IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002346
UI-2024-002347
First-tier Tribunal Nos:
HU/51659/2023
HU/51663/2023
LH/01236/2024
LH/01237/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

The Secretary of State for the Home Department

Appellant

and

SHA
AM
(ANONYMITY ORDER MADE)

Respondents

Representation:
For the appellant: Ms. S. Rushforth, Home Office Presenting Officer
For the respondents: Mr. R. Ahmed, Counsel instructed by MBM Solicitors

Heard at Field House on 10 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants (and/or any member of their family) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, 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 by the Secretary of State against the decision of First-tier Tribunal Judge Broe, (the "Judge"), dated 4 March 2024, in which he allowed the appeals of SMA and AM against the Secretary of State's decision to refuse entry clearance to the United Kingdom.

2. For the purposes of this decision, I refer to the Secretary of State as the respondent and SMA and AM as the appellants, to reflect their positions before the First-tier Tribunal.

3. Given the evidence in this appeal, I have continued the anonymity direction made in the First-tier Tribunal.

4. Permission to appeal was granted by Upper Tribunal Judge Macleman in a decision dated 10 June 2024 as follows:

> "3. Concision is commendable. Disagreement on weight does not show error of law. However, it is arguable whether the acknowledgement at [16] of 'factors set out in s.117B' of the 2002 Act is an adequate resolution of that aspect of the case.
>
> 4. It is noted that the grounds do not challenge the finding at [19] that family life is established for article 8 purposes.)"

5. There was no Rule 24 response.

The hearing

6. The hearing was hybrid, with the parties attending remotely. The sponsor was in attendance.

7. I heard oral submissions from both representatives following which I stated that I found the decision did not involve the making of a material error of law. My full reasons are set out below.

Error of Law

8. The grounds submit that the Judge failed to have full and proper regard to all of the statutory public interest factors outlined in section 117B, and that no explicit reference is made to these factors. Specifically, the grounds submit at (b) and (c) that the Judge failed to assess or attach any adverse weight to the appellants' ability to speak English and to their financial independence. At (d) it is submitted that the Judge failed to attach adverse weight to the appellants' inability to satisfy the requirements of the immigration rules.

9. As found by the Judge at [22], this was an unusual matter. He set out the background to the appeal from [3] to [6], and the sponsor's evidence from [8] to [12]. He found in the particular circumstances that the decisions were a disproportionate interference with the appellants' Article 8 rights. At [18] he found, which is not challenged:

> "18. I have had the opportunity of hearing from the Sponsor who I found to be helpful and credible. I accept that the Appellants left Afghanistan in the circumstances they describe. It is clear that the Sponsor was at risk and was evacuated with the other family members when the Taliban took control. The Appellant was not allowed to accompany them because he was an adult. I find it credible that he fled Afghanistan to escape the attention of the Taliban as he claimed. I accept that the Sponsor helped to facilitate the Appellants' flight from Afghanistan. I accept that initially they survived on his savings. I also accept that he continues to support them."

10. As noted in the decision granting permission to appeal, there is no challenge by the respondent to the finding that the appellants and sponsor enjoy family life at [19]. Further, there is no challenge to the findings at [21]. This paragraph states:

> "21. The effect of the decisions is that the Appellants will be unable to join their family in this country. I accept that they cannot return to Afghanistan. Their status in Pakistan is precarious. They cannot work and are dependent on money sent by the Sponsor. There is no dispute that the authorities are attempting to return Afghans to their country."

11. It is clear that the Judge is aware of the exceptional circumstances in the appellants' case. He set out the evidence of the first appellant that he himself had worked as a journalist in Kabul until August 2021.

12. Regarding the factors in section 117B, the Judge was aware that these had to be taken into account, as is clear from [16] where he sets out the legal framework. He states:

> "16. If an appellant does not meet the immigration rules, the public interest is normally in refusing leave to enter or remain. The exception is where refusal results in unjustifiably harsh consequences for the appellant or a family member such that refusal is not proportionate. I take into account the factors set out in s.117B Nationality Immigration and Asylum Act 2002 and balance the public interest considerations against the factors relied on by the Appellants."

13. It is not the case that the Judge was unaware of these factors. At [20] he states: "I have therefore given careful consideration to whether the Appellant's right to enjoy private and family life outweighs the public interest in maintaining immigration control." He is clearly aware of the need to balance the competing rights of the appellants and respondent, in particular the "public interest in maintaining immigration control".

14. While he has not specifically referred to the sections 117B(2) and (3) in his findings, he is clearly aware of the need to consider the public interest in maintaining immigration control. It is clear that he considered the appellants' particular circumstances to be exceptional, which findings have not been challenged. I find that he was aware of the factors under section 117B.

15. Further, even were I to find that the Judge had not had the public interest considerations in mind, there has been no challenge to the finding that there is family life, and no challenge to the findings as to the appellants' particular and exceptional circumstances. Any error is not material. It is accepted that the

appellants are Afghans who are living in Pakistan. It is accepted that they are subject to being returned to Afghanistan. It is accepted that the first appellant's father, the sponsor, is a refugee who worked as a journalist for the BBC in Afghanistan, and continues to work for the BBC in the United Kingdom. There is no challenge to the first appellant's employment as a journalist in Afghanistan.

16. I have taken into account the case of ASO (Iraq) [2023] EWCA Civ 1282, in particular [43]. This states:

> "There was some debate in submissions about the test which we should apply on this appeal in order to decide whether or not, if the F-tT did err in law in its approach to A's appeal, any such error was material, or not. As I understood the arguments, counsel in the end agreed that the question for us, based on the formula in paragraph 49 of the judgment of Sales LJ (as he then was) in *Secretary of State for the Home Department v AJ (Angola)* [2014] EWCA Civ 1636 is whether 'it is clear on the materials before [the F-tT] any rational tribunal must have come to the same conclusion'. If that is clear, then any error of law would be immaterial, and the appeal should fail."

17. I have also taken into account the case of Degorce [2017] EWCA Civ 1427, [93] and [94]. It is not the role of this Tribunal to interfere in a decision just because another judge may have decided differently.

18. In this particular case, there are exceptional circumstances which are accepted by the respondent. The appellants cannot return to their home country. They are at risk of being returned there by the country in which they are now living. There is family life between them and the sponsor on account of the appellants being emotionally and financially dependent on the sponsor. He is a recognised refugee, who was evacuated from Afghanistan due to his work with the BBC there.

19. It was submitted that, given the nature of the first appellant's education and his work as a journalist, including for the British Council, and the second appellant's level of education, on the balance of probabilities they could speak English. I note that their witness statements are in English, with no indication that there has been any need to read the statements back to the appellants in a language that they understand. In relation to financial independence, it was submitted that in addition to financial support from the sponsor, who continues to work as a journalist in the United Kingdom, given the appellants' levels of education and experience, on the balance of probabilities they appellants would also find employment. There is no explicit reference to this evidence in the decision, but the decision is well within the bounds of a decision that the Judge was entitled to make, given the particular and exceptional circumstances of the appellants' appeal.

20. I find that the grounds are not made out. There is no error of law in the Judge's decision.

Notice of Decision

21. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.

22. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 September 2024