IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002799

First-tier Tribunal No: HU/59389/2023
LH/01706/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

AESHAH EKAL AABER

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr D Bazini, counsel, instructed by Kidd Rapinet, solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House, on 22 August 2024

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Fox, promulgated on 15/04/2024, which dismissed the Appellant's appeal.

Background

2. The Appellant is a stateless Kuwaiti Bidoon, who now lives in in Iraq. On 26 April 2023 the appellant applied for entry clearance under the Adult Dependant Relative ("ADR") route, to join her son and sponsor, Yousef Ali Elenzi, who has refugee leave in the United Kingdom. The Appellant's application was refused by the Respondent on 5 July 2023.

The Judge's Decision

3. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Fox ("the Judge") dismissed the appeal on all grounds.

4. The Appellant lodged grounds of appeal, and, on 13 June 2024, Tribunal Judge Monaghan granted permission to appeal. She said

> 1. The application is in time.
>
> 2. Ground 1 submits that the Judge has erred in applying too high a standard of proof in respect of Article 8. Ground 1 is generic and fails to sufficiently plead how the Judge has arguably applied too high a standard of proof.
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> 3. Permission is granted in respect of Ground 2. The Judge arguably fails to refer to the Guidance in relation to whether or not family life exists in an Adult Dependent Relative case, nor does he specifically refer to the factors contained therein, or to all of them.
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> 4. Permission is granted on Ground 3 as there are several references to there being a lack of corroboration of certain parts of the evidence and the Judge has arguably therefore fallen into error.
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> 5. Ground 4 is also arguable. The Judge has not demonstrated that he has applied the correct test.
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> 6. Ground 5 is arguable. The Judge has arguably failed to set out with any clarity or at all a balance sheet approach in his assessment of proportionality. The Judge has arguably made inadequate findings in respect of proportionality.
>
> 7. Ground 6 is also arguable. The Judge has arguably failed to take into account relevant country background evidence on the position of Stateless Bidoons in Iraq when reaching his findings.

The Hearing

5. Mr Bazini, for the appellant, moved the grounds of appeal. He took me to [50] of the decision and said that, there, the Judge finds that family life within the meaning of article 8 does not exist. Mr Bazini said that the Judge did not give adequate reasons for the central finding in the decision.

6. Mr Bazini agreed that the fulcrum of this case is whether or not article 8 family life exists. If the Judge's finding that article 8 family life exists stands, then the remaining grounds of appeal are no longer relevant. The grounds of appeal driving at proportionality assessment could only be moved meaningfully if the challenge to [50] of the decision is successful.

7. Mr Bazini told me that it is not disputed that

(i) The appellant is the mother of the sponsor;

(ii) The appellant and sponsor lived together until 2019, when the sponsor fled from Kuwait and was granted refugee status in the UK;

(iii) The appellant and the sponsor are undocumented Kuwaiti Bidoons; and

(iv) The appellant has a number of medical concerns.

8. Mr Bazini said that the Judge's credibility findings are flawed and that the Judge makes factual errors in the decision. In the second sentence of the first paragraph, the Judge says that the appellant is a national of Nepal. At [24] the Judge says that the sponsor was travelling in the same car as his late sister when it was involved in a road traffic accident in Kuwait 2022. It is established that in 2022, the sponsor was present in the UK, and recognised as a refugee.

9. Mr Bazini referred to SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC), and told me that the appellant is undocumented, but registered with UNHCR (through the efforts of the sponsor) in IKR. He told me that the Judge should have had regard to the country guidance given in SMO(2) and should have taken account of what is known of the situation for undocumented Bidoons in IKR.

10. Mr Bazini was critical of each paragraph from [50] of the decision onwards. He asked me to allow the appeal, set the decision aside, and remit this case to the First-tier Tribunal.

11. Mr Terrell, for the respondent, relied on his detailed skeleton argument and told me that there is no merit in grounds 2 to 5 of the grounds of appeal, but he candidly expressed concerns about ground 6.

12. Mr Terrell correctly complained that a lot of what is argued went beyond the grounds of appeal, but he was clearly concerned that the appellant's case might not have been plead as well as it should have been before the First-tier Tribunal.

13. After formally opposing the appeal, Mr Terrell took me to [26] of the decision, where the first sentence is (at the very least) ambiguous. There, the Judge says

> The appellant has been granted protection status by the United Nations in Iraq.

14. Parties agree that the United Nations cannot grant protection status. Mr Terrell told me that there is force in the submission that the Judge should have considered the country guidance given in SMO(2), and should have given more consideration to the fact that the appellant is an undocumented Bidoon.

15. Mr Terrell maintained a neutral position in relation to ground 6 but did not forcefully resist Mr Bazini's submission that the appeal should be allowed, and this case should be remitted to the First-tier Tribunal.

ANALYSIS.

16. Mr Bazini advanced some arguments which stray beyond the grounds of appeal and the grant of permission to appeal. He explained that he comes to this case late, he did not plead the case before the First-tier Tribunal, nor did he frame the grounds of appeal. He asked for some latitude because he feared there has been a miscarriage of justice in this case.

17. At [50] of the decision, the Judge declares that the appellant fails to demonstrate that family life exists within the meaning of article 8 ECHR. That finding stands alone and is not properly explained. Between [51] and [74] of the decision, the Judge sets out criticisms of the evidence, but, when those criticisms are analysed, they disclose an inadequacy of reasoning.

18. The Judge constantly repeats that there is no reliable evidence. Instead of dealing with the evidence that is presented and analysing that evidence, the Judge sets off in search of something that does not exist. The Judge says that there is no reliable evidence that the appellant's carer intends to withdraw support but does not deal with the letter from the appellant's carer saying that he intends to withdraw support.

19. At [55] the Judge looks for corroboration, and then offers his own opinion of what would happen to the passengers in a car involved in a road traffic accident. The Judge's opinion is not related to the evidence presented.

20. The decision contains errors of fact. The appellant is not a national of Nepal ([1] of the decision). The appellant has not been granted protection status by UNHCR ([26] of the decision).

21. At [60] of the decision, the Judge records that the sponsor's former spouse was able to travel freely between Iraq and Kuwait. That is an irrelevant consideration.

22. At [64] of the decision, the Judge appears to conflate registration with UNHCR with the availability of an Iraqi CSID. The appellant is a Kuwaiti Bidoon.

The Judge does not explain how an undocumented Kuwaiti Bidoon will be able to apply for a CSID.

23. At [63] the Judge refers to the expiry of the sponsors leave to remain in Iraq. It was not part of the evidence that the sponsor ever had leave to remain in Iraq.

24. The Judge draws conclusions from errors in the findings of fact. That is a material error of law. The errors in the findings in fact, and the superficial analysis of the evidence, combined, make the Judge's finding that article 8 family life does not exist unsustainable. That critical finding is undermined by errors in fact finding and inadequate reasoning.

25. The undisputed facts are that the appellant is a widow. She is the mother of the sponsor. The appellant has a number of health concerns. The appellant is an undocumented Bidoon from Kuwait, who now lives in IKR. The appellant registered with UNHCR in 2023, with the assistance of the sponsor.

26. Headnote 35 of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) says

> *There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.*

27. The decision also contains a material error of law because the country guidance in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) was not factored into the proportionality exercise. The Judge was not referred to background materials and caselaw, but it is *pars judicis* to apply country guidance.

28. Because the decision contains material errors of law it is set it aside. It is a matter of agreement that a fresh hearing is necessary before the First-tier Tribunal.

Remittal to First-Tier Tribunal

29. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

30. I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand, but the First-tier tribunal might take the undisputed facts narrated at [7] & [25] above as a starting point. A complete re-hearing is necessary.

31. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Fox. An Arabic interpreter will be required.

Decision

The decision of the First-tier Tribunal is tainted by a material error of law.

The Judge's decision promulgated on 15 April 2024 is set aside.

The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 28 August 2024
Deputy Upper Tribunal Judge Doyle