Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02837/2019 (P)**

THE IMMIGRATION ACTS

Decided Under Rule 34	**Decision & Reasons Promulgated**
On 10 November 2020	**On 12 November 2020**

Before

UT JUDGE MACLEMAN

Between

B Z S (Afghanistan)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DETERMINATION AND REASONS

1. The appellant applied to enter the UK for settlement with her son, who is a recognised refugee in the UK. The ECO refused her application because she did not fall within any of the categories of family members within the rules (a spouse, partner, or child under 18). The ECO was not satisfied that she had family life for article 8 purposes with the sponsor, but even if she did, the decision was proportionate to effective immigration control.

2. FtT Judge Monson dismissed the appellant's appeal by a decision dated 19 October 2019. At [14], he recorded that the appellant acknowledged that she could not meet the rules for family reunion or as an adult dependent relative. At [20 – 21], he found that there was family life, but that the

circumstances were such that the proportionality balance was not in the appellant's favour.

3. The appellant sought permission to appeal to the UT on grounds of (1) failure to consider evidence (2) error on proportionality (3) failure to apply EU law and (4) failure to consider the UNHCR handbook.

4. FtT Judge Gumsley refused permission on 26 March 2020.

5. The appellant applied to the UT, on the same grounds.

6. On 22 May 2020, UTJ McWilliam granted permission on grounds 2 and 4 only, finding it arguable that the judge did not factor into the proportionality assessment that this was a family reunion application, the sponsor was a refugee, and the appellant was part of his family unit before he came to the UK. She had applied along with the sponsor's wife and children, whose applications were granted.

7. The UT set directions with a view to deciding without a hearing (a) whether the FtT erred in law and (b), if so, whether its decision should be set aside. Parties were also given the opportunity to submit on whether there should be a hearing.

8. Neither party has sought a hearing. The UT may now decide questions (a) and (b) without one, in terms of rules 2 and 34.

9. The appellant has filed submissions, dated 21 June 2020. Her line of argument on ground (2) is that visits and communications are not family life; the correct question was "whether it is proportionate to prevent reconstitution of the family unit the refugee was compelled to flee"; it was an error to fail to take into consideration the refugee context; and proportionality required consideration of whether family life can continue in the state of origin, which in the case of a refugee it cannot.

10. On ground (4), the UNHCR Handbook is cited on "the wider principle of the family unit"; at [185], "In practice … aged parents … are normally considered if they are living in the same household". It is said that the judge failed to consider that principle, and to consider the case in its proper context of the UK's obligation to provide refuge.

11. The respondent's submissions refer to the FtT's finding that while the position is not optimal, the appellant has care and support, and further funding would be available to her if needed. The line of argument is that the judge factored in all relevant factors, positive and negative; was well aware of the prior family situation; was not obliged to set out a particular section of the Handbook; and the grounds are only a disagreement about weight, which was a matter for the judge.

12. I find that the appellant's grounds and submissions do not disclose that the FtT's decision involved the making of any error on a point of law.

13. Although the FtT found pre-flight family life to exist, for the appellant, unlike core family members, that does not translate automatically into a right to enter the UK. The rules, and policy, are not the complete answer either, but they aim to draw the lines consistently with article 8. The appellant accepted that she did not succeed under refugee family reunion rules and policy, or under other rules and policies for extended family members, including those for adult dependants.

14. It would be an error to hold that visits and communication are a satisfactory alternative way to continue family life; but the FtT made no such error. It accepted that the outcome was not optimal, and that the appellant missed the sponsor and his family. It was not an error to consider visits and communications as part of the balancing exercise.

15. It is wrong to suggest that the judge overlooked the refugee family reunion context. This clearly appears at [1, 4, 5, 7, 8] and, indeed, pervades the decision.

16. The judge took the case as being all about the appellant not being able to live in her previous family unit in Afghanistan, and whether she had a right to do so in the UK. That was the essential question. It was not, as put at [14] of the appellant's submissions, whether there are insurmountable obstacles to family life in Afghanistan. There clearly were such obstacles, but the proposition for the appellant goes much too far. If so, every refugee extended family member would have a right of entry, without reference to any other considerations.

17. The judge did not err by failing to cite a paragraph of the UNHCR Handbook to which he was not referred.

18. The submissions on ground (4) are correct in saying that wider family members "are considered and that the UK has "chosen to provide for their admission"; but that admission is subject, in the first place, to conditions set by rules and policy.

19. The judge at [20] was persuaded, unlike the respondent, that there was family life. At [21], and in the decision as a whole, he struck the proportionality balance, noting factors both positive and negative. He left nothing relevant out of account, and fell into no error of law. The grounds and submissions resolve, as the respondent submits, into no more than disagreement over where the judge struck that balance.

20. The decision of the FtT shall stand.

21. The FtT made an anonymity direction. It is doubtful whether that is necessary, but neither party has addressed the matter. Anonymity is maintained herein.

Hugh Macleman

10 November 2020
UT Judge Macleman

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.