



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/34434/2013

Appeal Numbers: IA/34433/2013,

IA/34435/2013, IA/34436/2013

IA/34437/2013, IA/34438/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court Birmingham

On 3rd December 2014

Determination

Promulgated

On 17th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**AMG (FIRST APPELLANT)
AMB (SECOND APPELLANT)
MAG (THIRD APPELLANT)
SAG (FOURTH APPELLANT)
AAG (FIFTH APPELLANT)
YAG (SIXTH APPELLANT)
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mrs R Manning of Counsel instructed by Rotherham & Co Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellants appeal against a determination of Judge of the First-tier Tribunal Law promulgated on 29th January 2014.
2. The Appellants are nationals of Libya. The first and second Appellants are married and are the parents of the remaining Appellants who are minors born in 2003, 2005, 2007, and 2010 respectively.
3. The Appellants had arrived in the United Kingdom on 14th June 2011 as medical visitors with leave valid until 25th November 2011. Further leave to remain was granted outside the Immigration Rules because of the conditions in Libya, until 5th September 2012. The current applications were made outside the Immigration Rules on 4th September 2012, the Appellants relying upon Articles 3 and 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
4. The applications were made based upon the serious medical condition of the fourth Appellant who suffers from Epidermolysis Bullosa which is a severe genetic skin fragility disorder. It was contended that the fourth Appellant required medical treatment in this country that would not be available in Libya.
5. The Appellants' case was that prior to entering the United Kingdom in June 2011, the fourth Appellant had received medical treatment in the United Kingdom in 2005 and in 2007, when she was granted entry clearance as a medical visitor. A further visit was made in 2010. It was therefore the fourth trip to the United Kingdom, when the family arrived in June 2011. Initially they planned to stay for only a short period, but decided, when in this country, to make an application for discretionary leave to remain so that the fourth Appellant could obtain the appropriate treatment for her condition.
6. The fourth Appellant's father, the first Appellant, had lost his employment in Libya, and had sold everything including his house to pay for medical treatment.
7. The applications were refused on 8th August 2013. The Respondent considered the applications in relation to family life under Appendix FM of the Immigration Rules, and private life under paragraph 276ADE of the rules. The Respondent found that the Immigration Rules could not be satisfied, and did not consider that there were any exceptional circumstances, and therefore did not consider Article 8 outside the rules.
8. The Appellants' appeals were heard together by Judge Law (the judge) on 21st January 2014, and although the judge found that it would be in the best interests of the fourth Appellant and her siblings, for the whole family to remain in the United Kingdom, bearing in mind the uncertainty as to the

quality of medical treatment available in Libya, the appeals were dismissed both in relation to Article 3 and Article 8.

9. The Appellants applied for permission to appeal to the Upper Tribunal and permission was granted.
10. At a hearing before me on 22nd September 2014 I found that the judge had not erred in relation to Article 3, and those findings were preserved. I also preserved the finding at paragraph 35, of the determination which had not been challenged, that it would be in the best interests of the fourth Appellant and her siblings for the whole family to remain in the United Kingdom. I concluded that it was not clear from the determination that the judge had carried out the correct proportionality test regarding Article 8, when considering the factors said to outweigh the best interests of the children, and the fourth Appellant in particular. I therefore set aside the decision of the First-tier Tribunal in relation to Article 8. Full details of the application and the grant of permission, and my reasons for finding an error of law in relation to Article 8 are set out in my decision dated 24th September 2014.
11. The hearing was adjourned for further evidence to be considered in relation to Article 8.

Re-Making the Decision - the Upper Tribunal Hearing 3rd December 2014

12. On 2nd December 2014 the Appellants' solicitors had served an expert report upon the Tribunal and the Respondent. The report is dated 1st December 2014 and prepared by Alison Pargeter.
13. At the commencement of the hearing Mr Mills indicated that he had considered that report, and that the Respondent accepted in the light of the report, that the appeals should be allowed under Article 8 of the 1950 Convention. Mr Mills accepted that the report confirmed that the fourth Appellant would not have access to the medical treatment that she required if the family were returned to Libya.
14. In my view the concession by Mr Mills was rightly made and I allowed the appeals with reference to Article 8 and indicated that a written decision would be issued.
15. Mrs Manning applied for fee awards to be made which I indicated was not appropriate as the appeals had been allowed based upon evidence that was not before the original decision maker.

My Conclusions and Reasons

16. The findings made by the First-tier Tribunal that the fourth Appellant's illness did not reach the high threshold required to amount to a breach of

Article 3 were preserved, and therefore the issue before me related to Article 8 of the 1950 Convention. It was common ground that Article 8 should be considered outside the Immigration Rules on the facts of this particular case.

17. When considering Article 8 outside the Immigration Rules it is appropriate to follow the five stage approach advocated in Razgar [2004] UKHL 27 which indicates that the following questions should be considered;
 1. Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
 2. If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
 3. If so, is such interference in accordance with the law?
 4. If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
 5. If so, is such interference proportionate to the legitimate public end sought to be achieved?
18. The Appellants have clearly established family life with each other, but the Respondent's decision to remove would not interfere with that family life, as the Appellants would be removed as a family. The issue in this appeal relates to the fourth Appellant's private life, and the need for medical treatment that is available in this country.
19. In considering the five stage Razgar approach, it was accepted that Article 8 was engaged, and in my view the Respondent's decision was in accordance with the law as the Appellants could not meet the Immigration Rules in order to be granted leave to remain. The maintenance of effective immigration control is necessary in the interests of the economic well-being of the country. Therefore the question that has to be answered, is whether the Respondent's decision to remove is proportionate.
20. In considering proportionality I take into account section 117B of the Nationality, Immigration and Asylum Act 2002, which confirms that maintenance of effective immigration control is in the public interest.
21. When considering proportionality the best interests of children are a primary consideration and I set out below paragraph 35 of the First-tier Tribunal determination which confirms the finding that it is in the best interests of the children to remain in the United Kingdom;

“35. Nevertheless, for the purposes of the section 55 assessment, I find that it would be in the best interests of S and her siblings for the whole family to remain in the United Kingdom, bearing in mind the uncertainty as to the quality of medical treatment available in Libya.”

22. I accept that prior to entering the United Kingdom on 14th June 2011, the fourth Appellant had visited this country on three previous occasions as a medical visitor. Details of her medical condition are set out in a medical report dated 11th December 2013 prepared by Dr Fiona Browne a consultant dermatologist at Birmingham Children’s Hospital. There is an updated letter from Dr Browne dated 8th September 2014. In summary it is confirmed that the fourth Appellant (S) suffers from Epidermolysis Bullosa, which is a severe genetic skin fragility disorder which will affect her for the rest of her life. This results in painful blistering of the skin, and the skin lining of the mouth, throat and oesophagus. This causes difficulty eating and swallowing and S is being considered for a gastrostomy tube feeding in order to maintain weight. She has had to have a dilation procedure to stretch her oesophagus as she was choking on food.
23. S receives specialist care from a dentist, gastroenterologist, ophthalmologist, a paediatrician, and Dr Browne. There is also input from the physiotherapy and occupational therapy teams. S is described in Dr Browne’s initial report as having made great progress.
24. Dr Browne confirms that there is no specialist care for patients with Epidermolysis Bullosa in Libya and that if S were forced to return, “ultimately she would succumb to her condition in early adult years.”
25. In the updated letter dated 8th September 2014 Dr Browne confirms that S has to undergo daily painful dressing changes and regular pain medication, and has experienced swallowing difficulties and choking. She continues to struggle to eat and her weight and nutrition are of great concern. She is having increasing problems with blistering of the surface of her eyes causing her extreme pain and inability to open her eyes for days at a time.
26. Dr Brown comments that she is aware that a number of Libyan patients come privately to the United Kingdom to seek medical treatment because the expertise is not available to them at home. The prognosis for S should she return home is grave.
27. The expert report which was submitted on behalf of the Appellants on 2nd December 2014 is prepared by Alison Pargeter and is dated 1st December 2014. The report is independent, comprehensive, and extremely helpful to the Tribunal. I have no hesitation in accepting the author of the report as an expert in her field.
28. The first section of the report gives details of the health sector in Libya under the Qadhafi regime, while the second section gives information on

the health sector following the fall of Qadhafi. The third section gives an opinion as to the situation facing S, should she return to Libya.

29. In addition to reading the First-tier Tribunal determination, Ms Pargeter was provided with the medical report relating to S, and a Home Office Country of Origin Information response dated 5th August 2013 regarding the possibility of treatment for S in Libya. This indicated that a public hospital and a private clinic would be able to provide treatment for S. The Home Office report indicates that the information is limited to the availability of medical treatment and does not provide information on the accessibility of treatment. The information in the report does not purport to be exhaustive.
30. Ms Pargeter's expert report describes Libya's health sector as being in a desperate state and struggling to cope with the strains imposed upon it by the ongoing conflict. Hospitals and medical facilities are described as being overwhelmed with patients and vulnerable to attack with the quality of care hampered by staff shortages, and a lack of training and equipment, as well as an absence of basic hygiene. Ms Pargeter confirmed that there are skin specialists and dermatologists in Libya but she had not been able to identify any specialists in Epidermolysis Bullosa and to the best of her knowledge there is no dedicated medical service for those suffering from that condition.
31. In relation to the public hospital, which is said in the COI Report would be able to provide medical facilities, this is described as being allegedly hit during a NATO attack in 2011, and the hospital suffers from many of the problems and shortages described in the earlier part of the expert report. The hospital is described as being subject to the usual shortages and inadequacies and facing problems such as lack of medical supplies and equipment.
32. In relation to the private clinic it is not clear to what extent this is equipped to deal with S's condition and it is not operating normally because of the security situation. It is described as operating with a skeleton staff, with the majority of the resident expatriate medical and nursing staff having left Libya.
33. The expert report confirms that it is probable that S would struggle to acquire the medication she needs on a consistent basis as the medical system, including pharmacies, is unpredictable and vulnerable to disruption and the general security situation is described as highly unstable. Ms Pargeter expresses her opinion that if S were to return to Libya she would not be able to access the medical treatment and support that her condition requires, nor would she be able to access the same standard of care that she is currently receiving in the UK.

34. The production of the expert report caused Mr Mills to take the view that it was appropriate to concede that the appeals should be allowed under Article 8. I agree because the weight to be attached to the best interests of S, and the need for her to have access to the medical treatment which she depends upon, outweighs the weight, in this particular case, to be given to the public interest in maintaining effective immigration control, and the weight to be given to the fact that the Immigration Rules cannot be satisfied.

Decision

The determination of the First-tier Tribunal contained an error of law and is set aside. I substitute a fresh decision. The appeals are allowed in relation to Article 8 of the 1950 Convention.

Anonymity

I made an anonymity order at the hearing on 22nd September 2014 because the third to sixth Appellants are minors. The order is made pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the Appellants. Failure to comply with this direction could lead to a contempt of court.

Signed

Date

9th December 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

As the appeals are allowed I have considered whether to make a fee award. I make no award. The appeals have been allowed because of evidence produced to the Tribunal that was not produced to the Respondent.

Signed

Date

9th December 2014

Deputy Upper Tribunal Judge M A Hall