



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11607/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 14 June 2018  
Extempore

Decision & Reasons Promulgated  
On 22 June 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Emezie, Roli Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Paul promulgated on 1 December 2017 in which he dismissed her appeal on all grounds. Whilst the appeal was on asylum, humanitarian protection and human rights grounds the sole ground which is challenged before me is Article 8. For the reasons I gave in a decision of 15 February 2018 the decision of the First-tier Tribunal relating to article 8 is set aside. A copy of that decision is annexed to this decision.
2. The sole issue in the remaking of this appeal is whether removing the appellant to Lebanon would be in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention. In essence, the sole question here is whether

removal would be proportionate, it not being suggested that any of the first four questions in the Razgar analysis are not to be answered in the appellant's favour.

3. In assessing the article 8 claims, I have regard to section s117A and 117B of the 2002 Act which provides as follows:

Section 117A

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –

- (a) breaches a person's right to respect for private and family life under Article 8, and
- (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard –

- (a) in all cases, to the considerations listed in section 117B, and
- (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "*the public interest question*" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

Section 117B:

(1) The maintenance of effective immigration controls is in the public interest.

(2) 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 able to speak English, because persons who can speak English –

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) 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 persons –

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to –

- (a) a private life, or
- (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.

"qualifying child" is defined in section 117D:

"qualifying child" means a person who is under the age of 18 and who-

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;

4. It is necessary to consider also in this context what was held in MA(Pakistan) at [40] to [47].
5. The starting point for the assessment of Article 8 in this context is the findings reached by Judge Paul and also the best interests of the children which is the first matter to be considered.
6. My task in assessing the best interests of the children has been considerably hampered by the failure to provide any proper evidential basis as to whether the children would, as the appellant contends, not be permitted to reside in Lebanon on anything other than a temporary basis or that her husband would not be in the same position. This is, I consider, an important issue. This is not a situation in which the appellant is a citizen of the country to which she faces removal. On the contrary, she was resident there on a limited basis as a stateless person.
7. No direct evidence has been before me as to whether the Lebanese authorities would permit the appellant's husband, who is a British citizen, and the children, who are also British citizens, to enter Lebanon on anything other than a temporary basis as for example tourists. That is despite the direction made on 22 March 2018, indicating that I would be assisted by the production of an opinion from a Lebanese lawyer as to whether the appellant's husband and children would be permitted to go to live there with her, and if so, on what basis. All that I have been provided with is a report from Dr Alan George, who is not a lawyer, who has produced a report of considerable length which is, with respect, almost entirely irrelevant to the issues in this appeal. He does, however, say that the children would arrive as foreign nationals without any right of residence, would require entry and residence visas, which might well be granted but would require repeated renewal, and equally, he adds, they would not have any right of access to Lebanese or Palestinian education or healthcare or other welfare services and they would have to use private services. Nothing is said about the father but I consider it reasonable to infer that he would be in a similar situation.
8. Understandably, that makes is the assessment of the best interests of the children, difficult. I accept, as Dr George says in his opinion, which I consider he is able to opine, which is the general situation in Lebanon for Palestinians, set out at paragraphs [72] to [101] of his decision. Essentially, Palestinians have significant problems in obtaining work permits, in obtaining work and access to services and in reality it is extremely difficult for them to obtain Lebanese citizenship. They are, I accept, marginalised and their position would be difficult. That would be the position of the mother; there is no indication that the father could lawfully obtain employment as he is now a British Citizen. Whilst the children have lived in the United Kingdom for a relatively short time they are British citizens. I find that it is in their best interests to have both of their parents with them and I consider that there is a strong interest in them doing so.

9. I consider it also to be the case that the difficulties that they would face in Lebanon are significant and that their life chances would in this case be considerably greater were they to be educated in the United Kingdom, their country of citizenship. This is not a scenario in which either parents have a citizenship with the country in which they would have to live and I find on balance that it is unlikely that they would be able to obtain any permanent residence status there but at least as it appears from the U.S. State Department Report there were difficulties for even Lebanese women obtaining residence permits for their husbands.
10. There are therefore, I consider, strong reasons why the children's best interests are to remain in the United Kingdom. That of course is the starting point. I must therefore go on to reach conclusions as to proportionality and in doing so I consider that it is appropriate to do the balance sheet method of doing so. In assessing the factors in favour of the appellant I bear in mind that she does not meet the requirements of the Immigration Rules. It is not suggested that she does and I consider that that is a factor which counts against her. I consider also that the fact that she does not comply, that there is a strong interest in the maintenance of immigration control, which the appellant has flouted.
11. There is significant weight to be attached to the public interest in the maintenance of immigration control, which includes maintaining a system which applies to all equally and is consistently applied. The appellant does not meet the requirements of the Immigration Rules, which is a factor which, in light of the strong public interest, weighs significantly against her. It is also a factor against the appellant that she does not speak English and there is insufficient evidence to show that the family are financially independent in the United Kingdom.
12. As against that I consider that there are a number of factors which count in the appellant's favour. It is not disputed that she has a genuine and subsisting parental relationship with three children who are British citizens and it is therefore necessary to consider whether it would be reasonable to expect the children to leave the United Kingdom. That is not the same as compulsion and requires an analysis of their best interests. It also includes consideration of the wider public interest as accepted in **MA (Pakistan)** and these all must be factored into account.
13. I consider that on the facts of this case, which are very unusual in that there is no country of nationality for the appellant to return to. She is not a citizen of Lebanon and I conclude that family life could not properly be established there, given the legal restrictions on the husband and children living there except on a limited, temporary basis for short period. I conclude that in the circumstances, it would not be reasonable to expect the children to leave the United Kingdom. I reach that conclusion taking into account all of the negative factors set out above and I conclude therefore following the guidance in **MA (Pakistan)** that this is a factor which counts significantly in the appellant's favour.
14. Further, there have to be good reasons why this factor should not prevail over the others. There is, I consider in this case, a significant and very weighty public interest in the maintenance of immigration control, not least because it has effectively been

flouted. Nonetheless, I bear in mind that what I am dealing with here is the best interests of three children, one of whom is barely a year old, all three of whom are British citizens. I bear in mind the negative factors including the lack of speaking English and the lack of financial independence but equally I bear in mind, as I must, that the best interests of the children are a primary consideration.

15. Given the very real difficulties that the children would face even though they lived in Lebanon in the past, given that they would be seeking entry as British Citizens, I consider significant weight has to be attached to that. They are therefore in a different position, as far as I can be satisfied, in Lebanese law. The lack of any permanent status would make their situation precarious.
16. Taking all of these factors into account and attaching significant and great weight to the public interest in the maintenance of immigration control in this case and the need to maintain integrity in the system, I am nonetheless, given the difficulties facing the children, satisfied that removal of the appellant in this case would not be proportionate, given the very real difficulties in the family being able to have family life anywhere other than in the United Kingdom because of the nationalities of the children and the husband and the fact that the appellant has no nationality and the difficulties that there would be inherent in them having any basis of life together in Lebanon, the only other country which realistically they could be expected to live.
17. Accordingly, for these reasons I allow the appeal.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involves the making of an error of law and I set it aside.
2. I remake the decision by allowing the appeal on human rights grounds
3. I make an anonymity direction in respect of the appellant

### **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 her 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

Date: 21 June 2018



Upper Tribunal Judge Rintoul

ANNEX - ERROR OF LAW DECISION



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11607/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 15 February 2018  
Extempore

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M M A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Emezie Solicitor Advocate instructed by Roli Solicitors  
For the Respondent: Ms A Brocklesby-Weller

DECISION AND REASONS

4. The appellant appeals with permission against the decision of First-tier Tribunal Judge Paul promulgated on 1 December 2017 in which he dismissed her appeal on all grounds. Whilst the appeal was on asylum, humanitarian protection and human rights grounds the sole ground which is challenged before me is Article 8. There is no challenge to the dismissal on asylum or humanitarian protection grounds. The appellant is a Palestinian formerly resident in Lebanon. She is married to a British citizen who was formerly also a Palestinian but who was naturalised in the United Kingdom. There are three children of the family, two born in Lebanon both of whom are British citizens as they were born after their father had acquired citizenship and a

third child born in the United Kingdom. The judge concluded that it would have had regard to paragraph EX.1 and Section 117B of the 2002 Act concluded that it would on the facts of this case be reasonable to expect the children to return to Lebanon.

5. There are two principle grounds put forward in the grounds of challenge. First that the Secretary of State had approached the matter in an entirely incorrect manner and second that the judge's assessment of the children's position failed to take account of the fact that they are not citizens of Lebanon did not have a right to enter and reside and that **EV (Philippines)** on which the judge relied was clearly distinguishable it is also considered that the proportionality considerations are wholly inadequate as the assessment in relation to the children was subjective and flawed.
6. I have a number of concerns about the manner in which the judge approached the facts. There appears not to have been any consideration that the scenario in this case is entirely different from that in **EV (Philippines)**. In that case none of the parties were British citizens and in this case the father and the three children including the youngest are all British citizens. The youngest child is barely a year old. There is no appreciation that under Section 117B(6) and following **MA Pakistan** the fact that the children are British citizens is a factor of significant weight to be taken into account. There does not appear to have been any consideration as to whether the children could in fact relocate to Lebanon even if they wished so to do or that their parents wished them to do so. There is evidence in the witness statements of the appellant and her husband that he would not be able to return there except as a tourist.
7. It to be borne in mind that the appellant is not entitled to Lebanese citizenship are the children. Further whilst at paragraph [26], as the respondent submits, there is some consideration of the best interests of the children this is couched in terms of their welfare and it being said to be upper most. But there was no consideration of their position in the United Kingdom nor of the fact that significant weight is to be attached to the fact that they are British citizens.
8. The judge also appears to have assumed that both parents were able to work in the future and that they have extensive family ties but this does not resolve the question of whether the father could in fact relocate there. To state that there is nothing but the children's circumstances here which means that does not apply does not in this context make sense. It is also unclear how the judge who could have concluded in the light of **MA Pakistan** that the family could relocate to Lebanon and live there as they had done before the husband had come to the United Kingdom with the children. There is no evidential basis for that assumption.
9. There appears in my view to have been no proper consideration of the unusual factorial scenario in this case where in a family of five people only one is not a British citizen and there may well be significant legal obstacles to the family life which clearly exists continuing in Lebanon. There is simply no consideration as to whether the separation of the appellant from her children would be reasonable.
10. For these reasons I consider that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside. I am however satisfied that this is a case which should be remade in the Upper Tribunal.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The decision will be remade in the Upper Tribunal
3. An anonymity direction is made.
4. Any additional material upon which the parties wishes to rely must be served on the Upper Tribunal and on the opposite party at least 10 working days before the next hearing.
5. The Upper Tribunal will be assisted by evidence, preferably in the form on an opinion from a Lebanese lawyer as to whether the appellant's husband and children would be permitted to go to live there with her, and if so, on what basis.

Signed

Date: 22 March 2018

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul