



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001617 UI-2023-
001618
UI-2023-001619 UI-2023-001620

First-tier Tribunal Nos:
HU/55089/2022 HU/55100/2022
HU/55099/2022 HU/55101/2022
IA/07641/2022 IA/07642/2022
IA/07643/2022 IA/07644/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

- (i) Ms Nissreen Qassem Aloush
- (ii) Mr Yazan Jamal Qonbus
- (iii) Mr Bellal Jamal Qonbus
- (iv) Mr Emad Jamal Qonbus

(ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellants: Ms G Patel (Counsel)
For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 29 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are 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 appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge J. Austin, promulgated on 20th April 2023, following a hearing at Manchester Piccadilly on 3rd April 2023. In the determination, the judge allowed the appeals of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matters come before me.

The Appellants

2. The Appellants are nationals of Syria. The first Appellant is the mother of the Sponsor, Mr Saleh Qonbus. The remaining Appellants are his younger brothers. The Appellants all appealed against the decision of the Respondent dated 6th July 2022, refusing their applications to join the Sponsor as his dependants, under Rule 352D of the Immigration Rules.

The Appellant's Claim

3. The Appellants' claim was that they were related directly to the Sponsor, who came to the United Kingdom as a child refugee from Syria, and then succeeded in claiming asylum. They described themselves as being "in an unusual position", and as the judge explained, "the appellants' aim was to put into effect a family reunion," but that "the rules under which they might have applied did not meet their specific circumstances", and yet "the Sponsor is a brother or son to the appellants" (at paragraph 8).

The Judge's Findings

4. In his determination, the judge observed that the issue before him was "whether the appellants' applications should be allowed outside the Rules!" (at paragraph 10), because at the outset of the hearing, it was agreed by all concerned that the Appellants could not succeed in their application under paragraph 352 (at paragraph 99). The question accordingly, before the judge, was whether the Respondent's decision to refuse their claim was proportionate under Article 8 of the ECHR (at paragraph 10).
5. The judge heard evidence in cross-examination that the Sponsor "was in regular contact with the appellants by WhatsApp" and that the Appellants "were staying in the house belonging to a relative who is about to return from the Lebanon and would require the accommodation for himself", which meant that "There was a risk that the appellants will soon be homeless" (paragraph 13). The Sponsor himself, however, was not working and was not in a position to send any money to support them. In fact, the Sponsor had not left the United Kingdom since claiming asylum (paragraph 13). The Respondent accepted the family relationship between the Sponsor and the Appellants, "and accepted that "the sponsor had a genuine love and concern for the appellants and that there was evidence which was accepted as showing that the appellants' situation was causing a deterioration in the sponsor's mental health" (paragraph 15).
6. The judge proceeded to apply the **Razgar** principles (see **Razgar**), pointing out that:

“I make clear that I am balancing all of the respective arguments put before me in this appeal on the part of both the Appellant and those the Respondent made in coming to a view about whether the interference with the Appellants’ and the sponsor’s family life rights is proportionate to the legitimate aim pursued” (paragraph 27).

The judge then allowed the appeals under Article 8 ECHR.

Grounds of Application

7. The grounds of application state that the judge erred in failing to have proper regard to the public interest when finding that the refusal of entry clearance would amount to a disproportionate interference in the Appellants’ rights to family life with the Sponsor. Although the judge had expressly stated that he had regard to the public interest factors outlined in Section 117B of the Nationality, Immigration and Asylum Act 2002, no reference or consideration was made to any of the statutory considerations included in Section 117B. Thus, the judge failed to consider the financial independence of all four Appellants and whether there would be an additional significant financial burden on the public purse in their admission to the UK. The judge also failed to consider whether the Appellants had any ability to speak English. Indeed, the fact that the Appellant’s rights were not outweighed in the public interest consideration with the maintenance of effective immigration control in these circumstances was not given due regard. Reliance was placed upon the decision in **Dube (ss117A-117D) [2015] UKUT 00090** which referred to the statutory obligation on judges to have full regard to each of the public interest provisions contained in the legislation.
8. On 12th May 2023, permission to appeal was granted by the First-tier Tribunal on the basis that the judge had arguably failed to carry out an adequate assessment of the public interest factors set out in Section 117B. None of the Appellants could meet the provisions of the Immigration Rules and the judge failed to provide adequate reasons for finding as he did.

Submissions

9. At the hearing before me on 29th August 2023, Mr Tan, appearing as Senior Home Office Presenting Officer, took me to paragraph 28 of the judge’s determination where he had stated that Article 8(1) ECHR is engaged. However, submitted Mr Tan, the judge does not explain why there are no issues operating negatively against the Appellant when he states that, “Whilst I have considered section 117B of the 2002 Act, there are no features that operate negatively against the Appellants” (paragraph 28). He simply states that the Respondent’s decision under the appeal “is unlawful under section 6 of the Human Rights Act 1998” and that “the appellants are persons who require the protection of Article 8, and their appeals should succeed” (paragraph 28). The reality was, submitted Mr Tan, that under Section 117B the fact that the Appellants did not speak the English language and would be a financial burden upon the state, in circumstances where the Sponsor was not working in the United Kingdom, were weighty public interest considerations that he had to take into account. Given that it was common grounds that the Appellants could not succeed under the Immigration Rules, the failure of the judge (at paragraphs 27 to 28) to factor in these precise issues which did operate negatively against the Appellants, was an

error of law. In fact, the judge failed to identify any level of public interest operating negatively against the Appellants at all when he allowed the appeal.

10. For her part, Ms Patel drew attention to her Rule 24 response. She submitted that the Appellants could not succeed under the Immigration Rules (at paragraph 6), but that “The appellants were said to be in an unusual position in that they were related directly to the sponsor who came to the United Kingdom as a child from Syria and successfully applied for asylum” (paragraph 8). As he explained, “The appellant’s aim was to put into effect a family reunion” (paragraph 8). That in itself was not unusual, because there was long-standing authority in a decision by the President of the Upper Tribunal, that confirmed the viability of such a claim, and that the Appellant’s appeals were no different from that authority. The authority in question was **AT and another (Article 8 ECHR - Child Refugee - Family Reunification) Eritrea [2016] UKUT 00227 (IAC)**. Ms Patel directed my attention to the headnote of that case where it is stated that,

“While the Immigration Rules make no provision for family reunification in the United Kingdom in the case of a child who has been granted asylum, a refusal to permit the family members of such a child to enter and remain in the United Kingdom may constitute a disproportionate breach of the right to respect for family life enjoyed by all family members under Article 8 ECHR”.

11. What the judge in this case had done, submitted Ms Patel, was no different to what the president had decided in **AT and another**, which also involved a child refugee who could demonstrate the family bonds and the interdependency of its members. The judge had not neglected the countervailing considerations that militated against the Appellants, because when applying the **Razgar** principles, he was absolutely clear with respect to the interference with the family life in question that “I also find that this interference is in accordance with the law and pursues the legitimate interest of the economic well-being of the United Kingdom through the maintenance of effective immigration control” (at paragraph 26). He had then gone on to say that,

“I make clear that I am balancing all of the respective arguments put before me in this appeal on the part of both the Appellant and those the Respondent made in coming to a view about whether the interference with the Appellants’ and the sponsor’s family life rights is proportionate to the legitimate aim pursued” (paragraph 27).

12. It was against this background that the judge had then proceeded to say that, “I said that this is a situation where there was a forced separation between the child sponsor and his child siblings and his mother” and that, “I am satisfied that if the sponsor remained in Syria or if the appellants were with the sponsor [in the] United Kingdom they would remain in a family unit”, because “The family life ties have not been broken” (paragraph 27). On top of that, submitted Ms Patel, the judge also had the evidence in the witness statements of the Sponsor and the Appellants, explaining how they were all affected by the family separation, and there was also evidence from his support worker. The plain fact is that there is no material error of law in this decision.
13. In reply, Mr Tan submitted that if the judge had failed to identify the weight of the factors that went against the Appellants then he could not have been taking them into account. The facts of **AT and another** were different and its import

cannot be transposed into this case given the lack of proper explanation by the judge.

No Error of Law

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. My reasons are as follows.
15. It is not the case that the judge simply concluded that Article 8(1) ECHR was engaged, and that whilst he claims to have considered Section 117B of the 2002 Act, that he was wrong in stating that “there are no features that operate negatively against the Appellants” (paragraph 28). The fact is that this particular conclusion was preceded by the judge giving very specific and particular care to the facts as they unfolded before him. He had drawn attention to how “this is a situation where there was a forced separation between the child sponsor and his child siblings and his mother”. He was clear that “there is a considerable and exceptional aspect of family life between the sponsor and the appellants” because “Three of the appellants are children and the remaining appellant is the sponsor’s mother” and that “The sponsor was granted refugee status as a child and is barely into adulthood”. The judge had plainly explained that “He remains in close contact with his family members the appellants and is desirous of reuniting the family with himself as a refugee”, leading the judge to state that, “I consider that to refuse the appellants entry to the UK under the decisions under appeal has the effect of preventing that family reunion and breaching the Article 8 rights of the appellants” (paragraph 27).
16. This is not far removed from the decision of the President of the Upper Tribunal in **AT and another** where he held that “it is clear to me that this is a close, loving and mutually supportive family unit all of whose members would be overjoyed if reunification could be achieved”, and that “There is clearly discernible interdependence” and that:

“The enormous efforts to which the first Appellant went, the hardships which she has borne and the sacrifices which she has made, all in pursuit of family reunification, bear eloquent testimony to the virtues and character of the mother and the strength and stability of the family unit”,
17. So that “notably the ECO did not suggest that the Appellants are economic migrants and I am satisfied that there is no evidence from which this could be inferred in any event” (at paragraph 8 of **AT another**).
18. In the instant appeal, the Respondent’s submission at the end of the hearing was a short one and:

“the Respondent accepted the family relationship between the Sponsor and the Appellants and accepted that the Sponsor had a genuine love and concern for the Appellants and there was evidence which was accepted as showing that the Appellants’ situation was causing a deterioration in the Sponsor’s mental health” (paragraph 15).

19. In the instant appeal also, the evidence before the judge was that “with the house in which the appellants were staying belonging to a relative who is about to return from the Lebanon” that “there was a risk that the appellants would soon be homeless”, and that “the Sponsor said that as far as he was aware his mother downplayed any needs that they might have rather than cause him, the Sponsor, further anguish” (paragraph 13).
20. This was not dissimilar to the finding by the president in **AT and another** that “The mother and younger son plainly live in deprived and dangerous circumstances”, and that “They are destitute” and that “This is a fractured family” where, “Neither son has had the benefit of a father, or father figure, for several years”, so that “The mother struggles on, battling against the odds, ...” (at paragraph 9).
21. Whereas the judge could have been more specific, it is not the case that he has been neglectful of the Section 117B considerations, which he has particularly drawn attention to when concluding that, “there are no features that operate negatively against the Appellants” (at paragraph 28). This is especially so given that when he has regard to the fifth consideration in the **Razgar** principles, he takes care to point out that, “here I make clear that I am balancing all of the respective arguments put before me in this appeal on the part of both the Appellant and those the Respondent made in coming to a view about whether the interference with the Appellants’ and the sponsor’s family life rights is proportionate to the legitimate aim pursued” (paragraph 27). This demonstrates that the factors that the Respondent had taken into account in refusing the application were not overlooked by the judge. In short, there is no material error of law in the judge’s determination.

Notice of Decision

22. There is no material error of law in the judge’s decision. The determination shall stand.

10th November 2023

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Satvinder S. Juss