Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06884/2016**

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre	**Decision & Reasons Promulgated**
On 4th August 2017	**On 21st September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

AHMED ROSTAM AZIZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge R A O'Hagan, promulgated on 2nd March 2017, following a hearing at Birmingham, Sheldon Court on 23rd January 2017. In the determination, the judge allowed the appeal of the Appellant on human rights grounds under Article 8. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a national of Iraq, is a male, and was born on 1st July 1976. He appealed against a decision of the Respondent dated 26th May 2016, refusing his claim for asylum and humanitarian protection.

The Appellant's Claim

3. The Appellant's claim is that he and his family have been threatened by ISIS on the basis of their imputed political opinion; that the situation in Iraq is such that he and his family would be exposed to the risk of indiscriminate violence contrary to Article 15(c); and that he and his family, if returned to Iraq, would have to suffer the consequences of medical treatment being denied to their daughter, who suffers from Wolcott-Rallison syndrome, which is a genetic disorder, causing serious health issues, including diabetes and renal and liver failure.

The Judge's Findings

4. The judge held that the Appellant's asylum and humanitarian protection claim would fail, but there had been a previous decision by Judge Hubball on 17th August 2015, where the claim had been rejected, and the judge held that it could not succeed now (see paragraphs 19 to 21). He, therefore, went on to say that the only basis upon which the claim might potentially succeed was under Article 3 in relation to the medical claim arising from the Appellant's daughter's health problems (paragraph 22). Consideration was then given by the judge to a letter from Dr Melanie Kershaw, a consultant paediatric endocrinologist, dated 6th January 2017, and the judge set out extracts from this report at length (paragraph 22).

5. The judge then looked at how "the landscape has changed following the decision of the European Court of Human Rights in **Paposhvili v Belgium (App No. 41738/10**, dated 13th December 2016)", in that this decision departs from earlier established case law (see paragraph 24). The judge noted how, in the case of **N v UK** the previous long established position had been a requirement that there be "other very exceptional cases" within the meaning of the judgment in **N**, so as to raise an issue under Article 8 ECHR.

6. However, the position now was that

> "Situations involving the move of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of an absence of appropriate treatment in the receiving country or the lack of access to such treatment, or being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to significant reduction in the life expectancy" (paragraph 83)

would also suffice. The judge held this to be the case here because, "I have good evidence from Dr Kershaw" (paragraph 26). The **Razgar** steps were then followed (see paragraphs 28 to 30). The case law in relation to Article 8 was considered (paragraph 31 to 34). The judge finally dealt with the issue of public interest (paragraph 35). The appeal was allowed on human rights grounds. It was not allowed under the Immigration Rules.

Grounds of Application

7. The grounds of application state that the judge had misapplied the exceptionality test in **Paposhvili** and had failed to consider the House of Lords judgment in **N v UK**. Indeed, the judge had lowered the very significant obstacle in this case.

8. On 26th June 2017, permission to appeal was granted by the Tribunal on the basis that it was arguable that the judge had misapplied the exceptionality test in **Paposhvili v Belgium**.

Submissions

9. At the hearing before me the Appellant was not legally represented but had the assistance of a McKenzie friend in the person of Mr D Forbes. The Respondent, represented by Ms Aboni, a Senior HOPO, relied upon the Grounds of Appeal and stated that the judge had misunderstood **Paposhvili** and had failed to apply the House of Lords judgment in **N v UK**. Mr Forbes, assisting the Appellant, stated that the importance of the judgment in **Paposhvili** lay in the fact that the court there had addressed "exceptionality" in the way that **N v UK** simply had not. The judge's recital at paragraph 25 of what was said by the European Court in paragraph 83 of **Paposhvili** was accurate and he was entitled to apply that principle to the facts that were before him in the way that he did. There was no error of law.

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

11. First, the determination of Judge R A O'Hagan is clear, comprehensive and well reasoned. It is not the case that **N v UK** is overlooked because the judge had regard to the case of **GS (India) [2015] EWCA Civ 40** and expressly states that there was "a long line of earlier authorities" and that "until December 2016 it was the settled law to which I would have been bound to give effect" (paragraph 24). What the judge then does is to apply the latest judgment in **Paposhvili v Belgium** and in doing so, it is not the case that what he recites at paragraph 25 as being said at paragraph 83 of the judgment is incorrect. That is the principle. Thereafter he applies the principle to the facts before him (from paragraphs 26 to 29).

12. Second, the European Court of Human Rights had in **N v UK [2008] 47 EHRR 885** considered the position of an AIDS sufferer who, under treatment of antiretroviral drugs, was no longer in a critical condition (paragraph 47). Given that her condition was less critical, the benefit of Article 3 could not be given to her.

13. What **Paposhvili** now does is to give detailed guidance as to the "very exceptional" cases that were actually referred to in **N** (see paragraphs 181 to 182) and here the Grand Chamber was clear in its statement that,

> "The 'other very exceptional cases' were in the meaning of the judgment in **N v United Kingdom** (paragraph 43) which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment ....".

14. The question then is whether the judge was justified in concluding in the manner that he did. In this regard, the judge (at paragraph 22) set out the relevant parts of Dr Melanie Kershaw's expert report. She points out that Wolcott-Rallison syndrome

> "Is a multisystem disorder (not simple diabetes) which was not well understood by doctors in Iraq due to its rarity ... her diabetes control was extremely poor on arrival in the UK due to the way the family had been advised to use the insulin prescribed by her doctors in Iraq ...".

15. The medical expert goes on to say that

> "The significant risks in her condition are of liver and kidney failure. These occur unpredictably, and are triggered by intercurrent viral illnesses ... Intense support with intensive care and input of paediatric liver and kidney specialists are required ...".

16. The report ends with the observation that "Wolcott-Rallison is not a gradually or steadily progressive disease". The judge, accordingly, was entitled to conclude in the manner that he did on the basis of medical evidence before him.

Notice of Decision

17. There is no material error of law in the original judge's decision. The determination shall stand.

18. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 19th September 2017