



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

Appeal Number: HU/16109/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 March 2019**

**Decision & Reasons  
Promulgated  
On 28 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**ENTRY CLEARANCE OFFICER - AMMAN**

Appellant

**and**

**SUAD ABDULRAHEEM ABDULWAHHAB AL ADHAMI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms K Powell, Home Office Presenting Officer

For the Respondent: Ms C Thomas of Counsel, instructed by Descartes Solicitors

**DECISION AND REASONS**

1. Although this is the appeal of the Entry Clearance Officer I will refer to the original appellant, a citizen of Iraq born on 7 May 1954, as the appellant herein. Her appeal against the decision of the Entry Clearance Officer on 29 October 2017 to refuse her leave to enter the United Kingdom was allowed by the First-tier Tribunal following a hearing on 14 December 2018 on human rights grounds. The sponsor is the son of the appellant. The First-tier Judge heard evidence from the sponsor and his wife, the

appellant's daughter-in-law. Reliance was placed on the appellant's doctor, Doctor Wafiq. The judge noted in paragraph 29 that the evidence of Doctor Wafiq confirmed that the appellant has a serious physical health condition which limited her mobility. The judge had no doubt that she was a vulnerable and lonely woman separated from her only son and with no family support in Baghdad. However, the judge did not accept Dr Wafiq's evidence that the only option would be joint replacement surgery which was not available in Iraq and if she had surgery to alleviate her pain and improve her mobility "it would seem more than likely that she would be able to deal with her own self-care within a short time." Accordingly, the judge was not satisfied that the appellant, due to her illness, required long-term personal care and accordingly did not meet the requirements of E-ECDR.2.4. Furthermore, with financial assistance the judge was not satisfied there was no-one in Baghdad who could not reasonable provide domestic help, help with shopping and doctor's visits. Accordingly, the appellant could not come within the provisions of paragraph E-ECDR.2.5.

2. In relation to Article 8 the judge concluded her determination as follows:

39. The appellant is a widow, residing alone. The sponsor stated that he contacted her by phone, text and on-line, and there was daily contact. I accept his evidence despite a lack of documentation to confirm this.
40. The appellant is lonely and vulnerable, and I accept that she has a family life with her son and his wife, that there are more than normal emotional ties between them. I have therefore considered Article 8 ECHR outside the Immigration Rules. I have had regard to the tests set out in **Razgar [2004] UKHL 27** and the conditions in section 117B of the Nationality Immigration and Asylum Act 2002.
41. The issues is one of proportionality, whether the maintenance of effective immigration controls outweighs other factors.
42. The sponsor is now a British citizen. His wife is British and had originally been granted leave to remain in the United Kingdom along with her parents who had claimed asylum. Not unreasonably she has stated a fear of visiting Baghdad because of the dangers. The sponsor has not felt it safe to go to Baghdad to see the appellant.
43. Family life with the appellant, her son and his wife cannot reasonably be expected to be enjoyed in Baghdad. Whilst communication can be maintained by phone and online, given the security issues, it is unlikely that the sponsor can reasonably be expected to visit the appellant in the foreseeable future.
44. The sponsor and his wife are financially independent and are in a position to support the appellant. They can offer emotional and psychological support. Further social and

emotional support is available from the daughter in law's parents.

45. In all the circumstances I consider that on balance, it is proportionate to grant leave for the appellant to enter the United Kingdom to live in family with her son and daughter in law."

3. The judge accordingly allowed the appeal.
4. The Entry Clearance Officer submitted that the judge had overlooked several important factors. No explanation had been provided how the appellant's emotional and physical needs were being cared for at the present time or why the sponsor was unable to move to Iraq or why care could not be provided by family or friends in Iraq. The assertion that hired help could not be trusted was plainly speculative. The sponsor could pay for care to be provided privately. There was treatment available locally for the appellant's condition. It was unclear why the judge had allowed the appeal.
5. It was argued that the judge had failed to consider Section 117B of the 2002 Act and the need for effective immigration control. The appellant was likely to be a considerable burden on the NHS and might not be able to integrate successfully into British society. No findings had been made on the appellant's ability to speak English. Reference was made to **EV (Philippines) [2014] EWCA Civ 874**. The UK could not be expected to provide medical care to the world. All relevant factors needed to be considered in the round. Reference was made to **Huang v Secretary of State [2007] UKHL 11**.
6. Ms Powell submitted that it was not clear from the judge's findings made for example in paragraphs 35 to 37 why the judge had allowed the appeal. Care paid for by the sponsor could continue in Iraq. There had been a failure to take into account Section 117B.
7. In relation to Article 8 Counsel submitted that the judge had made findings that the appellant was a lonely and vulnerable woman and she accepted that the appellant had family life with her son and his wife and that there were more than the normal emotional ties between them. The judge referred in paragraph 42 to the sponsor being a British citizen. His wife was also British and had been granted leave to remain in the UK along with her parents who had claimed asylum. Counsel pointed out that the parties had chosen to be married in Jordan and had not returned to Iraq.
8. It was clear that the judge had referred to paragraph 117B of the 2002 Act and was alive to the financial issues. If leave were granted under Article 8 it would likely to be limited rather than indefinite leave and the appellant would have limited access to healthcare. The judge had not materially erred in her consideration of the public interest requirements and Section 117B of the 2002 Act. If a material error of law was identified there was a

short bundle including further evidence from Dr Wafiq taking issue with the judge's analysis of the evidence and also evidence that the appellant's wife is expecting a baby shortly.

9. At the conclusion of the submissions I reserved my decision. I can only interfere with the conclusions of the First-tier Judge if they were flawed in law.
10. The respondent contends that the determination is not sufficiently reasoned. It is argued that it was not explained why the sponsor was unable to move to Iraq or why care could not be provided by family or friends and it was submitted that the sponsor's assertions were speculative and did not constitute objective evidence. Furthermore, treatment was available for the appellant in Iraq.
11. In my view the judge did sufficiently explain the reasons for reaching her decision when the determination is read as a whole. For example, in paragraph 30 the judge states "I have no doubt that the appellant is a vulnerable and lonely woman, separated from her only son, and with no family support in Baghdad. She has a significant physical health condition." Nevertheless, the judge accepted that the appellant had a family life with the sponsor and his wife and there were more than the normal emotional ties between them. An important consideration was that this family life could not reasonably be expected to be enjoyed in Baghdad.
12. A point is taken that the judge did not consider Section 117B of the 2002 Act. The judge states that she had had regard both to the test set out in **Razgar** and the conditions in Section 117B in paragraph 40 of her decision. I am not satisfied that she failed to give the public interest sufficient weight having expressly confirmed she had had regard to the relevant section. The judge refers to the financial circumstances of the sponsor and his wife in paragraph 44 and was satisfied that they were in a position to support the appellant and in any event counsel submits that the appellant would be unlikely to be a burden on the NHS if granted limited leave to enter, as would be the normal position. On the issue of integration, the judge had accepted that the appellant was lonely and vulnerable and her family life revolved around the sponsor and his wife. The judge noted that the sponsor and his wife would offer emotional and psychological support and further social and emotional support was available from the sponsor's wife's parents.
13. I do not find that the judge arguably overlooked any relevant matter when reaching her conclusions. It does appear that a key factor in the judge's decision was that family life could not reasonably be expected to be enjoyed in Baghdad for the reasons she gives. It was no doubt this consideration in particular, together with the appellant's vulnerability and isolation, which informed the judge's assessment of Article 8 outside the Rules.

14. It may be that another judge might have reached a different decision but I am not persuaded that the decision of this judge was materially flawed in law for the reasons advanced by the Entry Clearance Officer. In the circumstances, I do not take into account the new evidence.

**Notice of Decision**

15. For the reasons I have given this appeal is dismissed and the decision of the First-tier Judge is confirmed. The First-tier Judge made no anonymity direction and I make none.

**TO THE RESPONDENT**  
**FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date: 25 March 2019

G Warr, Judge of the Upper Tribunal