

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/39935/2013,



Appeal Numbers:
IA/39937/2013,
IA/39941/2013,

IA/39946/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 8th April 2014

Determination

Promulgated

On 6th May 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR OSAMA MOHAMED BENMANSOUR - FIRST APPELLANT
MRS SALMA ABDULJALIL ELGHARYANI - SECOND APPELLANT
MISS BOSHRA BENMANSOUR - THIRD APPELLANT
MASTER MOHAMED BENMANSOUR - FOURTH APPELLANT
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Davison, Representative for Ison Harrison
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of Libya. The first and second Appellants are husband and wife. The third and fourth Appellants are their minor children. The second, third and fourth Appellants' appeals are dependent upon that of the first Appellant.

2. The first Appellant entered the United Kingdom on 7th January 2007 in possession of a student visa. The other three Appellants followed him a month later, entering as his dependents. Leave to remain for all Appellants was extended, for various reasons, until 31st July 2013.
3. On 30th July 2013 the Appellants made application for leave to remain outside the Immigration Rules. Those applications were refused by the Respondent and the subsequent appeals to the First-tier Tribunal (Judge Hague) were dismissed in a determination promulgated on 31st December 2013.
4. The Appellants now appeal with permission to the Upper Tribunal. Judge Hague in making his decision noted that the Appellants could not meet the Immigration Rules. This was always accepted by the Appellants who argued that the Respondent's decision infringed their rights to a private/family under Article 8 ECHR.
5. The Judge having set out somewhat briefly the jurisprudence in *Razgar* went on to hear oral evidence from the first Appellant and his children. Having taken evidence, the Judge concluded his determination in this way.

"The family would be removed as a unit and so family life between them would not be disturbed. Private life is of little weight in this case as they have always been in the United Kingdom knowing that they would ultimately return to Libya and so they cannot be perceived as having put down roots. I find that Article 8 is not engaged".
6. The grounds seeking permission rely on two main strands.
 - (i) Failure to find that Article 8 is engaged (see paragraph 13 of the determination).
 - (ii) Failure to carry out an Article 8 balancing exercise.
7. Mrs Pettersen on behalf of the Respondent served a short Rule 24 response; but when pressed to defend the determination sensibly accepted that the Judge's reasoning was deficient when he had concluded as he did in paragraph 13 "private life is of little weight in this case". She also agreed that although Article 3 had been raised in the grounds of appeal, the Judge had made no reference to that in any assessment on risk on return.
8. In the circumstances I informed Mr Davison that I did not need to hear from him.

Has the Judge Erred?

9. I find that Judge Hague has reached a conclusion as he did in paragraph 13 of his determination, which is flawed. He has based his assessment on an incomplete and possibly inaccurate factual matrix. He has found that the Appellants' case does not pass the second stage test by indicating that

Article 8 is not even engaged. Since the Appellants have been in the United Kingdom for a period of seven years and the children are now aged 12 and 11 years respectively, there needs to be substantial and sustainable reasons given why Article 8 is not engaged. I find no such reasons in the determination.

10. Likewise if Article 8 is engaged the appropriate balancing exercise is required to be carried out; this the Judge has failed to do. Finally the grounds of appeal did raise Article 3 ECHR. The Judge appears to have ignored that altogether. Bringing all those strands together I find that the decision of Judge Hague unsustainable. Because there is a lack of fact finding on the core issues, it is necessary to set aside the First-tier Tribunal decision and for the case to be heard again afresh and for new findings to be made. I consider that it would be more appropriate, in the light of the quantity of oral and documentary evidence to be considered, for the decision to be remade in the First-tier Tribunal and direct that it is remitted to that Tribunal accordingly.

DECISION

11. The determination of the First-tier Tribunal which is dated 31st December 2013 is set aside. I direct that the appeal be remitted to the First-tier Tribunal to remake the decision (not Judge Hague).

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated