



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

Appeal Number: AA/03557/2014

THE IMMIGRATION ACTS

Heard at North Shields

**Determination
Promulgated**

On 24 September 2014

On 22 December 2014

Given extemporaneous at the hearing.

Before

UPPER TRIBUNAL JUDGE RICHARD CHALKLEY

Between

MR BASHR FARAG ALI AL-NAHDI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Ms Julia Weatherall, Counsel instructed by Miles
Hutchinson & Lithgow, Middlesbrough*

For the Respondent: Ms H Rackstraw. Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Yemen and possibly also Saudi Arabia and is aged 45 years.
2. He previously visited the United Kingdom as a tourist in 1980, again in 2006 and in 2007. He used his own Yemen passport to enter the United Kingdom on the 11 January 2011 gaining entrance as a Tier 1 General Migrant valid from 1 March 2009 to the 1 March 2012.

3. The appellant's dependent family members joined him in the United Kingdom on the 5 February 2010. On the 1 March 2012 the Appellant made an application for an extension of his visa which was refused.
4. The Appellant appealed that decision and on the 11 September 2011 his appeal was allowed to the extent that it remained for the Secretary of State to consider the Appellant's Article 8 grounds. Having considered it, the Appellant's Article 8 appeal was refused by the Secretary of State for reasons set out in a refusal letter of the 9 May 2014. The Secretary of State also refused the Appellant's claim for a grant of asylum under Paragraph 366 of Statement of Changes Immigration Rules HC395 (as amended), and on the 7 February 2014 gave notice of decision to remove the Appellant by way of directions under Section 10 of the 1999 Immigration and Asylum Act.
5. The Appellant appealed the decision and his appeal came for hearing before First Tier Tribunal Judge Gordon at North Shields on the 30 June 2014. She dismissed the Appellant's asylum appeal and dismissed the Article 8 claim.
6. The Appellant subsequently obtained leave to appeal on the basis that the First Tier Tribunal Judge may arguably have erred in law by failing to find that Article 8 private life rights were engaged in respect of the children, despite the fact that the children are in full-time education in the United Kingdom. She failed to give adequate reasons for her findings and failed to note that the eldest child in particular is about to embark on a GCSE course.
7. Before me today, Ms Weatherall accepted that the Appellant could not bring his Article 8 claim within the Immigration Rules, as he failed to meet the requirements of those Immigration Rules. She asserted one child in particular is about to embark on a GCSE course and examinations and relying on Paragraphs 32-37 of *EV (Philippines) and Others* [2004] EWCA Civ 874 she said that it was necessary that the judge should have looked at the best interests of the children and should have borne in mind that the eldest child, being in education since 2010, is about to undertake GCSE examinations. In considering the best interests of the children that, she submitted, was an important matter to consider and was an exceptional circumstance justifying the grant of of the appellant's Article 8 appeal outside the Immigration Rules.
8. Ms Rackstraw for the Respondent pointed out that the child's education is not at a critical stage. The eldest child along with her sibling has had the benefit of an education in the United Kingdom since her arrival, which will obviously stand her in good stead on her return to Yemen where there are educational facilities available. She invited me to dismiss the appeal.
9. The Immigration Rules dealing with Article 8 are set out at Appendix FM and Paragraph 276ADE of Statement of Changes in immigration rules, HC 395, as amended.

10. It was made clear in *Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) at paragraph 29 in respect of Appendix FM and Paragraph 276ADE that:

“..... the new rules do provide better explicit coverage of the factors identified in case-law as relevant to analysis of claims under Article 8 than was formerly the position, so in many cases the main points for consideration in relation to Article 8 will be addressed by decision-makers applying the new rules. It is only if, after doing that, there remains an arguable case that there may be good grounds for granting leave to remain outside the Rules by reference to Article 8 that it will be necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the new rules to require the grant of such leave.”

11. I conclude that there was nothing at all about the appellant or his circumstances (or those of his wife and children) which could properly be said to be exceptional which would have permitted Judge Gordon to allow the appeal under Article 8 outside the rules. Her determination is slightly confused, but she appears to have proceeded on the basis that if the appellant does not meet the requirements of the rules she still has to consider Article 8 under Strasbourg Jurisprudence. *Nagre* and *Gulshan (Article 8 - new Rules - correct approach)* [2013] UKUT 00640 (IAC) have made the position much clearer. She found that the Article 8 appeal could not be allowed outside the rules and I agree with her.
12. The making of the decision by First-tier Tribunal Judge Gordon did not involve making an error law. Her decision is upheld.

Upper Tribunal Judge Chalkley

Dated: 24 September 2014