IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001620
UI-2021-001621

First-tier Tribunal No:
HU/00926/2021
HU/00956/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

AHMAD REZA RAJAEI (1)
ZOHREH SHAHSAVARI NAJAFABADI (2)
(NO ANONYMITY ORDERS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms D. Revill, Counsel instructed by Makka Solicitors
For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

Heard at Field House on 22 September 2023

DECISION AND REASONS

Introduction

1. The Appellants appeal the decision of First-tier Tribunal Judge Froom (hereafter "the Judge") promulgated on 22 August 2022, in which he dismissed the Appellants' appeals against the Respondent's refusal of their Article 8 ECHR human rights claims.

2. Permission to appeal was initially refused by First-tier Tribunal Judge Athwal on 17 October 2022 before being granted by Upper Tribunal Judge O'Callaghan on 11 August 2023.

3. For completeness, Upper Tribunal Judge O'Callaghan refused permission on Ground 2 of the Appellant's application but granted permission in respect of Grounds 1 & 3. Ms Revill confirmed in the hearing that she was not seeking to ask the Upper Tribunal to nonetheless consider Ground 2.

The relevant background

4. Both Appellants suffer with medical conditions which have varying degrees of impact upon their general day-to-day life however, the medical conditions of Appellant 1 are, in relative terms, far more serious than those of Appellant 2 and were therefore the focus of the Judge's assessment of the Article 8 ECHR appeal before him.

5. In a careful and detailed judgment, the Judge noted the earlier proceedings in which a previous dismissed decision of the First-tier Tribunal had been appealed and set aside by the Upper Tribunal; the Judge therefore noted that the Upper Tribunal had preserved the finding from the earlier First-tier decision of an extant family life between the Appellants, their children and their grandchildren in the UK and that they live together in a family unit (see para. 8).

6. The Judge also laid out the available medical evidence including a letter from Dr Bakhtiar (dated 6 December 2020) which detailed some of Appellant 1's medical history at that time. This letter recorded that Appellant 1 initially had a stroke in 2017 which left him with weakness in his right arm and leg; this was treated in Dubai where he was living with Appellant 2, para. 26.

7. Later, after coming to London with Appellant 2, Appellant 1 was admitted to A&E on 27 January 2020 after an episode of fainting - this was later diagnosed as a stroke, and he was advised that he might have neuro cardiogenic syncope. In September 2020 he was also found to be suffering from anxiety and stress due to health concerns and isolation caused by the pandemic as well as uncertainty over his immigration status (see para. 26).

8. In assessing the overall evidence, the Judge made some reference to the lack of up-to-date medical evidence (see for instance para. 28) and considered that there had been a degree of exaggeration in some of the witnesses' evidence but nonetheless accepted that:

a. Appellant 1 had experienced three falls since December 2020 (para. 30).
b. Appellant 1 was unsteady on his feet, experiencing neuropathic pain, depressed and needed to be reminded in respect of medication (para. 31); the Judge did not however accept that Appellant 1 needed support with all of his personal care as claimed.
c. In respect of Appellant 2, the Judge accepted that she suffers with fatigue and that she struggled to care for Appellant 1 and cannot manage if Appellant 1 falls over (para. 33).
d. The Judge went on to conclude that Appellant 1 could use a stick or a frame to make himself steady whilst mobilising (para. 33).
e. The Judge also found that the Appellants would prefer to remain with their children and grandchildren in the UK due to their difficulties and that there is a more secure supply of their medication here (para. 39).
f. Despite this, the Judge concluded (bearing in mind that the Appellants are wealthy people who had built themselves a very expensive house in Iran) that the Appellants would be able to employ carers for Appellant 1 in Iran and that this could be done even if Appellant 1 had had bad experiences of this previously; the Judge concluded that Appellant 1 could be adequately cared for, para. 39.
g. The Judge also accepted that obtaining the relevant medication in Iran would be challenging but also noted that the Appellants could receive visits from their two daughters and grandchildren who live in Iran (para. 39).

9. The Judge went on to conclude that there were no very significant obstacles to the Appellants continuing their private lives in Iran (para. 276ADE(1)(vi) of the Rules), applying the learning that such obstacles must amount to more than mere inconvenience or hardship (para. 38).

10. The Judge further found that there were no exceptional circumstances in the case and that the best interests of the Appellants' grandchildren were served by remaining in the United Kingdom with their parents (para. 44).

The Appellants' challenges

11. Focusing on the two Grounds of Appeal which were given permission by Upper Tribunal Judge O'Callaghan, Ms Revill succinctly argued that:

a. Despite the Judge properly noting a number of relevant factors in respect of Article 8(2) from para. 40 onwards, he had nonetheless erred in law by not expressly making a finding about the impact upon the family life between the Appellants, their children and grandchildren by the act of their removal from the UK.

b. Secondly, Ms Revill asserted that the Judge had not given appropriate weight to the best interests of the grandchildren based on, in her submission, the relatively unusual intensity of the family life between the Appellants and the grandchildren. Ms Revill emphasised that the Appellants and their grandchildren have been living in the same house

for at least three years and that therefore this constituted a family life beyond the normal kind of family life.

My findings and reasons

12. I am grateful to both representatives for the clear way in which they made their respective cases.

13. In assessing the Appellants' arguments, I have been mindful of the Court of Appeal's summary of the approach in KM v Secretary of State for the Home Department [2021] EWCA Civ 693:

> "77. I bear in mind the following well-established principles as to the approach of the Court of Appeal when considering a decision of a specialist tribunal such as the UT:
>
> (1) First, the UT is an expert tribunal and an appellate court should not rush to find a misdirection an error of law merely because it might have reached a different conclusion on the facts or expressed themselves differently (per Lady Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at [30]).
> (2) Second, the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the UT's assessment of the facts (per Lord Dyson in MA (Somalia) v SSHD [2010] UKSC 49 at [45]).
> (3) Third, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account (per Lord Dyson in MA (Somalia) at [45]).
> (4) Fourth, experienced judges in this specialised tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear from their language that they have failed to do so (per Popplewell J in AA (Nigeria) v SSHD [2020] EWCA Civ 1296 at [34]).
> (5) Fifth, judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined and the appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it (per Lord Hope in R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 [2013] 2 All ER 625."

Ground 1

14. In terms of Ground 1, I conclude that the Judge did do enough, when considering the various issues at play in respect of Article 8(2), to do proper justice to the nature of the family life between the Appellants, their children and their grandchildren in the context of the proposed separation.

15. In particular, I have already noted that the Judge proceeded from the starting point that the Appellants, their children and grandchildren enjoy an Article 8(1) ECHR family life together which therefore gave some initial acknowledgement to the significance of the family ties in this particular family unit (see para. 15).

16. It is also clear from the same paragraph, that the Judge understood the Appellants' family's evidence that they would not wish to travel to Iran should the Appellants be removed, and this was therefore the factual backdrop to the consequences of separation in this case; in other words: this was a family split scenario.

17. Looking at the judgment as a whole, as must be done, it is also clear that the Judge carefully assessed the current living arrangements between the Appellants and their family at para. 23. These findings also include a reference to the close connection between the Appellants and their three young grandchildren.

18. Additionally, the Judge made detailed findings in respect of the medical needs of both Appellants as well as unchallenged findings in regards to the Appellants' ability to house themselves and arrange private medical care in Iran.

19. At para. 44, the Judge acknowledged that the removal of the Appellants from the UK would cause distress to the grandchildren. The Judge also recognised and expressed sympathy for the Appellants' desire to see out their retirement in the United Kingdom and that there would necessarily be interference with their current family and private life.

20. I have not laid out every finding that the Judge made in his detailed assessment of the Article 8 ECHR appeal, but have sought to highlight some of the core paragraphs which, in my judgement, show clearly that the Judge did make direct findings about the impact upon the Appellants and their family in the UK by the proposed relocation to Iran and that therefore the family life of all parties was considered by the Judge and due weight was given. I therefore conclude that the Judge's analysis was compliant with Lal v SSHD [2019] EWCA Civ 1925 in that he fully grappled with the particular circumstances of these Appellants and their family.

21. There is a discrete point in Ground 1 at para. 5 in which Ms Revill argues that the Judge did not properly assess the difference between the private professional care available in Iran and the personal care provided by the Appellants' loving family. I have looked carefully at the Upper Tribunal's reported decision in Lama (video recorded evidence -weight - Art 8 ECHR : Nepal) (Rev 1) [2017] UKUT 16 (IAC) and para. 43, as relied upon by the Appellants.

22. In that case, the Upper Tribunal concluded that the particular care relationship between the appellant and his friend was so powerful in qualitative and emotional terms that the appellant's role in his friend's life was irreplaceable. Whilst the Upper Tribunal ventured the finding (with some degree of caution) that this amounted to Article 8(1) family life, such a finding was also considered to be a powerful factor in the Article 8(2) ECHR balancing assessment.

23. It is important to firstly note that this particular aspect of the reported decision is not part of the head-note and therefore is not part of the guidance. It therefore cannot be argued that the Judge materially erred by not making reference to the decision in Lama itself.

24. Nonetheless, I have also considered this part of the judgment in Lama as a common sense identification of matters which can be relevant to an holistic assessment of proportionality under Article 8(2) ECHR.

25. In my view, the Judge did, reading the decision as a whole, consider the dual impact of the care arrangements in the UK being interrupted (subject to the Judge's finding that there had been exaggeration as to the claimed level of help required, see for instance paras. 31 & 54) and the nature of potential private care arrangements in Iran which he found would be adequate despite challenges (para. 39).

26. Whilst much of that assessment was housed within the Judge's findings on the very significant obstacles test in para. 276ADE(1)(vi) of the Rules, it is relevant to note that this aspect of the Judge's conclusion has not been challenged.

27. Equally, it was the Appellants' case before the Judge that they could not meet the requirements in the Adult Dependent Relative route within Appendix FM (see para. 49). In my view the Judge was right to consider this a significant aspect of the appeal albeit he was correct not to treat it as determinative of the Article 8(2) ECHR balancing exercise.

28. I therefore conclude that the Judge did properly take into account the nuanced impact of removal on the family life from both the perspective of the Appellants and of their family in the UK when assessing whether or not the decisions led to unjustifiably harsh consequences.

Ground 3

29. In respect of the criticism of the Judge's conclusions as to the best interests of the Appellant's grandchildren at para. 44, I have ultimately concluded that the Judge did not materially err.

30. I should make it clear that I have no difficulty at all with Ms Revill's clear submission that a child's best interests may not, in principle, be confined to simply remaining in their country of nationality living with their primary carers but could incorporate all aspects of their well-being.

31. In my judgement however the Judge was also entitled to conclude that the Appellants themselves had not stepped into the shoes of their children and taken on the role as primary caregivers, but to observe that they live in the same house as their grandchildren and have close relationships with them.

32. This is not to denigrate the importance of those relationships but it is clear, as the Judge found, that the core thrust of the best interests of these

children revolve around their parents. In my judgement then, the Judge's conclusion at para. 44 which recognised that the children would experience distress as a consequence of the Appellants leaving the household, is sufficient to lawfully decide the issues relating to the best interests of the affected children and it is also clear that the Judge properly recognised the importance of the children's best interests in the overall assessment of Article 8(2).

Notice of Decision

33. The Appellant's appeals are therefore dismissed, and the decision of the Judge stands.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 October 2023