Upper Tribunal (Immigration and Asylum Chamber)

Appeal Numbers:
UI-2021-001151 [HU/00548/2021]
UI-2021-001152 [HU/00551/2021]
UI-2021-001153 [HU/00552/2021]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 August 2022	**On 14 October 2022**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

(1) ASMAA ALSAHAR
(2) MANAR ALSAHAR
(3) MARIA ALSAHAR
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Mr Saeed, Solicitor Advocate of Aman Solicitors Advocates
For the Respondent: Mr Melvin, Senior Presenting Officer

DECISION AND REASONS

1. On 5 July 2022, I issued my first decision in these appeals. I found that the First-tier Tribunal ("FtT") had erred in allowing the appeals on Article 8 ECHR grounds. I set aside the decision of the FtT and I ordered that the decision on the appeals would be remade in the Upper Tribunal with certain findings of fact preserved. This second decision follows a further hearing at Field House on 23 August 2022, which was listed for that purpose.

2. The relevant background is unchanged and what follows immediately below is taken from my first decision.

3. The appellants are Syrian nationals. The first appellant is the mother of the second and third appellants. The first appellant is 21 years old. The second and third appellants are five and four years old respectively.

4. On 27 September 2020, the appellants applied for entry clearance in order to join the first appellant's father in the United Kingdom. He is a refugee who was recognised as such on 25 October 2019. The first appellant's mother and her seven siblings applied for entry clearance shortly after the sponsor was recognised as a refugee. Those applications were successful and each of them was granted leave to enter on 29 November 2019.

5. The first appellant is married. She married her husband in 2015. She stated in her application for entry clearance that she did not know her husband's whereabouts and that she had herself been detained by the Syrian regime between July 2019 and July 2020. It was this, she claimed, which had prevented her from applying for entry clearance at the same time as her family members. Evidence was provided with the application to show that the first appellant suffered from mental health problems including acute psychosis.

6. In her decisions of 22 December 2020, the respondent did not accept that the appellants' circumstances were as claimed. She considered, in particular, that the first appellant and her children had formed an independent life away from the sponsor since her marriage in 2015. Her account of the reasons that she had not applied for entry clearance at the same time as her other family members differed from the account given by her mother in her Visa Application Form. The respondent did not accept that the refusal of entry clearance would be in breach of Article 8 ECHR.

7. The judge in the First-tier Tribunal concluded that the appellants' ongoing exclusion was in breach of Article 8 ECHR. In reaching that conclusion, the judge made certain findings of fact which were unchallenged by the respondent in her grounds of appeal to the Upper Tribunal and which were not tainted by the judge's error of approach to the question of proportionality under Article 8(2). I set out those preserved findings of fact at [25] of my first decision:

   (i) that the first appellant's husband had disappeared;

   (ii) that the first appellant was detained between July 2019 and July 2020; and

   (iii) that the appellants were living an independent life from 2015 to July 2019.

8. I declined to preserve any of the remaining findings of fact for reasons I gave at [26] of the first decision.

Resumed Hearing

9. Mr Saeed indicated that he intended to call only the sponsor as a witness. He confirmed that he relied on the skeleton argument he had filed for the FtT hearing, as well as the original appellant's bundle (208 pages) and the supplementary bundle of 75 pages. I did not have the supplementary bundle. A copy was provided for me. Mr Melvin had all the necessary papers. He had filed a skeleton argument. The advocates had agreed that it would be appropriate for me to consider the respondent's Country Policy and Information Notes, to which they intended to refer during their submissions.

10. I heard oral evidence from the sponsor. He gave evidence remotely, from home. I had permitted him to do so to avoid him travelling from his home in Nottingham as he is elderly and impecunious. He gave evidence through a Middle Eastern Arabic interpreter. There were no difficulties of interpretation during the hearing. The sponsor's eldest son was on hand during the hearing to assist him with accessing relevant pages of the bundle on his computer. He remained on camera at all times and there was no suggestion raised that the evidence given by the sponsor was in any way tainted by his presence.

11. The sponsor adopted his statements and was cross-examined by Mr Melvin. I do not propose to rehearse his evidence, which was recorded digitally and in my own Record of Proceedings. I shall refer to his evidence insofar as it is necessary to do so to explain my findings of fact, however.

Submissions

12. Mr Melvin relied on the Entry Clearance Officer's decision and on his skeleton argument. Paragraph [31] of that skeleton had been superseded by the evidence from a physician in Syria but it was apparent that the doctor in question had simply been told by the first appellant about her situation. The doctor apparently believed that the first appellant's mental health problems would be resolved or alleviated in the event that she came to the United Kingdom. There was a diagnosis of depression but it was far from clear what medication she was taking, if any. The letter fell to be treated with caution.

13. The state on the ground in the appellants' home area (Daraa) was stable and there was no indication of there being any large scale conflict there. Family and friends were apparently able to travel there quite freely and there was no indication that they were risking their lives to travel to a war zone. The situation in that area was gradually improving, as was clear from the Crisis Group report cited in the skeleton argument. The CPIN showed that there was a population of nearly a million people in that area, 60% of whom needed some humanitarian support. This was to be contrasted with Aleppo, for example, and with the really serious areas of concern in the north.

14. Mr Melvin queried (as he had in cross examination) why it was said that the first appellant and her family had done so little to find her missing husband. There was no background material to show that those who sought family members would themselves be targeted by the authorities. It was more likely than not that the appellants had some support in Syria.

15. The sponsor claimed that the appellants were living in one room because the rest of the house had been destroyed by a shell. That claim had not been made before and was a fabrication. The mayor had said no such thing in his letter. The sponsor said that the bomb had struck the house in 2018 or 2019 and it would have been mentioned if that was true.

16. The best interests of the children were not necessarily served by coming to the United Kingdom. They were in their country of nationality with their parent. They were entitled to an education there and there was no indication in the first appellant's evidence that they could not access an education. There was nothing in the evidence to suggest that the children suffered any mental or physical health problems.

17. Mr Saeed relied on the skeleton argument which he had prepared for the FtT hearing. The correct starting point was to consider whether there is a family life between the appellant and the sponsor. The facts are unusual. The first appellant is a married adult but her husband had disappeared and she had been held by the Syrian authorities for some time. Family life could ebb and flow, he submitted, and it had been rekindled when the appellant became dependent on her family in the UK. That was particularly so in light of her mental health problems, which stemmed from the appalling treatment that she had suffered at the hands of the Syrian regime when she was detained. She had a close and supportive relationship with her family in the UK but she struggled to look after the children. None of this was controversial or surprising, he submitted, and Article 8 ECHR was engaged in its family life aspect.

18. Mr Saeed submitted that the respondent's decision was not in accordance with the law because she had failed follow her published policy on Family Reunion. He did not accept my suggestion that the policy merely sought to set out the type of considerations which might be relevant to the assessment of an Article 8 ECHR case outside the Rules.

19. In any event, Mr Saeed submitted that the respondent's decisions were disproportionate under Article 8(2). It was clear from the CPINs that the conditions in the appellant's home area were of the utmost concern notwithstanding the suggestion that it was under government control. It was plausible that the first appellant was scared to leave the house. The sponsor had stated in his evidence to the FtT that she had no water or electricity and this was not a new point. These circumstances, including the appellant's trauma, were part of the holistic assessment required in the proportionality balance.

20. It was apparent that the first appellant is financially dependent upon the sponsor. That was itself unsurprising given that Syria is a patriarchal society. There was a risk of gender based violence and the children were unable to go to school. The best interests of the second and third appellants clearly militated in favour of their admission to the UK.

21. The cost to the NHS would be minimal if the appellants were granted entry clearance. The respondent had not provided any evidence of the cost to the public purse of educating the children in this country. Mr Saeed accepted that the property occupied by the sponsor would be statutorily overcrowded in the event that the appellants moved in but he submitted that neither that fact nor the council's apparent indication that it would arrange another property sufficed to render the decisions proportionate.

22. I indicated that I did not need to hear from Mr Saeed on the point I have summarised at [14] above. I reserved my decision on the appeals thereafter.

Analysis

23. I am grateful to both advocates, and particularly Mr Saeed, for the logical structure of their submissions. It is accepted that the appellants cannot meet the requirements of any of the Immigration Rules. The case is brought entirely in reliance on Article 8 ECHR outside the Rules and I propose to consider the appellants' cases in the structured way required by R (Razgar) v SSHD [2004] 2 AC 368.

24. The first question is therefore whether the appellants, and most particularly the first appellant, enjoys a relationship with her family members in the United Kingdom which engages Article 8 ECHR in its family life aspect. She is an adult and it is common ground that she is required to satisfy the test which has been set out in countless decisions of the Strasbourg and domestic courts, of whether the relationship is one which is characterised by 'more than normal emotional ties'. The Court of Appeal revisited that test in Rai v ECO [2017] EWCA Civ 320, with Lindblom LJ emphasising that 'the concept to which the decision maker will generally need to pay attention is "support"… which is 'real' or 'committed' or 'effective': [36].

25. Mr Saeed submits, and I accept, that family life may 'ebb and flow', by which he means that an adult child who has left the family home and married may thereafter return to receive the support of her parents and rekindle a family life which had ceased to exist. That is uncontroversial as a proposition of law; to hold otherwise would be to hold that the adult victim of an accident who becomes paralysed would not resume family life with their parent upon the parent undertaking to provide the totality of their care. What is necessary in this case is to consider all of the relevant circumstances in order to decide whether the first appellant – who is a married woman with children who had undoubtedly begun a family life of her own – has indeed rekindled family life with her parents since her husband's disappearance.

26. Mr Saeed relied on an assertion that the sponsor remits money to the appellants in Syria. There was no evidence in support of this claim, as Mr Melvin put to the sponsor in cross examination. He stated orally and at [18] of his first witness statement that he gives money to friends who then return to Syria and give it physically to the appellant. There were no relevant withdrawals noted in the family bank statements or witness statements from these friends in support of this assertion, however, and it would have been an easy matter indeed to

adduce evidence of these things. It is commonplace for assertions such as this to be made and accepted in the Immigration and Asylum Chamber upon production of a witness statement from the courier and a copy of his or her passport. There was nothing of that nature in this appeal and I do not consider the unsupported evidence of the appellant and the sponsor to suffice to establish this assertion on the balance of probabilities. I am not prepared to accept that the appellant is dependent on her family in the UK. Despite the accepted disappearance of the appellant's husband, I conclude that she has some form of support in Syria, as a result of which she is able to provide for herself and her children.

27. Mr Saeed also attached significance to the first appellant's mental health, submitting that she was particularly reliant on support from her family in the United Kingdom as a result of this and the trauma which precipitated it. There are, as I have noted above, preserved findings of fact that the appellant's husband went missing in August 2018 and that the appellant was herself detained by the Syrian authorities for a year from July 2019. She has been unable to state what happened to her during that time although the likely events are quite clear from the background material which I am familiar with as a result of other Syrian cases. There can be no real doubt that the appellant has been through a protracted and traumatic ordeal at the hands of the Syrian regime.

28. The evidence of the appellant's current mental health problems is limited, however. There is a letter from the Mayor of Al Haraa City dated 12 September 2021 which states that the appellant 'suffers an acute mental condition, anxiety, and fast heart pulsation symptoms' and that she is on 'continuous comforting medication'. There is a short letter from a Dr Yousif Latif of the School of Medicine, which states that the first appellant was found to be 'suffering Severer [sic] Depression Disorder' which required 'modern medication, which is not available in this country, in addition to the required psychiatric treatment with the presence of her parents to provide the required social and family support'. There is a further chit from the same doctor at p17 of the original bundle, which appears to be a translation of a prescription for a medicine called 'Brcntelex'. Submitted to the respondent in support of the applications was a letter from a Dr Mohamad Adeeb Faroukh, dated 26 September 2020, in which the first appellant is said to suffer from 'acute psychosis, in addition to tachycardia and acute psycho anxiety'. The letter states that the first appellant needs 'someone to take care of her' and that 'she takes adequate sedate drugs'.

29. A further letter which is presumably from Dr Faroukh (although his surname is spelt 'Frouh' in this letter) appears at page 55 of the supplementary bundle. This letter is dated 3 August 2022 and states that the first appellant visited his medical centre on the same date. He opines that her mental state had become worse and that 'her mental condition did not improve even after seeing a psychiatrist'. He notes that the 'prescribed medications' are not available and that the appellant showed symptoms of 'severe depression and a very bad mood'.

30. Despite the experiences which the appellant went through in 2018 and 2019, there is no consensus in the medical evidence as regards her current mental health state. Only one of the letters I have detailed refers to the appellant having psychosis and there is no subsequent reference to it. One of the letters suggests that the drugs available to the appellant are adequate, whereas others do not agree. Whilst I proceed on the basis that the appellant has been through a horrendous experience, the evidence which speaks to her current mental state does not provide a consistent or clear picture of the same.

31. Despite the difficulties with the medical evidence, and the absence of any supportive evidence in relation to financial support, I am satisfied that the first appellant is in regular contact with her parents and that they provide her with real and committed emotional support. It is clear that she has some mental health problems, as might be expected given her ordeals, and it is clear from the statements provided by the other family members that the appellant relies on the regular contact she has with them in order to alleviate her distress.

32. It is apparent from the recent letter written by a Perinatal Community Psychiatric Nurse in Nottingham on 9 September 2021 that the absence of the appellants from the lives of the sponsor and his family in the UK is causing the sponsor's wife 'significant distress' and is negatively affecting her mental health. I take into account the fact that the family has already lost one daughter – Khadijeh – who died at the end of 2019, when she was less than one year old. All things considered, I am persuaded, notwithstanding the difficulties with the evidence, that the ties between the first appellant and her parents in the UK are characterised by committed emotional support and that they disclose more than normal emotional ties as a result of her experiences in Syria.

33. I do not accept Mr Saeed's submission, which was made orally and at [8] of his skeleton argument, that the respondent's decisions were not in accordance with the law. Leaving to one side the limited meaning of that term in the jurisprudence of the ECtHR (for which, see Charles (human rights appeal: scope) [2018] UKUT 89 (IAC); [2018] Imm AR 911 and the other authorities cited at paragraph 7.93 of the current edition of Macdonald's *Immigration Law and Practice*), the reality of the guidance on which he relied is that it merely assists caseworkers with the relevant points which should be taken into account when considering cases such as this outside the Immigration Rules. The guidance relied upon by Mr Saeed was the Family Reunion guidance dated 31 December 2020. I note that the current version of the guidance, dated 29 July 2022 contains exactly the same text under the sub-heading *Children over the age of 18* on pages 33-34. That text is as follows:

> Family reunion as a child is open to a minor under the age of 18 who is not leading an independent life. The exception to this is where a child reaches the age of 18 after such an application has been lodged, but before it has been decided, and is not leading an independent life. In such situations, the caseworker must consider the applicant's eligibility under

> paragraph 352D of the Immigration Rules as if the applicant was still under 18.
>
> Where an application for family reunion under Part 11 of the Immigration Rules is received from a family unit of a refugee or someone with humanitarian protection and includes a child or children who are over 18, the child or children who are over 18 must be refused under the Immigration Rules. The caseworker must go on in every case to consider whether there are exceptional or compassionate circumstances, including the best interests of other children in the family, which warrant a grant of leave to enter or remain outside the Immigration Rules on ECHR Article 8 grounds. These could be that the applicant would be left in a conflict zone or dangerous situation and become destitute on their own; have no other relatives that they could live with or turn to for support in their country; are not leading an independent life and the rest of the family intend to travel to the UK. See Exceptional circumstances or compassionate factors for further information.
>
> It is open to children of a person with refugee leave or humanitarian protection who are over the age of 18 who are already in the UK to submit an application to the Home Office, to be considered under ECHR Article 8. The application should be submitted on a FLR(FP) form (Further Leave to Remain (Family and Private Life). See 'Family life (as a partner or parent), private life and exceptional circumstances'.
>
> Where the applicant is overseas it is open to them to apply for entry clearance, along with the required fee, on the basis of this relationship. The onus is on the applicant to meet the requirements of the Immigration Rules.
>
> [emphasis supplied]

34. Mr Saeed's argument was that because there were circumstances in this case of the type considered in the underlined section of the policy, the respondent's decision to refuse entry clearance was contrary to the policy and not, therefore, in accordance with the law. Even if all of those matters are assumed in the appellant's favour, however, an Entry Clearance Officer would not be bound to grant entry clearance. It is quite clear from the guidance that matters such as these are to be taken into account as part of an Article 8 ECHR assessment outside the Immigration Rules. The policy is merely to reach a decision which is in compliance with Article 8 ECHR, and therefore s6 of the Human Rights Act; it is not to bind the hands of the decision maker when a particular state of affairs exists. In that respect, the policy might be contrasted with that which was considered in SF and others (Guidance, post-2014 Act) Albania [2017] UKUT 120 (IAC); [2017] Imm AR 1003. I consider that the decisions under appeal were in accordance with the law for the purpose of the third question posed by Razgar.

35. The real question in this appeal is whether the respondent is able to show that the decisions, which undoubtedly pursue a legitimate aim, are nevertheless proportionate. What is required in that respect is a balance between the public interest, as codified (inexhaustively) by Part 5A of the 2002 Act, and the circumstances experienced by the appellants and their family. The question is whether the refusal of admission gives rise to unjustifiably harsh consequences. If it does, the decisions are in breach of Article 8 ECHR and the appeals are to be allowed. The Supreme Court, the Court of Appeal and the Upper Tribunal have all in recent times emphasised the benefit in using a 'balance sheet' approach to such questions, setting out the 'pros' in favour of admission and the 'cons' which militate against that course. I shall follow that approach, starting with the 'pros' relied upon by Mr Saeed.

36. The proper starting point in that exercise is the best interests of the children involved in this case, and the second and third appellants in particular. Their best interests are not the paramount consideration in a case such as this; they are a primary consideration, which means that although the best interests of the child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant: Zoumbas v SSHD [2013] UKSC 74; [2014] Imm AR 479, at [10](3).

37. Mr Saeed submits that the best interests of the children militate overwhelmingly in favour of their admission. There are a number of different strands to that submission. The first concerns the first appellant's mental health and her ability to look after the children. I have already set out much of the evidence on that subject above. The starting point is the FtT's acceptance that the first appellant's husband has been missing for years and that she was herself detained and inevitably ill-treated for around a year. I have taken all of the medical evidence into account. I have also taken account, as bearing on this question, the letter from Fatima Al Koud which was submitted to the FtT and records that the first appellant was suffering mental deterioration, anxiety and fear which had increased after her relatives left the country.

38. It is clear that the first appellant suffers from some mental health problems. That is almost inevitable, given the ordeal she suffered at the hands of the Syrian authorities from July 2019 to July 2020. The precise diagnosis, the medication required by the first appellant and the inadequacy of any treatment which she is able to receive in Syria is unclear from the evidence before me, however. There are claims that she has difficulty looking after the children but those claims are rather general and unparticularised. There is no assertion that the children are poorly nourished, in ill health or that they have inadequate clothing to keep them warm. They have a roof over their heads and they live with a parent. It is not said that the first appellant is confined to bed, for example, so that she is unable to provide effective care. Although it is clear and I accept that her mental health has suffered as a result of her personal circumstances, and her ill-treatment in particular, there is insufficient evidence before me to establish that she is unable to cope, whether in terms of her own needs or those of her children.

39. Mr Saeed also relied on the circumstances in the appellants' home area of Daraa. The city is in the south west of Syria and was the cradle of the Syrian revolution, as it was there that the first protests against the regime of President Bashr al-Assad in 2011 began. The city has been under government control again since 2018, when the rebel forces surrendered under a deal which permitted them to remain in the city under partial self-government.

40. As Mr Saeed demonstrated in his submissions with reference to the latest CPINs, however, this is not to say that the city is at peace. Violence and assassinations continue in the area and although it would be incorrect to describe it at as being on the frontline, it is far from peaceful. I need not reproduce the detailed statistics to which I was referred in the hearing; it suffices to accept that Daraa is not a city at peace and that, although there is no widespread shelling, the appellants are decidedly less safe there than they would be in the UK. There can be no realistic doubt that there is some danger in Daraa and, in fairness to Mr Melvin, he did not attempt to suggest that this was not the case. I also note that 60% of the population of Daraa were categorised as being in need in UNOCHA's February 2022 report, as set out at 4.23 of the Humanitarian Situation CPIN dated June 2022. Mr Saeed noted legitimately that the first appellant is likely to experience these difficulties acutely, in light of her status as a female head of household in a patriarchal society.

41. The effect of these conditions on the appellants, and on the child appellants in particular, is unclear from the evidence before me, however. I was told at the hearing that the appellants live in a single room of their house, the rest of it having been destroyed by a missile. The sponsor claimed that the strike had cut off the water and electricity supply to the property. That missile strike is said to have occurred before the FtT hearing, however, and it is a matter of concern that none of this featured in either the witness statements or the other documentary evidence before the FtT. When that point was raised, Mr Saeed protested that it had been mentioned in the oral evidence given to the FtT.

42. I have no access to the Record of Proceedings from the FtT but I have no reason to doubt what was said by Mr Saeed in that regard. Even assuming that that claim was made in oral evidence before the FtT, though, it is deserving of little weight when it was not mentioned by the first appellant or her family in the UK when they made their statements. If, as is claimed, the first appellant and her two small children were living in a partially destroyed property, that claim would surely have been made at an early stage of these proceedings as highlighting their plight. As it is, there is no adequate evidence before me to show that the second and third appellants have suffered negative consequences as a result of the situation in Daraa. There is no adequate evidence to show that they are physically or mentally disadvantaged by the strained circumstances in Daraa.

43. As with my consideration of the first of the Razgar questions, I have also taken account of the feelings and wishes of the remainder of the family. It was clear from the sponsor's oral evidence that he worries

about the appellants, and that his wife worries all the more. There are also moving statements and letters from the first appellant's siblings in the UK in the papers before me. I have taken careful account of those documents, amplified as they were by the sponsor's oral evidence. The family would prefer to be reunited and they are concerned about the appellants. The overwhelming message which the sponsor wished to convey was that the first appellant had suffered enough and that she would be best served by reuniting with the family in the UK.

44. Drawing all of these threads together, I consider that it would be in the best interests of the child appellants to come to the UK to live with the remainder of the family. Daraa is not an active conflict zone but it is not entirely safe. Their mother is mentally unwell and would benefit from the support of her family. Although they are with a parent and in their country of nationality, their best interests militate in favour of their admission to the UK. This is not a case in which the best interests of the children press overwhelmingly in favour of that outcome, however. That is because, as I have already observed, the extent of the difficulties which the children and their mother are actually experiencing in Syria is not precisely clear. Their best interests is a matter which favours admission; it is not shown in this case that there is an overwhelming case for admission on that basis.

45. For similar reasons, I accept that the wellbeing of the first appellant and of the family in the UK favours the appellant's admission to the UK. She is concerned about her mental health, her safety and her ability to look after the children. Her family in the UK feel that same concern, her mother acutely so. A range of matters therefore militate in favour of the appellants' admission.

46. Against that, I must weigh the public interest in the appellants' continued exclusion. It was in that respect that the FtT fell into legal error. The appellants are unable to meet the Immigration Rules and s117B(1) weighs against them, since it reminds courts and tribunals that the maintenance of immigration control is in the public interest.

47. I heard little by way of submissions on the application of s117B(2), which states that it is in the public interest that persons who seek to enter or remain are able to speak English. Mr Saeed did not attempt to submit that this sub-section was inapplicable in these circumstances and I consider that it must apply. The appellants are not able to avail themselves of an Immigration Rules which does not require a basic proficiency in English and the appeals are brought purely in reliance on Article 8 ECHR. There is no suggestion that the first appellant speaks English and her inability to do so must in my judgment militate against her.

48. The fact that the appellants do not meet the Immigration Rules and that the first appellant does not speak English are comparatively minor matters, however, when compared with the most obvious public interest consideration in this case. It is accepted on all sides that the appellants will not be financially independent in the event that they come to the UK. The first appellant will seemingly require medical care in order to treat her mental health problems and it is legitimate to

consider that as a matter relating to the economic wellbeing of the country: AE (Algeria) v SSHD [2014] EWCA Civ 653.

49. Mr Saeed tried valiantly to submit that the medication which the first appellant takes is either not available or available at a modest price in the UK. The point, however, is that she will require some treatment for these conditions, whatever they might precisely be, and that she will immediately represent a cost to the NHS as a result. As UTJ Southern stated in Akhalu (health claim: ECHR Article 8) Nigeria [2013] UKUT 400 (IAC), that is a matter which speaks cogently in favour of the public interest in a proper proportionality assessment. So too, in my judgment, is the fact that the child appellants will require enrolment into the educational system of the United Kingdom shortly after arrival. It does not matter that the respondent is unable to put a figure on the precise cost; there would inevitably be a burden.

50. The most significant cost to the public purse, however, arises from the accommodation required by the family. The sponsor explained in his oral evidence that his family of ten currently occupies a three bedroom property which is provided by the local authority. The sleeping arrangements are that he and his wife share one bedroom with their baby son, Omar; their oldest son, Abdallah, occupies the sitting room; two of the girls share the other reception room; two girls sleep in the second bedroom; and two boys sleep in the third bedroom. Mr Saeed accepted, as I think he was bound to, that the property would be statutorily overcrowded in the event that the appellants were admitted to the UK.

51. There is no suggestion that the family will be able to fund a larger property, or that it might be able to rent an additional property for the appellants in the event that they arrived in this country. They are wholly dependent on public funds and it would have been wholly unrealistic for Mr Saeed to suggest that this was even a possibility.

52. There was a suggestion in the sponsor's evidence that another property was to be provided by the council. Mr Saeed attempted in re-examination to elicit whether this property was to be provided specifically so as to accommodate the appellants. The answer was not entirely clear and there is no evidence in support of the assertion in any event. The real point, it seems to me, is that the local authority would have to provide further accommodation for the family in the event that it increased to a family of thirteen people. In the event that it failed to do so, there would be statutory overcrowding. Whether that was an additional property which could accommodate just the appellants or a larger property which could accommodate the whole family, there would be a significant additional burden on the public purse.

53. Balancing these considerations against each other, I come to the clear conclusion that the public interest in the appellants' exclusion must prevail. I will not rehearse their living conditions afresh, having analysed them in detail above. I accept that they are difficult but they are not so difficult, in my judgment, that they are able to overcome the public interest in maintaining the economic wellbeing of the country. That public interest is manifested in a case such as the present by the

maintenance of effective immigration control and the significant cost to the public purse which would inevitably be presented by the appellants' admission. At a time of heightened concern over the country's finances, that consideration outweighs the considerations ranged in the appellants' favour, such that the respondent is able to establish that the decisions under appeal were proportionate to the legitimate aim pursued.

54. In the event that the appellants' circumstances deteriorate or in the event that the family in the United Kingdom are better able to provide for them, it might well be that a future decision maker would not reach the same conclusion. For the time being, and on the evidence before me, however, I conclude that the appellants' continued exclusion is not in breach of Article 8 ECHR. I appreciate that this will be difficult news for the family.

Notice of Decision

The decision of the First-tier Tribunal having been set aside, I remake the decisions on the appeal by dismissing them.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 September 2022