



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003195

First-tier Tribunal No: HU/01720/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 July 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

Representation:

For the Appellant: Ms E Griffiths of Counsel, instructed by Kalsi Solicitors
For the Respondent: Mr AS Bazra, Senior Home Office Presenting Officer

Heard by remote video at Field House on 21 June 2023

DECISION AND REASONS

1. Although there was no anonymity request or direction at the First-tier Tribunal, there has been a late application for anonymity, on the basis that the decisions of the Upper Tribunal are published and that the appellant considers himself vulnerable in Lebanon.

2. The appellant has also made a very late (day of the hearing) application under Rule 15(2A) to rely on evidence not put before the First-tier Tribunal. However, at this stage the Upper Tribunal can only intervene if there is an error of law on the basis of the evidence that was before the First-tier Tribunal at the appeal hearing. In the circumstances, I did not admit the new material relied on by the appellant, save insofar as it might be relevant, the witness statement of counsel (Ms Solanki) representing the appellant at the First-tier Tribunal appeal hearing. As it happened, there were no questions for Ms Solanki from the respondent and the facts for which the statement had been produced were not in challenge (as to what was said at the First-tier Tribunal), so Ms Solanki was released at the outset of the hearing. At the same time, I kept the issue of further evidence under consideration but concluded that there was no good reason to admit the evidence, despite some reference to it in Ms Griffiths submissions.
3. After hearing helpful detailed submissions from both representatives, I reserved my decision to be given in writing, which I now do, having taken time to carefully consider the skeleton argument relied on by Ms Griffiths. There was no Rule 24 reply from the respondent.

Relevant Background and Grounds of Challenge

4. On 4.3.22 the First-tier Tribunal (Judge Veloso) granted permission for the appellant, a national of Syria resident in Lebanon, to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Designated Judge McClure) promulgated 9.12.21 dismissing his appeal against the respondent's decision of 26.11.19 to refuse his application for leave to enter and remain in the UK on the basis of private and family life with his mother and brother now in the UK, pursuant to article 8 ECHR. His mother has refugee status in the UK.
5. It had been conceded by the appellant's representative at the First-tier Tribunal appeal hearing that he could not meet the requirements of the Rules for admission to the UK. That meant that the only route for entry was under article 8 ECHR, based on family life with mother and brother, interrupted by the mother and brother's choice to come to the UK and leave the appellant behind.
6. In summary, the grounds argue that the First-tier Tribunal (i) raised new issues not relied on by the respondent and not put to the appellant at the appeal hearing, resulting in procedural unfairness; (ii) failed to properly consider evidence, thereby making mistakes of fact; (iii) failed to consider the objective evidence before the Tribunal; (iv) failed to consider GEN 3.2 and the appellant's circumstances; and (v) failed to consider relevant matters under article 8 ECHR.
7. In granting permission on all grounds, Judge Veloso considered it arguable that the First-tier Tribunal Judge erred in making findings on issues, including the availability of the Gateway Programme, not raised by the respondent or in respect of which the appellant was not offered the opportunity to respond. It was also considered arguable that the judge erred in noting that the appellant had left Lebanon in February 2014 but failed to realise that he returned the same day. Finally, it was considered arguable that in addressing the appellant's circumstances the judge failed to consider the background evidence and appeared from [64] and [65] of the decision to have only considered the circumstances of the mother and brother.

Consideration of the Grounds

8. The grounds substantially overlap with each other. Complaint is first made about the judge's reference to the Gateway Programme under which the mother and brother were granted refugee status, but which for whatever reason the

appellant did not benefit from, were referenced by the judge at [21] of the decision. It is argued that the judge speculated that the appellant did not meet the criteria, which is said to be relevant to the article 8 assessment. In essence, Ms Griffiths submitted that in respect of article 8, everything was material and therefore any error of fact rendered the proportionality balancing exercise flawed. For the reasons explained herein, I do not accept that 'catch-all' argument, which seemed to be a variant of the argument deprecated in R (Iran) and others v SSHD [2005] EWCA Civ 982, where Lord Justice Brook held that there was no duty on a judge in giving reasons to deal with every argument and that it was sufficient if what was said demonstrated to the parties the basis on which the judge had acted. This approach was adopted and applied in Budhathoki (Reasons for decision) [2014] UKUT 00341, where the Upper Tribunal held that "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

9. In relation to the first ground, Ms Griffiths complained that the judge at [33] and [50] speculated whether the appellant qualified or why he apparently was not accepted under the programme. It was submitted that had the judge raised this, it could have been explained that the programme was by then closed. It is submitted that the judge effectively dismissed the appellant's problems in Lebanon on the basis that they are covered by the Gateway Programme. I note that reference the Gateway Programme was not a frolic of the judge's own but in fact raised by the appellant's representative at the hearing as how other members of the family were able to benefit from it.
10. In his submissions, Mr Bazra accepted that there was an error in what is said about the programme by the judge, doubting the appellant's reasoning for not accessing the programme, and not raising these concerns with the representatives. However, Mr Bazra submitted that the errors claimed in relation to both grounds one and two were not material to the outcome of the appeal.
11. It is not clear to me that the judge in fact reached any conclusion on the Gateway Programme or the appellant's non-access of it that was or could have been material to the issues in the appeal. Regardless as to whether the appellant may have or was not able to take advantage of the Gateway Programme for whatever reason, the unchallenged fact remains that he was not processed under that programme and remained in Lebanon whilst the mother and brother decided to the UK. Although the judge referred at [25] to the problem of the appellant's concerns in Lebanon being that the Gateway Programme was established to deal with such cases, the judge concluded by accepting at the end of that paragraph that the appellant's circumstances in Lebanon were a relevant factor to be taken into account, in other words in the article 8 proportionality assessment; there can be no doubt that this was done. Whether or not the appellant had ample time to register as a refugee but did not, the reason for which the judge said was unclear, the issue was only relevant to the summary of the background history.
12. It follows that in my view nothing material was found by the judge that could be said to be relevant to the adverse findings and conclusion of the appeal, which was ultimately determined on the article 8 proportionality assessment. It also follows that there was no procedural unfairness by not raising concerns about the lack of access to the Gateway Programme with the legal representatives at the appeal hearing.

13. I am satisfied that the judge was entitled to point out, that at that time the appellant was a mature adult, and the mother and brother made the conscious decision to separate themselves from him to come to the UK. Whilst Ms Griffiths submitted that the circumstances of separate were relevant to the issues of reunion, it has to be borne in mind that this appeal could only succeed under article 8 family life grounds and was not a protection claim. At times, it appeared that Ms Griffiths was attempting to widen the ambit of the appeal beyond article 8 ECHR.
14. In relation to the same ground, the judge at [27] to [28] of the decision expressed doubt as to whether the appellant was the eldest child, given what appears in the Family book and other documents intended to confirm relationship to mother and brother. The only relevance of the particular relationship was the claim made on behalf of the appellant that there was an expectation that the eldest child should look after his mother. Ms Griffiths accepted that the judge did not need to accept every part of the appellant's factual case but suggested that the judge should have raised these now disputed issues with the parties. However, I fail to see how that can be material to the proportionality assessment which took account of whether the mother's needs were being met. It did not strengthen the appellant's article 8 claim to suggest that he only could care for his mother. I am satisfied that the references to whether the appellant was the eldest child or eldest son were not material to the outcome of the appeal but, in any event, from [60] of the decision the judge appears to have proceeded on the basis that he was.
15. Complaint is also raised as to the judge's treatment of the issue of the appellant's passport in Syria and whether the judge erred in failing to note that although the appellant had left Lebanon, he returned the same day. This aspect overlaps with Ms Griffiths' submissions on the second ground, which in essence was that the judge overlooked evidence and that each issue should have been raised during the hearing when the evidence could have been pointed to, and, because they were not raised, there was procedural unfairness and, further, that the article 8 assessment was flawed. For similar reasons to those outlined above, I am not satisfied that any material finding was made on any of these issues or that they bore materially on the article 8 assessment. I am satisfied that even if all these issues were resolved in the appellant's favour, the outcome of the appeal would necessarily have been the same, for the reasons given in the decision.
16. In relation to the third ground of ignoring the objective evidence, unarguably the judge considered the background reports and gave particular attention to the appellant's circumstances, as confirmed at [55] of the decision. In her submissions, Ms Griffiths pointed to what she said was a total of 11 references to there being a separation by choice between the appellant and the rest of the family. Ms Griffiths relies on the objective evidence as to the circumstances prevailing when the family separated, with the others being accepted as refugees and the appellant left behind in those same circumstances. There was no challenge to those difficult circumstances faced by those in Lebanon. At [62] the judge again confirmed that all circumstances had been considered before concluding that the separation was by choice and that family life in the sense protected by article 8 ECHR did not exist between the appellant and his other family members in the UK. That was a finding entirely open on the evidence and for which cogent reasoning has been provided. It follows that if there was no family life amenable to the protection of article 8, there can be no error in relation to the proportionality assessment, as article 8 is not engaged.

17. Contrary to the assertions in the grounds, it is clear from [10], [63] and [64] of the decision that the judge did consider the Immigration Rules and in particular the GEN 3.2 test of exceptional circumstances giving rise to unjustifiably harsh consequences for the appellant or a family member. It can also be seen that at [63] of the decision the judge went on to consider the situation on the alternative basis that family life did exist, and conducted the proportionality balancing exercise taking account of GEN 3.2's unjustifiably harsh consequences test. Unarguably, the conclusion that refusal of entry clearance would not cause unjustifiably harsh consequences for any other or give rise to exceptional circumstances was a finding entirely open to the judge on the evidence before the Tribunal, one which is supported by cogent reasoning. In relation to GEN 3.2, the judge concluding that the mother and brother had adequate care in the UK and at [65] that the refusal of entry clearance would not cause unjustifiably harsh consequences to anyone or give rise to exceptional circumstances.
18. Overlapping into the fourth ground, it was argued that the judge disposed of the concerning circumstances of the appellant by suggesting that the remedy was the Gateway Programme and that the appellant was at the risk of repatriation to Syria, and that the mother and brother were unable to provide him with finances from the UK. I do not agree that Mr Griffiths' interpretation that a dismissive treatment of the appellant's circumstances by the judge can be read into the decision. As mentioned above, it is clear that they were taken into consideration, as is confirmed at [64] of the decision. The grounds are in part a mere disagreement with the judge's assessment of the factors in the proportionality balancing exercise under article 8.
19. In relation to the fifth ground and the overall article 8 assessment, Ms Griffiths argued not only that all alleged factual errors were inevitably material to the article 8 assessment but also that the appellant's presence in the UK would assist the mother and brother to achieve their potential and that the evidence was that the brother was not thriving, so that reunion could promote the public interest. With respect, I do not accept that is the relevant test under article 8, or can amount to compelling circumstances sufficient, exceptionally, to render the refusal decision unjustifiably harsh and, therefore, disproportionate. Neither do I accept that the appellant's circumstances in Lebanon can be anything more than one factor in the overall assessment; the submission on behalf of the appellant appear to somewhat conflate the article 8 claim with issues of article 3 and humanitarian protection issues. Unarguably, the judge did consider the circumstances of both the appellant in Lebanon and the mother and brother in the UK as they applied to the issue of family life under article 8. In all the circumstances, I do not see that this ground discloses any error of law.
20. For the reasons summarised above, I find no material error of law in the making of the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal against the decision of the respondent remains dismissed.

I make no order for costs

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 June 2023