



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/01367/2014
AA/01368/2014
& AA/01369/2014

THE IMMIGRATION ACTS

**Heard at Columbus House,
Newport
On 26th November 2014**

**Determination Promulgated
On 11th December 2014**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**SJHA (1)
ANGA (2)
ANGA (3)**

(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Simmonds of Duncan Lewis Solicitors

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DETERMINATION AND REMITTAL

1. In this document I will refer to the parties by the style in which they appeared before the First-Tier Tribunal.

2. The appellants are female citizens of Iraq and are respectively mother and two daughters. All three appellants originally left Iraq in December 2011 and sought entry clearance into the United Kingdom from Jordan. It is understood that the first appellant then returned to Iraq to collect belongings, arriving in the United Kingdom on 7 February 2012. She then returned to Iraq on at least two occasions in February and March 2013, returning to the United Kingdom in June 2013 and then claimed asylum on 6 August 2013.
3. A decision was taken in February 2014 to refuse to grant asylum and the appellants all appealed the decisions taken by the respondent.
4. The appeals were heard before Judge of the First-Tier Tribunal NJ Osborne sitting at Newport on 3 April 2014. An oral hearing was conducted and both parties were represented (the appellants again by Mr Simmonds).
5. In a determination dated 10 April 2014 Judge Osborne found the appellants account to be credible as to the account of persecution in the home area of the three appellants, but found that there was a reasonable internal relocation alternative. The appellant's asylum appeal was accordingly dismissed, as was the appeal in respect humanitarian protection.
6. Judge Osborne then went onto consider Article 8 ECHR and allowed the appeals of all three appellants based upon the academic situation involving one of the daughters of the first appellant.
7. Each party then sought leave to appeal. Through administrative error only the grounds lodged on behalf of the respondent were considered.
8. The respondent alleged that the judge had erred in law by not first applying the requirements of the Immigration Rules and had not considered whether there were any compelling circumstances before embarking upon a free-standing Article 8 consideration. Paragraph 4 of the grounds state as follows:

"4. The judges finding that the family was entitled to remain in the UK solely on the basis of the elder daughters academic progress during the 2 years she has spent in this country as a dependent of her student father is perverse and fails to have sufficient regard to the wider public interest in removing those with no claim to remain here".
9. In granting the respondent leave to appeal another judge of the First-Tier Tribunal gave the following as reasons:

"1. The respondent seeks permission to appeal, in time, against a decision of the First-Tier Tribunal Judge Osborne who, in a determination promulgated on 14 April 2014, allowed, on human

rights grounds, the appeal of the appellant against the refusal of her asylum claim.

2. The grounds of appeal complain that the judge erred in failing to take account of the relevant Immigration Rules or of the guidance in **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC)** and gave disproportionate weight to the academic achievements of the appellant's elder daughter.

3. The grounds do reveal an arguable error of law".

10. Hence this matter came before me in the Upper Tribunal in August 2014, when again Mr Richards appeared for the respondent. Neither appellants nor representative attended. I noted that notice of the hearing had been served, but I also noted that contained in the file were grounds seeking leave filed on behalf of the appellants. These had been overlooked.
11. I therefore considered it appropriate not to proceed, but to adjourn matters.
12. After the hearing and acting as a judge of the First-Tier Tribunal I considered the appellants grounds seeking leave. I will refer to this document in detail below, but I granted leave in decision notice dated 22 August 2014. In that document I noted that I found it arguable that Judge Osborne had erred on the question of internal relocation.
13. By coincidence this matter was relisted before me in the Upper Tribunal on 26 November 2014. Neither party raised any objection to me sitting on what was now a cross appeal with leave having been granted to each party.
14. At the commencement of the hearing I indicated that I intended to deal with the hearing in two parts. Firstly to consider the respondent's application by way of submissions by the two representatives and then secondly to deal with the appellant's application, again by hearing separate representations from each party.
15. Mr Richards relied upon the grounds seeking leave with regard to the Article 8 aspect of the appeal. In essence the judge had allowed the appeal on the basis of the academic progress of one of the appellants. He had made irrational findings and the determination lacked any meaningful balancing exercise.
16. Mr Simmonds referred to a response under Rule 24. That document supported the decision of Judge Osborne in allowing the Article 8 appeal. Reliance in placed on **Gulshan (Article 8 - New Rules - Correct Approach) [2013] UKUT 00640** and it was further submitted in the response that application under the rules would have been "an academic exercise in the circumstances of this case".

17. In his verbal submission Mr Simmonds argued that the judge had given a detailed response when considering Article 8. Both he and Mr Richards referred to the case of **EV (Philippines) & Others v SSHD [2014] EWCA Civ 874**.
18. Mr Richards then responded by indicating that the best interests of the children in this case were to remain with the parent.
19. I then invited Mr Simmonds to make submissions with regard to the appellant's application arising from the refusal of the asylum appeal.
20. Mr Simmonds relied upon the grounds seeking leave, which in turn drew on the case of **HF (Iraq) [2013] EWCA Civ 1276** and paragraph 116 of that decision. The appellant had been found to be credible, but the judge had not considered the need to return to her home area to renew food subsidy provisions.
21. Mr Richards in response indicated there was little before the judge as to information as to the appellant obtaining food subsidy advantages and supported the judge's decision.
22. At the end of the hearing I announced that I found no material error of law in the judge's determination with regard to asylum and humanitarian protection, and that the appeal of the appellants was accordingly dismissed. I did however find a material error of law in the way the judge dealt the Article 8 appeal and that his decision in respect thereof could not stand. In the circumstances it was appropriate to set aside that part of the decision and for the case to be remitted back to the First-Tier Tribunal to deal with the Article 8 aspects of the appeal before a judge other than Judge Osborne.
23. In respect of the appellant's appeal on Judge Osborne's decision, I find no material error of law. In granting leave I found it arguable but having heard from Mr Simmonds I do not consider that the allegation of error has been made out. Mr Simmonds has simply relied upon the grounds which in turn rely heavily upon **HF**. Mr Richards makes a valid point as to exactly what evidence was before the judge with regard to food subsidies. Paragraph 27 of Judge Osborne's determination refers to that. Although that paragraph relates to a submission by the Presenting Officer, when read as a whole the determination clearly reaches a conclusion in support of that submission. The determination of Judge Osborne in dealing with the asylum claim is very full and there is nothing to suggest that there was evidence before him with regard to the need for food subsidies. The determination is full enough to suggest that if there was such evidence it would have been mentioned. Certainly there is no suggestion that evidence was overlooked.

24. From paragraph 27 through to 33, Judge Osborne has very carefully analysed the situation of the appellants in the light of **HF** and has reached conclusions at paragraph 33 that he was perfectly entitled to reach. There is no error and certainly no material error.
25. Dealing now with the respondent's appeal. Paragraphs 35 onwards deal with the question of human rights in general and Article 8 in particular. The judge has indeed embarked upon a stand alone consideration of Article 8 without reference to the Immigration Rules in general or the public interest in particular. In short Mr Richards is correct, the judge was wrong in failing to acknowledge the existence of any Immigration Rule could be applied before allowing the appeal outside the rules without finding compelling circumstances not sufficiently recognised under such rules.
26. The judge quite rightly considered the best interests of the children, as set out in paragraph 39 of the determination. However it is appropriate for due regard to be had to the views expressed by the Court of Appeal in **EV** (above). This is particularly relevant given the basis upon which Judge Osborne came to the conclusion to allow the appeal. Additionally there is little or no consideration of the public interest that must be balanced in an appeal such as this. There is no consideration of the jurisprudence that exists in deciding when a stand alone consideration of Art 8 can be conducted. In these circumstances I conclude that there is an error of law in the manner in which the judge dealt with Article 8 and it is material to the outcome of the appeal, and therefore falls to be set aside.
27. Given the need to establish facts with regard to the three appellants in their Article 8 appeals, it is appropriate that this matter be remitted to the First-Tier Tribunal in line with the Senior President's direction.
28. By reason of the above the First-Tier Tribunal judge who hears the case will restrict him or herself to the appeal in respect of Article 8 in line with current jurisprudence once the facts have been established.

Decision

29. The appeal by the appellants in respect of asylum and humanitarian protection is dismissed. The appeal of the respondent is allowed.

Signed

Date **10th December 2014**

Upper Tribunal Judge Poole