UTIJR6

JR/5653/2019

Heard at Field House on 3 December 2019

Upper Tribunal
Immigration and Asylum Chamber

BEFORE

UPPER TRIBUNAL NORTON-TAYLOR

The Queen on the application of Ziad A A MUNTASER and Others
Applicants

v

Secretary of State for the Home Department
Respondent

JUDGMENT

Representation:
For the applicants: Mr J Middleton, of Counsel, instructed by Kingsley Napley LLP Solicitors
For the Respondent: Mr B Seifert, of Counsel, instructed by the Government Legal Department

Introduction

1. The first applicant is the husband of the second. The first and second applicants are the parents of the third and fourth. It is common ground that the success of the second, third, and fourth applicants depends entirely upon that of the first applicant. Thus, for the purposes of my decision, I shall refer to the first applicant as “the applicant”.

2. By an application for judicial review made on 7 November 2019, the applicant seeks to challenge the respondent’s ongoing failure to make a decision on his application for indefinite leave to remain in the United Kingdom as a Tier 1 Investor (“the ILR application”), made on 4 October 2016, with his immediate family members as dependents.

3. Accompanying the judicial review application was an application for expedition. The matter initially came before me on 7 November 2019 for urgent consideration. I directed, on an exceptional basis, that the judicial review application be dealt with at what is commonly described as a "rolled-up" hearing in which the questions of permission and, if that were to be granted, the substantive merits, would be addressed on the same occasion. The respondent was directed to file and serve an Acknowledgement of Service within a restricted timeframe. This has been complied with.

Background

4. A detailed presentation of the relevant factual background to this case is set out in paras 13-66 of the Statement of Facts and Grounds and Chronology attached to the judicial review application form. In terms of the underlying factual accuracy contained therein, there is, as confirmed by Mr Seifert at the hearing, no material dispute between the parties. In light of this, I do not propose to set out the background in great detail. What follows is by way of a summary of relevant circumstances and events.

5. The applicant and his family members are all Libyan nationals. The applicant is now aged 74 and his wife is 64. They have resided in the United Kingdom lawfully since their arrival in 2011. The applicant entered this country as a Tier 1 Investor pursuant to para 245EB and Appendix A of the Immigration Rules ("the Rules"). The third and fourth applicants were already in the United Kingdom as students. In 2015, the applicant and his wife were granted extensions of their initial leave in accordance with the Rules on Tier 1 Investors. The third and fourth applicants were granted limited leave to remain on an exceptional basis.

6. On 4 October 2016, the ILR application was made using the Super Premium service. The basis of this was the 5-year lawful residence accrued by the applicant in this country since his entry in 2011. Biometric enrolment followed three days later. The applicant's solicitors then began what has transpired to be a very protracted correspondence exercise with the respondent as to the progression of the ILR application. On 19 October 2016, the respondent requested additional information from the applicant as to his background in Libya. This aspect of the applicant's history requires some expansion.

7. The applicant spent most of his working life in Libya in the field of engineering and construction. A maternal uncle of his had served as Prime Minister in the 1950s and 1960s. Following the 1969 coup led by Colonel Gaddafi, that uncle was detained and killed. Having spent some time studying in the United Kingdom, the applicant returned to Libya. As result of his familial connections, the applicant was detained by the Revolutionary Guard and tortured. Following his release, the applicant became the Chairman and General Manager of the Arab Union

Contracting Company ("AUCC") and ran it as a successful construction business. In 2006, and as a result of the desire of one of Colonel Gaddafi's sons to take over the company, the applicant resigned his post and was appointed to the role of the Libyan Ambassador to Turkey. He held this position until 2011, when the Gaddafi regime fell. Prior to this, the applicant had expressed support for the overthrow of the regime. He had never undertaken any political role within the regime. The Turkish authorities had no concerns about the applicant's activities and the entire family was granted residency in Turkey. In 2012, the applicant was temporarily placed on an asset seizure list by the National Transitional Council in Libya. Having petitioned this body, his name was removed from the list in October 2013. All of the applicant's circumstances relating to his career in Libya and his role as the Ambassador, were set out in a detailed note submitted to the respondent in response to a request.

8. There then followed a period of regular chasing by the applicant's solicitors, with a number of responses to the effect that the ILR application would be decided shortly. On 21 December 2016 an email from the Super Premium service team acknowledged that the ILR application was taking longer to process than anticipated. It was said that, "in cases of a complex nature it is necessary to undertake a thorough investigation of the facts. In some instances, these have to be pursued at length… I can assure you the case is under active consideration…". In January 2017 the applicant was informed that no further information or documentation was required from him. Over the next six months or so, there was a series of failures to respond to chasing emails from the applicant's solicitors. In June 2017, the solicitors were informed that there was an intention to contact the applicant "within the next six weeks". At this stage, the suggestion was made by the solicitors that the applicant should meet the respondent's representatives. In August 2017, the solicitors were informed by the respondent that there was a "resource issue" which was continuing to cause delay. Further chasing correspondence followed. In early March 2018, the respondent indicated that the applicant would be called for an interview "as soon as is possible". A couple of weeks later, and in the absence of any interview date being provided, a Pre-Action Protocol letter was sent to the respondent. A second such letter was issued in June 2018. Eventually, an interview was conducted on 12 September 2018. On 12 December 2018, the particular caseworker with conduct of the applicants ILR application confirmed the intention to make a decision no later than 31 January 2019. A day before that deadline, the caseworker responded to an email from the solicitors confirming that he would be unable to reach a decision on time. No new timeframe was provided. On 2 April 2019, the applicant made his first judicial review application (JR/1818/2019). An application to expedite those proceedings was refused by Upper Tribunal Judge Blum on 2 April 2019. Before a decision on permission was made, the respondent offered to compromise the proceedings by way of a consent order. That order, sealed by the Upper Tribunal on 28 May 2019, read as follows:

> "UPON the Respondent agreeing to make a decision on the Applicants indefinite leave to remain application within 4 months from the date of the sealed consent order, absent any special circumstances;
>
> BY CONSENT, it is ordered that:-
>
> 1. The Applicant do have leave to withdraw the above-numbered claim for judicial review.
> 2. There be no order as to costs."

9. The judicial review application was duly withdrawn. In the event, no decision was made within the four-month timeframe set out in the consent order. On 7 October 2019, the applicant's solicitors sent a Pre-Action Protocol letter, giving notice that a second judicial review application would be made within 28 days unless a decision on the ILR application had been made. The response to the Pre-Action Protocol letter included the following passages:

> "Firstly, please accept our apologies for the failure to make a decision by 28 September 2019, as agreed by a consent order following previous litigation.
> Consideration of your client's case has continued during the period from May 2019 to date and the SSHD continues to gather and evaluate information in order to assess whether your client meets the requirements to be granted ILR as set out in paragraph 245EF.
> Therefore, active consideration will continue and when all enquiries have been completed, we will make a decision as quickly as possible thereafter."

10. No decision was made within the relevant period and so the application for judicial review now under consideration was made.

The applicant's written case

11. In summary, the applicant's case can be stated as follows. As to the underlying facts, it is asserted that the applicant has been wholly transparent about all relevant matters concerning his time in Libya and the United Kingdom. He has engaged proactively with the decision-making process throughout. The respondent has been provided with all relevant material There is nothing in his case to suggest any bad character or other considerations which might lead to a refusal of the ILR application (with particular reference to Part 9 of the Rules). The applicant has been led to believe that his case was to have been decided relatively speedily (or at least without any significant delay) at various stages over the last three years. Any suggestion that the applicant's case is so complex as to justify the ongoing delay is misplaced: there is nothing complex about the application, or, even if there was, it should not have taken this long to resolve in any event.

12. As to the legal basis for the judicial review challenge, the applicant puts forward four grounds:

i. That the respondent has acted unlawfully by failing to make a decision on the ILR application within a reasonable time;
ii. That the respondent has failed to comply with her policy on deciding ILR applications;
iii. That the delay and mishandling of the ILR application amounts to an abuse of power;
iv. That the delay resulted in a violation of the applicant's rights under Article 8 ECHR.

13. In terms of relief sought, the applicant asks for a declaration that the respondent's failure to make a decision on the ILR application is unlawful, and that there be a mandatory order requiring the respondent to make a decision on the application within 28 days.

The respondent's written case

14. The Acknowledgement of Service is relatively brief and to the point. There is an assertion in the first paragraph that:

> "The delay has been caused by the complexity of the case, which a specialist team is handling due to the Applicant's previous career in Libya."

15. The second paragraph goes on to state:

> "Despite this, the Respondent has decided she will aim to provide a decision within three months from the date of filing of this AOS (absent special circumstances)."

16. In light of the above, it is then asserted that this application for judicial review has been rendered "entirely academic", and that permission should be refused. Three cases are cited in support of the contention that applicant's case should not be substantively considered. The first is R v SSHD, ex parte Salem [1999] 1 AC 450, at 457A:

> "The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

17. The second is R (Zoolife International Ltd.) v SSEFRA [2007] EWHC 2995 (Admin), with particular reference to paras 13 and 36. Para 13 states:

> "These points are particularly potent at present time where the administrative court is completely overrun with immigration, asylum and

> other cases and where it would be contrary to the overriding objectives of the CPR for an academic case to be pursued, after all, one of those overriding objectives is 'dealing with a case justly [which] includes so far as practicable allotting to it an appropriate share of the courts resources while taking into account the need to allot resources to other cases.'"

18. The third case relied upon is R v BBC ex parte Quintavelle (1998) 10 Admin LR 425. It is said that this supports the respondent's view that the aim to make a decision in the present case within three months means that there is no relief which the Upper Tribunal can grant that would hold any value for the applicant.

Oral submissions

19. I hope I do no disservice to Counsel by not setting out the oral submissions at length here. I will deal with relevant aspects of what each had to say when setting out my conclusions and reasons, below.

20. Suffice it to say that Mr Middleton relied on his skeleton argument, which itself reflected what is set out in the statement of facts and grounds of challenge. Having criticised the respondent's argument that this claim is now academic, Mr Middleton took me through relevant aspects of the factual history of the case contained within the statement of facts and the helpful chronology contained in the applicant's bundle. The core thrust of his submissions was that, in light of the accepted factual history (described in the skeleton argument as being "forlorn"), the respondent's failure to have made a decision on the ILR application was so flagrantly unfair as to constitute a public law error. The respondent had failed over the course of time to comply with timeframes she herself had set; had failed to provide any substantial updates as to the progression of the ILR application; had failed to adduce any evidence in support of the contention that the case was complex; and had compounded the already significant delay by then failing to comply with the agreed timeframe contained in the consent order of 28 May 2019.

21. Whilst all grounds of challenge were relied on, Mr Middleton accepted that if the first ground was made out, this would be sufficient for the applicant to be entitled to the relief sought. Ultimately, all the applicant wanted was to have a decision on the ILR application.

22. Mr Seifert relied on the Acknowledgement of Service. He accepted the applicable legal framework set out applicant's grounds and Mr Middleton's skeleton argument. As mentioned earlier in my decision, he also accepted the underlying factual basis as set out in the statement of facts and chronology.

23. It was submitted that the applicant's case involved what were described as "exceptional circumstances", requiring the gathering of evidence. The respondent had acted with every good intention to provide a decision within a reasonable time.

24. During the course of the hearing, Mr Seifert had sought further instructions as to a possible compromise of these proceedings. He confirmed that the respondent was now willing to agree that she would "agree" to make a decision on the ILR application within 3 months from 14 November 2019. However, she was unwilling to give an undertaking to that effect (apparently, no such undertakings are now given in proceedings).

25. Having given Mr Middleton the opportunity to take further instructions on this development, he confirmed that this "offer" was unacceptable to the applicant, given the history of this case and in particular what had occurred in respect of the previous consent order.

26. Mr Seifert maintained the respondent's position that in light of what is said in the Acknowledgement of Service and given the latest offer of an agreement to make a decision within a fixed time period, the applicant's case was academic.

Is this judicial review application academic?

27. It is sensible to deal with the question of whether this judicial review application is academic first. For the reasons set out below, I conclude that it is not, and that the respondent's position on this issue is misconceived.

28. The central basis of the applicant's challenge is that there has been a failure to make an actual decision on his ILR application, notwithstanding previous assertions by the respondent that such a decision was to have been made within various timeframes, the most recent of these being 4 months from the sealing of the consent order on 28 May 2019. Thus, the respondent's confirmation in the Acknowledgement of Service that she "aims" to make a decision within a new timeframe (absent special circumstances) clearly did not have the result that the applicant has achieved all that he could hope for. This is not a case in which, for example, the reconsideration of an existing decision is the ultimate goal. The applicant is challenging the failure to make a decision, and that central contention is in no way remedied by the respondent's confirmation.

29. The proposed agreement (as opposed to an "aim") put forward by the respondent at the hearing in no way detracts from the appropriateness of considering the substance of the applicant's case. Whilst "agreement" carries greater value than merely an "aim", it is clearly some distance short of an undertaking. This, in conjunction with the history of the case, makes the applicant's refusal to accept a compromise at this stage entirely reasonable.

30. To put it in the words of Lord Slynn in Salem, there is very much an

existing matter of controversy between the parties. Therefore, the issue of whether any exceptional circumstances exist to justify proceeding to hear the applicant's case simply does not arise here.

31. Finally, the relief sought by the applicant in this case retains its value. A declaration as to the unlawfulness of the respondent's failure to make a decision may still be appropriate in light of that ongoing failure. In addition, and more importantly, a mandatory order would, on the applicant's case, be of central importance to his desire to extract a decision from the respondent. Such a decision is, after all, all that the applicant asks for.

Ground 1: is the respondent's ongoing failure to have made a decision on the ILR application unlawful?

32. The basic legal framework relating to the issue of unlawful delay is uncontroversial. The respondent is obliged to decide validly made applications within a "reasonable time" (see, for example, R (FH and Others) v SSHD [2007] EWHC 1571 (Admin), at para 6, and R (AC (Algeria) [2019] EWHC 188 (Admin), at para 61). What constitutes a "reasonable time" will depend very much upon the particular circumstances of any given case (AC (Algeria), at para 61). Relevant factors may include: applicable policies; other calls on the respondent's resources; the extent to which the applicant is compliant with the decision-making process; the complexity of the case; and the nature of any information required and how readily this may be done. Importantly, in order to cross the line from mere ineptitude or poor standards of service to that of unlawfulness, the applicant must show that the respondent's failure is Wednesbury unreasonable in the sense that it is irrational. It will no doubt be a very unusual case – indeed, an exceptional one - which will be able to meet that threshold.

33. The first point to make is the actual period of time with which I am concerned: a day short of 38 months. That is an inordinate delay. Having said that, the simple fact of the delay is insufficient to make out the unlawfulness challenge. It is the particular circumstances relating to the delay that are all-important.

34. It is manifestly the case that the applicant has not simply cooperated with the decision-making process, but has been proactive in providing the respondent with relevant information (with evidence in support) from the very beginning of his immigration history. His former role as the Libyan Ambassador to Turkey was acknowledged in the entry clearance application made in September 2011. Having presumably given careful consideration to that application, entry clearance was duly granted. All relevant information was then set out in the extension application made in 2015. This application was also granted. Thus, when it came to the ILR application in October 2016, the applicant was already well-known to the respondent. This is relevant to the question of delay

because, unlike in an asylum case, for example, the respondent was not considering the applicant's application from a position of complete (or near complete) ignorance of the individual's circumstances. In this regard, the fact that cases such as FH and Others and AC (Algeria) concerned delays in deciding asylum applications does not undermine the strength of the applicant's challenge; indeed, if anything, it places the adverse nature of the respondent's delay in sharper relief.

35. When it came to the ILR application, full and frank disclosure was made once more. When, some two weeks after having made the application, the respondent requested the applicant to provide further information about his career and activities in Libya, a detailed background note was provided two days later. On any view, that note can only be described as exceptionally thorough.

36. In light of the above, it is quite clear that the applicant has at all times placed his metaphorical cards face up on the table, for consideration by the respondent.

37. Both before and soon after the background note was provided, the applicant had been given clear indications by the respondent that is application would be decided shortly. These of course proved to be wholly inaccurate, a state of affairs which is something of a theme in this case.

38. The issue of complexity is relied upon by the respondent in these proceedings as the sole explanation for the ongoing delay. There are a number of serious difficulties with the respondent's position. First, there is no evidence before me from the respondent whatsoever in support of the bare assertion set out in the Acknowledgement of Service. For example, there is nothing by way of a statement of truth from a relevant caseworker, setting out at least an indication of the claimed complexity. Second, as far as I can see, there has never been any evidence provided to the applicant concerning the possible complexity of his application. Third, whilst it is not my role to examine the merits of the ILR application itself, there is strength in Mr Middleton's submission that, at least on the face of the evidence provided by the applicant over the course of time, it is difficult to detect any particular complexity in what he has had to say. Fourth, the question of complexity was alluded to by the respondent as long ago as late December 2016. Yet, save for passing mentions in letters to the applicant's solicitors dated 3 April 2018 and 29 May 2018, the issue does not appear to have been raised again until the Acknowledgement of Service. There has been no attempt at an explanation as to whether either: a) the claimed complexity raised December 2016 has proved insurmountable ever since; and/or b) new matters of complexity have come to light in the intervening period (I shall return to this last point, below). Fifth, it is of note that in January 2017, the respondent informed the applicant that no further information or documentation was required from him. This acts to highlight the

difficulties in the respondent's reliance on the complexity issue: if the respondent was of the view that she had all she required as of January 2017 at the latest, it raises the question of how it can rationally be said, even now, that the complexity of the case justifies the delay?

39. In any event, even if the case has been, and remains, regarded as complex, there has been nothing by way of substantive explanation, now or during the last three years, as to the nature of any "exceptional circumstances" (a phrase used by Mr Seifert in submissions) or "special circumstances" arising in the case. In the context of other actions and inaction by the respondent, this failure achieves particular significance in terms of the lawfulness of the delay.

40. There have been at least two relatively significant periods of may be described as "radio silence" on the respondent's part, during which the applicant's efforts to chase-up his application were left unanswered. Between February 2017 and June 2017, and then again between August 2017 through to the end of that year, the accepted chronology includes repeated references to "no response" from the respondent. Seen in isolation, this might not amount to very much. However, context is important. Prior to these periods, the applicant had already been given inaccurate timeframes for the determination of his ILR application and had been told that no further information was required from him. I conclude that the failure to have responded during these two periods is relevant to my consideration of the respondent's overall conduct.

41. Having been told in late June 2017 that progress was being made on the ILR application, the applicant was told that there was an intention to contact him within the next six weeks. As is abundantly clear from what followed, the concept of "progress" was misguided, as apparently was the intention to make contact. In fact, the undisputed facts show that it was the applicant who was then proactively seeking to have a meeting with the respondent as soon as possible.

42. The respondent's failings at this juncture were compounded by a response some two months later that there was a "resource issue" which was continuing to cause delays. I agree with Mr Middleton's submission that the respondent cannot have it both ways; on the one hand asserting that the applicant's ILR application was "progressing" under "active consideration", whilst on the other claiming that resource problems were apparently preventing this from occurring. In my view, this is a further example of the material inconsistencies in the respondent's approach to the applicant's case over the course of time.

43. Between the middle of September 2017 and April 2018, there was a failure to provide the applicant and his family with either their Libyan passports or written confirmation of their continuing leave to remain in the United Kingdom. There was never any explanation for this aspect of the delay. The passports were only returned in response to a Pre-Action

Protocol letter, and the confirmation of continuing leave took a further two months to arrive. On the unchallenged evidence before me, I am satisfied that this aspect of the delay had a prejudicial impact upon the day-to-day lives of the applicant and his family.

44. I turn to the interview conducted on 12 September 2018. I remind myself that the applicant had been seeking a meeting with the respondent since June 2017. Having read the transcript for myself, I agree with Mr Middleton's summary of what the interview covered, namely the topics of the applicant's involvement with AUCC, his response to the Libyan revolution of 2011, and his brief inclusion on an assets seizure list issued by the National Transitional Council in Libya. It is clear that no specific allegations relating to character or past conduct were put to the applicant at the interview. I see nothing arising from the evidence which raised any *prima facie* contradictions with information previously provided to the respondent or any issues of particular complexity.

45. In relation to the assets seizure list, I note that documentary evidence showing that the applicant had been removed from it in 2013 had been sent to the respondent along with the Pre-Action Protocol letter dated 23 March 2018, some six months prior to the interview. Further, following the interview, the applicant submitted additional documentation relating to the asset seizure list issue. At no stage, at least as far as I can see, has the respondent indicated any particular concern arising out of that documentation.

46. A final point as regards the interview is this. Having apologised for the applicant's case being in what was described as a "black hole" for some time, the caseworker stated that there would not be "any blockages" and no need to refer to any "external agencies" before deciding the ILR application. Any possible liaison with the Foreign and Commonwealth Office was described as "pretty normal", and it was said that any impact on timeframes would be communicated to the applicant should that occur. It is apparent that no communications were received following the interview to indicate any new issues giving rise to and/or perpetuating existing complexity.

47. On 12 December 2018, the caseworker expressly stated a specific intention to make a decision no later than 31 January 2019. Not only was this timeframe missed, but the respondent failed to proactively acknowledge the inability to do so: once again, it fell to the applicant to draw information out. This is an example of a failure to meet a specific timeframe, but it is also indicative of the overall conduct of the respondent in respect of the applicant's ILR application.

48. On 2 April 2019, the applicant made his first judicial review claim. The respondent proposed the settlement of proceedings by way of a consent order. I have quoted the terms of that order earlier in this decision. Mr Middleton is correct in accepting that the failure of the

respondent to meet the agreed timeframe set out in the recital to the consent order did not amount to a breach of either an undertaking or the order itself (see R (MMK) v SSHD (consent orders - legal effect - enforcement) [2017] UKUT 00198 (IAC), at [27]-[30]). However, in my view, four relevant consequences flow from the respondent's failure. First, it provides good support for the applicant's contention, with which I have agreed, that the current proceedings are not academic. Second, it represents a further example of an expressed deadline having been missed, without explanation, and in particular, without it then being asserted that "special circumstances" in fact existed. Third, if it is now being said, retrospectively, that "special circumstances" prevented the timeframe from being met, this is significantly undermined by the absence of any evidence to that effect. Fourth, it does nothing to inspire much confidence as to the respondent's current position in these proceedings (which changed from expressing an "aim" in the Acknowledgement of Service to an "agreement" by way of instructions to Mr Seifert during the hearing).

49. In all the circumstances, I regard the failure of the respondent to abide by the agreed timeframe set out in the consent order to be a significant factor in this case.

50. I now draw together all of the matters set out above to constitute the cumulative basis for my conclusion on ground 1. This unfortunate case discloses, amongst other matters: a litany of missed timeframes; inaccurate assertions of progress; failures to communicate with the applicant adequately or at all; prejudice to the applicant and his family; a failure to attempt to substantiate (even in general terms) any assertion of complexity; and a wholesale failure to abide by the agreement set out in a consent order. None of the delay is attributable to the applicant. Indeed, his conduct and the efforts of his solicitors have been commendable.

51. When the relevant matters are viewed through the prism of the period of delay, this is one of the rare cases in which the respondent's failure to make a decision is properly categorised as so egregious as to be unlawful. It goes well beyond extremely poor standards of service or maladministration. It is manifestly unreasonable and irrational.

52. Therefore, I grant permission on ground 1, dispense with relevant procedural requirements, conclude that the applicant succeeds on this first basis of challenge, and grant the application for judicial review.

53. This being the case, I do not regard it as necessary to reach conclusions on the remaining grounds of challenge. That is certainly not to say that they are without merit. For the avoidance of any doubt, I have no hesitation in formally granting permission. However, as Mr Middleton acknowledged during argument, success on the first ground is sufficient so far as the applicant is concerned.

54. It follows from my conclusion on the applicant's case that his wife and two children also succeed.

55. I would like to state my gratitude to Mr Middleton and Mr Seifert for their assistance in this matter. In addition, I express my appreciation of the exemplary manner in which the applicant's solicitors have prepared this application for judicial review. Much is said in tribunals at all levels about poor representation, but acknowledgements of high quality work are a rarer thing. In this case, it is fully justified.

Summary of conclusions

56. For the reasons set out above:

i. The respondent's failure to make a decision on the four applicants' ILR applications is unlawful;

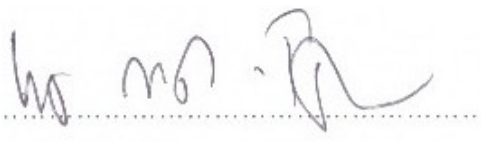
ii. The four applicants succeed in their application for judicial review.

Relief

57. On the basis of what I have said above, the applicants are entitled to a declaration that the respondent's failure to make a decision on the ILR applications made on 4 October 2016 is unlawful.

58. The applicants also seek a mandatory order. I have given careful consideration to whether this is appropriate in all the circumstances. I conclude that it is, having regard to the particular history surrounding not just these proceedings but what preceded them.

59. Whilst a timeframe of 28 days is sought, in view of the time of year at which that deadline would fall, I regard it as appropriate to set an alternative timeframe of 35 days from the handing down of this judgment and the accompanying Order.

Signed: 

Upper Tribunal Judge Norton-Taylor

Dated: **5 December 2019**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

UTIJR6

JR/5653/2019

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of Ziad A A Muntaser and Others

Applicants

v

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Norton-Taylor

Application for judicial review: Order

Upon judgment being handed down on 5 December 2019

It is ordered that:

1) The applicants' application for judicial review is granted in accordance with the judgment handed down;
2) The respondent's failure to make a decision on the applicants' application for Indefinite Leave to Remain, made on 4 October 2016, is unlawful;
3) The respondent is to make a decision on the four applicants' applications for Indefinite Leave to Remain within 35 days of the date of this Order, that being 5 December 2019.

Permission to appeal

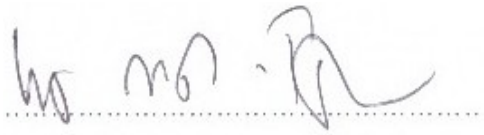
Mr Siefert made an application in order (quite legitimately) to preserve the respondent's position, given that he was unable to remain for the whole of the handing down hearing.

I refuse permission on the basis that there are no arguable errors of law in my judgment.

Costs

This issue is to be dealt with by way of written submissions.

1) The applicants shall file and serve written submissions on costs no later than 4pm on 20 December 2019;
2) The respondent shall file and serve a response no later than 4pm on 9 January 2020;
3) The applicant, if so advised, may file and serve a reply to the respondent's response no later than 4pm 16 January 2020.

Signed: 

Upper Tribunal Judge Norton-Taylor

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A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).