



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006619
UI-2022-006620

First-tier Tribunal No:
HU/50673/2022
HU/5067
6/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

18th October 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AA
AT**

(anonymity order made)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: Mr Ahmed, Counsel instructed by A2 Solicitors

Heard at Manchester Civil Justice Centre on 10 October 2023

DECISION AND REASONS

1. The Respondents are both stateless Bidoon habitually resident in Kuwait. They are respectively a mother and her seven-year old son. They seek permission to

come to the United Kingdom in order to settle in accordance with the rules relating to refugee family reunion and/or Article 8 ECHR. Their Sponsor in the United Kingdom (S) is the husband of the First Respondent and the father of the second. Their linked appeals were allowed, on human rights grounds, by First-tier Tribunal Judge Alis on the 16th October 2022. The Secretary of State now has permission to appeal against those decisions.

2. The only issue raised by the Secretary of State's grounds is whether the First-tier Tribunal Judge erred in failing to have regard to the Respondent applicants' failure to produce certificates confirming that they are free of tuberculosis.

The Legal Framework

3. The applicable paragraph in the case of the First Respondent was, at the date of the decisions, paragraph 352A of the immigration rules:

352A. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the partner of a person granted refugee status are that:

- (i) the applicant is the partner of a person who currently has refugee status granted under the Immigration Rules in the United Kingdom; and
- (ii) the marriage or civil partnership did not take place after the person granted refugee status left the country of their former habitual residence in order to seek asylum or the parties have been living together in a relationship akin to marriage or a civil partnership which has subsisted for two years or more before the person granted refugee status left the country of their former habitual residence in order to seek asylum; and
- (iii) the relationship existed before the person granted refugee status left the country of their former habitual residence in order to seek asylum; and
- (iv) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and
- (v) each of the parties intends to live permanently with the other as their partner and the relationship is genuine and subsisting
- (vi) the applicant and their partner must not be within the prohibited degree of relationship; and
- (vii) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

4. The paragraph relating to the Second Respondent was paragraph 352D:

352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:

- (i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom; and
- (ii) is under the age of 18; and
- (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum; and

(v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

5. In addition to the requirements set out in these rules, collectively termed the refugee family reunion provisions, the Respondents were required to comply with various general requirements. One of these is set out at paragraph A39:

“Any person making an application for entry clearance to come to the UK for more than six months... having been present in a country listed in Appendix T for more than six months immediately prior to their application, **must present**, at the time of application, a valid medical certificate issued by a medical practitioner approved by the Secretary of State for these purposes, as listed on the Gov.uk website, confirming that they have undergone screening for active pulmonary tuberculosis and that this tuberculosis is not present in the applicant”.

6. Paragraph A39 must be read in conjunction with Appendix TB which includes the following:

TB5. The decision maker may waive the requirement to provide a valid TB certificate if they are satisfied that the applicant is unable to obtain a certificate and it is reasonable to waive the requirement on the specific facts of the case.

7. It is common ground that the Respondents could still succeed in their appeals even if they were unable to meet all of the requirements set out in the immigration rules. In order to do so they would have to establish that the refusal to allow them to reunite with their refugee sponsor in the United Kingdom would be a disproportionate interference with their right to family life as protected by Article 8 ECHR.

Error of Law

8. The Secretary of State’s grounds of appeal are that the Tribunal erred in law in:
- (i) Failing to make a finding on whether the applicants had met the requirements of paragraph A39;
 - (ii) Omitting to factor that failure into the proportionality balancing exercise.
9. I am not satisfied that the Secretary of State’s grounds have any merit. That is because it is clear from paragraphs 37 and 38 of the First-tier Tribunal’s decision that it understood that paragraph A39 was in issue, that the Respondent applicants had failed to produce the required certificates, and the reason why. That reason, briefly stated, was that without identity documents they were unable to apply to take the relevant tests. It was not challenged that the Respondent

applicants are Kuwaiti Bidoon. It is accepted that the sponsor is an undocumented Bidoon, and that it is therefore likely that his wife and child will be similarly without the relevant identity documents. In those circumstances it was reasonable to conclude but this particular failing under the rules should not be fatal to the human rights appeals.

10. More significantly, any error on the part of the Tribunal below is now immaterial. TB certificates for both Respondents have now been produced. It seems from a handwritten addendum to those documents, issued by the International Organisation for Migration in Basra, that the test centre was satisfied as to the applicants' identities only because they were able to produce the same DNA results that they had relied upon before Judge Alis. In other words, the usual requirement that an identity document be produced was waived by the IOM.
11. Although Mr Tan did express concerns about the current validity of certificates issued on the 27th of October 2022, I am satisfied that this is a matter than can be properly resolved at post. Should an entry clearance officer require fresh certificates, this will no doubt be communicated to the Respondent applicants. The parties should however be mindful that the IOM appears to have exercised their discretion in issuing the documents, and that this discretion may not be exercised in the same way again. The ECO may wish to consider exercising his own discretion under TB5 to prevent any further delay in this refugee family being reunited.

Decision

12. The decision of the First-tier Tribunal is upheld.
13. There is an order for anonymity in force.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
10th October 2023