Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/11380/2019
HU/12323/2019
(V)

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 27 May 2021	**On 11 June 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR YASER NAJEH KAMEL KHATTAB (FIRST APPELLANT)
MISS RAHMEH KHATTAB (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Mr K Wood, Legal Representative for IAS, Liverpool
For the respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are appeals against the decision of First-tier Tribunal Judge Devlin ("the judge"), promulgated on 9 October 2020. By that decision, the judge dismissed the

appellants' appeals against the respondent's decision, dated 19 July 2019, their human rights claims (made by way of applications for entry clearance).

2. The appellants are citizens of Jordan. Their human rights claims were based primarily on paragraph 297(i)(f) of the Immigration Rules, which provides as follows:

> 297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:248
>
> (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
>
> …
>
> (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

3. The United Kingdom-based sponsor, Mrs Barton, is the appellants' maternal grandmother.

4. In refusing the human rights claims, the respondent concluded that there were no "serious and compelling family or other considerations" which made the exclusion of the appellants from the United Kingdom undesirable. It was accepted that the other criteria under paragraph 297 of the Rules were satisfied.

The decision of the First-tier Tribunal

5. Having set out the case in outline, the judge proceeded to state her findings, reasons, and conclusions at [73]-[249]. On any view, she adopted a very conscientious approach to what were clearly very important issues in the appeals.

6. The judge directed herself to the guidance set out in Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88 (IAC) on more than one occasion, together with references to other appropriate judgments of the higher courts.

7. The detailed consideration of the constituent elements of paragraph 297 of the Rules is set out between [76] and [177]. Then, between [178] and [186], the judge proceeded to bring all of the specific considerations together and then set out her conclusions in a lengthy section under the sub-heading entitled "Looking at everything in the round". Ultimately, she concluded that despite there being factors in the appellants' favour there were no "serious and compelling" family or other considerations.

8. The judge then went on to provide a very detailed consideration of Article 8 on a wider basis. Her findings and conclusions are set out between [188] and [249]. She concluded that the respondent's decisions were not disproportionate.

The grounds of appeal and grant of permission

9. There are two grounds of appeal put forward, although in reality they overlap somewhat. First, it is said that the judge misdirected herself in law in relation to the guidance set out in Mundeba. References are made to specific the judges consideration of the evidence which, it is said, all pointed towards the existence of "serious and compelling family or other considerations." Second, it is said that the judge's findings/conclusions were irrational in light of her consideration of the evidence.

10. In granting permission to appeal, Upper Tribunal Judge Kamara observed that she was "only just persuaded" that the proposed challenge was arguable.

The hearing

11. Mr Wood relied on the grounds of appeal. Beyond that, he was admirably concise in oral submissions (a commendable trait not always seen in representatives before the Tribunal). He confirmed that the central thrust of the appellants' case was that in light of the evidence, the judge should have reached precisely the opposite conclusion to that which she arrived at. He referred me to the facts in Mundeba, although he did not seek to draw a direct comparison between that case and the present. There had been strong evidence before the judge and she should, in all the circumstances, have found that there were "serious and compelling family or other considerations" to exist.

12. Ms Cunha submitted that the judge had correctly directed herself to the law, made adequate findings of fact, and that the high threshold for a perversity challenge had not been met.

13. In reply, Mr Wood submitted that there were conflicting findings in the judge's assessment.

14. At the end of the hearing I reserved my decision.

Conclusions on error of law

15. I am only entitled to interfere with the judge's decision if I am satisfied that it contains errors of law. Having considered her decision holistically, I have concluded that no such errors exist.

16. It is plain that the judge correctly directed herself to the applicable legal framework, both in respect of paragraph 297 of the Rules, Mundeba, and Article 8 on a wider basis. The had note of Mundeba reads as follows:

> *"The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require.*
>
> *ii) Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is "an action concerning children...undertaken by…administrative authorities" and so by Article 3 "the best interests of the child shall be a primary consideration".*
>
> *iii) Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.*
>
> *iv) Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come in to play where there are other aspects of a child's life that are serious and compelling for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social backgrounds and developmental history and will involve inquiry as to whether:-*
>
> *a there is evidence of neglect or abuse;*
>
> *b. there are unmet needs that should be catered for;*
>
> *c. there are stable arrangements for the child's physical care;*
>
> *The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission.*
>
> *v) As a starting point the best interests of a child are usually best served by being with both or at least one of their parents. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important: see also SG (child of a polygamous marriage) Nepal [2012] UKUT 265 (IAC) [2012] Imm AR 939 ."*

17. It simply cannot be said that the accurate legal direction set out earlier in the decision has not been carried through to the findings and conclusions. All of the constituent elements of the Mundeba guidance are specifically dealt with under relevant sub-headings in the decision. Indeed, it is in my view difficult to see what more she could have done to ensure not only that she approached her assessment of the evidence on a correct footing, but also that the reader was clearly able to see that this is what she did.

18. The judge has in my judgment produced a thorough and balanced assessment of the evidence before her, reaching sustainable findings and equally sustainable conclusions drawn therefrom. I do not propose to set out all of the matters

considered by the judge. They appear in the body of her decision for all to read. There is no suggestion that she misunderstood the evidence or failed to have regard to relevant evidence. What appears at [77]-[177] is a very careful consideration of all aspects of the evidence, undertaken within the applicable legal framework of paragraph 297 of the Rules and in light of Mundeba.

19. Importantly, at [178]-[186], the judge brings all of her previous considerations together and sets out what are in my judgment eminently sustainable conclusions. The matters at [77]-[177] must be seen in light of the holistic evaluation in this section of the decision. The fact that the judge did find that certain aspects of the evidence weighed in favour of the appellants' indicated that she had adopted a balanced approach. What it did not indicate was that the favourable findings were bound to lead to a conclusion that the appellants should succeed with reference to paragraph 297 of the Rules.

20. Nor am I satisfied that the elevated threshold of a perversity challenge is met in this case. Far from it. Whilst appreciating that the appellants and Mrs Barton will be very disappointed with the judge's decision, the findings and conclusions reached were well within the sphere of rationality. That they felt strongly that the judge *should* have found in their favour does not mean that she was *bound* to do so.

21. For the reasons set out above, the appellants' appeals to the Upper Tribunal must be dismissed.

Anonymity

22. The First-tier Tribunal did not make an anonymity direction, and nor do I.

Notice of Decision

23. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

24. The appeals to the Upper Tribunal are dismissed.

25. The decision of the First-tier Tribunal stands.

Signed: *H Norton-Taylor* Date: 28 May 2021
Upper Tribunal Judge Norton-Taylor