Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number: IA/23085/2013

THE IMMIGRATION ACTS

Heard at: Manchester	**Determination Promulgated**
On: 12th June 2014	**On:11th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Naftali Zvi Kalish
(no anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Leskin, Birnberg Pierce and Partners
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Israel date of birth 27th December 1988. He has permission to appeal against the decision of the First-tier Tribunal (Judge Lambert) to dismiss his appeal against the Respondent's decision to refuse to vary his leave to remain in the United Kingdom. That decision followed from the refusal to grant the Appellant further leave to remain as the spouse of his British wife.

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Background and Matters in Issue

2. The Appellant was first given leave to enter as a spouse in 2010. In March 2013 he returned to Israel for a family visit. When the Appellant presented himself at Manchester airport hoping to re-enter the UK to join his wife and children he was stopped by border force officials who pointed out that his last visa had expired before he had even left the UK. The Appellant was nevertheless granted two months leave to enter in order to "regularise his position".

3. Once in-country the Appellant made an application for leave to remain as a partner.

4. The Respondent refused the application by way of letter dated the 28th May 2013. The Appellant did not qualify for leave to remain because he had not shown that he had the requisite level of English language skills. Nor had he shown he had sufficient funds. The letter also put in issue whether this was a genuine and subsisting relationship, but in view of the couple's three children the Respondent has now very sensibly withdrawn that ground of refusal. The letter went on to wrongly state that there was no right of appeal to the First-tier Tribunal. No consideration is given to Article 8 outwith the framework of the Immigration Rules.

5. Judge Lambert correctly found that there was a full right of appeal since the Appellant had valid leave at the date that he made his application, having been given two months leave to enter at Manchester airport. She noted that the Appellant's representative had nevertheless conceded that the Appellant could not succeed under the Rules because he could not meet the requirements as to maintenance or English language skills. The skeleton argument made it clear that the Appellant relied solely on Article 8 outside of the Rules. Judge Lambert prefaced her analysis of Article 8 by making a number of clear findings of fact. She accepted that the Appellant and his wife have been in a genuine relationship since 2009. She found that they have a large extended family living close by in Manchester: "relationships within the family are close and mutually supportive. The Appellant's mother-in-law helps the sponsor and Appellant with child care whenever she is needed. The loss through illness of the sponsor's younger sister in June of this year caused suffering for the family and for the sponsor in particular". She found no evidence to suggest that the Appellant had made any consistent attempt to learn English since he first arrived here in 2010; this was to be contrasted with his prioritisation of his religious study. In respect of the Appellant's role in parenting his British children that was found to be significant. These facts clearly led to a

finding of family life, and the Tribunal accepted that there would be an interference with it if the Appellant were to have to return to Israel.

6. In respect of proportionality the First-tier Tribunal placed weight on the fact that the Appellant has three young children who all live in the UK with their mother. She has lived here all her life and does not speak Hebrew. She enjoys a close and supportive family network in the UK and the sponsor has been particularly reliant upon this network since the death of her sister. The Appellant conceded that life for his family would not be impossible in Israel, but rather than they would face difficulties in trying to relocate there. Judge Lambert gave primary consideration to the best interests of the Appellant's three young children and to what Blake J says in Mansoor about the importance of being able to live in the country of one's nationality. She noted however that they are very young and that none are in full time education. At present their lives revolve around their parents and extended family. She noted the evidence as to the close relationships within the wider family but found no evidence to suggest that a period of separation from those family members would be "actively damaging" to their wellbeing". They would be able to develop relationships with their father's family in Israel. Judge Lambert could find no reason to find that it would be contrary to the best interests of the children for them to live with their father in Israel for a period, should their mother decide that she wanted to go with him. This was in the alterative to the Appellant returning to Israel alone and making an application to come back once he had all the requisite matters in order:

> "4.17…The obstacles to the Appellant being able to meet the requirements of Appendix FM are on the evidence before me capable of being overcome within a reasonable timescale. He is literate man who applies himself readily to religious learning. I have no doubt that provided he chooses to apply himself to the task he also has the ability to learn English and pass a language test. He would not, if he wished to return to the United Kingdom, need to remain in Israel for any prolonged period of the children's lives. If they and their mother accompanied him they would, in the relatively foreseeable future, be able to expect to return to this country to take full advantage of their British citizenship"

7. Having considered the evidence before her Judge Lambert concluded that the Sponsor would be "in no worse position than any number of single parents who have to cope alone". Although she would find it difficult she would be aided by the close support of her family. The

decision was not disproportionate and the appeal under Article 8 was dismissed.

8. The grounds of appeal are almost as long as the determination itself. Numerous errors are alleged, most of which amount to a disagreement with the decision. Some of the paragraphs make no sense. Others are repetitive. I hope I do no injustice to the grounds by boiling them down to the points focussed upon in Mr Leskin's oral submissions. It is said that the First-tier Tribunal erred in the following respects:

    i) Failing to record or consider material evidence. The Appellant relied on the oral evidence of five witnesses in addition to himself and his wife yet none of their evidence was noted nor apparently any weight given to it. All of these witnesses (members of the Sponsor's family) gave important evidence about the very close relationship between the Sponsor and her family, all of which was relevant to proportionality and the assessment of 'best interests'; this omission led the Judge to "skirt over" the very great loss suffered by the family when the Sponsor's sister died. This matter was also confirmed in writing by the family doctor and the Judge failed to have regard to his evidence. It was this ground that attracted First-tier Tribunal Campbell to grant permission to this Tribunal.

    ii) Failure to deal with points made by the Appellant. This is said to include failing to make findings on the fact that the Sponsor would have to give up her job if she moved to Israel; that she was having a "very difficult time" with her young baby; that her mother had to give her more support than she has had to give to any of her other children; that the family would find it difficult to move to Israel because of the very substantial degree of emotional and practical support that they receive here from the Sponsor's family, and that the Appellant would stand a much better chance of being able to learn English in the UK than he would in Israel.

    iii) Applying "too much weight" to the Appellant's lack of English. It is submitted that the Judge attaches "disproportionate and excessive weight" to the fact that the Appellant has not passed his English language test.

9. It is also alleged that the determination erred in its approach to the Sponsor's financial situation. Mr Leskin conceded in his oral submissions that this was not a central ground of appeal, since it was agreed that the Appellant could not meet the requirements of the rules in any event. The evidence that the Judge considered lacking has now been provided.

10. In his oral submissions Mr Leskin further submitted that the First-tier Tribunal had erred in failing place adequate weight on the fact that the children are British.

My Findings on Error of Law

11. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision. Judge Lambert could not have been plainer in this decision. She heard what was said about the sad loss of the Sponsor's sister, and about how close the Sponsor is to her family. She took that into account. The determination refers in several places to the amount of practical and emotional support the Sponsor gets from her extended family [see for instance 4.10, 4.13, 4.15]. It was not in issue and she accepted that it was so. It is therefore difficult to see what difference it would have made if the Judge had "stated that she had a record of the evidence which can be referred to", "given justice to the oral evidence" or "referred to the fact that there were five other witnesses" (all discrete 'errors' alleged by the grounds of appeal). I find that if there was an error in failing to record the evidence of the witnesses it cannot be said to be material, since none of the findings contradicted anything any of these witnesses said. The determination gives full consideration to the fact that this is a close-knit family who have suffered a bereavement.

12. Similarly I do not find that the Tribunal erred in its approach to the submissions advanced by the Appellant. Most of the points raised in the grounds amount to a disagreement with the determination. I am told that Mr Leskin advanced an argument that the Appellant would be far better placed to learn English in the UK than he would in Israel, and it is now said that the omission to deal with this was an error of law. With respect, it is difficult to see how that could have made any impact on the Judge's decision. If she considered that it was reasonable that he return to Israel in order to to apply for a spouse visa she would no doubt have considered it reasonable that he apply for a student visa if he wanted to study in the UK.

13. Much of Mr Leskin's oral submissions were taken up with the matter of the Appellant's failure to meet the requirement that he speak English to a specified standard. It is said in the grounds that the Judge placed "excessive weight" on the fact that the Appellant did not appear to have taken any real steps to study English. This matter is addressed by the determination at paragraph 4.17 where the Judge points out that there are no apparent obstacles to the

Appellant actually learning English, it's just that so far he has chosen to do other things. I find it hard to see how that can be said to be "excessive" – the determination gives no indication as to how much weight the Tribunal placed on this factor, it is just listed as one amongst a number. I would add that it is clearly a factor of some importance as far as the Respondent is concerned, the new rules reflecting the will of parliament in introducing the English language requirement, upheld by Beatson J and then the Court of Appeal in Chapti. I do not find that there was any error in the weight attached to this matter.

14. The final matter that was raised before me was the issue of the children's nationality. A number of cases were cited which emphasise the importance of a child's nationality, and how a child has the right to grow up in his or her country of nationality and enjoy the benefits that this might bring. Judge Lambert herself gives very full consideration to some of those authorities at paragraph 4.14. If it could be said that there was any error in her approach, which I do not find, I cannot find it to be material, since these children are plainly also entitled to Israeli citizenship. Mr Leskin protested that I could not take judicial notice of that. Their father is Israeli. Their Jewish mother is entitled to make *aliyah* to Israel whenever she likes. It would therefore be extraordinary to suppose that the Israeli government would deny these children confirmation of their citizenship. The argument as to nationality is therefore neutral.

15. In respect of finances I think it fair to say that the determination is incomplete. Judge Lambert was not asked to make findings on whether the Appellant could meet the financial requirements of Appendix FM and it would appear that the evidence before her was limited. If the Appellant's evidence about the family's financial situation is correct no doubt he will very easily be able to satisfy an Entry Clearance - or Immigration - Officer that he can meet those requirements.

16. The decision of Judge Lambert does not contain any errors of law. Her findings are clear and were open to her on the evidence before her. She was entitled to find that the Appellant should return to Israel and take his English language course. I note that the Appellant has now been back in the UK for some time and may have already completed it. If that is so then his absence from the UK will likely be brief.

Decisions

17. The decision of the First-tier Tribunal contains no error of law and it is upheld.

18. I make no direction as to anonymity.

Deputy Upper Tribunal Judge Bruce
23rd July 2014