



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/49496/2014
IA/49497/2014
IA/49499/2014
IA/49498/2014
IA/49500/2014
IA/49501/2014

THE IMMIGRATION ACTS

Heard at Field House

On 29 October 2015

Determination

Promulgated

On 30 December 2015

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**AS (FIRST APPELLANT)
JC (SECOND APPELLANT)
HC (THIRD APPELLANT)
ROC (FOURTH APPELLANT)
RIC (FIFTH APPELLANT)
RAC (SIXTH APPELLANT)
(ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Jacobs, Counsel instructed by Bureau for Migrant Advice

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are all citizens of Lebanon. They were born on 13 February 1953, 17 June 1948, 30 January 1982, 20 May 1984, 13 March 1987 and

13 March 1992, respectively. The first and second appellants are the parents of the remaining appellants.

2. They came to the UK from Lebanon in July 2006 having been evacuated by the UK government because of military action by Israel in Lebanon at that time. The first appellant had a British passport as a British Protected Person. They were granted leave until January 2007. A further period of leave was granted but subsequent applications were refused.
3. The latest applications were made on 18 June 2014, according to the respondent's refusal letter, being applications for leave to remain on human rights grounds in respect of each of the appellants. Those applications were refused and decisions made in each case on 21 November 2014 to remove them to Lebanon pursuant to Section 10 of the Immigration and Asylum Act 1999. The respondent's immigration summaries for the appellants indicate that the claims have been certified as clearly unfounded under Section 94(2) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), although that appears to be an error, not being reflected in the decision letters in any of their cases.
4. The appellants appealed against the respondent's decisions and their appeals came before First-tier Tribunal Judge R. J. N. B. Morris at a hearing on 5 May 2015, whereby she dismissed the appeal of each appellant. Permission to appeal against her decision having been granted in respect of each appellant, the appeals came before me.

The Decision of the First-tier Tribunal

5. The following is a summary of the proceedings before Judge Morris and her conclusions. At [12] there is reference to a concession made on behalf of the appellants at the hearing to the effect that they were not able to satisfy the requirements of the Article 8 Immigration Rules in terms of family or private life. Similarly, it was confirmed that there was no reliance on Articles 3 or 8 in isolation, in terms of the health issues of any particular appellants, although those matters were to be taken into account overall.
6. Consideration was given to whether there should be a 'pure' Article 8 consideration, and although not expressly stating that there were exceptional or compelling circumstances not sufficiently recognised under the Rules, the judge did in fact undertake a full Article 8 assessment.
7. In that assessment she concluded that all the appellants had established a private life in the UK, with each other and the wider community. She was also satisfied that family life exists between the appellants and between WC and MC. They are also children of the first and second appellants and therefore siblings of the remaining appellants.

8. Noting that the first appellant is a British Protected Person the judge decided that it was nevertheless the case that she is subject to immigration control and has no right to live or work in the UK.
9. Consideration was given to the appellants' circumstances in the UK and the extent to which they had all maximised the opportunities available to them. Medical considerations in terms of some of the appellants, to whom such considerations applied, were taken into account.
10. The conclusion was reached that none of the appellants in respect of whom health issues were raised, were able to establish that the high threshold for engagement was reached in terms of a 'health case' under Articles 3 or 8.
11. Consideration was also given to the appellants' prospects in Lebanon, for example in terms of employment. There is reference at [30] to the security situation. The extent to which they would be able to receive continued financial support from WC was also considered.
12. It was ultimately concluded that the respondent's decision would not amount to a disproportionate interference with the family or private lives of any of the appellants.

The Grounds and Submissions

13. The grounds raise a number of issues in relation to the judge's assessment of Article 8. It is suggested that she erred in law in her consideration of Section 117B of the 2002 Act, that the conclusions in terms of the proportionality of removal with reference to family life with relatives in the UK is flawed and that the judge had failed to consider the family's reputation for collaboration with Israelis in Lebanon. It is argued in relation to the last matter that notwithstanding that there had been no asylum or Article 3 claim, the issues in this respect were required to be determined by the judge.
14. Furthermore, it is contended in the grounds that the judge wrongly failed to treat the evacuation of the family from Lebanon and the British Protected Person status of the first appellant as not amounting to an exceptional distinguishing factor in the proportionality assessment. In other words, the appellants were not voluntary migrants.
15. Those submissions were developed before me by Mr Jacobs. It was submitted that there was an unusually strong family life amongst the appellants and with WC and MC, amounting to a degree of exceptionality.
16. The appellants had established a private life since 2006 and the judge commented on their creditable behaviour since they have been in the UK. There was also evidence of the first appellant's breast cancer and the

second appellant's bladder cancer. These all amounted to cumulative factors that needed to be taken into account.

17. Although the judge had found that little weight was to be given to the appellants' private life in accordance with S.117B(5) of the 2002 Act, that finding should not have been allowed to encroach on the family life considerations. At [25(i) and (j)] the judge had not acknowledged that that assessment of private life under S.117B(v) could not apply to family life. The judge was required to disregard the private life finding in that respect when considering the family life that had been established with other members of the family over a period of nine years in the UK. There needed to be a separate assessment of the weight to be given to family life, unencumbered by S.117B(5).
18. I was referred to the decisions in *Forman (ss 117A-C considerations)* [2015] UKUT 00412 (IAC) and *Deelah and others (section 117B - ambit)* [2015] UKUT 00515 (IAC) in relation to 'precariousness' with reference to private life.
19. With reference to *AM (S 117B) Malawi* [2015] UKUT 0260 (IAC) which decided that an appellant can obtain no positive right to a grant of leave to remain in terms of S.117B(2) or (3) whatever the degree of his fluency in English or the strength of his financial resources, that did not apply in terms of family life, the case being concerned with private life only. In this respect I was also referred to *R (on the application of Luma Sh Khairdin v Secretary of State for the Home Department (NIA 2002: Part 5A) IJR* [2014] UKUT 00566 (IAC) at [59] which it was submitted supported the proposition that the appellants are entitled to the benefit of S.117B considerations in terms of family life claims.
20. Mr Jacobs contended that the judge was not entitled to use the appellants' financial independence as a matter adverse to them in terms of the proportionality assessment when statute in the form of S.117B points to that being a positive factor in their favour in terms of family life. It was accepted that this argument was parasitic on the earlier argument about the application of S.117B(2) and (3) to family life cases.
21. It was further argued that the judge was wrong to find that there would be no interference with family life between the appellants and WC and MC on the basis that they left Lebanon fifteen years and five years earlier, respectively, before the appellants came to the UK. That overlooks the fact that family life has been established amongst them all since 2006 when the appellants arrived. They had become accustomed to family life since 2006, which is the starting point.
22. If there had only been an issue of family life in the appeal, and not one of private life, the appellants, it was suggested, would actually be in a better position which suggests that the judge's conclusions in relation to

precariousness and no benefit from financial independence or English language infected her findings in relation to family life. Mr Jacobs adopted my distillation of his argument: the judge's consideration of the appellants' private life had "diluted" her assessment of family life in terms of the proportionality of removal. The suggestion that the appellants would be able to use Skype to maintain their family life was a perverse conclusion it was submitted.

23. As regards [30] the judge was wrong to disregard the issues of fear of return raised by the appellants simply on the basis that they had not applied for asylum or made an Article 3 claim. That could not mean that their fear was not relevant to Article 8 of the ECHR. It appears to have been accepted by the respondent at [5] of the 'rule 24' response that the family were harassed in 2006 because of collaboration with the Israelis by the first appellant's brother. The appellants would be returning with some measure of fear. There was background evidence in relation to ISIS trying to penetrate the north of Lebanon and the background material before the First-tier Tribunal in this respect which was not taken into account.
24. Lastly, it was submitted that the health issues of some of the appellants were inappropriately compartmentalised and not taken into account on a cumulative basis. The fact that no individual Article 3 claim on health grounds was advanced did not mean that it did not need to be taken into account under Article 8.
25. Lastly, the first appellant's British Protected Person's status was a factor to be taken into account in the public interest in their removal. The judge erred in not taking that into account as an exceptional fact in their cases. They are involuntary migrants. There is no public interest in removing the family of a British protected passport holder which the British military brought to the UK.
26. It was contended that there were similarities with the Ghurkha cases in terms of the 'historic' dimension.
27. Ms Brocklesby-Weller submitted that there was no error of law in the judge's determination in any respect. The arguments advanced on behalf of the appellants are essentially disagreements with the outcome.
28. As regards the s.117B(5) point in terms of precarious private life, the fact that the judge did not say that little weight should be given to family life where it was established in precarious circumstances undermines the argument advanced on behalf of the appellants. The judge did not come to the view that their family life was undermined for that reason. She clearly confined it to private life, as set out in the statute. She then went on at [25(i)] to consider family life separately. There is nothing to indicate that there was any confusion between her considerations of family and private life.

29. The decision in *AM (Malawi)* is to the effect that there is no positive benefit to the appellants in Article 8 terms by reason of financial independence or proficiency in English. The decision in *Khairdin* at [59] is wholly supportive of that proposition. None of the other cases relied on, for example *Forman*, assist the appellants, *Forman* being consistent with *AM (Malawi)*.
30. The financial support that they could expect on return to Lebanon was relevant to the judge's assessment of the proportionality of their return. They would be able to "reconstitute" their private lives on return. It was relevant that they would be going back, in the case of some of them, with skills and financial support. They would not be able to advance any argument in terms of destitution. It was conceded that none of the appellants could meet the Article 8 Immigration Rules in terms of private life. There was thus an acknowledgement that they were not able to demonstrate very significant obstacles to integration on return.
31. Their family life in the UK was found to be very strong but there is no contradiction in relation to the judge's consideration of the period of time they had spent in the UK. That period of time was presumably a relevant factor in the finding that they had established family life. The judge had dealt with the issue of how they could continue their relationship with those family members still in the UK.
32. As was pointed out at [29(iv)(b)], WC had considered exporting his business to Lebanon and paid a visit there last year to explore the Lebanese markets in CCTVs.
33. As regards the assertion of the potential for harassment on return because of the point made about a family member's previous collaboration with the Israelis, it does not appear that this was a live point taken before the Tribunal. As was pointed out in the determination at [25(ii)(a)], there is no evidence that they intended to leave Lebanon before they were evacuated. Similarly, there was nothing to indicate that in the nine years' interval between 2006 and now, any such problem would persist.
34. The rule 24 response could not be interpreted as meaning that the respondent accepted any assertions as to previous harassment, particularly in circumstances where it was submitted that not all the documents would have been before the writer of the rule 24 response.
35. It has not been disputed that in terms of health issues there is adequate treatment available to the appellants on return to Lebanon. They are in the fortunate position of being able to receive financial support in order to access treatment. The fourth appellant had treatment in Lebanon prior to arriving in the UK. The monitoring that the first and second appellants need could continue in Lebanon.

36. The judge was aware of the British Protected Person status of the first appellant, as is expressly pointed out in the determination at [25]. However, she is nevertheless still subject to immigration control. It is the case that none of the appellants have any basis of stay in the UK and had made applications for further leave to remain in the past. They did not have to leave Lebanon in 2006 and did not have to remain either. There is nothing particularly unusual in their circumstances.
37. In reply, Mr Jacobs reiterated some of his earlier arguments, referring to the authorities already cited. It was not accepted that the judge had in effect 'changed direction' from a consideration of private life to family life, there was a continued consideration of both issues, all in the same paragraph. The family life findings follow on from the findings in relation to private life.
38. It is not simply a case of disagreeing with the outcome but of advancing legal arguments in relation to the judge's conclusions.
39. In terms of the suggestion that the concession that the appellants were not able to meet the requirements of the Article 8 Immigration Rules meant that it was conceded that there were not very significant obstacles to their integration, that is not correct.
40. The judge should have dealt with the issue of fear of return and the rule 24 response does amount to a concession.
41. The appellants left Lebanon because they were in danger if they stayed. They came here involuntarily as a result of events in Lebanon.

My assessment

42. I deal with the arguments in the order in which they were advanced on behalf of the appellants before me. As a general comment, I would conclude that all the particular circumstances of the appellants as outlined in submissions and in the grounds do feature in the judge's determination. That is, arguably, aside from the issue of what is said to be a fear on return and previous harassment of the family, because of the first appellant's brother's collaboration with the Israelis. It is not suggested on behalf of the appellants that the judge has failed to identify any particular fact or matter relied on, aside from the issue to which I have just referred.
43. Once that is recognised, the question arises as to whether in fact the detailed arguments advanced on behalf of the appellants amount only to a disagreement with the judge's assessment of the facts.
44. It is necessarily the case that the judge will have had to have dealt with the different features of the appellant's circumstances in a sequential way in the determination. That however, of course does not mean that there was an impermissible compartmentalisation of issues. There was a

considerable amount of material for the judge to consider, with many different facets of the appellants' private and family lives. I note that at [12] the judge recorded the essence of the appellants' claim as including their health problems, being one of "several factors" to be taken into account when considering "the circumstances in the round".

45. At [25] relevant Immigration Directorate Instructions ("IDI's") were quoted, including the instruction to case workers that the decision maker must consider all relevant factors. At [25(ii)(i)] there is further reference to the "Guidance" to the effect that cumulative factors should be considered.
46. At [29], with reference to positive factors advanced on behalf of the appellants, the judge came to her conclusions on that particular issue "having considered all the evidence".
47. It is not apparent from the determination that the judge came to the view that any one particular factor was determinative of the appeal against any one of the appellants. Looking at the determination as a whole, I am satisfied that it involves a rounded assessment, on a holistic basis, of the factors to be taken into account both 'for and against' the appellants in terms of proportionality.
48. I do not accept that there was any impermissible eliding of the issues of private and family life with reference to the 'precariousness' issue. At [10] the judge quoted s.117A-B, and D of the 2002 Act. At [24], after consideration of the circumstances of the appellants' leave in the UK, she concluded at (e) that the appellants' private lives in the UK were established at a time when they knew that their ability to stay was by no means certain. At subparagraph (f) she referred specifically to s.117B(5) to the effect that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. She squarely in that subparagraph linked precariousness to the appellants' private lives. At subparagraph (i) she gave consideration to family life. Nowhere in the determination is there any either express or implied suggestion that the judge read over the precarious issue from the appellants' private lives into the family life consideration.
49. It was not necessary for her expressly to state that precariousness had no application so far as s.117B(5) is concerned in terms of their family life. It is apparent that the judge was aware of that provision's limited application in terms of private life only.
50. It was argued that the appellants should have been entitled, in a positive way, to the benefit of s.117B(2) and (3), that is the ability to speak English and their being financial independent (relying on WC). It was submitted that although the decision in *AM (Malawi)* could be said to suggest otherwise, its application is limited to private life cases.

51. I do not agree with that submission. In the first place, *AM (Malawi)* was in fact a case involving family life. Furthermore, the Tribunal did not suggest that its reasoning in relation to English language ability and financial independence in terms of positive benefits, was limited to private life cases. Indeed, it seems to me that there is no rational distinction to be made in terms of family or private life on that distinct issue. The provision to be found at s.117B(2) and (3) makes no such distinction.
52. Insofar as reliance is placed on the decision in *Khairdin*, the Tribunal in *AM (Malawi)* disposed of the same argument at [17], disagreeing with the proposition at [59] relied on in the case of the appellants before me. In actual fact, on close analysis it seems to me that what Judge Lane said at [59] of *Khairdin* is not at all inconsistent with *AM (Malawi)*. The “mild support” that was referred to seems to have been limited to the fact that the respondent could not rely on lack of financial independence as a public interest factor. Although I am not bound by the decision in *AM (Malawi)*, I find its reasoning persuasive and I agree with its conclusions on this issue.
53. It is not the case that Judge Morris concluded at [25(i)] that the appellants’ removal would not amount to an interference with family life with WC and MC. In that paragraph she stated as follows:
- “Whilst there would be an interference with the family life they enjoy with [WC] and [MC], [WC] left the Lebanon fifteen years and [MC] five years before the Appellants arrived in 2006. They were therefore accustomed to living apart. Family life can be maintained in the same way as it was before the Appellants’ arrival, and it could also carry on through electronic means such as Skype. Whilst this is by no means the same as the family life they would have were the Appellants to remain here, the inconvenience and less favourable means of enjoying their family life is not such as would outweigh the public interest in firm and fair immigration control”.
54. There was therefore a finding of interference with family life and necessarily this would have taken into account that that was established more recently, in any event since 2006. Earlier, at [22] she had concluded that there was family life between the appellants and WC and MC, and that this was evidently a very close family for whom WC has been financially responsible for many years. She referred to their living in close proximity with each other meaning that they meet on an almost daily basis. She referred to the Friday evening family gatherings that are evidently very important to them.
55. As is evident in the quotation above, the judge recognised that contact from Lebanon would by no means be the same as the family life that they would have were the appellants to remain in the UK. She was entitled to refer to the extent to which the families would be able to maintain contact. She did not conclude that that family life would in any way be equivalent if the only contact were by means of Skype.

56. It is argued that the judge impermissibly disregarded the fear that the appellants expressed of return in relation to retaliation on account of the first appellant's brother's collaboration with the Israelis. It is submitted that even though what may be asserted falls short of what would be required in order to be granted international protection, that does not mean that it is an issue that is irrelevant to Article 8. The phrase "fear of retaliation" was the one used in submissions before me. In the written grounds at [5] it is asserted that the judge erred at [30] "in refusing to entertain" the point raised earlier in the determination at [13(i)], being the difficulties experienced because of the collaboration which was publicly known.
57. I do not accept that there is any concession in the rule 24 response at [5] which states that "The family were only harassed in 2006 and there was no evidence to suggest that this would still occur some nine years later, or, if it did, it amounted to serious ill-treatment." Stating that they were only harassed in 2006 is simply a re-statement of the appellants' claim in this respect, or at least as articulated in the grounds.
58. It is not the case that the judge did not take into account the appellants' expressed security concerns in relation to Lebanon. At [30] there is reference to concerns expressed about the political situation in Lebanon. The judge concluded that "undoubtedly" there was serious political and social disruption in Lebanon. She referred to Foreign and Commonwealth Office Guidance, included in the bundles of the first and second appellants. That guidance was quoted by the judge as including that the security situation in parts of Lebanon can deteriorate quickly and that there is a potential for further violence. She referred to the fifth appellant's witness statement dated 20 March 2015 which stated that although the security situation may not be life-threatening that was just one part of the fifth appellant's concerns as expressed in the witness statement.
59. In [30] there is reference to the fact that the appellants had been advised that should they wish to make a claim on asylum or Article 3 grounds they could have done so. It is evident from [11] that no such applications had been made and their solicitors in January 2014 had said that they did not wish to make a claim for asylum in the UK.
60. Returning to the 'collaboration risk issue', given that the issue was raised I do consider that the determination would have benefited from explicit consideration of that point where the judge dealt with security issues generally. However, it is not the case that the judge ignored the 'security' issue in general terms, as is demonstrated by [30]. She was entitled to take into account that no asylum or Article 3 claim in a distinct sense had been made. It is evident from the determination that she took the security issue into account in her overall assessment of proportionality under Article 8.

61. On the question of what was said in submissions to be a “fear of retaliation”, I have for my part considered carefully all the witness statements put before the First-tier Tribunal, both those witness statements in the case of each appellant dated in 2015, and such witness statements dating from 2012 as were also included. In the witness statements before the First-tier Tribunal, those of the first and second appellants say nothing of any fear of return on the basis of retaliation. Indeed, those witness statements do not mention the issue of collaboration by the first appellant’s brother. WC’s witness statement dated 10 April 2015 says nothing about that issue either, although a witness statement dated 14 August 2011 refers to it on a ‘historic’ basis, without expressing any concern about future risk in this regard.
62. The witness statement of MC of the same date in 2015 is silent on the issue. The third appellant’s witness statement, undated but presumed to be prepared for the hearing before the First-tier Tribunal, does refer to historic incidents of harassment in relation to that issue but does not give any indication of any future difficulty because of it. The earlier statement of 27 July 2012 from the third appellant does deal with the issue both in its historic sense and in terms of future job prospects. Neither of the witness statements of the fourth appellant, dated 1 April 2015 or 27 July 2012 mention the issue, and nor does the witness statement of the sixth appellant dated 6 March 2015 or that dated 27 July 2012. The fifth appellant’s witness statement dated 20 March 2015 deals with the point in a historic sense but not in much detail, stating that she does not know how the issue would affect their future prospects. Her witness statement dated 27 July 2012 does deal with the issue in more detail including in terms of future job prospects.
63. In the light of the fact that there was scant suggestion by any of the appellants of any future risk in terms of apparent previous collaboration by the first appellant’s brother, I cannot see that even if it could be said that the First-tier Tribunal Judge erred in law in failing to make express reference to that issue and to take it into account, it could have affected the outcome of the appeal. If it was such a pressing issue in terms of any risk or future prospects, it is reasonable to conclude that it would have been raised more prominently in witness statements.
64. So far as the health concerns of some of the appellants are concerned, these issues were dealt with in detail in the determination and I do not accept that there was any inappropriate compartmentalisation of health issues, which were considered on a cumulative basis.
65. The issues in terms of employment prospects are also referred to generally at [30] and more specifically at [30(ii)] in the subsequent subparagraphs. The judge concluded that financial support would probably continue for the appellants, giving reasons for coming to that view which are sustainable. She referred to the educational qualifications

that the appellants had obtained in the UK, where that applies, and to work experience in relation to the fifth appellant.

66. She considered the fourth appellant's circumstances in terms of her being married to a person with leave to remain until November 2015, with the possibility of his being able to renew that leave to remain. She gave separate consideration to their circumstances in terms of the options available to them.
67. Judge Morris did undoubtedly take into account the circumstances in which the appellants came to the UK and the fact of the first appellant's British Protected Person's status. At [24] she stated as follows:

"It is a material consideration in this matter that the First Appellant is a British Protected Person and that the Appellants arrived in this country as a result of being evacuated from the Lebanon by the British government".

68. However, as was also pointed out, the first appellant's status did not give that appellant or indeed any of the others a right to stay in the UK. She also noted that there was no evidence that the appellants' circumstances were such that they had intended to leave Lebanon but for the need for them to be evacuated in 2006.
69. Having considered in detail the arguments advanced on behalf of the appellants, I am not satisfied that it has been established that there is any error of law in the decision of the First-tier Tribunal.
70. Whilst for the reasons I have given the determination would have benefited from an explicit consideration of the 'collaboration' issue, I do not consider that the judge's failure to refer to this in detail in the findings section of the determination amounts to an error of law. Even if I am wrong about that, I am not satisfied that it is an error of law which could have affected the outcome of the appeal on the basis of the evidence put before the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal of each appellant therefore stands.

ANONYMITY

I make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequently, this determination identifies each of the appellants and others associated with them by initials only in order to preserve the anonymity of the appellants. No report of these proceedings shall directly or

indirectly identify the appellants or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 17/12/15

Upper Tribunal Judge Kopieczek