



IAC-PE-SW-V1

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

Appeal Numbers: OA/11605/2013
OA/11606/2013
OA/11607/2013
OA/11608/2013
OA/11610/2013
OA/11611/2013
OA/11612/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th July 2015**

**Decision & Reasons Promulgated
On 16th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

FM

AM

NM

MM

SM

MAM

MNM

(ANONYMITY RETAINED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Singh

For the Respondent: Mr McVeety

DECISION AND REASONS

Introduction

1. The Appellants born on 20th December 1997, 20th December 1997, 10th November 1999, 20th June 2006, 1st December 2001, 6th May 2004 and 16th December 2010 are all citizens of Kuwait and are all children of the Sponsor father, ANM. The Appellants were represented by Mr Singh. The Respondent was represented by Mr McVeety, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellants claim to be stateless Kuwaiti Bidoons and made application to join their Sponsor father in the UK who had obtained refugee status. The Respondent had refused the Appellants' applications and the Appellants had appealed that decision. Their appeal was heard by First-tier Tribunal Judge Devlin sitting in Manchester on 22nd May 2014. At the time of both application and appeal hearing there were a further five Appellants namely the first wife of the Sponsor together with the four children born of the first wife and Sponsor. The judge allowed the appeals of those Appellants but dismissed the appeals of the above named seven Appellants who were all the children of the Sponsor's second wife.
3. The Appellants appealed that decision by application and permission to appeal was granted by Upper Tribunal Judge McGeachy on 13th January 2015. He provided brief reasons for such permission stating that it was arguable that there was a lack of evidence relating to the claims as to whether these Appellants were part of the pre-flight family of the Sponsor, that matter having not been raised in the Notices of Refusal. However he allowed all Grounds of Appeal.

Submissions on behalf of the Appellants

4. I am grateful to both Mr Singh and Mr McVeety for their helpful submissions in a case which is complex by the number of Appellants involved. In summary Mr Singh firstly has stated that there had been a procedural irregularity in this case. He noted that at the time of the appeal hearing South Manchester Law Centre was in difficulties and that additionally the Sponsor had instructed another who could not be found. Mr Singh said that he did not have a Respondent's bundle and there was little information available and that at the time of the hearing he only had some refusal letters but not all of the refusal letters and the Appellants' bundle consisted merely of DNA evidence to prove the link between the Appellants and their father. He said there was no witness statement from the Sponsor within the Appellants' bundle and the judge had not allowed in the interview record of the Sponsor taken by the Respondent because it had not been served timely. It was said that the lack of information and evidence available pre-hearing was such that there was a material procedural irregularity in the matter proceeding at that stage.

5. In terms of error of law Mr Singh pointed to what he said was a contradiction between the judge's findings at paragraph 170 and 209. It was further said that the youngest Appellant must have moved to Jordan with the first wife, namely his stepmother, and it was that individual being referred to by the judge at paragraph 208. I was further referred to paragraphs 210 to 215 where it was said that the judge had made an error and finally it was said that there was a breach of Article 8 in this case and there was an error of law in not so finding. Essentially Mr Singh said that these Appellants were living in Jordan with their stepmother, the Sponsor's first wife, and her four children whose appeals had been allowed. Therefore to refuse these Appellants' appeals under Article 8 would essentially prevent the first wife and her children coming to the UK as that would leave the children alone or conversely would cause a split in the families.

Respondent's Submissions

6. Mr McVeety said that there were two potential scenarios in the judge's mind in that either firstly the Appellants of the second marriage may have been part of the pre-flight household of the Sponsor in the past but not in the period immediately before he left for the UK. Secondly and potentially in the alternative the children of the second marriage, namely the Appellants, had never been a part of the Sponsor's pre-flight household.
7. Mr McVeety referred me to the judge's findings on the evidence of the Sponsor and the vagueness and inconsistency of that evidence. It was further submitted that the judge was entirely right not to allow this case under Article 8 in circumstances where it could not be said that removal of the Appellants from Jordan would in fact be removing them from their own natural mother and in circumstances where so little was known it could not be said to be in the best interests of the children to be uprooted.
8. At the conclusion of the hearing I thanked both representatives for their helpful and concise submissions and I now provide my decision with reasons.

Decision and Reasons

9. The background to this case is that the Sponsor, ANM, had come to the UK in June 2012. He claimed asylum and that was granted by the Home Office without the need for an appeal hearing. The basis of ANM's claim and the basis for the Home Office granting him refugee status was that he was an undocumented Bidoon from Kuwait.
10. ANM had been married twice. His first wife had borne him four children. His second wife had borne him seven children. The children range in age from dates of birth in 1997 to 2012. The applications before the Home Office and on appeal before the First-tier Tribunal Judge consisted of appeals from the first wife and all eleven children. There was no application or appeal at any stage from the second wife.

11. The judge had allowed the appeal in respect of the wife and her four children but refused the appeal in respect of the seven children from the other (absent) wife.
12. Mr Singh submitted there was procedural irregularity as the Respondent had failed to comply with Rule 13 by not serving bundles on the Appellants. This was an application advanced by Mr Singh at the outset of the appeal hearing and considered by the judge at paragraphs 15 to 25. Mr Singh submitted that he was only in receipt of some of the children's refusal letters but not the adult Appellant and he only received that refusal letter on the day of the appeal hearing. He had none of the applications and there was no witness statement from the Sponsor.
13. The judge had noted that in reality there was very little evidence in this case. He established that Mr Singh had been instructed by the Sponsor for some considerable time and there does not appear to be any coherent reason why in those circumstances he had not taken steps to be aware of the notice of decision or indeed obtain a witness statement from the Sponsor. The judge had further noted at paragraph 20 that the thrust of Mr Singh's submissions that he would be prejudiced was essentially because he only learned at the date of hearing that the wife's refusal had in part been based on paragraphs 320(3) and (10) of the Immigration Rules.
14. The judge dealt properly with this particular adjournment request and for proper reasons refused an adjournment. The following points can be made upon this matter and in response to submissions raised:
 - (a) It is difficult to see how given the accepted length of time that Mr Singh had been instructed that he had not sought documents from the Respondent that he was missing or indeed in any event produced the Sponsor's witness statement.
 - (b) On behalf of the minor Appellants he had obtained DNA evidence to demonstrate all eleven children were related to the Sponsor as claimed indicating an ability to obtain evidence from the Sponsor.
 - (c) The absence of the refusal letter relating to the adult Appellant (Appellant's wife) did not prevent Mr Singh making detailed submissions upon the refusal under paragraphs 320(3) and (10) that he was unaware about until the day of the hearing. In any event given the judge allowed her appeal the matter is academic.
 - (d) The judge properly did not allow service of, or take account of the interview record of that adult Appellant as it had not been served by the Respondent. That was a fair approach to take.
 - (e) In respect of the refusal letters relating to the children they were all identical in manner (as may be expected) and not to have all did not therefore cause any prejudice.
 - (f) The judge in the absence of any written evidence from the Sponsor taken either by the Respondent or representatives in terms of a witness statement, heard at

length oral evidence from that Sponsor. He also had available documentary evidence from the Sponsor relating to his asylum claim and referred to that within paragraph 89 of the decision.

(g) Although it is said that in relation to the children the only issue raised was under paragraph 352D(i) (relationship) that is not the case. The ECO refusal letters all clearly state "I am not satisfied that you are the child of a person granted refugee status in the UK or that you were part of the family unit of your Sponsor at the time that your Sponsor left your home. 352D(i)(iv)."

15. The judge had heard submissions from both the Respondent and Mr Singh on the issue of pre-flight family unit (paragraphs 31 to 43). The judge did incorrectly note at paragraph 143 that the Respondent did not refuse the application under paragraph 352D(iv). It is plain that refusal had been on that basis in respect of all the Appellant children. However that error at paragraph 143 was immaterial given the judge had heard evidence upon that matter, submissions upon those issues and reached conclusions upon that feature of the case based on the evidence he had heard.
16. The judge had allowed the appeal of the adult wife. He had allowed the appeals of her four children. He had also accepted the DNA evidence and answered the issue under paragraph 352D(i) in relation to the remaining seven children. The live issue therefore was whether those children had formed part of the pre-flight family unit of the Sponsor. He considered the documentary and oral evidence of the Sponsor in this respect with care. In reality there was, and there was unlikely to be any other evidence that would have touched upon this subject. The judge considered that issue at paragraphs 143 to 184. It is a detailed and clear set of findings based upon the evidence and submissions he had already heard. He gave clear and cogent reasons for a differentiation between the four children he found came within paragraph 352D(iv) and those he found did not. There is a logic and clarity and care in those findings that were both open to him and entirely reasonable based on the evidence. There was no inconsistency or ambiguity in those findings. He was entitled to find that the Sponsor's evidence was vague, inconsistent and lacked credibility when he attempted to describe the situation of the wife of those seven children and their circumstances which was the evidence underpinning the whole issue of whether they formed part of the pre-flight family unit.
17. The judge considered his decision under Article 8 of the ECHR at paragraphs 185 to 218 within the ambit of **Razgar**. Again he gave a detailed and thoughtful appraisal of Article 8 of the ECHR. He noted that there was no evidence that those seven Appellants were not with their natural mother who had been of signal importance throughout their life. He noted the absence of evidence from her, any of the teenage children and reached a conclusion that was clearly open to him. Indeed a contrary decision may well, given the absence of evidence, have led to a somewhat concerning situation of an attempted removal of the children from their mother or their

circumstances where she may well have formed clearly a potential central figure in their lives. On the evidence available his decision was both reasonable and balanced.

Notice of Decision

- 18. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.
- 19. Anonymity retained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Lever