



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000313
UI-2023-000314
UI-2023-000315

First-tier Tribunal No: HU/50332/2023
IA/00603/2023
HU/50335/2023
IA/00605/2023
HU/50333/2023
IA/00604/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th June 2024**

Before

**UPPER TRIBUNAL JUDGE MACLEMAN
&
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

**BAHEA ALFROUH
MAJEDA ALFROUH
YAMEN ALFROUH
(ANONYMITY ORDER NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr K Forrest, counsel, instructed by Maguire solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh, on 6 June 2024

DECISION AND REASONS

1. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Respondent against the decision of First-tier

Tribunal Judge Green dated 18/12/2023, which allowed all three Appellants' appeals on article 8 ECHR grounds.

Background

2. The first Appellant was born on 10/02/1971. She is the mother of the sponsor. The second appellant is the sponsor's sister, who was born in 2008. The third appellant is the sponsor's brother. He was born on 20/11/1988. All three appellants are Syrian nationals. The sponsor fled Syria in 2018. He has refugee status

3. The first and second appellants applied for entry clearance as the adult dependant relatives of the sponsor. The third appellant applied for entry clearance as the dependent child relative of the sponsor.

4. The Respondent refused the appellants' applications on 6 December 2023 stating that the appellants cannot meet the requirements of the Immigration Rules.

The Judge's Decision

5. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Green ("the Judge") allowed all three appeals on article 8 ECHR grounds.

6. The Respondent lodged grounds of appeal, and on 30/01/2024 First-tier Tribunal Judge Boyes gave permission to appeal stating

1. The application is in time.
2. The grounds assert that the Judge erred in respect of numerous aspects of Appendix FM- ADR and Article 8 generally.
3. The grounds set out a number of complaints which are explained in clear terms. They need no further elucidation or explanation from me. The grounds are clearly arguable given their apparent importance to the decision as a whole and that the allegations involve a suggestion that the Judge has misunderstood and misapplied the law.
4. Permission is therefore granted on all matters raised.

The Hearing

7. For the respondent, Mr Mullen moved the grounds of appeal. He told us that the decision contains a material error of law because the Judge took account of third-party support, and included universal credit awarded to the sponsor and his two brothers as part of his overall assessment of the maintenance

requirements of the immigration rules. Mr Mullen said that that error was compounded by failing to notice dependency on public funds.

8. Mr Mullen told us that paragraph 12A of appendix FM-SE dictates that evidence of available funds must be supported by an assessment of the agency that provides that money, and that evidence was lacking. He told us that the absence of the evidence undermines the Judge's findings about the maintenance requirements.

9. Mr Mullen asked us to allow the appeals and substitute our own decision reversing the decision of the First-tier Tribunal.

10. For the appellants, Mr Forrest adopted the terms of his rule 24 note. He had three points to make in response to the respondent's submissions. The first was a question of fact about the identity of the sponsors; the second, a question of law concerning the maintenance requirements of the immigration rules; and the third, that regardless of the Immigration Rules, the appellants should succeed on freestanding article 8 ECHR grounds of appeal.

11. Mr Forrest referred us to the original applications and said that what the respondent calls "third-party support" is, in fact, support from the sponsor and his two brothers, all of whom were equally concerned for each appellant and each of whom should be treated jointly as sponsor.

12. Relying on the cases of Yarce (adequate maintenance: benefits) [2012] UKUT 00425(IAC) and CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 (IAC), Mr Forrest told us that it does not matter that third parties provide support. What matters is the availability of funds. Confessing that he found appendix FM and appendix FM-SE to be turgid reading, he told us that the rules should be interpreted liberally because of the number of exceptions to the requirements listed in appendix FM-SE.

13. Finally, Mr Forrest told us that the Judge finds at [35] of the decision that article 8 family life exists. The appeals can only be brought on article 8 ECHR grounds. He told us that the Judge found that there are exceptional circumstances amounting to a breach of article 8 which lead to unjustifiably harsh consequences. He asked us to preserve those findings and either

(i) Allow the appeals and substitute a decision allowing each appeal on freestanding article 8 ECHR grounds, or

(ii) Dismiss the appeals and preserve the First-tier Tribunal's decision.

Analysis

14. At [10] of the decision the Judge correctly quotes the relevant parts of the immigration rules. The focus for the purposes of these appeals is on following provisions

E-ECDR.3.1. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

And

319X (vii) the applicant can, and will, be maintained adequately by the relative in the United Kingdom without recourse to public funds

15. Having found that each of the appellants satisfies all other aspects of the immigration rules, the Judge turned his attention to the financial requirements between [32] and [34] of the decision. There, the Judge adopts the calculation of income for the sponsor and his two brothers contained in the appellant's Appeal Skeleton Argument. The Judge accepts that the income of the sponsor and each of his two brothers comes from public benefits, including Universal Credit and Housing Benefit.

16. The sponsor and his brothers intend to provide for each of the appellants from the public funds that they receive. None of the appellants can, therefore, say that they will be maintained without recourse to public funds. The Judge's analysis of the immigration rules contains an error of law.

17. That error of law is material because the Judge's freestanding article 8 ECHR assessment has its foundation on the incorrect finding that each of the appellant meets the requirements of the immigration rules.

18. We have to find that the Judge's decision is tainted by material error of law. We set the decision aside.

19. Parties' agents agree that we should proceed to substitute our own decision.

20. None of the appellants can succeed under the immigration rules simply because they do not meet the maintenance requirements of E-ECDR.3.1. and paragraph 319X (vii).

21. We preserve the Judge's finding that article 8 family life exists among all three appellants and the sponsor, but to consider article 8 ECHR grounds of appeal, we must apply section 117B of the Nationality, Immigration and Asylum Act 2002.

22. In the appellants' favour, article 8 family life exists.

23. What we must weigh against that article 8 family life is that

- (i) None of the appellants speak English.
- (ii) None of the appellants are financially independent
- (iii) Immigration control is in the public interest.

24. We are mindful of the fact article 8 ECHR considerations are separate from a claim for international protection. We have to focus on the only competent ground of appeal.

25. Adopting a balance sheet approach to proportionality assessment, we find that there are more factors weighing against the appellants than in their favour. We therefore find that the respondent's decisions are not a disproportionate breach of article 8 family life.

DECISION

The decision of the First-tier Tribunal dated on 18/12/2023 is tainted by a material error of law and is set aside.

We substitute our own decision.

The appeals are dismissed on article 8 ECHR grounds.

Signed **Paul Doyle**
June 2024
Deputy Upper Tribunal Judge Doyle

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