



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001022
UI-2023-001023
First-tier Tribunal No:
HU/54325/2022
HU/54326/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

MOHAMMAD ADEL AL-HAFFAR
LINA AL KADAMANY
(no anonymity order made)

Appellants

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellants: Mr Brown of Counsel by Direct Access

For the Respondent: Mr Diwyncz a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 18 September 2023

DECISION AND REASONS

1. The brevity of this decision is due to the common sense approach taken by both representatives.
2. The Appellants are spouses, citizens of Syria, and born on 19 April 1960 and 14 May 1965 respectively. They appealed against the decision of the Respondent dated 17 May 2022, refusing them leave to enter to join their son Dr Alaa Al-Haffar.
3. The Respondent refused the applications as they did not meet the requirements of the Immigration Rules contained within [EC-DR1.1, E-ECDR 2.4, 2.5, and 3.1], and Gen 3.1 and 3.2 of Appendix FM.
4. The Appellants appeal was dismissed by First-tier Tribunal Judge Hillis in a decision promulgated on 19 December 2022. Given the agreement

between the representatives with which I agree, it is not necessary for me to quote extracts from the decision.

Permission to appeal

5. Permission was granted by First-tier Tribunal Judge Austin on 14 February 2023 who stated:

“2. The grounds assert that the Judge erred in law on a number of grounds set out at page 21 of the application, and that those errors were material errors in law.
3. Permission to appeal is granted on the first ground, namely that the Tribunal may have failed to give adequate consideration to the application of Paragraph 319V of the Immigration Rules and whether the requirements were met by the appellants.”

The Appellants’ grounds seeking permission to appeal

6. The excessively lengthy grounds assert, excluding unnecessary repetition, that:

“3. It is submitted that the Determination of the Judge should be set aside as the Determination discloses the following errors of law;
i. A failure to apply the correct legal provision, namely Paragraph 319V of the Immigration Rules; and
ii. A failure to identify the Respondent’s erroneous assessment of the Appellants’ applications;
iii. A flawed approach to the Adult Dependent Relative Requirements of Appendix FM of the Immigration Rules;
iv. A flawed approach to the application of GEN 3.1 to GEN 3.2 of Appendix FM of the Immigration Rules;
v. A flawed approach to the application Article 8 ECHR;
vi. A failure to take into account relevant evidence;
vii. A failure to give findings on material matters.”

Rule 24 notice

7. The Respondent asserted in her letter of 17 April 2023 that;

“3. Whilst it is argued in the grounds that the FTTJ failed to consider and apply para 319V and permission has been granted on this point alone, the FTTJ had no legal basis to do so.

...

5. ... for the sake of brevity the applicants having made an application after 09/07/12 and not having held leave to enter/remain in any other relevant category do not fall within any of the exceptions or categories. As such, the ECO and the FTTJ could not have considered para 319V as it was not applicable to the appellants.”

Oral submissions

8. Mr Brown submitted that whilst Ground 1 regarding [319V] was unarguable, I should grant permission to appeal on grounds 2 and 3, namely whether exceptional circumstances and unjustifiably harsh consequences existed in not granting entry clearance. He pointed me to

the Appellants' statements where various issues were raised to support that contention that were not considered in the Judge's decision such as how the Sponsor and his brother left Syria, the evidence as to what life was like in Syria, and the rapidly deteriorating security situation.

9. Mr Diwyncz accepted that there was sufficient to establish that there was a material error of law. There was no presenting officer at the hearing which did not help the Judge.

Discussion

10. Regarding Ground 1, he was plainly no error of law in relation to the application of [319v] of the immigration rules for the reasons given by the Judge. The Judge was not assisted by a wholly erroneous basis for the application that was pursued.
11. Regarding Ground 2 and 3, applying Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC), as the grant was not expressly limited to Ground 1, I am satisfied that it is to be construed that permission to appeal was granted on all grounds. Even if I am wrong in that and it is for me to decide whether to grant permission to appeal on those grounds, I do as it is plainly arguable that as the issues were raised, the Judge should have considered them, however poorly the case was presented.
12. The Judge was not assisted by the failure by the Respondent to provide a presenting officer in what was an appeal of some complexity. It was not therefore surprising given how the appeal was presented that the decision did not address the issues of whether exceptional circumstances and unjustifiably harsh consequences existed in not granting entry clearance. I agree with the representatives that there was consequently a material error of law in the Judge not making findings on, or considering, these issues.

Notice of Decision

13. The Judge made a material error of law. I set aside that decision.
14. Having heard from both representatives I agree it is appropriate to remit the appeal back to the First-tier Tribunal for a de novo hearing not before Judge Hillis as no findings have been made regarding core issues in the appeal.
15. In an effort to assist the First-tier Tribunal regarding listing, I direct the

(1)Appellants to file and serve such additional evidence as they intend to rely by 30 October 2023

- (2) Respondent to conduct and file and serve a meaningful review by 13 November 2023
- (3) Appeal to be listed on the first available date for 3 hours on or after 20 November 2023 for a face to face hearing at Phoenix House Tribunal Hearing Centre, Rushton Avenue, Thornbury, Bradford with no interpreter being required.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 September 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.