



Upper Tribunal
(Immigration and Asylum Chamber)

Appeals: PA/11400/2017
& PA/11404/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 1 August 2019

Decision and Reasons Promulgated
On 9 August 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A S & M S
(anonymity direction made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. On 1 August 2019, Mr K Forrest, Advocate, appeared for both appellants, instructed by Latta & Co, Solicitors, for the first, and by Katani & Co, Solicitors, for the second. Although it was suitable and convenient for both appellants to have one advocate on this occasion, they have been separately represented in prior proceedings. Mr A Govan, Senior Presenting Officer, appeared for the respondent.
2. The appellants are brothers, citizens of Jordan. FtT Judge Buchanan dismissed their appeals by a single decision, promulgated on 10 April 2018.

3. Procedure then went awry, beginning with significant errors in the grant of permission issued by the FtT to the first appellant only, muddling up names and references, and mistaking whether both had sought permission.
4. Following on from that grant, the respondent conceded error of law in the first appellant's case; the UT set aside the decision of Judge Buchanan; by a decision promulgated on 4 April 2019, FtT Judge Montgomery again dismissed his appeal; and on 15 May 2019, the FtT granted permission to appeal to the UT.
5. In the case of the second appellant, the FtT at a later date granted permission to appeal to the UT against the decision of Judge Buchanan.
6. The cases were brought together again in the UT today.
7. I recognise that the cases of the two appellants do not inevitably stand or fall together, and that the grant of permission to the second appellant to appeal against the decision of Judge Buchanan is not based on the same grounds or made for the same reasons as for the first appellant. However, their cases are closely interlinked. It would not be tenable for the decision of Judge Buchanan to stand as a resolution of one but not of the other.
8. The main reason for granting permission to appeal against the decision of Judge Montgomery was arguable procedural irregularity by resolving the case partly by reference to information from the case file of the second appellant (see paragraphs 12 & 32) to which he and his representative did not have access. That ground is not entirely devoid of merit.
9. Before Judge Montgomery, neither side sought adjournment to bring the cases back together, and they appear to have misapprehended the position in the other appeal (see paragraph 12). It may well have been an error all round for parties and the tribunal to proceed as they did, rather than ensuring that the two cases were again linked.
10. In the round, there has been procedural irregularity, arising principally from the botched grants of permission to appeal against the decision of Judge Buchanan, such that the only satisfactory outcome is a fresh hearing of both appeals.
11. The decision of Judge Montgomery, as to the first appellant, and the decision of Judge Buchanan, as to the second appellant, are set aside, and stand only as a record of what was said at the hearings. The member or members of the FtT chosen to reconsider the case are not to include any of the judges previously involved.
12. The cases should be set down for hearing on the same day and in the same list. Whether to hear them together, and whether to issue one or two decisions, is for the FtT. As Mr Forrest said, and as mentioned above, the outcome is not inevitably the same in each case. However, they have

not applied to have their cases separated, and neither could sensibly be resolved without some reference to the other.

13. An anonymity direction applied in the FtT in one case but not in the other. The matter was not addressed in the UT, so this decision is anonymised.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

UT Judge Macleman
Dated 1 August 2019