



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000436

First-tier Tribunal No: EU/51825/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 23<sup>rd</sup> of April 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SKINNER**

**Between**

**RAKIA AL TURK**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Chaban, the Appellant's sponsor, appeared in person  
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 20 March 2024**

**DECISION AND REASONS**

1. The Appellant is a citizen of Lebanon married to a British national. She wishes to join her husband, Mr Chaban, in the UK because of his care needs. He has had lung cancer, which was treated surgically and he was recommended for chemotherapy as a way of reducing the risk of it returning.
2. The Appellant's application was refused by the Entry Clearance Officer in a decision dated 9 March 2023 on the basis that she did not meet the English Language Requirements of the relevant Immigration Rules. The Rules require, in summary, that either a person can show that they speak English or that they are exempt from the requirement. The Appellant said in her application that she was exempt, and there is no dispute that she does not have the requisite level of English.
3. A person is exempt, in summary, if they are aged 65 or over, if they have a disability (mental or physical) which prevents them from meeting the

requirements, or if there are exceptional circumstances which prevent them from meeting the requirements prior to entry to the UK.

4. In her application form, the Appellant selected that she was exempt because of exceptional circumstances. Those exceptional circumstances were said to be that she has learning difficulties and finds it very hard to retain information.
5. Mr Chaban sent two emails to the Entry Clearance Officer about his wife's ability to learn English at about the time that the application was submitted. In the first, he said that it was very difficult to learn English in southern Lebanon, where the Appellant lives and suggested that she would learn English when she comes to the UK, with the help of his daughters. In the second email, Mr Chaban expanded on this. He said that he had forgotten to mention that the Appellant had "a problem of learning" and noted that the Appellant grew up under Israeli occupation, when, it is said, parents did not send girls to schools there and that the Appellant cannot read or write and cannot tell the difference between 12 and 21. He also noted that he wanted his wife to come to the UK because his health is now poor.
6. The Entry Clearance Officer did not accept that the Appellant had shown that she had learning difficulties because no evidence of this had been submitted. That is not strictly correct, as Mr Chaban's emails constitute some evidence, but on any view the Entry Clearance Officer was bound to conclude on what had been submitted that this was insufficient to discharge the burden of proof on the Appellant to demonstrate that she has learning difficulties and that these prevent her from learning English to the requisite level.
7. The Appellant then appealed to the First-tier Tribunal. The parties agreed that the appeal could proceed without an oral hearing and it was accordingly determined by First-tier Tribunal Judge Cary ("the Judge") on the basis of the written evidence which had been submitted by both parties on 12 October 2023. In his decision, the Judge explained that the right of appeal to the First-tier Tribunal cannot be brought on the basis that the Immigration Rules have been wrongly applied, but that, in appealing on the basis of Article 8 ECHR, whether the Rules have been met will be an important consideration (and may even be effectively determinative). The Judge accepted that the Appellant and Mr Chaban had family life together and explained that, for that family life to give rise to a right to enter the UK to join Mr Chaban, a refusal to allow the Appellant to do so must be "disproportionate".
8. In respect of proportionality, at para.22 the Judge found that there was no evidence before him that it would be impracticable without incurring unreasonable expense for the Appellant to gain access to the necessary tuition or to take the England language test. There was no medical evidence to suggest that the Appellant was incapable of passing it. There was no evidence of any claimed learning difficulties, despite this absence of evidence having been raised by the Entry Clearance Officer in her decision, or of why any such difficulties are sufficient to prevent the Appellant from passing the required test. There was also no evidence that the Appellant had attempted to learn English. The Judge then noted that there was a letter from Mr Chaban's GP. From this the Judge noted that Mr Chaban's medical problems had not prevented him from visiting his wife in Lebanon. The Judge did not consider that the Appellant's (or, presumably, Mr Chaban's) circumstances were such that the Appellant should be excused from the need to comply with the English language requirement in the Immigration

Rules. The decision was not therefore disproportionate and the appeal was dismissed.

9. By notice of appeal dated 9 November 2023, the Appellant sought permission to appeal to the Upper Tribunal. So far as is material (and with spelling and grammar corrected), this was on the basis that “Lebanon is not safe now. There is a war between Lebanon and Israel.”
10. Permission to appeal was granted by First-tier Tribunal Judge Moon. Judge Moon noted that there was no evidence that the Appellant relied upon the armed conflict which has been taking place since 7 October 2023 before the Judge, but nonetheless considered that the current situation in the region was material to the appeal and it was therefore arguable that the failure to consider how this crisis might affect the Appellant’s ability to sit the English Language test or the effect on the Appellant’s family life amounted to an error of law.
11. At the hearing before me, Ms Ahmed initially indicated that she was “on the fence” in relation to this appeal, it appeared out of a sense of sympathy for the circumstances in which Mr Chaban and the Appellant found themselves. I indicated that, given that the Upper Tribunal can only allow an appeal if there is an error of law, she would need to assist me to identify any such error in the Judge’s decision for me to be able to allow the appeal. Otherwise she could withdraw the decision, in which case the appeal would in effect fall away. After allowing Ms Ahmed some time to take instructions on these issues, she indicated that the appeal was in fact opposed and that she would not withdraw the decision. It was open, she noted, to the Appellant to make a further application with better evidence.
12. Turning then to my decision, with respect to Judge Moon, I consider that permission was granted on a legally erroneous basis in this case. As a matter of law, it is not arguably wrong not to take account of a factor that is not relied on in a human rights appeal before the First-tier Tribunal. As the Upper Tribunal has made clear the role of the First-tier Tribunal is to determine the issues as identified by the parties: see Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC).
13. Moreover, there was no evidence before the Judge in relation to the current armed conflict in the region, and in particular between Israel and Hezbollah, which could have enabled him to conclude that the Appellant should be exempted from the English language requirement as a resident in south Lebanon, nor, plainly, is this a matter on which judicial notice could (let alone should) have been taken.
14. In my judgment, the Judge considered all of the evidence that was before him and came to conclusions that were open to him on that evidence. He did not make any mistake of law that would enable this Tribunal to interfere with his decision.
15. As I pointed out to Mr Chaban at the hearing, the Appellant’s difficulty in this case was the lack of any real evidence of her inability to pass the English language test or other reason why it would not be reasonable for her to have to meet the English language requirement. In those circumstances, it was almost inevitable, particularly without having heard oral evidence from Mr Chaban at a hearing, that the Appellant’s appeal would be dismissed by the Judge. It *may* be

that if the Appellant or Mr Chaban are able to take legal advice and to put together evidence of the Appellant's schooling (or lack thereof), her intellectual inability to learn English (whether by reason of learning difficulties or otherwise) and/or the situation that currently pertains in Lebanon, she will be able to make a further application which succeeds either before the Entry Clearance Officer or on appeal. That is however not a matter for me.

16. The appeal is accordingly dismissed. Neither party sought an anonymity direction in this case and I do not consider that there was any reason to make one of my own motion in light of the circumstances of the case and the importance of the principle of open justice.

### **Notice of Decision**

The decision of the First-tier Tribunal does not involve the making of an error of law and the appeal is accordingly dismissed.

**Paul Skinner**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

7 April 2024