



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06531/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at George House, Edinburgh  
On the 3<sup>rd</sup> November 2021**

**Decision & Reasons Promulgated  
On the 11<sup>th</sup> November 2021**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN  
& DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SALAM HASAN JOODI**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr A Devlin, advocate, instructed by Latta & Co,  
solicitors  
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting  
Officer

**DECISION AND REASONS**

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Handley promulgated on 9 October 2019, which dismissed the Appellant's appeal on article 8 ECHR grounds.

### Background

3. The Appellant was born on 23 November 1973 and is a national of Iraq. His wife and two daughters are dependents on his claim. One of the appellant's daughters is an Iraqi national. The appellant's older daughter and his wife are both Iranian nationals.

4. On 3 February 2017 the Appellant made a protection claim. On 20 June 2017 the Secretary of State refused the Appellant's application.

### The Judge's Decision

5. This case has some procedural history. The appellant's first appeal against the respondent's decision was determined in 2018, when the First-tier Tribunal dismissed the appellant's protection claim but allowed the appeal on article 8 ECHR grounds. The respondent appealed that decision successfully, and, in February 2019, the appeal was remitted to the First-tier Tribunal on article 8 ECHR grounds only. That remittal led to the decision of First-tier Tribunal Judge Handley, promulgated on 9 October 2019, which dismissed the Appellant's appeal on article 8 ECHR grounds.

6. Permission to appeal to the Upper Tribunal was granted. In a decision issued on 13 March 2020, which should be read as if incorporated herein, the Upper Tribunal found, as conceded by the respondent, that the Judge's decision was tainted by a material error of law, and set it aside. This case now calls before us so that the decision, on article 8 ECHR grounds only, can be remade.

### The Hearing

7. For the appellant, Mr Devlin relied on his detailed and helpful written submission. Mr Diwnycz, for the respondent, accepted that although the older daughter recently became an adult her personal circumstances and the family circumstances are such that family life for article 8 purposes exists among the appellant, his wife and both daughters. He drew our attention to a response to an information request about the availability of treatment for ADHD in Iraq. He said that if that information had been available earlier, the appellant's appeal would likely have succeeded. His final comment was:

I cannot defend the initial decision in light of this now available evidence.

### The Relevant Agreed Facts

8. The appellant is an Iraqi national. His wife and elder daughter are Iranian nationals. His younger daughter is an Iraqi National. This appeal

turns on the circumstances of the appellant's older daughter, who is now 18 years old.

9. The appellant's older daughter is a schoolgirl in her final year of secondary school. She has always lived with her parents and has not embarked on an independent life.

10. The appellant's older daughter suffers from complex ADHD and a brain injury. She receives support from the Community Adolescent Mental Health Service, Occupational Therapy, Life link, counselling and learning support technology. She needs, and receives, support in her social and emotional development, and is described by her pastoral care teacher as "vulnerable".

11. The support and therapies the appellant's daughter benefits from are not available in Iraq.

### Analysis

12. After a turgid procedural history, this appeal is now clearly focused on one simple question. It is a matter of agreement that article 8 family life exists between the appellant's daughters and their parents. It is a matter of agreement that the appellant's older daughter receives treatment and support for a mental health condition, and that, if she returns to Iraq, the treatment she has received since 2016 will come to an end.

13. Section 55 of the Borders, Citizenship and Immigration Act 2009 is no longer a relevant consideration because the appellant's older daughter has already celebrated her 18<sup>th</sup> birthday, but, crucially, it is a matter of concession that article 8 family life continues.

14. We consider paragraph 276 ADE(1)(vi) of the immigration rules. It is common ground that the treatments and therapies from which the appellant's older daughter benefits are not available in Iraq (and probably never have been). The weight of reliable evidence tells us the withdrawal of those treatments and therapies presents very significant obstacles to the appellant's older daughter's integration into Iraqi society. The context is that she is not an Iraqi citizen and has never lived there.

15. The respondent's decision is therefore a disproportionate interference with the appellant's older daughter's article 8 private life. Because it is conceded that article 8 family life exists, the disproportionate interference with the appellant's older daughter's article 8 rights creates a disproportionate interference with the appellant's right to respect for family life.

16. We find that the appellant's daughter meets the requirements of paragraph 276 ADE(1)(vi) of the rules. [TZ \(Pakistan\) and PG \(India\) v The Secretary of State for the Home Department \[2018\] EWCA Civ 1109](#) tells us that where a person satisfies the Rules, whether or not by reference to

an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1). As the appellant's daughter meets the requirements of paragraph 276ADE(1)(vi) of the rules, the respondent's decision must be a breach of the appellant's article 8 rights. The appellant does not claim that any other articles of the 1950 Convention are engaged.

17. This appeal succeeds on article 8 ECHR grounds.

### Decision

18. The decision of the First-tier Tribunal promulgated on 9 October 2019 has already been set aside.

19. We substitute our own decision

20. The appeal is allowed on article 8 Human Rights grounds.

21. No anonymity direction has been requested or made.

P Doyle

4 November 2021

Deputy Upper Tribunal Judge Doyle

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### 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.**