



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

**Appeal Number:
UI-2022-002720 HU/00913/2021
UI-2022-002722 HU/00901/2021**

THE IMMIGRATION ACTS

**Heard at Birmingham IAC
On the 24 November 2022**

**Decision & Reasons Promulgated
On the 01 December 2022**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

Between

**MR. MAJED MOHAMED ARABI
MRS. GHSON MAROUF ARABI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. J. Howard, Fountain Solicitors

For the Respondent: Mr. C. Bates, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants appealed against a decision of First-tier Tribunal Judge French (the "Judge"), promulgated on 8 February 2022, in which he dismissed the Appellants' appeals against the Respondent's decision to

refuse leave to enter the United Kingdom on human rights grounds. The Appellants are Syrian nationals currently living in a refugee camp in Lebanon. They applied under the Family Reunion provisions to join the first Appellant's parents and brother in the United Kingdom.

2. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on 6 May 2022 as follows:

"It is arguable the First-tier Tribunal Judge made mistakes of fact leading to a flawed assessment under Article 8. In particular the facts cited as wrong are in Grounds 1.1 and 1.2.

Further, it is arguable that the Judge had misunderstood the evidence in that it was difficult for family members to meet the Appellants in Lebanon. It was the evidence of the Sponsor that they had in fact been denied entry on the last two occasions. It is arguable therefore that the Article 8 assessment is flawed as a result.

Permission is granted on all the grounds."

3. In the Rule 24 response dated 24 June 2022 the Respondent opposed the appeal.

The hearing

4. The first Appellant's mother and brother attended the hearing. We heard oral submissions from both representatives. We reserved our decision.

Error of law

Ground 1

5. It was asserted that the Judge had made a factual mistake at [1] where he stated that the first Appellant's brother's family were living in the USA. It was submitted that this was a material error when assessing Article 8 as the assessment under Article 8 needed to consider the best interests of the Appellants' nephews and nieces as a primary consideration.
6. We are not persuaded that this ground is made out. We accept that the Judge made a factual error at [1] when he stated that the Appellant's brother's family were living in the USA. However, in relation to any consideration of Article 8, we are not persuaded that the best interests of these four children would have made a material difference to the outcome of the appeal. They are the nieces and nephews of the Appellants. They live with their parents in the United Kingdom. Their grandparents are also living in the United Kingdom. There was no evidence before the Judge that it would be against their best interests for the Appellants to be denied entry clearance.
7. However, we find that this mistake of fact indicates a wider failure on the part of the Judge properly to consider the evidence before him. We refer to this further below when considering Ground 4.

Ground 2

8. Mr. Howard made no further submissions in relation to this ground. The Grounds of Appeal state:

“The Judge materially erred by assessing the Article 3 ECHR claim only after having made findings in relation to the Article 8 ECHR claim. It is respectively contended that the Appellant’s claim under Article 3 ECHR should have been considered before the claim under Article 8 ECHR.”

9. We are not persuaded that this ground in and of itself has any merit. There has been no challenge to the Judge’s decision in relation to Article 3. In relation to the Article 8 assessment, we will consider that below under Ground 4.

Ground 3

10. It was submitted that the Judge had made a material misdirection when finding that it would become easier for the first Appellant’s parents to visit him in Lebanon when the evidence of the Appellant’s father, the “Sponsor”, was that he has always been denied entry into Lebanon. Mr. Howard submitted that this finding was contrary to the evidence before the Judge. At the date of the hearing the Sponsor could not visit Lebanon.

11. Mr. Bates submitted that the Judge was going from what the Appellant’s mother had said, which was that they would be banned from visiting Lebanon for a period of five years. This meant that the ban was due to end in 2022. He submitted that it was not irrational to find that the first Appellant’s parents would find less difficult to enter Lebanon.

12. The Judge states at [15] when addressing Article 8:

“The First Appellant's mother said that she had made a recent trip to Lebanon to visit one of her granddaughters who had been in hospital, so although it might be difficult it was possible for his parents to visit Mr and Mrs Arabi, and that should become easier to arrange now that the parents had been out of Lebanon for 5 years.”

13. This refers to the first Appellant’s mother’s evidence which is set out at [8]:

“The Lebanese authorities had not allowed her husband entry to Lebanon. She explained that normally a refugee, who had left Lebanon under the UN resettlement scheme, would not be permitted to return for 5 years after leaving, but she said that special arrangements had been made for her, because one of her other sons had lost a child through a congenital illness.”

14. The witness statement of the first Appellant’s father states at [31]:

“My wife and I attempted to visit Majed and his family on two occasions in Lebanon. The first was on 9 November 2018. The Lebanon authorities did not permit us to enter Lebanon and returned us to

Cyprus from where we had got a connecting flight. The second time was on 14 September 2020. My wife and I tried to get a direct flight to Beirut. On our arrival at Beirut airport, they refused me entry. Consequently, my wife and I had to travel back to London. My wife has been able herself only to travel to visit our son and family in Lebanon alone. Each time she travels, she is only permitted to stay for 15 days. My wife last travelled to Lebanon in October 2021 and saw Majed and the family then.”

15. We find that, while the evidence of the first Appellant’s mother was that it should become easier for them to gain access to Lebanon, as at the date of the hearing the evidence before the Judge was that the Sponsor had twice been refused entry to Lebanon. There was no evidence before the Judge that, at the date of the hearing, the Sponsor would be able to visit the Appellants in Lebanon. The Judge found that it was possible for the first Appellant’s “parents” to visit them, which was contrary to the evidence that only his mother had been allowed entry.
16. We find that this is an error of fact which has infected the Judge’s consideration of Article 8. In relation to materiality, we will address this in Ground 4 below.

Ground 4

17. In the grounds of appeal it states:

“At [29] and [30] of the statement of the Sponsor, Mohamad Orabi (see page 6 of Appellant’s Bundle), the Sponsor gives details regarding the poor current living conditions the Appellants are facing in Lebanon.

It is contended that the FTT Judge materially erred in failing to adequately assess whether there were exceptional circumstances warranting the Appeals to have been allowed under Article 8 ECHR.”

18. Mr. Howard submitted that there had been no consideration of whether there were any exceptional circumstances in the Appellants’ case. He referred to [10] of the decision where his submissions from the hearing in the First-tier Tribunal were set out. He had clearly submitted that there were exceptional circumstances in the Appellants’ case. He referred also to his Skeleton Argument from the First-tier Tribunal where he had submitted that the Respondent should have considered paragraph 319V of the immigration rules, in particular 319V(f) “the son, daughter, sister, brother, uncle or aunt over the age of 18 if living alone outside the United Kingdom in the most exceptional compassionate circumstances”.
19. Mr. Bates submitted that there had been an holistic assessment of Article 8, and it could be assumed that the Judge had read the Skeleton Argument and the witness statements. We do not agree with this submission. We find that the Judge has failed properly to consider Article 8, and whether or not there were any exceptional circumstances. There is no indication in the decision that he has given proper, if any, consideration to the evidence in the witness statements.

20. The extent of the Judge's consideration of Article 8 is set out at [15]. He states:

"I shall address the Appellant's claim that a refusal of this claim would constitute a breach of the Appellant's right to a private life under Article 8 of the ECHR. The current status quo is that the Appellants are living with their 4 children in Lebanon, as they have been, apparently since 2013. Their family life is as that unit of 6. The Sponsor, his wife and Abbas had been living in a different country (i.e the UK) since 2017. Accordingly to the witnesses they managed to keep on regular contact with the sponsor, his wife and the brother Abbas, through Whatsapp, so could maintain their family life through that means. The First Appellant's mother said that she had made a recent trip to Lebanon to visit one of her granddaughters who had been in hospital, so although it might be difficult it was possible for his parents to visit Mr and Mrs Arabi, and that should become easier to arrange now that the parents had been out of Lebanon for 5 years."

21. We have found above that there is an error in his finding that both parents could visit the Appellants. The Judge then considers Article 3 at [16], and then at [17] states:

"It seems to me that there is some confusion in the case presented by the Appellants. On one hand it is claimed that the appeal is all about reunification of the family. However the wider family has been apart since at least 2017. Moreover it seems that the plan is for Rami (a brother) to live in France and the 2 sisters to live in Canada, so it is difficult to accept the argument as to a wider family reunification being appropriate. The Appellants immediate family are already living with them, in Lebanon and they keep in touch with the family members living in UK. Linked to this claim is the suggestion that the Appellants should be given leave to enter the UK so that they can act as carers for the Sponsor and his wife. However they have managed for nearly 5 years without the Appellants being on hand to assist them. Moreover I understand that they each receive PIP, which is designed to provide funding so that professional care services can be accessed. Suffice it to say that I do not agree that the Appellants should be granted leave on the reunification argument or that they should be carers. Mixed into the thrust of the Appellants' case is also the argument that the Appellants are financially dependent on the Sponsor, but this is not a claim under the EU Settlement scheme. In the IAFT-6 it is indicated that these are not appeals under EEA legislation. In any event the documentary evidence shows that any payments have been erratic. Dealing with the Human Rights claim there is no reference in the IAFT-6 to the Appellants being in fear for their lives in Lebanon. This is only raised by the 3 witnesses. I have now been provided with material suggesting that Lebanon is a failing state, but I have been given no statement by either of the Appellants to explain why they are unable to continue to reside in Lebanon. As far as the Article 3 claim is concerned there is no evidence that either of the Appellants is receiving or requires on going medical treatment which is not currently available to them in Lebanon, but would be in the UK. In conclusion I conclude that there is no merit in this appeal. I have balanced the rights of the Appellants against the need to maintain immigration control and have concluded that the

refusal of the Appellants' applications to enter the UK is proportionate. Accordingly I dismiss the appeal.”

22. Contrary to what the Judge states at [17], we find that there was no confusion in the case presented with reference to the Skeleton Argument and the submissions as recorded by the Judge. It is clear from these that the Appellants’ case was that there were exceptional circumstances such as to justify allowing the appeal. We find that the Judge has not properly considered the evidence when at [17] he states that “the plan” is for one brother to live in France, and two sisters to live in Canada. It is clear from the evidence in the Sponsor’s statement that the entire family applied from Lebanon to be resettled by the United Nations. The applications of the Sponsor and his wife, and of their son Abbas and his family, were successful and they were granted resettlement in the United Kingdom. At [16] to [20] of his statement he explains the situation regarding the rest of his family:

“16) Our whole family applied to be resettled. Zainab is currently at a refugee camp in Lebanon. She has not yet had a reply from the UN as to whether she will be resettled.

17) My daughter Rania is also at the refugee camp in Lebanon with her children and her husband. She has been informed that she is to be resettled in Canada soon.

18) My son Rami has been subsequently resettled to France. He is now there with his wife and their children on a Refugee Visa.

19) Majid and his family have been waiting a response from the UN but have not been successful to date.”

23. We find that the entire family applied for resettlement from the UN, and it is down to the UN, not to any plan of the family, that some members have been resettled in the United Kingdom, and some in other countries. The Appellants’ applications for resettlement by the UN are outstanding. We find that the Judge has made a mistake of fact when he states that the Sponsor and his family effectively had a plan not to remain together. It is for this reason that he appears to consider that the Appellants’ case is not one of refugee reunification.
24. Further, we find that at no point was it submitted that the main purpose of the applications was for the Appellants to act as carers for the Sponsor. It was clear from the Skeleton Argument and from the submissions that the Appellants’ case was that there were exceptional circumstances. The Judge states at [13] that the “primary argument seemed to be so that they could act as carers for the Sponsor and his wife”. We find that this is not made out.
25. The evidence before the Judge was that the Appellants, with their four children, were living in a refugee camp in Lebanon. The Sponsor states:

"29) Majed and Ghson's situation is currently very bad. They are forced to live in tents at the refugee camp in Lebanon. It is very cold there at present due to the Winter.

30) They have to use wood for heating and cooking. At present, it is very cold in Lebanon. There is snow. Their situation is very bad. Their children are unable to go to school. One of their children also suffers from Asthma. He regularly has to attend hospital in order to get assistance to breath."

26. At [37] and [38] he states:

"37) My son Majed has advised me that he fears for his life and that of his family if they are returned to Syria. My son is scared as he informs me that the Lebanon authorities are working with the Syrian authorities and returning Syrian Nationals from the Refugee Camp. My son is very scared that he will be returned to Syria where he is wanted by the authorities. He fears he will be killed on return to any part of Syria. Previously, he was arrested and detained by Syrian authorities in Syria.

38) My son has also informed me that the Lebanon citizen have recently attacked the refugee camp due to racism and burnt down 3 of the tents near to where they live. The situation is very tense at the Refugee camp and unsafe. The current situation for my son there with his wife and children cannot continue."

27. This evidence was repeated in the witness statements of the first Appellant's mother and brother, but there is no reference to it in the Judge's decision. Paragraph [15] of the decision makes no reference to the circumstances in which the Appellants are living. There is no reference to the first Appellant's disability, referred to by all three witnesses, which is that part of his left leg has been amputated. The evidence of refugees being returned to Syria was corroborated by background evidence which was referred to in the Skeleton Argument at [26(i)], and found from pages 201 to 218 of the Appellants' bundle. There is no reference to this, or to the evidence of the circumstances in the refugee camp where the Appellants are living.

28. We find that the Judge has failed properly to consider the Appellants' case. He has stated that the Appellants' approach to the application was confused, but we find that it is his approach which was confused. He recorded the submission that there were exceptional circumstances, but then failed to consider what those exceptional circumstances were by reference to the evidence before him. The decision contain errors of fact which have contributed to his misunderstanding of the Appellants' position, and there is no holistic Article 8 assessment. We find that these are material errors of law. Accordingly, we set the decision aside.

29. We have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. We are mindful of the Court of Appeal case of AEB [2022] EWCA Civ 1512, albeit that we have not found that there was a procedural error in this appeal. Paragraph 7.2 contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to

deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, as there has been a failure properly to consider the totality of the evidence, and having regard to the overriding objective, we find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involves the making of material errors of law. We set the decision aside. No findings are preserved.
2. The appeal is remitted to the First-tier Tribunal to be heard de novo.
3. The appeal is not to be listed before Judge French.
4. No anonymity direction is made.

Signed

Kate Chamberlain

Deputy Upper Tribunal Judge Chamberlain

Dated 1 December 2022