Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: HU/12751/2019**

HU/12755/2019

HU/12756/2019

HU/12760/2019

THE IMMIGRATION ACTS

Decided under rule 34 (P) **Decision & Reasons Promulgated**

On 11 November 2020 **On 19 November 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MRS AMA HAMED ALHAJJAR

MR NASSER FAHED ALHAJJAR

MR GALAL ALNAGAR

MRS RAWAN ALSHABAN

(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation (by way of written submissions)

For the appellant: McGlashan MacKay Solicitors

For the respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. These joint appeals come before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Kopieczek on 24 July 220 (served with directions on 13 August 2020) against the determination of First-tier Tribunal Judge Handley, promulgated on 9 April 2020 following a hearing at Glasgow on 12 March 2020.

2. The appellants are Syrian nationals born respectively on 1 February 1969, 10 August 1960, 13 November 1989 and 8 March 1995. They are the mother, father, brother and sister-in-law of the sponsor, Talal Nassar Alnajjar and seek to join him on family reunion grounds. They are currently residing in Lebanon where they have been since 2013. They are not in a refugee camp and the third appellant has permission to work. The first appellant has severe asthma and a bone condition and the second appellant has a heart condition. Their applications were made on 17 April 2019 and refused on 1 July 2019 under paragraph 352A of the Immigration Rules and on article 8 grounds. The decision was reviewed by the EC Manager but maintained on 2 October 2019. It was considered that they did not meet the requirements of the rules and that there were no exceptional circumstances which warranted leave to enter on discretionary grounds.

3. The appeals came before First-tier Tribunal Judge Handley. He heard oral evidence from the sponsor and his wife. He found that whilst the second appellant had a heart condition, he had been receiving treatment in Lebanon. With respect to the first appellant he found that little evidence of her condition or how it impacted upon her had been provided and that there was no suggestion that she would be unable to receive medical treatment either. He noted that the third appellant was entitled to work, that he did so and supported the family. The judge noted that the sponsor had left Syria for Lebanon in July 2013 and that the appellants had followed in December 2013. the sponsor then came to the UK in May 2018. the judge accepted that conditions were difficult for the appellant but noted that they did not live in a refugee camp and had accommodation which included a toilet, a kitchen and bedrooms. He considered that the appellants were all adults and that the sponsor had no more than the usual

emotional ties with his family. He, therefore, concluded that there were no exceptional circumstances identified. It was conceded that the requirements of the Immigration Rules could not be met. Accordingly, he dismissed the appeals.

4. The appellant successfully sought permission to appeal. Although this was refused by First-tier Tribunal Judge Page on 2020, it was granted upon renewal to the Upper Tribunal.

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5. The appeal would then have normally been listed for hearing but due to the pandemic this could not be done and instead the grant of permission, sent out on 13 August 2020, included directions in which Upper Tribunal Judge Kopieczek expressed the view that the appeal could be decided on the papers. The parties were invited to put forward any objections they may have to that proposal and to make further submissions within certain time limits.

6. Both parties have responded to directions and both have agreed to a paper determination. I am satisfied that that is the appropriate way to dispose of these appeals. In reaching that decision, I have had regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

7. I have had careful regard to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers and that the arguments for and against the appellants have been clearly set out. Neither party has raised any objections to a paper determination. I am satisfied that I am able to fairly and justly deal with the matter in that manner and now proceed to do so.

Discussion and conclusions

8. I have considered the evidence, the determination, the grounds for permission, the grant of permission and the submissions from both sides.

9. The appellant relies on his original grounds of permission to the First-tier Tribunal which are better presented in the renewed grounds which are put forward in lieu of the further submissions sought in the directions.

10. Three grounds are put forward. The first is that the judge failed to have regard to all the relevant considerations in determining whether article 8 was engaged. It is submitted that he had no regard to the fact that the sponsor financially supported the appellants or that he had left them after several years in Lebanon with the intention that they would be reunited in the near future. It is argued that those factors are relevant to the consideration of whether family life exists and that it cannot be said that there is no conceivable basis on which a different conclusion could have been reached had the judge taken these matters into account.

11. The second ground is that the judge erred in assuming that the appellants were all registered in Lebanon because the second appellant had received medical treatment and the third appellant was allowed to work. It is argued that there was no evidence before the judge that registration was necessary in order to receive medical treatment. Moreover the sponsor had explained in his statement that public health care could not be accessed and that they had to pay for private care although this was partly covered by the Red Cross. It is argued that by way of his assumptions, the judge had been led to consider that the situation in Lebanon was better than it was.

12. The third ground is that the judge failed to have regard to the factors identified in the respondent's policy in determining whether the refusal of entry clearance would result in unjustifiably harsh consequences for the appellants and the sponsor. These factors included the ability to lawfully remain in or enter another country, the nature and extent of the family relationships, the circumstances which led to the separation of the sponsor from his family, the impact upon them if the application was refused and the absence of governance or security in another country. It is argued that the judge had no regard to any of these factors.

13. When taken together, it is clear that the thrust of the appellants' grounds is that the judge did not have regard to all the evidence and the factors that were before him. If it is found that he erred even in one of the respects argued, then this would render the entire determination unsustainable and it would mean that the balancing exercise had not been properly carried out.

14. I have had regard to Ms Aboni's submissions which argue that the judge properly directed himself and reached a conclusion open to him but I cannot concur with that view. For the following reasons, I find that the judge erred in law such that his assessment of article 8 is flawed and the decision must be set aside.

15. The judge's determination is extremely brief. His findings essentially only cover one page. Whilst this is not necessarily a problem in itself, in this case, given the substantial amount of documentary and oral evidence before him, a deeper and lengthier analysis of the evidence was warranted. The judge's consideration of family life, for example, consists of two sentences at paragraph 15 where he finds that the appellants are all adults and that the emotional ties between them and the sponsor are no more than would normally be expected. There is absolutely no consideration of the evidence put forward to support the claim of family life, no reference to the evidence of communication between the parties, of the sponsor's financial support, of the intentions of reunion, of the circumstances in which the family came to be in Lebanon and in which they were separated or of the precarious existence they lead. Indeed, no reasons at all are given for why the judge reached the conclusion that he did as to family life. His findings are not findings at all but mere statements of his conclusion. The appellants are entitled to know why their family life claims were rejected and the judge's reasoning on the matter is regrettably missing from the determination.

16. The respondent's policy on family reunion was included in the appellants' bundle before the judge but he does not even appear to have considered it. The many factors that were required to be considered in the article 8 assessment have apparently been completely disregarded and the only matter that the judge appears to have focused on is the availability of medical treatment in Lebanon. As can be seen from the evidence, however, the judge did not have any regard to the difficulties in that respect as set out in the sponsor's witness statement and as highlighted in the grounds.

17. The decision making is entirely inadequate given the nature of the appeal and the wealth of documentary evidence adduced. The appellants are entitled to a better consideration and analysis of their case and for this reason I consider that they have not had a fair hearing. The decision is set aside in its entirety and the matter is remitted to the First-tier Tribunal for a de novo hearing.

Decision

18. The decision of the First-tier Tribunal contains errors of law and it is set aside. The appeals are remitted to the First-tier Tribunal in Glasgow where a fresh decision shall be made by another judge.

Anonymity

19. No request has been made at any time for an anonymity order and I see no reason to make one.

Directions

20. Further directions for the hearing shall be issued by the relevant Tribunal in due course.

Signed

R. Kekić
Upper Tribunal Judge

Date: 11 November 2020