



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

Appeal Numbers: IA/41327/2014
IA/41337/2014
IA/41521/2014
IA/41531/2014
IA/41538/2014
IA/41524/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 16 June 2015**

**Determination issued
On 24 June 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A H H DARMISH & OTHERS

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Nazir, of Copland Immigration Services
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are father, mother and four children. The oldest child is an adult and the other three are minors. They are all citizens of Libya. On 29 July 2014 they sought leave to remain in the UK on the basis of family and private life. The respondent refused all the applications for reasons which are principally explained in a letter to the first appellant dated 1 October 2014.
2. First-tier Tribunal Judge P A Grant-Hutchison dismissed the appellant's appeal by determination promulgated on 20 February 2015.

3. As the respondents' decisions contemplate all the appellants leaving the UK together, there was never any prospect of success on the basis of interference with family life.
4. As to private life, the Judge found that he had to consider in terms of Rule 276AD(iv) whether there would be "very significant obstacles" to integration into Libya. Noting at paragraph 11 that the situation there was "at the least unsettled" he did not find any reason why they might not integrate. He found no good arguable case or compelling circumstances for the appeals to succeed outside the Rules, and that any interference with Article 8 rights would be proportionate.
5. The appellants argued that the cases of the minor children should be considered under paragraph 276ADE(1)(iv) on the basis of seven years continuous residence in the UK and the reasonability of expecting them to leave. However, Judge Grant-Hutchison found that the relevant date was the date of decision and that the test was therefore not the reasonability of departure but very significant obstacles.
6. The grounds of appeal to the Upper Tribunal erroneously again insist that the relevant date was the date of the hearing. That is incorrect. The Rules are explicit that the relevant date is that of application.
7. The grounds complain that the question of a genuine subsisting parental relationship is not analysed in the determination. However, there has never been any dispute over the relationships among the first two appellants and their minor children.
8. The grounds also complain that the best interests of the children are not mentioned, but that has to be taken into account in the context that they would be expected to leave the UK with both parents, the family having come here on the basis of the first appellant's studies and not with a view to settlement.
9. A First-tier Tribunal Judge granted permission to appeal to the Upper Tribunal on 22 April 2015. The points on which permission was granted were that it was arguable that the Judge might have erred in finding that there would not be very significant obstacles to resettlement in Libya given the current crisis in that country, and given that they had been in the UK for seven years, and arguable failure to consider the best interests of the children.
10. In a Rule 24 response the respondent argues that on the basis of paragraphs 11 and 17 of the determination it is plain there could have been no different conclusion on the question of very significant obstacles to integration into Libya. There was no submission raising issues about the children's private lives and paragraph 9(d) of the determination

records the submission for the appellants that there were no significant obstacles to integration.

11. In a letter dated 15 May 2015 the appellants seek to introduce new evidence. This goes mainly to the present state of affairs in Libya. The letter says that the first appellant “has come up with a new point” which he seeks to develop in a further statement: that he would be at risk of death, and his family at risk of harm, from the present government in Libya due to his part-time service in the reserve army under Qaddafi.
12. I observed at the outset to Mr Nazir that the appellants appear throughout to have been attempting to bring claims which properly fell under the Refugee Convention or in terms of humanitarian protection.
13. Mr Nazir acknowledged that the “very significant obstacles” relied upon by the appellants were based on events in the last few years in Libya during their absence. Their case was that the turmoil in the country makes it too dangerous for them to return. The appellants place of origin is in “one of the most affected areas”. He submitted that the error in the First-tier Tribunal was a failure to analyse the full country situation in Libya. However, he also said that the appellants sought to base their case on their family and private life interests alone and any protection element was only “to strengthen the point”.
14. I queried why this had not been pursued through the well established channels as a protection claim. Mr Nazir explained that the first appellant was not interested in following that procedure because he did not wish to become dependent on the UK government or to give up the ability to work. He argued that the case should be allowed on the basis of the best interests of the children, the younger two of whom were born and have been brought up entirely in the UK.
15. Mr Matthews submitted that the appellants specifically did not ask for a grant of protection and it was not apt for them to pursue such issues by way of a family and private life claim. The relevant Rules were not designed for that purpose. In any event it was for the appellants to establish “very significant obstacles” which they failed to do. That presented them with the fairly high challenge of proof on the balance of probabilities, a point they failed to mention in the First-tier Tribunal. In a properly taken protection claim they would have to show only real risk of persecution or of serious harm. The case they did put forward rightly failed both on family and on private life under paragraph 276ADE. The appellants now have options of either making a protection claim or of applying again on the basis of private life, the children having reached the seven year milestone. It was not of course guaranteed that they would succeed on either basis but it was misconceived to bring protection claims in the course of these proceedings, to argue that the seven year criterion

could be considered in these proceedings, and to attempt to enhance the protection claim by fresh assertions at this stage which had nothing to do with legal error in the First-tier Tribunal.

16. Mr Nazir in response repeated the points that the appellants' claims do amount to a need for protection but should be allowed within the private life Rules, and that the claim should also succeed on the basis of the children's interests, they having now been here for seven years.
17. I indicated that there was no error of law in the determination.
18. The Judge rightly rejected the wholly unlikely proposition that the younger children have no knowledge of Arabic (paragraph 17). There is no error of law in his crucial conclusion that the appellants had not shown very significant obstacles to their integration in Libya, which is their country of origin. The criteria for private and family life issues are not designed for deciding claims based either on individual protection needs or on universally intolerable country conditions.
19. It may be understandable that the first appellant seeks to retain the opportunity of working in this country, but if there is a genuine need for protection then the appellants can be expected to follow the course the UK prescribes for extending such protection to those in need of it.
20. The determination of the First-tier Tribunal shall stand.
21. No anonymity order has been requested or made.



19 June 2015
Upper Tribunal Judge Macleman