IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001599

First-tier Tribunal No:
HU/50242/2021; IA/03391/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 August 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

HANAA AL-HUSSAINI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Al-Rashid, Counsel instructed by Carlton Law Chambers
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 5 July 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Colvin dated 12 March 2022 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 15 January 2021, refusing the Appellant's human rights claim. The Appellant's claim is based on her private life and family life with her daughter, who is in the UK with limited leave to remain as a student.

2. The Appellant's daughter's leave to remain was due to expire on 27 September 2022 (following the end of her course in May 2022) but her course of study and leave was, I am informed, extended to end of September 2023. Although I was not shown any proof of that extension (and Mr Wain was unable to assist), I am prepared to proceed on the basis that this is the case. Further, I was informed by Mr Al-Rashid that the Appellant's daughter's course of study is now completed, and she is due to graduate at a ceremony on 14 July 2023. After that, allowing a short period to bid farewell to a few friends, she intends to leave the UK with her mother (the Appellant).

3. I am of course only presently concerned with whether there is an error of law in the Decision and, if there is, what should be the consequence. The factual background is however unusual since the Appellant intends to leave the UK with her daughter in the coming months. It is also unusual since both the Appellant and her daughter are returning to a country of which they are nationals and where it is accepted that both can live and continue their family life. Both the Appellant and her daughter are Iraqi by birth but now US nationals.

4. The Judge found that there were no very significant obstacles to the Appellant's integration in the United States. Paragraph 276ADE(1)(vi) of the Immigration Rules ("Paragraph 276ADE(1)(vi)" of "the Rules") was not met. The Judge did not accept that the Appellant had established a private life in the UK. She has been here only since September 2019. She applied in time to remain as a dependent of a relative in the UK, but that application was refused in April 2020. She has overstayed since. The Judge accepted that family life existed between the Appellant and her daughter but concluded, outside the Rules, that family life could continue in the US and therefore there was no interference. Both conclusions were predicated on the Appellant's daughter returning to the US with her mother.

5. The Appellant appealed on the following grounds (as pleaded):
   Ground one: The Judge failed properly to assess proportionality applying the Razgar test. It is said that if the Judge had done this, the balance might have been tipped given the existing family life between mother and daughter, the Appellant's medical conditions and the short period of leave sought.
   Ground two: The Judge did not assess the Appellant's human rights claim as at date of hearing. The Appellant would be "bound to encounter very significant obstacles if she is required to leave the UK now, whilst her daughter remains here to complete her studies".
   Ground three: The Judge was wrong to apply a contingency test to the issue of whether the Appellant would be required to leave the UK without her daughter. Her daughter is entitled to remain until she completes her studies, and her visa expires.
   Ground four: The Judge was also wrong to apply a contingency test to the assessment of Article 8 ECHR outside the Rules.

6. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on 12 April 2022 as follows:

> "1. This appeal stands dismissed by a decision of First-tier Tribunal Judge Colvin. Having assessed the evidence, the judge concluded that the appeal did not succeed through the application of article 8 of the European Convention on Human Rights – inside or outside the immigration rules.
> 2. In my assessment, it is arguable, as per the grounds on which the appellant seeks permission to appeal, that the judge should have assessed this appeal – and possibly did not do this – as if the appellant would be required to leave the UK before her daughter's current leave to remain as a student expires on 27 September 2022 (see paragraph 5 of the grounds). Or on the basis that the appellant would be required to leave the UK before May 2022 – before the daughter's studies in this country are effectively complete.
> 3. It seems to me arguable that if the case had been assessed on one of the bases referred to above, the evidence did establish *very significant obstacles* for the purposes of paragraph 276ADE of the immigration rules and/or the appellant might have succeeded through one of the other routes referred to in her grounds 4 to 8.
> 4. The appellant should not take this grant of permission as any indication that the appeal will ultimately be successful."

7. The matter comes before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

8. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle and Respondent's bundle before the First-tier Tribunal together with the Appellant's skeleton argument before the First-tier Tribunal. I do not need to refer to any of the documents save for the Decision.

9. Having heard submissions from Mr Al-Rashid and Mr Wain, I indicated that I would reserve my decision and provide that and my reasons in writing which I now turn to do.

DISCUSSION

10. I begin with the basis for the Judge's conclusions. In relation to Paragraph 276ADE(1)(vi), the Judge found as follows:

> "19. The respondent has refused the appellant's private life application on the main ground that it has not been shown that she would have very significant obstacles to reintegration to the US under paragraph 276ADE of the Immigration Rules. The evidence is that the appellant and the sponsor have been living in the US for some 10 years before coming to the UK in September 2019 and were supported financially by an inheritable [sic] left to the sponsor. As stated by the sponsor at the hearing the intention is that they both will return to the US once her studies are completed either in May

> 2020 [sic] or a bit later but before her visa expires in September 2020 [sic]. She also confirmed that if the appellant is required to leave at any time she would return with her to the US.
> 20. This means that for all practical purposes the appellant will be returning to the US with her daughter who is her full-time carer. Whilst it seems that the sponsor still has to arrange accommodation for their return, they will be going back to Arlington Virginia where they lived previously and where the appellant has doctors who have treated her in the past. It is also accepted that the sponsor is able to finance them both on return. In these circumstances I am satisfied that the appellant will not have very significant obstacles to reintegration to the US and therefore does not meet the requirements of paragraph 276ADE(1)(v) [sic] of the Immigration Rules."

11. Before moving on to the reasoning and assessment outside the Rules, I observe that there are a few typographical errors in the above assessment. The Judge clearly meant Paragraph 276ADE(1)(vi) and has referenced the correct test so there is no error in that regard. The Judge has also referred to 2020 (which is when the Appellant's leave expired) when she meant to refer to 2022. However, nothing turns on that. The Judge clearly recognised the chronology of the argument. The Appellant's daughter's course had not yet concluded but would do so shortly and her visa was due to expire a few months later. Both end dates were within a period of months after the hearing and Decision.

12. Turning then to the assessment outside the Rules, the Judge found at [21] of the Decision that the Appellant had not established a private life in the UK. As such, the Judge did not need to go on to consider proportionality of interference. There was no interference with private life which required justification. I did not understand the Appellant to take issue with this finding. Given the factual context of this case – the short period for which the Appellant had been resident in the UK and that her only life appears to be with her daughter and the receipt of medical treatment – the conclusion of the Judge is unsurprising. Indeed, the opposite conclusion might well have been perverse.

13. The Judge then went on to consider the Appellant's family life as follows:

> "22. In terms of family life it is accepted by the respondent that the appellant and her daughter, the sponsor, enjoy a family life that engages Article 8. Again it is to be noted that this family life has been established in the UK at a time when the appellant's status was either precarious or she had no right to remain here. In any event, as stated above, the sponsor has made it clear that she will return to the US whenever the appellant is required to leave which means that family life will continue in the US. At the same time I find that it is reasonable for the sponsor to return to the US in the relatively near future as her studies will be completed when she hands in her assignments in early May 2022 even though she holds a visa that does not expire until September 2022. In these circumstances, I find that the refusal decision would not result in unjustifiably harsh consequences for either the appellant or the sponsor.

> 23. Therefore I am satisfied that the appellant has not shown that there are exceptional circumstances in this case in order to make the refusal decision disproportionate under Article 8. Accordingly the appeal is dismissed."

14. I can dispose very shortly of the Appellant's first ground. The Judge clearly conducted a balancing assessment at [22] and [23] of the Decision. In essence, her conclusions that removal would not be disproportionate are predicated on family life being capable of being continued in the United States (which is not disputed save as to the timing of removal) and that it would not be unreasonable to expect the Appellant's daughter to return with her mother whenever her mother was removed as the daughter only had limited leave to remain and had almost completed her course save for handing in her assignments. The fact that the Appellant only wanted leave to remain for a matter of months is neither here nor there when one considers that she could not meet the Rules (on the Judge's finding on Paragraph 276ADE(1)(vi)) and that her daughter herself only had limited leave to remain with a very short period remaining.

15. The remaining grounds can all be taken together as they concern the timing of removal and assessment. That is also the focus of the grant of permission to appeal.

16. I cannot agree with Judge Cruthers that the Judge did not proceed on the basis that the Appellant's daughter might have to leave the UK before her studies are complete. The last sentence of [20] of the Decision and what is said at [22] of the Decision both show that the Judge proceeded on the understanding that if the Appellant were removed her daughter would go with her. It is that finding which in reality forms the basis of all of the remaining grounds.

17. Mr Al-Rashid submitted that the Appellant could not travel without her daughter. He also submitted that the Appellant could not live in the US without her daughter. However, the Judge did not expect her to. As I say, the Judge very clearly proceeded on the basis that the Appellant's daughter would choose to leave with her mother if her mother were removed.

18. Mr Al-Rashid suggested that the final sentence of [19] of the Decision (and by inference what is said at [22] of the Decision) misunderstood the evidence. I pointed out that I did not have the recording of the hearing in order to establish that this was so. I also make the point that this is not pleaded in the grounds. If it had been, it might have been necessary to obtain the recording.

19. In response Mr Al-Rashid drew my attention to the record of the evidence as set out in the Decision which he submitted was inconsistent with the Judge's finding. In other words, his case was that it was not open to the Judge to make the finding she did based on the evidence she

received. Notwithstanding the failure to plead this point, I considered it without objection from Mr Wain.

20. The evidence of the Appellant's daughter on this issue is set out at [6] and [7] of the Decision. It is not dealt with in the witness statement, and I therefore have only what is said in the Decision about this issue as follows:

> "6. In oral evidence-in-chief the sponsor confirmed that she is a student at Regents University (private) on an interior design BA 3 -year course that started in September 2019. She has to submit her final assignments at the beginning of May 2022 which is the end date of the course. Her intention is to return to the US with her mother in May but this may be later before her visa expires on 27 September 2022.
> 7. In cross-examination she confirmed that if her mother had to leave the UK earlier than when her visa expires she would return to the US with her mother. They do not have any relatives there. In answer to questions from myself she said that she had yet to start arranging accommodation in Arlington, Virginia where they lived previously. Her mother would be looked after by the same doctors in the US on return. She had not intended her mother to stay beyond the expiry of the visit visa."

21. Mr Al-Rashid relied on the final sentence of [6] of the Decision. On that basis, the Judge had not been entitled to find that the Appellant's daughter would return to the US with her mother even if that were before her course ended. However, as Mr Wain pointed out, that was not the end of the evidence. The evidence in cross-examination was that the Appellant's daughter would return to the US with her mother if her mother had to leave the UK before her visa expired. In other words, the Appellant's daughter would choose to return with her mother and to prioritise her mother's care over her own interests. That latter point is consistent with the tenor of her witness statement (see also [5] of the Decision).

22. Based on that evidence taken as a whole, the Judge was entitled to reach the conclusion she did that the Appellant's daughter would return to the US with her mother whenever her mother was removed. Once that is accepted, then there can be no error of law. The Appellant accepts that, provided her daughter returns with her, there will be no very significant obstacles to her integration in the United States. They will continue their family and private lives there as they did before the Appellant's daughter came to the UK for her studies.

23. There is therefore no error of law in the Decision established by the grounds. The Judge assessed the claim as at date of hearing. Her assessment is not based on any contingency. It is based on what would happen if the Appellant were subject to removal action at any time after the Decision.

24. Even if I had found an error of law to be established, I would not have set aside the Decision. As at the date of the hearing before me, the

Appellant's daughter was due to graduate in a little over a week's time. After that, whatever view is taken of the evidence she gave to Judge Colvin, she accepts that she would be able to leave even though her leave does not apparently expire until September 2023. It would serve no purpose therefore to set aside the Decision and to re-make it. Put another way, at the date of the hearing before me, removal of the Appellant could not on any view be seen as disproportionate.

25. The Appellant can however take some comfort from the fact that my decision is not being issued until after the date of her daughter's graduation. As Mr Wain pointed out, there could be no question of the Respondent seeking to remove the Appellant until such time as her appeal rights are exhausted by which time the Appellant's daughter will be well able to return to the US with her mother without any prejudice to her own interests.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Colvin dated 12 March 2022 does not contain a material error of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 July 2023