



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001726
UI-2023-001727
UI-2023-001728
UI-2013-001729
UI-2023-001730
First-tier Tribunal No: HU/01582/2021
HU/01583/2021
HU/01584/2021
HU/01585/2021
HU/01586/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 09th of January 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MRS IAG
MISS EAAS
MISS RAAS
MASTER AAAS
MASTER HAAS
(ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mair instructed by Paragon Law Solicitors.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 28 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants and their family members in the UK 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 them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants' appeal with permission a decision of First-tier Tribunal Judge Row ('the Judge'), promulgated on 14 February 2023, in which the Judge dismissed their appeals against the refusal of their applications for leave to enter the UK based on their relationship with the person referred to as G ('the Sponsor'), which were refused on 10 February 2021.
2. The appellants are all Syrian nationals. The first appellant was born on 1 January 1994. The remaining appellants are her children. E, a daughter aged nine at the date of the hearing before the Judge, R, a daughter and the third appellant aged eight, the fourth appellant, A, five and the fifth appellant, H, was four years of age.
3. G is said to be the father of the first appellant. He entered the UK in December 2014 and claimed asylum. The first appellant's mother and brother joined G at the end of 2015, and all have been granted indefinite leave to remain. They are also Syrian nationals.
4. The Judge notes it being accepted at the outset of the hearing that the first appellant could not meet the requirements of the Adult Dependent Relative rule and nor could the children meet the requirements of paragraph 319X of the Immigration Rules.
5. It was argued before the Judge that the appellants' met the criteria under Appendix FM Gen 3.2 and that in any event they should succeed under Article 8 ECHR.
6. The Judge's findings are set out from [29] of the decision under challenge. In that paragraph the Judge does not accept on the evidence that the appellants had established the first appellant's husband had disappeared or that there were no other family members in Syria with whom they could live. The Judge was also not satisfied their house had been bombed as claimed.
7. The Judge considered the welfare of the children between [30 - 33] and concluded on the basis of the limited evidence that was provided that the best interests of the children are for them to remain where they are.
8. In relation to paragraph Gen.3.2 of Appendix FM, the Judge notes G has never met any of his grandchildren, has never lived with them, that he left Syria in 2012, and that during that time the first appellant had a separate family life with a husband "which may continue" [34].
9. The Judge notes little evidence of communication between the family in Syria and G [35].
10. At [37] Judge accepts that the appellants' and G are related and there is a family life "of some kind" that the decision interferes with, as a result of which the Judge goes on to consider the proportionality of that interference from [38].
11. The Judge's conclusion is that interference in any protected life is proportionate. Accordingly all the appeals were dismissed.
12. The appellants sought permission to appeal on five grounds asserting material error in the approach to the evidence, material error with regard to the best

interests of the minor appellants, material error of law in relation to the medical evidence, material error in regard to GEN.3.2, and a failure to have regard to guidance and case law applicable to the appeal, for reasons fully set out in detail in the ground seeking permission to appeal drafted by Ms Mair dated 14 March 2023.

13. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Gleeson on 8 July 2023, the operative part of the grant being in the following terms:

1. The appellants are Syrian citizens, a mother and her four children (two daughters and two sons), who appealed to the First-tier Tribunal against the respondent's decision on 10 February 2021 to refuse them leave to enter as the family members of a recognised refugee, the principal appellant's father, who is also Syrian, and who is the grandfather of the other four appellants.
2. Anonymity order. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants have been granted anonymity. They are to be referred to in these proceedings as IG, ES, RS, AS and HS. No-one shall publish or reveal any information, including the name or address of any of these appellants, likely to lead members of the public to identify them or any of them. Failure to comply with this order could amount to a contempt of court.
3. The appellants' account is that they are living in destitution in Syria, in hiding and moving from place to place, after the principal appellant's husband disappeared in 2018. They say that they are barely surviving and the sponsor in his witness statement set out the 'exceptionally dire circumstances' in which they are living. They were able to reach Lebanon to attend the Visa Application Centre there, but then had to return to Syria as they had only been granted permission to enter Lebanon for one day.
4. The First-tier Tribunal dismissed the appeal. The First-tier Judge considered that the sponsor and his wife, who have indefinite leave to remain, are not financially independent but rely on state benefits. He did not believe their account of the death or disappearance of the principal appellant's husband, who is the father of the other four appellants. The family life between the appellants and the sponsor was limited, and the appellants could not meet the requirements of the Immigration Rules HC 395 (as amended), nor was this a case where leave to enter should be granted on Article 8 ECHR grounds outside the Rules.
5. The appellants seek permission to appeal, arguing that the First-tier Judge erred in law:
 - (i) in stating that there was a 'lack of independent evidence of what the true situation is in Syria' effectively requiring corroboration, but rejecting such corroborative evidence as the appellants and sponsor did provide;
 - (ii) in his approach to the best interests of the four child appellants;
 - (iii) in finding that the sponsor's health condition would not deteriorate if the appellants were not admitted to join him, which was contrary to the evidence in the sponsor's witness statement;
 - (iv) in applying section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) to Gen3.2 of Appendix FM, which is a standalone provision; and
 - (v) in failing to have regard to the respondent's family reunion policy and relevant case law.

6. The grounds of appeal are arguable.
14. The Secretary of State opposes of the appeal in a Rule 24 response dated 28 July 2023, the operative part of which reads:
3. The Judge at the First Tier carefully considered the evidence between paras 12 and 28. There were discrepancies and very limited evidence from the appellant. Some pieces of evidence the FTT found to be of limited value, they fully explained why and it was clearly open to them to take this view. It is clear that there was limited contact between the sponsor and the appellants. Given the state of the evidence the FTT concluded that they could not be satisfied of the true situation of the appellants in Syria. This was a properly reasoned and legally sound conclusion and the grounds are a disagreement.
 4. The other findings of the FTT must be considered in light of their conclusion that they could not be satisfied of the true situation of the appellants in Syria. In these circumstances it was inevitable that the FTT would go on to dismiss the appeal.
 5. Although the Secretary of State does not consider that the FTT has erred as set out in the grounds she does consider that the FTT has erred in finding that there is an Article 8 protected family life. The Tribunal is requested to treat this as an application by the Secretary of State to challenge that finding. This will only be a material issue should the FTT be found to have erred as set out in the appellant's grounds.
 6. It appears that the FTT found at Para 37 that there was a protected family life. The test for establishing an Article 8 family life is that it is shown that there is a level of dependency between the parties. The FTT concluded at para 34 that the first appellant had a separate family life with her husband and that the sponsor had never met the other appellants. At para 35 they found that there was no financial dependency and there had been little in the way of communication. Although they noted the WhatsApp messages they had previously found these to be self serving. Given these findings the conclusion that there is a protected family life is perverse.
 7. The respondent invites the Tribunal to uphold the decision of the First Tier.

Discussion and analysis

15. Ground 1 asserted a material error in the Judge's approach to the evidence. The ground asserts that it is not disputed that a person who was otherwise put forward a cogent case should not fail merely because he or she does not have supporting documentation/evidence. It is argued on the appellants behalf that the Sponsor's detailed written and oral evidence should have been accepted as corroborative of the claimed circumstances. The ground asserts that at no stage in the determination did the Judge say he rejected or placed limited weight upon the Sponsor's detailed written and oral evidence which should have been accepted as being sufficient to establish or corroborate the claimed circumstances. The Grounds refer to the Judge accepting there was some corroborative evidence by way of text messages, visa stamps and photographs, but that the Judge then placed limited weight upon the text messages as being self-serving and that the photographs could have been taken anywhere. The grounds argue those points were not put to the Sponsor who was therefore not given the opportunity to address the suggestion that the text messages may have been purely manufactured for the purposes of the appeal hearing rather than representing genuine communication between the Sponsor and appellants. Similarly, it is claimed that it was not put to the Sponsor that photographs of the

appellants in front of a bombed out house was not in fact their own house and that procedural fairness dictates that he should have been given the opportunity to respond, especially if such points were not raised in the refusal notice. The Ground also argues that the expression “self-serving” is not supported by adequate reasons for describing the text messages as such.

16. In addition to making submissions in the above terms Ms Mair referred to the Judge accepting their positions in Syria were consistent with the background evidence, and that the Judge should have undertaken a sliding scale assessment bearing in mind the appellants are women and children. It is submitted that if the appellant is alone with the children they face a greater risk and that the Judge had not given adequate reasons for not incorporating or not finding accordingly.
17. There is merit in the submission by Mr Bates that Ground 1 is the main ground upon which the appellants seek to challenge the Judge’s decision as all the remaining grounds flow from the same.
18. The grounds of appeal refer to [24] - [27] of the Judge’s decision in which the Judge writes:
 24. Not of these matters might involve inconsistency. What they do point to is a lack of independent evidence of what the true situation is in Syria. It is for the appellants to establish this with evidence.
 25. Some photographs have been provided which are said to show the children in front of the bombed house. The photographs add little. They could have been taken anywhere.
 26. There are records of two WhatsApp conversations between IG and G. They are dated 28 and 29 March 2019. They talk of IG’s husband being missing. They are of limited evidential value. They may have been made to give the impression of this to support the application. They are self-serving.
 27. No attempt has been made to obtain independent evidence of the family’s circumstances. It may be that this would be difficult to obtain in a country in which there is a war. It would be reasonable to seek to obtain it. G has been able to obtain other evidence from Syria such as photographs, passport documents, birth certificates etc.
19. It is important that the determination is read as a whole rather than picking individual lines or sentencing or words out of specific paragraphs and then criticising the Judge on the basis of the same. Such an approach has been strongly criticised by the Court of Appeal on a number of occasions.
20. In [24] the Judge in fact finds in favour of the appellants by rejecting matters the decision maker found to be inconsistencies in the refusal letter. The Judge finds that not all the matters might involve inconsistencies but did find they pointed to a lack of independent evidence of what the true situation is in Syria for this family. That is an important finding which has not been shown to be outside the range of those available to the Judge on the evidence. The claim being made is that as a result of the family circumstances within Syria, and the country conditions appertaining, they face a real risk such that their exclusion from the United Kingdom is disproportionate. The Judge notes that it was for the appellants to prove their case.
21. At [25] the Judge refers the photographs that have been provided. It is clear from reading the determination as a whole, as I indicated to Ms Mair during the hearing, that the Judge did consider the evidence with the required degree of anxious scrutiny. The Judge’s finding that the photographs add little to the

appellant's case is indicative of the limited weight the Judge felt able to place upon this evidence as proof of the claims being made. On their own they did add little and claiming they could have been taken anywhere is an observation reasonably opens the Judge in the absence of any evidence showing they had been taken where it was claimed, namely showing that the appellant's family home had been bombed. The criticism that the Judge's assessment of the evidence on that basis was not put to the Sponsor is something I cannot comment upon as I have not seen a transcript of the evidence given at the hearing but, even if it was not, the grounds do not establish any errors that may have occurred is material when all the matters are considered as a whole. It was for the appellants to prove their case. They were claiming their property had been bombed and was therefore not available to them. The photographs were taken to corroborate that claim. The Judge assessed that evidence together with the evidence as a whole before concluding that it did not. This has not been shown to be a finding outside the range of those reasonably open to the Judge on the evidence.

22. In relation to [26] and the Judges assessment of the two WhatsApp posters being self-serving, I have had regard to the Upper Tribunal decision of R (on the application of SS) v Secretary of State the Home Department ("self-serving" statements) [2017] UKUT 00164 (IAC). Ms Mair refers to this decision at (d) of Ground 1 where she writes "*the expression self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing.*" That is a partial quote from the findings of the Upper Tribunal in the case, the full guidance provided being:
- (1) The expression "self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing. What is needed is a reason, however brief, for that designation. For example, a letter written by a third party to an applicant for international protection may be "self-serving" because it bears the hallmarks of being written to order, in circumstances where the applicant's case is that the letter was a spontaneous warning;
 - (2) Whilst a statement from a family member is capable of lending weight to a claim, the issue will be whether, looked at in the round, it does so in the particular case in question. Such a statement may, for instance, be incapable of saving a claim which, in all other respects, lacks credibility.
23. The use of the adjective protean refers to a statement being one able to change frequently or easily and one able to do many different things. The guidance therefore requires more. In this case, there Judge comments upon the limited evidential value of the two WhatsApp conversations dated 28th and 29 March 2019. They appear to specifically relate to the claim by the first appellant that her husband is missing. The Judge does not find able to place the weight upon the photographs or the WhatsApp messages that the appellants believe should be placed upon them to establish their claim. The Judge's reasons for this approach are clearly set out at [27].
24. The Judges finding about the lack of independent evidence is not irrational having looked at the evidence that was made available for the purposes of the appeal before the Judge. It was not only that no further evidence had been provided but there was also no evidence that any effort had been made to do so. Whilst the Judge balances that finding with accepting that it would have been difficult in a country in which there was a war, again, a rational conclusion, the

Judge balances that comment by the finding that notwithstanding the country conditions and claimed circumstances in relation to the appellants, other evidence had been obtained from Syria. Although it may have been difficult it was not made out that the type of evidence that may have assisted the appellants could not have been reasonably obtained.

25. The Judge at [28] makes a finding of fact that the Sponsor had not been in Syria since 2012 and therefore had no first-hand knowledge of the reality of the situation of the appellants. That has not been shown to be a finding outside the range of those reasonably available to the Judge.
26. There is reference to the need for the Judge to have assessed the appellants circumstances in light of relevant country information. It is not made out the Judge did not do so. The skeleton argument before the Judge referred to an earlier CPIN, the Syrian Civil War August 2020 - Security and Humanitarian Conditions in Syria which reflected country conditions as they existed at that time. That is important as in 2019 more than 90,000 individuals were forcibly disappeared in Syria at the hands of the Syrian government according to the Syrian Network for Human Rights as noted in the Human Rights Watch World report 2019: Syria. Indiscriminate attacks on civilians and civilian objects by the Syrian/Russian military. Such attacks persisted in 2018, including the use of indiscriminate attacks on civilians and civilian objects. The up to date CPIN at the date of the hearing before the Judge was however the Country Policy and Information Note: Humanitarian situation, Syria, June 2022. It is not made out there was anything in that publication, or other relevant country information brought to the Judge's attention, that would make a material difference to the assessment of the appellants' position.
27. In considering all challenges to the Judges findings, I bear in mind the guidance provided by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 at [2] in which Lord Justice Lewison, when delivering the lead judgment with which the other members of the Court agreed, wrote:

2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion.

What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The

trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

28. I find the Judge was clearly aware of and took into account the evidence provided on behalf of the appellants. Ground 1 is, in effect, disagreement with the weight the Judge gave to the evidence and/or the conclusions the Judge arrived at having considered that evidence.
29. I do not find it made out the Judge failed to apply the correct approach or to assess the evidence made available adequately. A reader of the determination is able to understand not only what the Judges findings are but also the reasons for coming to the same. Reasons only need to be adequate, not perfect, the weight to be given to the evidence was a matter for the Judge, disagreement with the outcome does not establish legal error. In particular, it is not made out that the Judge's conclusions are outside the range of those reasonably open to the Judge on the evidence. No procedural unfairness sufficient to amount to a material error of law is made out.
30. Ground 2 asserts a material error of law with regard to the best interests of the minor appellants. The grounds assert the Sponsor provided clear written and oral evidence as to his and his wife circumstances in the UK and that he could have been cross-examined if those circumstances were in doubt. The case was put firmly on the basis that the best interests of the children could only be met by them coming to the UK and that the Judge erred by making a contradictory finding.
31. The Judge considers the best interests of the children at [30 - 33] where it is written:
 30. The children are not resident in the United Kingdom. I consider their best interests anyway. If the situation is as portrayed by the sponsor then the best interests of the children would be to come to the United Kingdom to be with G. However I am not satisfied as to what the true situation in Syria is.
 31. I know little about the circumstances of G and his wife. There is no guarantee that children who come to the United Kingdom would fare better than in their home country. Not all children who come to these shores do.
 32. No court in England would make a decision that it will be in the best interests of the children to come to the United Kingdom on the limited evidence which has been presented to me. Unless and until that is established then, on the evidence before me, the best interests of the children are to remain where they are.
 33. It is a primary, although not the primary, and not paramount consideration.
32. Claiming the determination is unsafe as a result of a procedural unfairness in not cross-examining the Sponsor if his and his wife's circumstances were in doubt is without merit. The first point to make as that it was not for the Judge to cross examine anyone. The needs of the children were clearly a known issue. The

proceedings are litigious, and directions were given to enable the parties to file all the evidence on which they were seeking to rely. Ms Mair is a very experienced and capable barrister based at Garden Court North who if she thought there was a deficiency in the evidence could have explored the same in evidence in chief. There is nothing before me to show that there was anything before the Judge that undermines the finding that due to the limitation in the evidence relating to the children their best interests are to remain with their family in Syria.

33. In that respect Mr Bates in his submission stated that the Sponsor, G, came to United Kingdom due to issues in his own right relating to his life in Syria and problems he encountered as a result, not in relation to any of the appellants. The effect of the lack of evidence in relation to the first appellant's husband is that it was found that is a family home in Syria, the first appellant's husband and father of the children lives there and that it had not been shown otherwise. As a result it was clearly open to the Judge to find that the children's best interests are to remain with their parents. Whilst the country material speaks of some parts of Syria suffering hardship, destitution, famine, and a negative impact of armed conflict, this varies by individual region within Syria. Although the up to date CIPU refers to some in the appellants home region suffering food insecurity there was insufficient evidence to show that the situation for this family unit was such as to make the refusal of their applications disproportionate. There is merit in the question posed by Mr Bates which was how was the Judge able to find as the appellants suggest in the grounds seeking permission to appeal without knowing what the real situation on the ground in Syria is?
34. The ground is, in effect, a disagreement with the weight the Judge gave to the evidence in relation to the best interests of the children. I find the Judge considered the available evidence with the required degree of anxious scrutiny and has made findings supported by the evidence that have not been shown to be irrational or outside the range of findings reasonably open to the Judge in relation to this issue.
35. Ground 3 asserts the material error of law in reliant regard to the medical evidence claiming the Judge's findings that the situation for G was significant but not serious, the evidence showing they have been treated for depression, and that there was nothing about their condition or treatment which would indicate their condition will worsen if the family does not come to the United Kingdom, is contrary to the evidence which it is claimed the Judge erred in failing to refer to at all.
36. That evidence is in the Sponsor's witness statement. It is settled law a judge is not required to refer to each and every aspect of the evidence and no material error arises in the Judge not setting out chapter and verse from the Sponsor's witness statement for which the Judge is criticised. The Judge clearly considered the evidence with the required degree of anxious scrutiny including the letter from the Sponsor's GP.
37. At [36] the Judge writes:
 36. G and his wife are being treated for depression. There is a letter from their GP to that effect. Their treatment involves the prescription of mirtazapine, a first-line antidepressant, at a low dose. They have been referred for counselling. There is no involvement of secondary services. There has been no hospital admission. There is no involvement of the crisis team. The condition is significant but not serious. There is nothing about their condition

or treatment which would indicate that their condition would worsen if the family does not come to the United Kingdom.

38. The GPs letter from The Forest Practices dated 4 March 2021 and reads:

I write with written consent from the patient.
I confirm that G is registered at The Forest Practice [full address provided].

The patient has h/o Type 2 Diabetes mellitus, Hypertension, Stroke, anxiety/depression disorder.

He is on the following repeat medications - [details provided]

His last Hba1c in December 2020 was 67.

G's depression stems from his experiences in Syria where he was captured and tortured. His daughter and her family are still in Syria and the patient is understandable extremely concerned for her safety and well-being. His mood is often low due to this worry.

He has been referred for counselling in the past.

39. A later dated 4 March 2021 from the same practice in relation to the Sponsor's wife has also been considered. That refers to injuries sustained by that individual as a result of a bomb explosion in Syria and referral to Orthopaedics and to having been told surgery would be unlikely to be of any benefit. In relation to Sponsor's wife mental health it is written:

"NK suffers with low mood, poor sleep, due to worries about her family/daughter back in Syria. She is unable to contact and speak to them freely and this is affecting her mood regularly. She is on an antidepressant mirtazapine for the same."

40. Even taking into account the Sponsor's witness statement and the GP letter, it has not been shown the Judge's finding of the lack of evidence to indicate the worsening in their medical condition, such that the decision had been shown to be disproportionate, is a finding outside the range of those reasonably open to the Judge on the evidence. The Judge does not dispute that G and his wife are suffering from anxiety/depression for which they are receiving treatment, or causation. The reference to the treatment being received and lack of involvement beyond is clearly factually correct. The suggestion in the grounds that the Judge should make an alternative finding on the base of the Sponsor's own witness statement is an argument that greater weight should have been given to that evidence. That was a matter for the Judge. The Judge clearly considered the impact on the sponsor and his family if appellants failed in their appeal. Whatever the subjective impact upon the Sponsor may be, it was not shown to warrant a finding other than that made by the Judge.

41. Ground 4 asserts material error in relation to paragraph GEN.3.2 of Appendix FM asserting that whilst the Judge purports to consider the appellants cases under this provision he wrongly does so by reference to the public interest factors in section 117 B, which it is argued is a clear material error of law as GEN.3.2 is within the Rules, and the Judge should have determined if the appellants meet

the terms of the Rules under GEN.3.2 and if they do so that will be determinative of their claims, without making reference to the section 117B factors.

42. GEN.3.1 is a section of Appendix FM headed "Exceptional circumstances". GEN.3.2 reads:

GEN.3.2.(1) subject to subparagraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which is otherwise being considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision maker must consider whether the circumstances in subparagraph (2) apply.

(2) Where subparagraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the appellant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, and relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

43. Section 117 (A - D) Nationality, Immigration and Asylum Act 2002 sets out the Secretary of State's view of how an Article 8 ECHR assessment should be undertaken and what weight should be given to certain factors, and how certain term should be defined. The submission the Judge erred when considering GEN.3.2 by taking into account the section 117 B factors is a submission without merit. It is clear from the wording of GEN.3.2 that what is envisaged is that where an individual cannot succeed under the specific provisions of Appendix FM the resultant decision must still be compatible with Article 8 ECHR. The fact the person cannot succeed under the Rules, as is the case with the appellants, will be a relevant factor, but the requirement to make the eventual decision compatible with Article 8 ECHR shows that it is acknowledged that there may be other factors which still warrant entry or leave being granted. Those factors will be the exceptional circumstances, i.e. that even though a person cannot succeed at the Rules they should still be allowed to enter or remain in the UK for other reasons.
44. As a decision-maker is therefore being asked under GEN3.2 to determine whether the decision under challenge breaches a person's right to respect to private and/or family life under Article 8 ECHR, and as a result will be unlawful under section 6 of the Human Rights Act 1998, section 117A is specifically stated to apply: see section 117A(1). That gives rise for the need in addition to identifying the protected right for the decision-maker, such as the Judge, to consider the public interest question. Section 117A(2) specifically states that in considering the public interest question the court or tribunal must, in particular, have regard (a) in all cases, to the considerations listed in section 117 B.
45. The submission is in reality an attempt to argue that the Judge should only have taken into account the situation showing the circumstances are exceptional without taking into account the public interest question. This provision incorporates a proportionality assessment into the Immigration Rules.
46. The Judge's consideration of GEN.3.2 can be found at [34 - 45]. The Judge specifically refers to the points relied upon by the appellants and mentions and takes into account the public interest. At [45] the Judge writes: "*Taking all these matters into account I do not find that refusal of entry clearance to the*

appellant's would result in unjustifiably harsh consequences for the appellants or for G and his wife. The consequences are justified by the public interest involved. The appellants did not succeed under GEN.3.2." As the only challenge this finding is the Judge taking into account the public interest factors, a challenge without merit, it has not been shown this is a finding outside the range of those reasonably open to the Judge on the evidence when considering the public interest together with other matters.

47. Ground 5 asserts a failure to have regard to the guidance and case law applicable to this case claiming the appellants relied extensively on case law and the respondent's guidance regarding applications outside the immigration rules on refugee family reunion. The assertion the Judge failed to have regard to the relevant cases provided and the guidance is without merit.
48. Paragraph [20] of the grounds seeking permission to appeal refers to the guidance stating caseworkers should consider, if a person cannot meet the requirements of the family reunion rules, whether there are other circumstances raised which may justify the grant of entry clearance or leave outside the rules on the basis of Article 8 ECHR. At [21] is reference to cases relied upon by the appellants.
49. There is no obligation upon the Judge to set out each and every case referred to or provide comment on the same. The Judge clearly took into account consideration of the appellants ability to meet the Rules, which the appellants could not, and undertook the necessary Article 8 assessment. The Judge considered the evidence with the required degree of anxious scrutiny as noted above. I do not find any viable challenge to the decision on the basis of failure by the decision-maker to apply relevant guidance, that would have any merit. Article 8 ECHR has been considered where necessary. The ground is, again, a suggestion that the Judge should have come to a different conclusion than that recorded in the determination. The Judge undertook the necessary fact sensitive analysis as required but did not find on the basis of the evidence provided that any other outcome was warranted. That finding that has not been shown to be affected by material legal error.
50. Whilst the case was argued with her usual vigour and passion by Ms Mair on the appellants behalf, I find the grounds do not establish legal error material to the decision to dismiss the appeal on the basis of the evidence made available to the Judge.
51. As it has not been made out that the Judge has erred in law in a manner material to the decision to dismiss the appeal the Upper Tribunal has no jurisdiction to interfere any further in this matter.
52. As noted above, this decision has been made on the evidence. If further evidence is available it may be open to the appellants to make a fresh application. That is a matter on which they can, if necessary, seek advice.

Notice of Decision

53. No legal error material to the decision of the Judge has been made out. The decision of the First-tier Tribunal shall stand.

C J Hanson

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 December 2023