IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001753
UI-2023-001755
UI-2023-001756

First-tier Tribunal No:
HU/00891/2021
HU/00402/2021
HU/00403/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

19th February 2024

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

SABAH SALEH Al HAWAMADA, AMANI Al OKLA & OMAR Al OKLA
(no anonymity order)

Appellants (in the FtT)

and

Entry Clearance Officer

Respondent (in the FtT)

For the Appellants: *Mr S Winter, Advocate, instructed by Rutherford Sheridan Ltd, Solicitors*
For the Respondent: *Mr T Lindsay, Senior Home Office Presenting Officer*

Heard at Edinburgh on 1 December 2023

DECISION AND REASONS

1. This is the ECO's appeal, but we refer to parties as they were in the FtT.

2. The appellants are a widowed mother and two children, citizens of Syria, born on 20 August 1972, 15 May 2005, and 10 January 2010. They applied for entry clearance to join the sponsor and other relatives who have leave to remain as refugees in the UK. The ECO refused their applications in

©CROWN COPYRIGHT 2024

November 2020. They appealed to the FtT on human rights grounds. FtT Judge Farrelly heard their appeals on 13 March 2023. His decision, dated 10 and promulgated on 12 April 2023, concludes by stating that their appeals are "dismissed under the rules" and "allowed under article 8 and family life".

3. The ECO sought permission to appeal to the UT, framing the application as one ground. Sub-paragraphs (a) – (e) are based on failure to have proper regard to the public interest and on absence of reference to the statutory considerations in section 117B of the 2002 Act, in particular the burden on the public purse and ability to speak English; (f) asserts failure to factor inability to satisfy the rules into the proportionality balance; and (g) alleges error in founding at [25] upon exceptional circumstances, in that the appellants "are orphans and have no family in Ethiopia", when they are neither nationals of Ethiopia nor orphans with no family.

4. FtT Judge Athwal granted permission on 15 May 2023.

5. Mr Lindsay submitted that the defects disclosed by the grounds were such that the decision could not stand.

6. On the public interest factors, Mr Winter argued that consideration did not have to include express reference, and it could be read in that the Judge had those matters in mind, but found them to be outweighed.

7. As to the passage at [25], Mr Winter suggested that it is an accidental introduction from another decision and may safely be disregarded.

8. We did not find that to be a sustainable reading. The passage goes on to say that the appellants have been "displaced from their home country", which is also wrong. We do not think there can simply have been an insertion from another decision, because the paragraph next mentions that at the time of application two of the three appellants were minors, which is accurate.

9. However it came about, we find that the error so far misrepresents the case that it cannot be excised with any confidence that the case was decided on a correct apprehension of the facts. On whichever side the balance had been struck, this, by itself, would require a reconsideration.

10. Section 117B of the 2002 Act provides:

> **Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

11. There does not have to be express citation, but decisions must leave no doubt that those considerations, central to all appeals on article 8 grounds, have been applied. We are unable to detect that the Judge took that approach to sub-sections (2) and (3).

12. Apart from the challenges in the grounds, it may help to point out some other matters.

13. The Judge should not have purported to dismiss the appeal "under the rules", which is another misapprehension.

14. The Judge was obviously puzzled as to which passages in the immigration rules, and as at which date, applied as his starting point. He did not have the assistance he should have from either side in citing the relevant texts. At the rehearing, parties are expected to be clear on the rules, policy and guidance on entry of (i) family members of refugees and (ii) extended family members.

15. There was some debate before us, not resolved, on whether the rules at date of application or at date of hearing are relevant. We think that

following amendment of section 85(5) of the Act, tribunals in an entry clearance case may no longer be limited to matters at date of decision, although consideration of matters beyond that date may require the respondent's consent. Again, both sides need to clarify their approach.

16. Another oversight in the decision is that the family relationships among the appellants and their relatives in this country are not within the nuclear family core which is the paradigm for protection. Whether family life within article 8 exists is an issue of fact. Among adult relatives, and further extended family, that usually requires elements of dependency over and above the norm. This bears, perhaps crucially, on which criteria the appellants have to meet.

17. It is for the FtT to direct further procedure, but a starting point might for both sides to provide updated statements of their positions.

18. The decision of the FtT is **set aside**. The case is **remitted** for fresh hearing before another Judge.

19. No anonymity order has been requested or made.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 December 2023