**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/03703/2016

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 1 November 2017** | **On 3 November 2017** |

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**[V K]**

Appellant

**and**

**The Secretary Of State For The Home Department**

Respondent

**Representation:**

For the appellant: Ms R. Popal, Counsel, instructed by Malik & Malik, Solicitors
For the respondent: Mr I. Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Russia who appealed against the determination of First-tier Tribunal Judge Dineen promulgated on 9 February 2017 dismissing his appeal against the decision of the respondent made on 1 April 2016 refusing his asylum claim and the associated claims for humanitarian protection and under Articles 2 and 3 as well as his claim that removal would breach his right to respect for family and private life under Article 8. The latter consideration was conducted

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first by considering the public interest criteria in Appendix FM and paragraph 276ADE(1) and then whether the family should receive Discretionary Leave outside the Immigration Rules.

2. The appellant and his family are Muslims.

**The issues raised in the grounds**

3. The First-tier Tribunal Judge dismissed the asylum claim on the basis that it lacked credibility. The reasons provided by the Judge are set out in paragraphs 49 to 58 of his determination. The claim was centred upon a business arrangement involving a Mr Azamat. Certain unidentified individuals lent 13 million roubles, apparently to the appellant himself, into business in which Mr Azamat was concerned as a sole trader. When the business did not produce a profit, the appellant claims that he became liable for the repayment of the advance and that this placed him at risk on return to Russia. I am satisfied that the reasons advanced by the First-tier Tribunal Judge in dismissing the appeal are both sound and sensible. A challenge to this element of the determination was not pursued before me.

4. It is also said that the Judge acted unlawfully in failing to treat the appellant as 'a vulnerable adult' in reaching an adverse credibility finding. The basis of this claim appears to be that in two answers he provided in his asylum interview he had stated that he was depressed and was taking medication for this. I have no hesitation in rejecting this contention. Any Judge is required to assess the evidence of an individual with all the frailties and anxieties that any witness brings to a hearing, especially where the individual is an unfamiliar environment and whether proceedings may be difficult to follow and conducted in a language which is not his primary tongue. This does not prevent a Judge from performing his duty in assessing the evidence. Nor does it require the Judge to make express reference to that individual's vulnerability. Once again, this ground was not argued before me.

5. Similarly, there is nothing in the allegation that the Judge improperly imposed a requirement for corroboration. The Judge commented upon the lack of written material in circumstances where there was none. This point, like the preceding grounds, was not argued before me. The stance adopted by Ms Popal was entirely correct, reflecting no doubt what Upper Tribunal Judge Martin had written in her grant of permission that the grounds challenging the adverse credibility findings had no merit.

6. Accordingly, the only point pursued was the First-tier Tribunal Judge's approach to the Article 8 claim in the circumstances that arose in relation to one of the appellant's children, F, who was born on 6 November 2011 and who was 14 at the time the respondent made her decision on 1 April 2016. She had reached the age of 15 when the determination was promulgated. The appellant's wife and their children entered the United Kingdom on 19 October 2010 and had been in the United Kingdom for 5 ½ years when the relevant decision was made.

**The determination**

7. It is apparent that the family was in the forefront of the judge's mind when he recited their immigration history in paragraph 7 of the determination. Having set out in summary form the facts in relation to the asylum claim, the Judge turned in paragraphs 40 and 41 to the Article 8 claim. It is immediately apparent that his attention was focused upon F. He described how she suffered from severe anxiety, depression and panic attacks. He referred to the difficulties she had experienced in 2014 when she had attended a private Islamic school. He described how she had told OFSTED inspectors how badly the school was run and this had resulted in a hostile reaction on the part of the staff in their treatment towards her. She was withdrawn from the school and subsequently educated at home with the approval of the local authority. He said in paragraph 41

> "Evidence in relation to the wellbeing of the children appears on pages 76 to 86 of the appeal bundle, and as to education at pages 88-115. In summary, they have been receiving appropriate medical care and educational services, and have been benefiting from them."

8. There was no dispute about this material. It was unnecessary for any cross-examination to be conducted in relation to it. There is no suggestion that the respondent challenged any of the contents. It was unnecessary to repeat it or make findings upon it. In the same way that the appellant was recorded as being a Russian national born on 1 October 1973 rendering it unnecessary to make a specific finding of fact upon it, so too was it accepted that F was suffering from severe anxiety, depression and panic attacks.

9. The Judge commenced his examination of the Article 8 claim in paragraph 60, commencing with a statement of fact that the family would be in no danger on return to the Russian Federation. They would return as a family unit where they would re-establish their lives in Russia notwithstanding the inevitable disturbance to their present lives in the United Kingdom. The Judge acknowledged that the inevitable disturbance to the children's education needed to be placed in the balance. He reasonably noted, however, that whilst he fully understood why the appellant would prefer his family to remain in the United Kingdom and for their current lives to continue, Article 8 did not involve the principle that the family had the right of free choice. He correctly treated the issue as one of proportionality. In doing so, he needed to say no more than he took into account the requirements of s. 55 of the Borders, Citizenship and Immigration Act 2009. He is, of course, a very experienced judge who expressly recognised the need to safeguard and promote the welfare of children who are in the United Kingdom. In paragraph 66 of the determination he said:

> "However I take into account what I find to be the strong interests of the children to be with their parents, wherever those parents may be, whether or not in the UK. While medical and educational services in the Russian Federation may be considered by the appellant and his wife to be inferior to those available in the United Kingdom, and while there may be some discrimination in the provision of services on grounds of religion or ethnicity, there is no evidence to show that such

services are unavailable. The overriding interests of the children are, as I find, to be served by their being with their parents as a family group. Neither Article 8, as noted above, nor the need to safeguard and promote the welfare of children who are in the United Kingdom, enable the appellant and his wife simply to choose where they would prefer their family to live, however well founded such choice might be."

10. The Judge then spoke of the maintenance of effective immigration control and the acquisition of a private life established by a person at a time when that person's immigration status was precarious. This was principally a reference to the appellant whose presence in the United Kingdom was as an asylum seeker whose claim had been disbelieved. There is no suggestion that he was treating the children as responsible for their predicament. Inevitably, they were there as a result of the decision of their parents. He concluded that he was not satisfied that removal would be disproportionate.

11. This finding is challenged in the grounds of appeal by asserting that there was a failure to consider the best interests of the child F and that insufficient consideration was conducted in relation to her health or the conditions in Russia.

12. This challenge to the First-tier Tribunal Judge's determination would not have arisen had the Judge given a detailed recital of the medical evidence although, as I have said, he provided a summary of it in paragraph 41 of the determination which included a reference to the relevant pages in the appellant's bundle. This reference to the material demonstrates that he was aware of its contents. Furthermore, having seen the bundle of material that was before the First-tier Tribunal Judge, I am satisfied that the markers that he left in the bundle clearly demonstrate not only that he referred to the contents in paragraph 41 but that he himself had examined those pages. I propose to do the same now.

**The evidence**

13. The most disturbing document is from Luton and Dunstable University Hospital Foundation Trust recording F's admission on 5 October 2014 at 2 o'clock in the morning and her discharge the following day. This recorded that F was admitted after ingesting 40 tablets of her mother's Russian anti-hypertensive medication. Fortunately, she was admitted for observation and those observations were within normal ranges. The specific medication was unknown as it was marked in Russian but observations were conducted as to the side-effects. F was seen by the Child and Adolescent Mental Health Service. It transpired that she had taken the overdose of medication after feeling low in mood and angry after bumping into a teacher from her previous school. It was an impulsive act in nature and she had no history of self-harm. She regretted the overdose and her wish to live was stronger than her wish to die. It was thought safe to discharge her home under the care of her mother and she would be followed up by the Child and Adolescent Mental Health Service [pp. 80-82].

14. On 28 October 2014, Ms R. Grabowski, 'the coordinator for refugees, asylum seekers and all other pupils new to be United Kingdom' wrote from the Luton

Learning Resource Centre recording that in the summer of 2014 the family approached Luton Borough Council with enormous concerns regarding their education and treatment at the [ ] education trust in Luton. This was where the three school-age children had been receiving their education since October 2010, paid for privately. The three children, including F, were born in Moscow and Russian citizens but of mixed ethnicity, their Muslim faith and dress code singling them out.

15. Due to their poor learning environment and unacceptable treatment by the [ ] School staff and its headteacher, they raised some serious concerns in the school. This led to very poor and rude treatment of the children and their mother when she attempted to raise matters with the headteacher. The family contacted a Luton Borough Council social worker who contacted Ms Grabowski. The children were also referred to her by a local children's centre. She continued [p. 85]:

    "It was clear that the children could not continue to study at [ ] education trust where they were facing discrimination, ill-treatment and were being seriously chastised for telling the truth about certain aspects of the school life and curriculum. The OFSTED inspection for [ ] Girls and Boys Schools in May 2014 reported the school to be inadequate (Grade 4) in all areas. The full OFSTED report can be read on the Internet. The report reflects the poor, non-inclusive learning environment and inadequate leadership; this was indeed exemplified in the treatment the [ ] children had faced there. Latterly they had felt so sick about their poor treatment at the school that they were showing signs of anxiety and phobia about attending the [ ] School."

16. Ms Grabowski's report records [p. 86] that arrangements were then made for the children to be placed in Putteridge High School in Luton where they commenced studying in September 2014. She spoke of the children in warm terms.

17. The terrible experience the children suffered at the [ ] School appears to be confirmed in relation to a victim support letter dated 15 August 2014 recording that F had been a victim of crime [p. 76]. I assume this was related to her experiences at the school. F's experiences are confirmed by an OFSTED letter dated 13 August 2014 [pp. 114-5] acknowledging a complaint made to OFSTED about [ ] Boys and Girls School. Unfortunately, OFSTED washed their hands of the complaint.

18. On 24 November 2014, Dr Khan wrote to say that Z (not F) had ongoing symptoms of stress and depression. She had been asked to be referred to a psychologist. This referral had been done and she was then awaiting an appointment. Her condition arose as a result of her being expelled from school on 17 June 2014 [p. 77].

19. On 14 April 2015 Dr S. Dadabhoy from the Kingsway Health Centre in Luton wrote to say [p. 83] that F was his patient who was suffering from frequent panic attacks and depression nearly every day lasting 20 minutes, occurring both in school and at home:

> "She says that the triggering factor is usually a noisy environment, bright lights or too many people around her. She informed me that her mood is okay, she sleeps well and there is no idea of self-harm.
>
> Due to depression and panic attacks patient was unable to attend school 16 March 2015 to 14 April 2015. Due to the panic attacks she is frequently missing days of school so therefore it is in her best interests to be home schooled; F also agrees with this.
>
> I have referred F to child and adolescent's psychiatry for assessment and management. She is waiting for the appointment."

20. On 23 September 2015 an individual on behalf of the Kingsway Health Centre confirmed [p. 84] that F was still suffering from frequent panic attacks. The content of the last letter [page 83] was repeated and F was still apparently awaiting an appointment from the child and adolescent psychiatry team.

21. On 25 July 2016 the Elective Home Education and Child Licensing Officer of the London Borough of Barking and Dagenham's children's services wrote to confirm that F was registered with the local authority for Elective Home Education. Ms Kelly had visited the home recently to advise on an application for her to attend another school should F's health allow. She said she would be seeking the schools adviser to conduct a further visit to monitor F's progress with this education [p. 79].

22. On 4 August 2016, Dr Hannan, the GP registrar to Dr Sanomi of the Rush Green Medical Centre in Romford wrote in relation to F who was her patient that she suffered from anxiety symptoms which had been getting worse with time. She was unable to use public transport due to anxiety and was reliant upon her father for transport. Her anxiety symptoms had resulted in her being home schooled. She was waiting to see a child psychiatrist at the Child and Adolescent Mental Health Service [p. 78].

23. The bundle of documentation before the Judge continues with large numbers of documents relating to the children's progress at school as well as other activities. A large number of photographs depict the children.

24. This documentation amply demonstrates that F was deeply troubled by her experiences at the [ ] School. The Judge can have had no reason to doubt, and expressed no doubt, that this resulted in her depression, anxiety and panic attacks. Although there were two references to F being referred to the Child and Adolescent Mental Health Service, there is no report from a psychiatrist as to any further treatment but the underlying difficulties with her mental health were recorded and attested to by the local health centre.

25. The immediate cause of the physical distress was obviously alleviated by leaving the school. However, it is of note that her attempt at suicide or self harm was triggered by her seeing one of the staff. Happily, there was no evidence before the Judge of suicidal ideation and the discharge summary points to the incident being

an impulsive act which F subsequently regretted. That said, her symptoms continued.

**The consideration of whether the determination discloses a material error**

26. I have provided a more detailed examination of the documentary material than that provided by the Judge in his determination. Nevertheless, I would not regard the Judge's summary of the medical evidence in paragraph 41 as being inaccurate. He said, quite properly, F suffers from severe anxiety, depression and panic attacks. He recorded she had difficulty in 2014 when she was at the [ ] School in relation to which she complained to OFSTED inspectors. He recorded how this had resulted in hostile treatment of her by the school staff causing her to leave and to commence home education. That, in truth, is exactly what occurred.

27. The medical evidence was limited. There was no psychiatric report notwithstanding the reference to F being referred to the unit for treatment or assessment. There is no evidence of medication. One can infer that her mental health must have been somewhat improved by being removed from the environment which was so painful and damaging to her. Assuming that her home education continued, we can infer that this was being provided by her parents.

**Appendix FM and paragraph 276ADE(1)**

28. The respondent's decision letter set out why the various family members did not meet the public interest criteria under Appendix FM and paragraph 276ADE(1). It was not suggested by Ms Popal that they did at the material time.

**A wider Article 8 assessment and proportionality**

29. Consequently, it was on this basis that the First-tier Tribunal Judge came to examine whether it was proportionate to remove this family by reference to a wider consideration of Article 8. Given the interference that would be occasioned by removal was sufficient, potentially, to engage Article 8, the enquiry had swiftly moved on to proportionality. On the conclusion of their asylum claim, which was not found to have been truthful, there was no further lawful basis upon which the family might establish a right to remain, save if removal violated their human rights. There was, of course, no viable Article 3 claim based upon the risk of serious harm arising either out of the asylum claim or the medical conditions of any of the family members. Furthermore, although the Judge acknowledged there was a level of discrimination against Muslims in Russia, this did not amount to ill-treatment of sufficient severity to engage the Convention.

30. As the family would be returning to Russia as a unit, there would be no violation of their protected family life. The evidence pointed to F suffering from depression and anxiety and panic attacks but no further evidence was adduced as to treatment or therapeutic care. In these circumstances, no judge properly directing himself could have reached the conclusion that the family's removal was unlawful as a disproportionate interference with their private lives. The Judge properly

recorded that mental health services in Russia may not be as good as in the United Kingdom. There was no evidence as to how that differential would impact upon F herself. There was no evidence that a health professional had provided a prognosis dealing with the likely future course of her illness, the type of treatment or the length of such treatment. Nor was there any evidence of a private life that F had developed outside her home although, inevitably, as a child who has lived in the United kingdom for several years, it is proper to infer that such a private life must have been created.

31. Although criticism is made of the Judge's comments that the appellants immigration status was precarious, I do not consider that was inappropriate given that the appellant had no leave to remain in the United Kingdom save for the right not to be removed pending his unsuccessful asylum claim. That was not a firm foundation on which to base an Article 8 claim.

32. I well recognise that time has passed since the First-tier Tribunal reached its decision. Time is a significant factor when assessing removal in cases involving children. An application of Appendix FM and paragraph 276ADE(1) may now lead to a different result, I know not. Furthermore, Ms. Popal intimated that there was further medical evidence currently available. These considerations, however, do not impact upon my consideration of whether the First-tier Tribunal Judge made a material error of law. I am satisfied that he did not. Whilst I acknowledge he could, as I have done, gone through the various pages of the bundle, I am satisfied he was well aware of its contents. Furthermore, whilst I have focused solely on the material as it affects the issue before me, namely the evidence insofar as it related to F, the Judge was concerned with a much wider examination of both the asylum claim and the Article 8 claims as it affected each member of the family. He was confronted with the bundle of some 200 pages. I would not regard it as reasonable for him to have summarised each of those 200 pages, whereas I enjoyed the comparative luxury of examining only a small section of it. For these reasons I am satisfied the Judge reached the right conclusion on the material before him.

DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN<br>JUDGE OF THE UPPER TRIBUNAL<br>2 November 2017