Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers:
UI-2022-001491 (HU/01582/2021)
UI-2022-001492 (HU/01583/2021)
UI-2022-001493 (HU/01584/2021)
UI-2022-001494 (HU/01585/2021)
UI-2022-001495 (HU/01586/2021)

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On the 13th October 2022

Decision & Reasons Promulgated
On the 09th November 2022

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IAG (1)
EAS (2)
RAS (3)
AAS (4)
HAS (5)

Respondents

Representation:
For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Ms L Mair, Counsel instructed by Paragon Law

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondents are granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondents, likely to lead members of the public to identify the respondents. Failure to comply with this order could amount to a contempt of court.

1. The appellant in the appeals before me is the Secretary of State for the Home Department ("SSHD") and the respondents are IAG, EAS, RAS, AAS and HAS. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT and hereafter I refer to the Secretary of State as the respondent.

2. The appellants are all nationals of Syria. The first appellant is the mother of the second to fifth appellants. On 19th October 2020 they made an application for entry clearance to the UK under Appendix FM of the Immigration Rules. The first appellant's father arrived in the United Kingdom in December 2014 and claimed asylum. He was granted refugee status in 2015. Her mother and brother arrived in the United Kingdom in or about the end of 2015. All three of them have been granted indefinite leave to remain in the UK.

3. When the first appellant's parents and brother left Syria, the first appellant was living with her husband, the father of the second to fifth appellants. It is said that in or about August 2018 the first appellant's husband went missing and his current whereabouts are unknown. The appellant's family home was bombed in 2019 and the first appellant has had to rely upon the support of friends and neighbours for accommodation and food. The appellants travelled to Lebanon and made an application for entry clearance.

4. The application for entry clearance was considered by the respondent under the adult dependent relative rules. The respondent concluded that the appellants are unable to meet all of the eligibility requirements, and in particular, noted that the appellant had failed to provide evidence to demonstrate that there is adequate maintenance, without recourse to

public funds. The respondent also referred to a tenancy agreement for a property that was occupied by the first appellant's parents and brother. The respondent noted there is no evidence to confirm that the property is sufficient to accommodate the appellants', and concluded she was not satisfied that there will be adequate accommodation available to the appellants without further cause to public funds.

5. The appellants appeal was allowed by First-tier Tribunal Judge Groom for reasons set out in a decision promulgated on 3rd February 2022. The hearing proceeded in the absence of the Presenting Officer for reasons set out at paragraphs [7] to [10] of the decision. The first appellant's father gave evidence with the assistance of an Arabic interpreter arranged by the Tribunal. The judge's 'analysis of the evidence and findings' are set out at paragraphs [13] to [23] of her decision.

6. Although it is difficult to discern the findings made by Judge Groom, she states, at paragraph [16], that she does not consider that there are any credibility issues regarding the evidence given by the sponsor. It is said; *"He was quite distraught during his evidence with regards to the appellant's current situation in Syria"*. At paragraph [17] she states:

> "For the sake of clarity, none of the Appellants fit into the categories of the immigration rules. I therefore consider whether there are reasons of private or family life why the appeals should be allowed outside of the Rules."

7. At paragraphs [18] to [23], Judge Groom considered the Article 8 claim outside the immigration rules. At paragraph [19] she noted that the first appellant's parents continue to provide emotional support for the appellants and she referred to the impact of the current situation on the health of the first appellant and her parents in particular. At paragraph [20], she said that it is apparent from the written evidence presented, that the appellants' current situation in Syria is 'unduly harsh'. She noted there is no male support or family support for the appellants in Syria and they are homeless. Judge Groom referred to the respondent's CPIN: Syria: the Syrian Civil War, August 2020 and said that given the

first appellant is a lone woman with four children to care for, internal relocation would not be possible. At paragraph [22], Judge Groom referred to the best interests of the children and said that it is in the best interests of the second to firth appellants to join their wider family in the UK, particularly their grandparents, and it follows that the first appellant, as the adult with sole parental responsibility for the children, should also be allowed to join her parents in the UK.

8. At paragraph [23], Judge Groom said:

> "I have had regard to section 117B of the Nationality, Immigration and Asylum Act 2002 which states that the maintenance of proper immigration control is in the public interest. However, in this case I find that the decision to refuse leave to enter the UK in this case is a disproportionate breach of the Article 8 rights of the Appellants and the Sponsor. Therefore, the circumstances of the Appellants and the Sponsor outweigh the Respondent's legitimate interest in maintaining proper immigration control."

9. The appeal was therefore allowed on Article 8 grounds.

<u>The appeal before me</u>

10. The respondent claims Judge Groom failed to have any proper regard to the public interest when finding that the refusal of entry clearance would amount to a disproportionate interference in the appellants' rights to family life with the first appellant's parents and brother. It is said that although the judge states she has regard to the public interest factors outlined in section 117B of the Nationality, Immigration and Asylum Act 2002, no reference is made to any of the statutory considerations included within section 117B. The respondent claims the judge failed to consider whether there would be any additional and potentially significant financial burden on the public purse. Additionally, no reference is made to the appellants' ability to be accommodated without further recourse to public funds. Furthermore, the judge failed to consider whether the appellants have any ability to speak English, which could also add to their inability to integrate and become financially independent in the future.

11. Permission to appeal was granted by Upper Tribunal Judge Grubb on 5th July 2022. He said:

> "It was accepted that none of the appellants could succeed under the Rules. The appellants, instead, relied upon their circumstances in Syria and that the sponsor and family were in the UK. On the basis of the grounds, it is arguable that the judge failed properly to have full regard to the public interest in [23] when concluding that the refusal of entry clearance was disproportionate (see KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC)). For these reasons, permission to appeal is granted."

12. I have heard submissions from Mr Bates and Ms Mair and I am grateful to them both for their focused and succinct submissions. Mr Bates adopts the grounds of appeal and submits Judge Groom acknowledged that the requirements of the immigration rules are not met. In KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 00413 (IAC), the Upper Tribunal confirmed, in headnote [3]:

> "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. That the appellants in an application for entry clearance do not meet the Immigration Rules is an adverse factor."

13. Mr Bates submits Judge Groom did not treat the fact the appellant's cannot meet the requirements of the rules as an adverse factor, and although Judge Groom referred, at [23], to s117B of the Nationality, Immigration and Asylum Act 2022, she does not engage with the relevant factors, particularly s117B(3), and fails to give any or any adequate reasons for finding that the public interest in the maintenance of proper immigration is outweighed here. Mr Bates submits this is not a case in which it can be said that the only possible outcome is that the appeal would be allowed, if the judge had properly noted that an inability to meet the Immigration Rules is an adverse factor that weighs against the appellants. Furthermore, if the judge had had proper regard to the public interest considerations set out in s117B, they would all be adverse to the appellants. He submits the respondent must be able to understand why

the judge reached the decision that she did, and that is not apparent from the brief reference to s117B in paragraphs [23] of the decision.

14. In reply, Ms Mair submits there is no error of law in the decision of Judge Groom, but even if there is, any error is immaterial. She submits that reading the decision as a whole, the Judge here was quite satisfied that there are exceptional circumstances such that the decision to refuse entry clearance is disproportionate. There were no factual challenges to the evidence before the First-tier Tribunal and Judge Groom gave detailed reasons as to why the proportionality assessment came down firmly in favour of the appellants. The Judge considered the position of each member of the family. There was evidence before the First-tier Tribunal that there is no other support available to the appellants in Syria. There was clear evidence regarding the adequacy of maintenance and accommodation in the UK. There was evidence before the First-tier Tribunal that the first appellant's parents are now in receipt of PIP's and her brother has also moved out of the property and lives on his own. Ms Mair submits there was good reason for the Judge to conclude that the public interest here is outweighed, and the Judge adequately explains why this is an exceptional case. Ms Mair submits Judge Groom referred to s117B of the 2002 Act in paragraph [23] of the decision and as the relevance of s117B and the public interest is now well established, it was sufficient for the judge to say that she had had regard to s117B, without more. Ms Mair submits that even if the judge had made reference to the particular provisions of s117B, the outcome of the appeal would have been the same.

Discussion

15. Having carefully considered the submissions made by both Mr Bates and Ms Mair, I am satisfied that the decision of First-tier Tribunal Judge Groom is vitiated by a material error of law and must be set aside.

16. At paragraph [23] of her decision, Judge Groom refers to s117B of the 2002 Act, which states that the maintenance of proper immigration control is in the public interest. As far as is relevant, s117B states:

> "…
>
> (2). 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 United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (3) 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 United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> …"

17. For the purposes of this decision, although I was not taken to the evidence before the First-tier Tribunal, I am prepared to accept the submission made by Ms Mair that there was clear evidence regarding the adequacy of maintenance and accommodation. The difficulty, however, is that the judge fails to refer to that evidence at all in her decision, and the impact that might have upon the public interest considerations set out s117B(2) and (3).

18. The rationale underpinning the duty to give reasons is generally said to be threefold: to enable the parties to know why they have won or lost; to enable an appellate court to understand the reasons for a decision so that it can perform its supervisory function; and finally, to enable the public to know why a decision of public significance was taken. I accept the level of detail required will vary considerably from case to case and I accept a detailed evidential exegesis is not required. I am however quite satisfied that upon a careful reading of what is said at paragraphs [13] to [23] of the decision, it is not apparent that Judge Groom had in mind that in an application for entry clearance, the inability to meet the

Immigration Rules is an adverse factor, or that she had proper regard to the relevant public interest considerations set out in s117B of the 2002 Act in reaching her decision. As Mr Bates submits, the factors set out are all adverse to the appellants. Judge Groom refers to factors that weigh in favour of the appellants but fails to address factors that weigh against them, in the balancing exercise. In the end, I cannot therefore be satisfied that Judge Groom would have reached the same decision, had she had proper regard to all relevant factors.

19. In all the circumstances I am satisfied that the decision of First-tier Tribunal Judge Groom is tainted by material errors of law and must be set aside. Both Mr Bates and Ms Mair submit that in light of the error of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. I am satisfied that the appropriate course is for the appeal to be remitted to the FtT for hearing afresh. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

20. Although it is a matter for the First-tier Tribunal, this appeal was previously heard at the Nottingham Justice Centre to accommodate the health of the first appellant's father, and to ensure he is able to attend to give evidence. The hearing of the appeal should again be listed at the Nottingham Justice Centre if possible.

NOTICE OF DECISION

21. The decision of First-tier Tribunal Groom promulgated on 3rd February 2022 is set aside.

22. The appeal is remitted to the First-tier Tribunal for rehearing, with no findings preserved.

23. The parties will be notified of a fresh hearing date in due course.

Signed **V. Mandalia** Date; 13th October 2022

Upper Tribunal Judge Mandalia