



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

JR/1333/2020 (V)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

**Heard at Field House by Skype for Business
on 25 September 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

The Queen on the Application of

IAD

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Applicant: Ms M Knorr, Counsel, instructed by Simpson Millar LLP
For the Respondent: Mr Z Malik, instructed by the Government Legal
Department.

JUDGMENT

**(Amended under Rule 42 of the Tribunal Procedure (Upper Tribunal)
Rules 2008)**

1. The applicant, an unaccompanied asylum-seeking child from Afghanistan now aged 17 years, challenges the respondent's decision of

12 December 2019 refusing the request from the Directorate of Immigration, France, to take charge of his asylum claim, pursuant to Article 8(2) of Regulation 604/2013 of the EU Council Regulation (the Dublin III Regulation) and the decision of 17 February 2020 maintaining the refusal decision following a request for reconsideration.

2. The applicant had left Afghanistan in 2019 and arrived in France in July 2019 and claimed asylum. His claim was registered by the French authorities in October 2019. The take-charge request (TCR) was made by the French authorities in order for the applicant to join his maternal uncle, FR, in the UK. FR was an Afghan national who had been granted refugee status in the UK and had subsequently acquired British citizenship. The TCR was refused by the respondent on the basis that the relationship between the applicant and FR had not been satisfactorily established by the evidence.
3. The applicant sought permission to apply for judicial review to challenge the respondent's decisions on the grounds that the respondent's processing of the TCR and refusal to accept responsibility was unlawful and in breach of EU law, common law and Article 8 of the ECHR. The remedies sought by the applicant were: a declaration that the UK was the responsible Member State for the applicant's asylum claim under Dublin III; an order quashing the decisions of 12 December 2019 and 17 February 2020 refusing the TCR; an order that the respondent communicated her responsibility to the French authorities and arranged to have him transferred to the UK, or alternatively to take a new decision on the TCR; a declaration that the respondent's failure properly to investigate and accept responsibility for his asylum claim was unlawful; a declaration that the respondent had breached her obligations under Dublin III and Article 8; and damages.
4. Permission was granted at an oral hearing on 4 August 2020 by Upper Tribunal Judge Kopieczek.
5. In the detailed grounds of defence, the respondent accepted that she ought to withdraw and reconsider her decision to reject the TCR. In a letter dated 24 September 2020 the respondent confirmed that, in light of DNA evidence produced by the applicant, the family link between the applicant and FR was accepted, and it was therefore considered that the applicant's judicial review claim had become academic. A consent order was proposed in terms requiring the applicant to submit the new DNA evidence to the French authorities following which it was agreed that a family assessment would be requested once a new TCR was made by the French authorities.
6. In response the applicant objected to the respondent's proposal and to the need for a further TCR to be made and the requirement for further evidence to be sent to the French authorities.

7. The matter then came before me for a hearing without the parties having managed to reach an agreement on the terms of a consent order.
8. Ms Knorr re-stated the objection to the terms proposed by the respondent and the requirement for a further TCR to be made by the French authorities. She referred me to other orders made in similar circumstances, where the claim had been conceded by the respondent but the terms of a consent order were not agreed, and where there had been no such requirement, in particular the judgment in AM v SSHD (JR/3831/2019) and the final order in R (on the application of BAA and Another) v Secretary of State for the Home Department (Dublin III: judicial review; SOS's duties) [2020] UKUT 227.
9. In light of the applicant's objection, and in the absence of any proper explanation by the respondent as to why a further TCR request was required and why the applicant was required to submit further evidence to the French authorities, I did not consider the proposal to be a reasonable one and I preferred the terms of the order proposed by the applicant.
10. In the circumstances, and following my conclusion as above, the following order and directions were agreed by the parties:
 - (1) The Respondent request a family assessment within 2 working days;
 - (2) The Respondent make a new decision on the Take Charge Request within 3 working days of receipt of the family assessment and communicate that decision to the French authorities and the Applicant via his solicitor;
 - (3) The parties to propose directions for the outstanding matters in the claim within 28 days of a decision on the TCR;
 - (4) The Respondent will pay the Applicant's reasonable costs to date;
 - (5) Future costs reserved.



**Upper Tribunal
Immigration and Asylum Chamber
Judicial Review Decision Notice**

The Queen on the application of

IAD

Applicant

v

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Kebede

Interim Order

Having considered all documents lodged and having heard from the parties' respective representatives, Ms M Knorr, of counsel, instructed by Simpson Miller Solicitors, on behalf of the Applicant and Mr Z Malik, of Counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a hearing at Field House, London on 25 September 2020.

AND UPON the Respondent agreeing on 10 September 2020 to withdraw and reconsider her decisions dated 12 December 2019 and 17 February 2020 refusing the Article 8 TCR but submitting to the Upper Tribunal through her Counsel that a new Take Charge Request is required in order to make a fresh decision;

AND UPON consideration of the interim order in MA v SSHD JR/3831/2019 and the final order in R (BAA) v SSHD (Dublin III: judicial review; SoS's duties) [2020] UKUT 00227 (IAC) and the Applicant's right to a remedy under EU law and the ECHR;

