Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15703/2018
HU/15708/2018
HU/15712/2018
HU/15715/2018
HU/15716/2018
HU/15719/2018

THE IMMIGRATION ACTS

Heard at Field House
On 21st November 2019

Decision & Reasons Promulgated
On 11th December 2019

Before

Mr JUSTICE NICOL
UPPER TRIBUNAL JUDGE COKER

Between

KF
KH
AF
FF
MF
ZF
(anonymity order made)

Appellants

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Meredith instructed by The Migrants Law Project,
For the Respondent: Mr Z Malik instructed by GLD

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants in this determination. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. For reasons set out in a decision promulgated on 18th June 2019, Upper Tribunal Judge Coker found errors of law in the decision of First-tier Tribunal Judge Paul, who had allowed their appeals against a decision of the respondent refusing them entry clearance, such that the decision was set aside to be remade. The remaking of the decision came before Mr Justice Nicol and Upper Tribunal Judge Coker on 21st November 2019.

Background

2. The following, briefly outlined, background is not subject to challenge.

3. The appellants in this decision, are the mother, father and younger siblings of an 18-year-old young man, date of birth 31st January 2000, who is recognised as a refugee in the UK. He and his family are Syrian nationals. In 2013, when the sponsor was aged 13, the family fled Syria and lived in Jordan. During their time in Jordan the family lived in difficult conditions; the sponsor experienced exploitative labour arrangements, arrest and detention for working without permission while trying to support his family and was sexually assaulted. In August 2015, aged 15, he left his family in Jordan and travelled across Europe to Calais where he lived for several months. Whilst in Calais he witnessed violence including a fight in which a man was killed. He then travelled to Germany and, following a 'take charge' request by Germany, he was admitted to the UK to join a maternal aunt, her husband and their sons on 1st July 2016 at which time he was aged 16. That relationship broke down and in August 2016 the sponsor left that home; he was taken into Local Authority care in accordance with s20 Children Act 1989.

4. The last Children in Care Review meeting took place on 7th November 2017 which stated, inter alia, that the sponsor would continue to be supported by the Onwards and Upwards Team (OUT) after his 18th Birthday but there would be no further review meetings. That report refers to him meeting the Support Housing Worker (Tom Conway) at his then accommodation every three to four weeks for 'key work sessions' but they also saw each other two to three times a week. Although the review recommended that he be visited by a social worker every 6 to 8 weeks, there were no disclosed records that this had in fact occurred. The sponsor continued to live at the supported accommodation until March 2019 and then moved to his current address – permanent independent accommodation. The outreach support continued until September 2019. The sponsor is no longer eligible for 'add-ons' such as psychotherapeutic counselling, bursary allowance for travel to college or help with education and employment advisors.

5. Mr Conway has continued to see him occasionally, for example when the sponsor is passing his previous accommodation; these meetings are not under any formal arrangement. Mr Conway expressed his concern that the sponsor's previous social network, described in the last Review as being active with regular visits to his extended family members is no longer in place because he lives some distance away from them. He expresses concern that the sponsor, who previously had difficulty opening up to staff at his previous supported accommodation, was not able to seek support from his allocated personal advisor, whom he only sees every three months or so in any event and this is likely to end soon.

6. On 1st September 2016 the sponsor was assaulted by three men whilst walking in Willesden with his cousin; the police had been called but no further action resulted.

7. The sponsor has been examined by Dr Datta, a specialist registrar in Child and Adolescent Psychiatry and two reports are relied upon – 21st November 2018 and 13th September 2019. The respondent did not, in her grounds of appeal against the decision of the First-tier Tribunal Judge, challenge the qualifications of Dr Datta or the findings made. Dr Datta's second report was prepared after the First-tier Tribunal decision was set aside; there was no request by the respondent for Dr Datta to be called to be cross-examined and no challenge to her report. Dr Datta, in her first report concludes that the sponsor

> "presents with post-traumatic stress disorder and co-morbid major depressive disorder. The aetiology for his PTSD are the traumas described in his history which include: his experiences of the war in Syria; his exploitative labour arrangements and sexual assault in Jordan; and a traumatic and lengthy journey to the United Kingdom which included a stay in the Calais jungle camp (as an unaccompanied minor) where he witnessed extreme violence. There is an ongoing significant exacerbation of these symptoms due to his current separation from his family…he will not be able to fully recover from his PTSD or depressive disorder without long terms social stability, a key component of which is family support. This is because social stability is a necessary pre-requisite to the specialist psychological treatment that I recommend…".

8. In her second report, Dr Datta concluded, inter alia,

> "… The inability to reunite with his family promptly has resulted in further deterioration in his mental state and is a barrier to effective treatment at present….it is highly likely that this deterioration will continue if continued separation occurs and the risk will only be reduced with long term supportive social stability now, which undoubtedly involved reunification with his family. In my opinion, [the sponsor's] clearly worsening PTSD and depression in relation to the ongoing separation from his family is preventing him from discussing his sexual assault in detail as is required for treatment of the associated post traumatic symptoms."

Dr Datta refers to the sponsor's loneliness his accommodation, his profoundly different perspective to college, that he doesn't really have friends, feelings of lack of settlement and worry about his family. She concludes that that his

symptoms are consistent with PTSD and Major Depressive Disorder – severe subtype. She states

> "..[she] can no longer recommend a trial of anti-depressant medication; this on the basis of how [the sponsor's] symptoms have developed….at present medication would be contraindicated unless [the sponsor] was in a highly supported environment such as accommodation where he has access to 24 hour professional support, as he does not have the proximal support of his family….in order for [the sponsor] to receive from his psychiatric disorders; he requires as a necessity a safe and stable social situation for significant period of time and this equates to him being reunited with his family in the UK."

9. There was delay in determining the sponsor's asylum claim; On 25th June 2017, the respondent, in response to a complaint about delay, stated that they aimed to take a decision on the sponsor's asylum claim within three months. On 31st October 2017 the sponsor's solicitors were informed by telephone that the sponsor's application had been passed to a new team set up to make decisions on old cases. In response to a further complaint by his solicitors, the sponsor was informed on 23rd November 2017 that the sponsor's case 'was now ready to go to the team that makes decisions'. On 1st December 2017, the sponsor received a letter stating that the formal complaint about delay had been upheld. On 19th December 2017, the sponsor, through his solicitors, sent a pre-action protocol letter challenging what they submitted was an ongoing and unlawful delay in reaching a decision on the sponsor's substantive asylum application. They relied upon the Procedures Directive)2013/32/EU) Article 31 although the UK has opted out of this. Nevertheless, paragraphs 333A[1], 350[2] of the Immigration Rules are of relevance to the question of delay. The response to that letter, dated 22nd December 2017 stated that the relevant department [of the Home Office] would contact them within 3 months.

10. The sponsor was recognised as a refugee on 4th January 2018 some 18 months after his claim was made. He became 18 on 31st January 2018. On 25th January 2018, his parents and siblings sought entry clearance and were refused in decisions dated 28th February 2018: they fall out with the Immigration Rules, and the ECO was not satisfied that there were exceptional circumstances which warranted a grant of leave outside the Rules.

Remaking the decision

11. The fundamental issue in these appeals is the proportionality of the respondent's decisions to refuse entry clearance to the sponsor's parents and younger siblings. Although submitted in her skeleton, that the decisions were not in accordance with the law and thus in breach of Article 8(2), this was, correctly, not pursued by Ms Meredith in the light of *Charles (human rights appeal: scope)* [2018] UKUT 89 (IAC).

[1] Where a decision cannot be taken within 6 months, the SSHD should provide information on the likely time frame, if requested

[2] Particular priority and care should be given to children's applications

12. In extradition cases where it is alleged that the return of the requested person would be contrary to Article 8 ECHR, the Divisional Court has recommended drawing up a balance sheet of the factors favouring return and those against. A similar approach can usefully be adopted where the issue is not extradition, but whether an immigration decision would put the UK in breach of Article 8.

13. We think it helpful to set out some important starting points.

14. First, it is the sponsor's rights under Article 8 which are engaged. It is he, and only he, who is in the UK. By Article 1 of the ECHR the UK undertook 'to secure to everyone within [its] jurisdiction the rights and freedoms defined in section 1 of this Convention'. Those rights and freedoms include, of course, Article 8. There are certain exceptions where the Convention has an extra-territorial reach, but none of them is relevant in the present context. As Ms Meredith submitted, there are cases where Article 8 has been held to require the admission of someone who is outside the UK, but that is because their exclusion would be an impermissible interference with the private or family life of a family member who is in the UK –see for instance *Secretary of State for the Home Department v Tahir Abbas* [2017] EWCA Civ 1393. We do not therefore agree with Ms Meredith that the Appellants themselves have Article 8 rights for present purposes since they are all in Jordan.

15. Next, some of the Appellants are children. We do not doubt that life for Syrian refugees in Jordanian refugee camps is hard and for children it will be harder still, but that, too is at best of attenuated relevance to the present issue before us. As Mr Malik observed, the Borders, Citizenship and Immigration Act 2009 s.55(1) applies to 'children who are in the United Kingdom'. Part of the purpose of s.55 was to incorporate partially into English law the United Nations Convention on the Rights of the Child. ('UNCRC'). Article 3 of the UNCRC says 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' In *AT and AHI v Entry Clearance Officer Abud Dhabi* [2016] UKUT 00227 (IAC) ('*AT*') to which we will return, McClosky J, then President of the Upper Tribunal (Immigration and Asylum Chamber), annexed to his judgment 'Every Child Matters' by UKBA (2009). Section 55(3) of the 2009 Act requires people exercising functions to have regard to guidance given by the Secretary of State. 'Every Child Matters' is that guidance. At paragraph 2.6 of this document UKBA acknowledged the status and importance of a number of international instruments including UNCRC. At paragraph 2.7 it said, 'Every child matters even if they are subject to immigration control. In accordance with the UNCRC the best interests of a child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children.' Paragraph 2.34 of 'Every Child Matters' says, 'The statutory duty in section 55 of the 2009 Act does not apply in relation to children who are outside the United Kingdom. However, UK Border Agency staff working overseas must adhere to the spirit of the duty and make enquiries when they have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other

countries and UK Border Agency staff will abide by these. The Supreme Court noted this paragraph of 'Every Child Matters' in *R (MM) v SSHD* [2017] UKSC 10, [2017] 1 WLR 771 at [47]. As Mr Malik put it in his submissions to us, while s.55 does not in terms apply to the child appellants, the spirit of the duty under UNCRC may be relevant. We agree that this is as high as the relevance of the UNCRC to the position of the children Appellants can be put.

16. Next, Ms Meredith relied heavily on *AT* as to which Mr Malik made a number of criticisms. We think it necessary to address each of these:

(a) *AT* is not binding authority. Ms Meredith accepted that this was correct, as do we. It remains persuasive authority, as Mr Malik accepted, although he suggested that because of his other comments it should not carry a great deal of weight.

(b) *AT* was different because the sponsor had been a child when the application was made, when the ECO refused entry clearance[3] and at the date of remaking by the Upper Tribunal. In the present case the sponsor was an adult when the ECO refused entry clearances (28th February 2018) since he turned 18 on 31st January 2018. We accept that this is an important difference. We note as well that s.55(6) of the 2009 Act defines children (in common with other UK statutes and the UNCRC at Article 1) as a person under 18. Ms Meredith referred us to paragraph 27 of the Immigration Rules which concerns those who applied for entry clearance when they were children but who become adults before a decision is made. However, we agree with Mr Malik that this paragraph is nothing to the point: it concerns *applicants* for entry clearance. In this case it is the *sponsor* who has become an adult between the making of the application and the ECO's decision.

(c) Mr Malik observed that McCloskey J had been wrong to say that there was a 'blanket prohibition' on relatives joining a refugee in the UK other than a spouse or minor child of a refugee (see *AT* at [11] and [22]). We agree with Mr Malik that this was an exaggeration. There is not a *prohibition* on other relatives joining a refugee (as there is, for instance, on those who have been deported from the UK being granted entry clearance – Immigration Rules paragraph 320(2)(a)) There is simply no provision for family reunion for a family member with a refugee in such circumstances. We agree that this was a mistake on the part of McCloskey J. However, it does not seem to us to have been material. It did not lead him to make any consequential error based on this exaggeration.

(d) Mr Malik drew our attention to *AT* [22] where McCloskey J. had relied on his own previous decision in *ZAT and others v SSHD (Article8 –Dublin Regulation –Interface –Proportionality)*. However, the decision of the Upper Tribunal in ZAT had subsequently been reversed by the Court of Appeal –see *R (ZT (Syria) and others) v SSHD (UNHCR intervening)* [2016] EWCA Civ 810, [2016] 1 WLR 4894. At [64] the Court of Appeal emphasised the importance of a fact-sensitive analysis. We accept that such an analysis is critical. Otherwise *ZAT* concerned the interpretation of

[3] AT was born 10th July 2000. His appeal was dismissed by the First-tier Tribunal on 7th April 2014 following a hearing on 4th April 2014. That decision was set aside because of error of law on 30th July 2014 and again on 22nd July 2015. The decision was remade by the Upper Tribunal on 23rd March 2016.

the UK's obligations under the Dublin III regulation which is not material to the present matter.

(e) Finally, Mr Malik drew attention to [39] of *AT* where McCloskey J. had said, 'Next, it is necessary to give effect to the principles enunciated in Mathieson (*Mathieson v Secretary of State for Work and Pensions* [2011] UKSC 4, [2011] 2 AC 166) together with those aspects of the Secretary of State's statutory guidance noted in [31] above [this is a reference to the 'Every Child Matters' document to which we have already referred]. I do not deduce from any of these principles or sources that the Secretary of State is under *a duty* to facilitate reunification for this family in the United Kingdom with the result that the impugned decisions of the ECO are vitiated. The existence of an absolute duty of this nature was not argued and I do not consider that such a duty exists. However, in my view the *orientation* of these principles and policies is to favour rather than undermine, what the Appellants seek to achieve by these appeals. They qualify for substantial weight in the proportionality balancing exercise.' [emphasis in the original]. Mr Malik argues that this is to misunderstand *Mathieson*. At [44] Lord Wilson said this, 'The noun adopted by the Grand Chamber in the *Neulinge*r case 54 EHRR 1087, cited above, is "harmony". A conclusion reached without reference to international Conventions, that the Secretary of State has failed to establish justification for the difference in his treatment of those severely disabled children who are required to remain in hospital for a lengthy period would harmonise with a conclusion that his different treatment of their rights violates their rights under two international Conventions.' Mr Malik submitted in his skeleton argument, 'It is one thing to say that a particular conclusion, "reached without reference to international Conventions" will "harmonise" with those international conventions, it is quite another to attach "substantial weight" to the "orientation" of international "principles and polices". We agree that there is force in this criticism of Mr Malik's.

17. Standing back, we conclude as follows regarding *AT*:

(a) is incumbent on us to conduct an intensive fact-sensitive exercise to decide whether there would be disproportionate interference with *this* sponsor's private and family life if the Appellants' refusals of entry clearance were upheld. With respect, to FTTJ Paul we do not share his description of *AT* as 'all-embracing'. The SSHD did not seek to appeal the decision and, accordingly, it was dispositive of the factual situation with which the Tribunal was then presented, but it was no more than that.

(b) *AT* is an example of how that can be the case, although there are (inevitably) differences between the sets of facts in AT and the present case, notably that AT was a child both when the ECO refused entry clearances to his family members and when the Upper Tribunal took the final decision.

(c) We accept that it is *Mathieson* rather than *AT* which should guide us in relation to the role of international instruments which have not been incorporated into domestic law. It may be material that a particular

outcome would be in harmony with such instruments, but that is not the same as saying they should be accorded substantial weight.

Although *AT* is a reported decision and of persuasive authority, in the light of *ZT*, the starting and significant point is the Article 8 rights of the individual who is in the UK.

18. We then turn to consider the factors which weigh in the balance as to why the refusal of entry clearance is not a disproportionate interference with the sponsor's right to private and family life.

(a) We start with Nationality, Immigration and Asylum Act 2002 s.117B which is headed 'Article 8: public interest considerations applicable in all cases'. Subsection (1) provides, 'The maintenance of effective immigration controls is in the public interest.'

(b) Section 117B(2) says, 'It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the UK are able to speak English, because persons who speak English-(a) Are less of a burden on taxpayers, and (b) Are better able to integrate into society. FTTJ Paul described the Appellants at [22] as 'non-English speaking' and there is no evidence before us to suggest that is incorrect. We must therefore proceed on the basis that this is a factor against the grant of entry clearance.

(c) Section 117B(3) says, 'It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the UK are financially independent, because such persons –(a) Are not a burden on taxpayers, and (b) Are better able to integrate into society. FTTJ Paul also said at [22], '[The Appellants] will find it very difficult to integrate into the UK, and will likely be a drain on resources for a considerable period of time. The fact that it is a large family aggravates the potential impact on the public purse in this country.' Again, we have had no contrary evidence.

Ms Meredith noted that there is no requirement under the Immigration Rules for refugees themselves or their spouses or minor children to show that they can live in the UK without recourse to public funds. That is correct, but we agree with Mr Malik that it is nothing to the point. The Appellants are not entitled to claim asylum in the UK since the obligation under Article 33 of the Refugee Convention applies only to refugees who are in the territory of a Member State and the Appellants, even if they are refugees, are not in the UK. The Appellants are not the spouses or the minor children of the sponsor. The Appellants rely on Article 8. It is for that reason that s.117B of the 2002 Act is relevant. We must therefore also proceed on the basis that their lack of financial independence, too, is a factor against the grant of entry clearance. FTTJ Paul commented on the fact that there were a large number of Appellants. We raised with both parties whether they considered that all the Appellants must succeed in their appeals or all must fail, or whether there was scope for differentiation between the Appellants. Both Ms Meredith and Mr Malik agreed that all the appeals stood together. Either all must succeed, or all must fail. They were agreed that there was no scope for differentiating between the Appellants.

(d) The SSHD's policy as expressed in the Immigration Rules is to cater for the family reunification of refugees in only limited circumstances. Thus, provision is made for the partner of a refugee (paragraph 352A), minor children of a refugee (paragraph 352E). In addition, there are general provisions for the admission of other family members (see Immigration Rules Appendix FM) of which refugees, like other sponsors can take advantage. Otherwise, as is said in the Home Office document 'Family Reunion: for refugees and those with humanitarian protection' (19th March 2019) at p.30, 'Where the applicant is a parent, grandparent, brother or sister of someone with refugee status or someone with humanitarian protection leave, they will not qualify under the family reunion provisions.' As was made clear in *Agyarko* [2017] UKSC 11 the purpose of the Immigration Rules is to enable decision makers to understand and apply the appropriate weight to be given to the public interest. Whether through s.117B(1) or otherwise, we accept that the fact that the appellants do not meet the Immigration Rules is an adverse factor.

(e) We were not referred to any international or national provision or jurisprudence that supports entry to the UK of parents and/or siblings of adult refugees.

19. We turn to the factors which suggest that the refusal of entry clearance would be a disproportionate interference with the sponsor's private and family life.

(a) Ms Meredith laid particular stress on the sponsor's mental ill health. The sponsor had arrived in the UK as an unaccompanied minor. He had had traumatic experiences. While in Syria, he had witnessed the violent suppression of a peaceful protest he had attended. His home had been destroyed by bombing. People he had known had been arbitrarily arrested. He and his family had fled to Jordan He had worked without permission and been exploited in consequence. He had also been sexually abused while in Jordan. At 15 he left Jordan and travelled through Turkey and Greece. He had lived for 2 years in the camp known as 'the Jungle' in Calais. He had witnessed a fight in which a man had been killed. He had claimed asylum in Germany, but because he had an aunt living in the UK, the UK had agreed to take charge of his asylum application. Although he had originally stayed with his aunt, that relationship had broken down. He had been a looked after child with the local authority (the London Borough of Barnet), but that arrangement had formally come to an end when he became 18 save for occasional support as detailed above (paragraph 5).

We have two reports from Dr Datta. We have referred to these in more detail above. The first is dated 21st November 2018. Dr Datta is a Specialist Registrar in the field of child and adolescent psychiatry. Although Mr Malik noted that Dr Datta was still undergoing training, he did not dispute that she was qualified to provide an expert report. We note as well that Dr Datta is supervised by Dr Susannah Fairweather who is a Consultant Psychiatrist. No issue was taken with Dr Datta's level of skill before the FTT and we have no hesitation in accepting her professional opinion, against which there is no evidence. In this first report Dr Datta concluded that the sponsor suffered from clear psychiatric disorders and fulfilled the diagnostic criteria for post-traumatic stress disorder. She

commented that his PTSD 'would be severe based on the frequency and number of symptoms expressed and the level of functional impairment he suffers as a result.' Dr Datta also considered that the sponsor suffered major depressive disorder which would be severe based on the frequency and number of his symptoms. Dr Datta considered that the sponsor needed psychiatric treatment with medication and specialist psychological treatment, but she considered that his situation was particularly related to separation from his family and, absent family reunification, 'formal psychological treatment is almost irrelevant.' Dr Datta saw the sponsor again on 28th June 2019 and provided a second report on 13th September 2019. She reported a deterioration in his condition, both his PTSD and his depression were now worse than when she had seen him previously. In her view that deterioration would continue if he was not reunited with his family. The sponsor was close to one of his cousins but had not been able to discuss his mental health problems with him.

(b) A second factor on which Ms Meredith had relied was the delay in dealing with the sponsor's application for asylum. He had been transferred to the UK from Germany on 1st July 2016 and he claimed asylum on arrival. He was not granted asylum until 4th January 2018. Since the sponsor was from Syria and indeed from the Governorate of Dereaa (which even by Syrian standards was particularly troubled) and since there was no question of there being a safe alternative country (since the UK had agreed to take charge of his application for asylum) that length of time was difficult to explain. Solicitors on the sponsor's behalf had complained about the delay on 2nd November 2017. The complaint was upheld by the SSHD on 1st December 2017. When there was still no decision on the sponsor's application for asylum, the solicitors wrote a Pre-Action Protocol letter on 19th December 2017. Whether for that or some independent reason, the sponsor was granted asylum, as we have said on 4th January 2018. The PAP letter also alerted the SSHD to the sponsor's intention, as and when he was granted asylum to apply for his family in Jordan to join him. Mr Malik submitted that it would not be right to allow the appeal as some form of discipline of the SSHD because of any past delay, if such there had been. He relied on *T Afghanistan* [2015] UKSC 40. We understand that principle. However, Mr Malik agreed that, if the Tribunal considered that there had been unreasonable delay in deciding the sponsor's application, that would potentially, be a factor to consider in the overall Article 8 balance.

The Article 8 balance: our conclusion

20. In our view this is a case where it would be a disproportionate interference with the sponsor's private and family life to refuse his family the entry clearances that they seek. We reach that conclusion for the following reasons:

(a) We accept Mr Malik's submission that what is required is intensively fact specific. It follows that we have decided this appeal against the particular factual background of the sponsor as it relates to these appellants.

(b) It is not unusual for those who have fled war and persecution to be traumatised, but this sponsor's mental ill health is striking even by such

standards. The medical evidence relied upon is particularly detailed, comprehensive and up to date. The recent report illustrates what was flagged up in the first report. The sponsor suffers severe PTSD. He suffers severe depressive disorder. Depression, as understood by psychiatrists, is not be confused with being downcast at the beginning (or end) of a week. It is a recognised mental illness that has to satisfy internationally agreed criteria. Even so, depression can be classified as mild, moderate or severe. In the sponsor's case, his is Major depression of the severe subtype.

(c) In the relatively short interval between Dr Datta's first and second examination of the sponsor (November 2018-June 2019), his PTSD and depression had both deteriorated.

(d) As Mr Malik agreed, an underlying public interest which can be detected behind the 2002 Act s.117B(2) and (3) is the value of those who come to the UK integrating and settling successfully here. The sponsor's prospects of integrating and settling successfully according to Dr Datta are intimately bound up with whether he can be joined by his family. This is not a case where drugs are a possible alternative. In her second report Dr Datta says 'Therefore, at present, medication would be contraindicated.' Nor is therapy an alternative form of treatment. As Dr Datta also said, 'He is unlikely to be capable of embarking on this challenging trauma related therapeutic work until family reunification has occurred.' Mr Malik asked us to note that Dr Datta's view was that this was 'unlikely' not impossible. With respect to Mr Malik, we are unimpressed by that distinction.

(e) We recognise that the sponsor does have relatives in the UK. Indeed, it was because of them that the UK agreed to take charge of his asylum application. He does apparently have a friendship with his cousin Omran. However, the relationship, in terms of day to day living with his aunt broke down and that was why he moved out from her home. As Barnet noted in its Care Plan, '[A] was previously living with his Aunt in their home. This placement has broken down, as a result of the youngest son (14) in the home not getting on with [A], and this adding stress to the family [redaction] As a result [A] after staying in their house from 01/08/2016 was asked to leave, making him homeless.' Although there is reference in the Children in Care Reviews and in the sponsor's and his aunt's witness statements to contact between them, we accept that this contact is no substitute for the required emotional support that can, according to Dr Datta, only be obtained from his parents. We are aware that Dr Datta has not addressed this directly in either of her reports, but we are satisfied that the overarching tenor of her report is such as to make it plain that the sponsor's extended family in the UK are of little or no assistance to him in terms of his future integration, establishment and mental well-being.

(f) Since he became an adult, the formal support, save for very limited support from a personal advisor whom he sees at most every three months, from Barnet has come to an end, although Mr Conway, the Housing Officer with the organisation which was assisting the sponsor until he moved to permanent independent accommodation has continued to take an interest in him. Mr Conway gave evidence before the FTT. Mr

Conway explains in an updating witness statement of 20th September 2019 that the sponsor 'appears to be maintaining his accommodation, avoiding trouble with the law and continuing in education. On this basis he is likely to be lower priority on his personal adviser's case load compared to some others.' Mr Conway continues, 'I consider that [the sponsor] needs consistent, regular, support and care in order for him to be able to open up and deal with the trauma that he has experienced. That type of support is not available from either Barnet Foyer [the organisation for which Mr Conway works] or the Local Authority.... the only path to him fully realising his potential is if his family is able to finally be reunited with him to provide him the close support and care described above.'

(g) The sponsor is not a child. He was not a child when the ECO took his decisions. He was not a child when the FTT allowed the appeal. He is not a child now. It does not seem fruitful to us to attempt to parse precisely which of those dates is the critical one. But, in this context it is relevant that the decision on the sponsor's asylum application was delayed. It is not necessary for us to decide if the delay was so great as to be unlawful. The delay was anyway such that the solicitors' complaint was upheld. Had the application been dealt with expeditiously, the sponsor would have been in a position to apply earlier for the Appellants to join him (as the solicitors had indicated in their PAP was his intention). There would in those circumstances, still have been no right for the sponsor to be joined by his family under the Immigration Rules, but, the SSHD would have been obliged in those circumstances to consider his best interests in accordance with s.55 of the 2009 Act. Had the SSHD been obliged to consider the sponsor's best interests, we have no doubt that it would have been plain that his best interests would have been for him to be reunited with his family. Of course, the sponsor's best interest would not then necessarily have then been determinative, but they would have been a primary consideration. To that extent the sponsor (and, indirectly, the Appellants) have been prejudiced by the delay. We consider that Mr Malik was right to concede that this is a factor which can properly be taken into account in the overall Article 8 assessment. On its own, this factor would not have had a significant impact, but it is nevertheless a matter we have factored into our decision.

(h) We have recognised that, even though s.55 of the 2009 Act does not apply to children outside the UK, the SSHD's policy is to have regard to the spirit of the provision so far as children abroad are concerned. We do not consider that this takes the Appellants' case much further. Of course, we recognise, as we have done, that the conditions of Syrian refugees in Jordan are harsh and they would, no doubt, be better off in England. But, the children in Jordan are with their parents, which is usually the best arrangements for children (see for instance *Mundeba (s.55 and para 297(i)(f))* [2013] UKUT 88 (IAC)). The last sentence of paragraph 2.34 of 'Every Child Matters' refers to international or local agreements which might require children to be referred to the authorities of other countries. We have not been told of any such agreements that are applicable in this case.

(i) As we have observed, both parties were agreed that the appeals stand or fall together. The SSHD is entitled to comment, in line with the 2002 Act s.117B(2) and (3) that none of the Appellants apparently speak English and none of them are likely (in the short to medium term at least) to be financially independent. We recognise that the total impact on taxpayers could be significant. As against that, if the sponsor does not have the support of his family which Dr Datta considers to be essential for his mental health to recover, he will be a cost to the taxpayer, whereas if he were to recover, Mr Conway's views suggest that he could be a flourishing member of society. While s.117B(3) means that the Tribunal must be alive to the impact of its decisions on the taxpayer, it would be invidious if the Article 8 balance was seen as no more than a book keeping exercise.

(j) At times in his submissions, Mr Malik suggested that an alternative to the Appellants being granted entry clearance would be for him to visit his family in Jordan. There are, though, several reasons why that alternative is unreal. First, as Ms Meredith observed, it is hard to see how such a temporary visit would provide him with the stability and support which Dr Datta considers essential for his recovery; secondly, Jordan is not a party to the Refugee Convention. The Appellants are able to stay in Jordan for the time being, but their position there is precarious. That may be *their* least worse alternative. But the sponsor is presently protected. He would be ill advised to go to Jordan for even a temporary visit. In any event, Jordan was where the sponsor was sexually abused. As he says in his witness statement of 28th July 2016, he fears that if he went to Jordan he would be arrested as he had been before. He would have no rights there. Thirdly, it would be dependent on the sponsor having the means to pay for such a trip. There is no evidence that he does have such means.

(k) We agree with Ms Meredith that the present situation is not directly comparable to some of the other cases where Article 8 of the ECHR has been invoked. Thus, this is not a situation where a foreign criminal opposes deportation on Article 8 grounds. Nor is the present case directly comparable to the situation where a person has no leave to remain but relies on Article 8 to resist their removal. But while those cases will raise considerations peculiar to them, we do agree with Mr Malik that there does have to be something exceptional or compelling about the circumstances of the present case to make the denial of entry clearance, which would otherwise be consistent with the Immigration Rules, a disproportionate interference with the sponsor's family or private life. In our view, though, there are such circumstances in as we have explained.

21. We have decided this case on Article 8 grounds. In her skeleton argument, Ms Meredith referred also to Article 14 in conjunction with Article 8. Article 14 prohibits discrimination in conjunction with one of the other rights in the Convention. In her skeleton argument, Ms Meredith had suggested that there had been discrimination against the sponsor as a person who was disabled on account of his mental ill health. In her oral submissions, though, she made it clear that she was not pursuing a discrete argument relying on Article 14 together with Article 8. It was not entirely clear to us whether she also chose to abandon another argument signalled in her skeleton argument which relied on

the Equality Act 2010. In any event, this was not a matter which had been raised in the Appellants' grounds of appeal to the First-tier Tribunal. It would also have had formidable difficulties in terms of Schedule 3 paragraph 16 of the Equalities Act 2010. However, as we have already made clear, the sponsor's mental ill health is a very material factor in the Article 8 balance and, it may be, that this was what Ms Meredith wished to emphasise by her reference to his disability.

Conclusion

22. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and has been set aside.

23. We re-make the decision of the First-tier Tribunal, but our conclusion is the same and the Appellants' appeals are allowed. The decision to refuse them entry clearance was a violation of the sponsor's rights under Article 8 ECHR.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

We continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 28th November 2019

Mr Justice Nicol