



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

Appeal Number: AA/16809/2010

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2014**

**Determination Sent
On 5 June 2014**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

AELEO MAJID IBRAHIM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott, instructed by Paragon Law Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal has a protracted history. The appellant, who is of Palestinian ethnicity and is from Gaza, came to the United Kingdom, it seems, in February 2008. He claimed asylum on the same day. This application was refused on 22 August 2008 but he was granted discretionary leave until 5

July 2009 in line with the respondent's policy for unaccompanied asylum seeking children (he was born on 5 January 1992).

2. The appellant made an application for further leave to remain in the United Kingdom on 5 July 2009 and this was refused by the respondent on 25 November 2010. He appealed against that decision to a Judge of the First-tier Tribunal, and that appeal took place on 5 September 2011. The judge dismissed the appeal but subsequently the appellant was granted permission to appeal by an Upper Tribunal Judge following refusal initially by a First-tier Judge.
3. Things stalled somewhat thereafter as a consequence of delay in establishing whether or not the appellant is on the Israeli Population Registry. Ultimately it was confirmed that he was not on the registry but following two previous For Mention hearings, on 19 June 2013 the respondent said that they had not worked out the legal consequences of the appellant not being on the registry which, it was canvassed, might lead to him being granted discretionary leave on the grounds of being stateless.
4. The matter was further considered at another For Mention hearing on 20 August 2013 and again on 27 September 2013. Following the failure by the respondent to respond to case management directions the matter was listed for a further hearing on 13 January 2014. On that date it was accepted by Mr Walker on behalf of the respondent that the appellant is stateless and he noted the impasse in a situation where the appellant could not apply under the statelessness rules while he had an appeal pending and he would lose his section 3C leave. Mr Walker did not think it would be possible to comply with an unless order within 28 days.
5. As a consequence I directed that each side would have fourteen days to put in further written submissions and subsequently I would determine the appeal on the papers. Further submissions were received from the appellant but none from the respondent.
6. In his written submissions Mr Draycott contends first that the appellant is entitled to a grant of 30 months' discretionary leave on the basis that he meets the criteria set out within paragraph 403 of HC 395. In the alternative it is argued that since the appellant clearly meets all the practical and compassionate considerations which underlie paragraph 403, and the extensive private life that he has developed, as detailed in his most recent witness statement, the Tribunal was asked to conclude that the appeal should be allowed under Article 8 of the European Convention on Human Rights.
7. In the alternative, as I think it is expressed, the Tribunal is asked to remit the claim for a fresh hearing by the First-tier Tribunal. In the further alternative, if remittal was not thought to be appropriate then the appellant would rely upon the arguments in his First-tier grounds to the

effect that the country guidance decision in HS could either be distinguished on its facts or was wrongly decided.

8. I will consider these arguments in order.

9. Paragraph 403 of HC 395 states as follows:

“Requirements for limited leave to remain as a stateless person

403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:

- (a) has made a valid application to the Secretary of State for limited leave to remain as a stateless person;
- (b) is recognised as a stateless person by the Secretary of State in accordance with paragraph 401;
- (c) is not admissible to their country of former habitual residence or any other country; and
- (d) has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless.”

10. In paragraph 405 it is said that where an applicant meets the requirements of paragraph 403 they may be granted limited leave to remain in the United Kingdom for a period not exceeding 30 months.

11. As is accepted at footnote 1 to paragraph 13 of Mr Draycott’s submissions, the appellant does not satisfy the requirements of paragraph 403(c) as he has not made an application under paragraph 403(a). The point is made of course, as has been accepted by Mr Walker, that he could only do that by withdrawing his present appeal and thereby losing his section 3C extended leave and the right to work or receive any welfare benefits accordingly and becoming an overstayer.

12. The clear wording of the Rule cannot be by-passed. I recognise the dilemma with which the appellant is faced, but nevertheless he has not satisfied the requirements of paragraph 403(a) although I accept the other requirements of paragraph 403 are satisfied. It is of course also the case that there is no concept of a “near miss” in Article 8 cases. Nevertheless it is of relevance to the proportionality evaluation in respect of the appellant's private life that the Secretary of State has on a number of occasions failed to comply with directions and has delayed significantly in the course of these proceedings which is capable of being interpreted as an indication that she sees no urgency to the resolution of the appellant's situation. Nevertheless he cannot be required to remain in limbo for an

indefinite period and these are matters that are not irrelevant to the Article 8 assessment.

13. In that regard the appellant says in his third witness statement, dated 21 January 2014, that he has now been living in the United Kingdom for nearly six years, most of this with lawful leave. He has had education and employment during this period and has developed friendships. It is clear from reading his statement that he has used his time profitably while in the United Kingdom both in terms of study and work. It is relevant also to note from Mr Draycott's skeleton argument for the For Mention hearing of 13 January 2014 and his reference to and reliance on the decision of the Upper Tribunal in Cvetkovs [2011] UKUT 212 (IAC) that an unexplained failure on the part of the respondent to comply with a direction may lead the Tribunal to consider that the appeal is not opposed such that the matter may be determined on the papers without further notice after the expiry of 28 days.
14. I have noted above the defaults of the respondent in the course of this litigation and to that can be added the failure to provide any submissions subsequent to the For Mention hearing on 13 January 2014.
15. The Article 8 issues in this case as so frequently comes down to the matter of proportionality. The appellant has clearly developed a private life while in the United Kingdom over the six years he has been here and, although there is nothing in that private life which in ordinary circumstances would not render his removal disproportionate, and certainly it is the case that he cannot come within the Immigration Rules on Article 8, nevertheless the combination in my view of the lack of any strong indication from the respondent's side of any compelling interest in removal in this case, together with the fact that the appellant through no fault of his own is placed in the dilemma referred to above with regard to his inability to satisfy paragraph 403(a) of HC 395, leads me to the conclusion that that on the exceptional facts as I conclude them to be in this case, he is able to identify such circumstances as set out above to show that his removal would be disproportionate. I therefore allow his appeal under Article 8 of the ECHR.

Signed

Date

Upper Tribunal Judge Allen