 and has been living with the appellants but that was not a relationship amounting to family life and any interference would be proportionate. There was scant information concerning the appellants' private life and, given that any private life that exists has been established whilst they were unlawfully present, little weight could be given to it.

8. The grounds for seeking permission to appeal, drafted by Mr Paxton who appeared also before the First-tier Tribunal, are commendably succinct. There are two grounds. The first ground is that although attention was drawn to the prohibition on marriage between cousins in Georgia, the judge makes no reference to that. Instead, he finds that there is no evidence of widespread societal disapproval of such relationships. Mr Paxton's submission is that if the judge had taken account of the fact that such marriages were not permitted in Georgia, that would have fed into the judge's assessment of whether there was societal disapproval and he may have concluded that such relationships were considered "taboo". The second ground is that the judge had insufficient regard to the first appellant's length of residence in the United Kingdom and the "impact upon the emotional wellbeing of his daughter, with whom he is in regular face to face contact.

9. Permission was granted to argue both of those grounds.

10. At paragraph 36 of his determination the judge said:

> "I am not satisfied that the appellants' relationship would be in breach of Georgian law."

   In the refusal letter, the respondent said:

> "… it is accepted that marriage between two cousins is prohibited in Georgia…"

Those statements assert different things and the latter statement does not establish that the first statement by the judge was factually incorrect. It is one thing to prohibit marriage between cousins, which, literally, means no more than that persons so related face a prohibition against marriage so that they cannot become man and wife. It may be significant, in that regard that it has not been suggested that the appellants have sought to be married in the United Kingdom, where there is no such prohibition against marriage between first cousins. It is another thing altogether to say Georgian law makes such a relationship unlawful or seeks to criminalise it or to impose penalties upon those who engage in such relationships. Mr Paxton developed this ground in oral submissions by suggesting that the fact that the law prohibited such marriages may well mean that this would impact upon the level of societal disapproval so that the judge left out of account a material consideration and so fell into legal error. The difficulty with that submission is that Mr Paxton accepted that there was no evidence before the judge as to how such societal disapproval has or might manifest itself nor that any adverse consequences had been visited upon persons conducting such a relationship in Georgia.

11. When pressed to identify any evidence of societal disapproval that was before the judge, Mr Paxton pointed to the witness statement of the second appellant in which she said that she had brought shame upon her family. This, plainly, is not cogent evidence of societal disapproval such as to render irrational the rejection by the judge of any such risk. Mr Paxton argued that the main focus of the claim was on the risk from family members in Georgia but, on the findings made by the judge, that was not a real risk faced by the appellants and if there be any difficulty, the availability of a sufficiency of protection from the authorities and the ability to relocate elsewhere that the area in which family members live were a complete answer in themselves to the claim.

12. For these reasons, I am entirely satisfied that the first ground is not made out.

13. The second ground concerns the article 8 claim and that, understandably, is focussed on the first appellant, as the second appellant's claim was, by any view, a weak one that had no prospect whatever of succeeding, for the reasons given by the judge. Two complaints are made in respect of the approach taken by the judge to the article 8 claim of the first appellant. The first is that insufficient regard was had by the judge to his length of residence. That is not arguable because it is plain that the judge had that in mind because at paragraph 53.2, where he considers this, he refers specifically to the fact that the first appellant has spent 15 years in the United Kingdom. The second complaint, that the judge has not had sufficient regard to the impact upon the first appellant's daughter in the United Kingdom is also

not made out. As the judge observed, the appellant had been able to maintain a relationship with his daughter in Georgia despite being absent 15 years and there is no reason at all to suppose that he cannot similarly maintain contact with his daughter in the United Kingdom, even if that will be of a different nature. The judge noted the absence of any evidence from that child or her mother about the current arrangements and his conclusions were plainly open to him on the evidence the appellant chose to put before him.

14. For these reasons, I am satisfied that the judge made no error of law, material or otherwise.

Summary of decision:

15. First-tier Tribunal Judge Povey made no material error of law and his decision to dismiss the appeal shall stand.

16. The appeal to the Upper Tribunal is dismissed

Signed

Upper Tribunal Judge Southern

Date: 12 October 2017