



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/06018/2016  
HU/06435/2017, HU/06437/2017  
HU/06439/2017, HU/06441/2017  
HU/06443/2017, HU/06446/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 June 2018**

**Decision & Reasons Promulgated  
On 3 July 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MR M T + 6  
(ANONYMITY DIRECTION MADE)**

**Respondents**

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondents: Ms D Revill, Counsel, instructed by Irving & Co Solicitors

**DECISION AND DIRECTIONS**

1. The respondents (hereafter claimants) are citizens of Syria. The first two are husband and wife. The other five are their children aged 14, 12, 10, 8 and 4 at the date of decision. They applied for family reunion to join the son of the first two claimants,

AT, who is a recognised refugee in the UK. AT was born in January 2001. He arrived in the UK in May 2015 and was granted refugee status in October 2015. Their application was refused by the appellant (hereafter the ECO) on 10 February 2016. Their appeal came before Judge L K Gibbs of the First-tier Tribunal (FtT) who, in a decision posted on 27 November 2017, allowed their appeals on Article 8 grounds. The judge agreed with the ECO that the claimants could not meet the requirements of the Immigration Rules but considered that they should succeed for two main reasons, firstly that it would be in AT's best interests to do so (paragraph 8) and secondly because it would be a disproportionate interference with the right to respect for family life enjoyed by the claimants and AT to refuse them entry clearance. In submissions to the judge the claimants' representative, Ms Revill, appearing at the FtT level as well, placed significant reliance on the Upper Tribunal case of **AT and Another (Article 8 ECHR - Child Refugee - Family Reunification) [2016] UKUT 00227 (IAC)** and a document appended to it, "Entry Child Matters - Statutory Guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children" (November 2009).

2. The ECO's grounds of appeal contend that the judge erred in failing to assess the claimant's case on a case by case basis which was required under Article 8 outside the Rules. The judge was said to have paid no regard to the circumstances of the claimants including their current whereabouts; the health of the family members; their ability to provide for their basic needs; whether or not the sponsor was the head of the household; the burden on the UK State (especially given that there are seven claimants); the family ties in Lebanon; the feasibility of their reunification in Lebanon; and the evidence of the impact on the sponsor in light of the refusal.
3. In a Rule 24 Reply the claimants' representatives submitted firstly that the judge's reasons for allowing the appeal were adequate because the only matters that the ECO had relied upon was the claimant's failure to meet the Immigration Rules and the fact they would be reliant on public funds. They sought to rely in this regard on the reported case of **VV Lithuania [2016] UKUT 00053 (IAC)** at paragraph 23. The Reply submitted secondly that, contrary to what the grounds suggest, the judge had had regard to the specific circumstances of the claimants and the sponsor.
4. I consider that the ECO's grounds are made out. Before explaining why it is salient to set out the relevant paragraphs of the judge's decision. Having set out excerpts from the UN Convention on the Rights of the Child and the UN General Comment No. 6/1005 "Treatment of Unaccompanied and Separated Children outside their Country of Origin", the judge wrote:

"12. I have also taken into account s.117 of the Nationality, Immigration and Asylum Act 2002 (as amended) and, as in *AT* I find that it is reasonable to assume that none of the appellants speak English or will be financially independent on arrival in the UK. I also take into account the public interest in maintaining immigration control but I find that the facts of

these appeals are that the appellants have not sought to evade these controls but have properly made their applications for entry clearance. In my mind the fact that the Immigration Rules do not make provision for such circumstances should not weigh heavily against them given the primary consideration that I have of Amir's best interests.

13. I am also persuaded that it is in the public interest that Amir is reunited with his family so that he has the greatest possibility to reach his full potential in the UK, an issue identified as a relevant factor by the Upper Tribunal in *AT*:

*"36. The evidence establishes clearly that the sponsor is under achieving as a person. This means that his contribution, actual and potential, to United Kingdom society is diminished. This arises in circumstances where he has demonstrated his willingness to adapt to United Kingdom culture and to study earnestly in this alien country. The prediction that society will secure some benefit if the sponsor achieves family reunification in this country is readily made. Thus reunification will promote, rather than undermine, the public interest in this respect. It will be manifestly better for society than maintenance of the status quo."*

14. I am satisfied, taking into account all of the above facts, that the ECO's decisions to refuse the appellant's entry clearance to the UK interfere disproportionately with the right to respect for family life enjoyed by the appellants and Amir

5. There are several difficulties with the judge's reasons. First of all, the judge appears to consider that the Immigration Rules make no provision for family members seeking entry clearance to join a refugee or beneficiary of humanitarian protection in the UK for family reunion. They do: see paragraphs 319L-319Y. These Rules are not restricted to sponsors who are minors. They include a specific Rule at paragraph 319, "Requirements for leave to enter or remain in the United Kingdom as the parent, grandparent or other dependent relative of a person with limited leave to enter or remain in the UK as a refugee or beneficiary of humanitarian protection". The fact that the claimants were clearly not able to meet all the requirements of the rules, in particular they could not show that they were "financially wholly or mainly dependent on the ..... refugee ..." meant that the judge was required to attach significant weight to this inability when assessing the claimant's circumstances outside the Rules. Whilst the judge's statement at paragraph 12 that "the fact that the Immigration Rules do not make provision for such circumstances should not weigh heavily against them" would superficially appear to suggest he weighed this inability against the claimants, albeit not heavily, his earlier statement that "the [claimants] have not sought to evade these controls but have properly made their applications for entry clearance" indicates that his taking into account the public interest in maintaining immigration control was limited to the claimants' decision to make an entry clearance application, rather than on their ability to meet the

substantive requirements of the Rules. It must be borne in mind that the provisions in the Rules are those that are applied to all categories of persons seeking to join refugees for family reunion and it is not for a judge to decline to weigh them in an effective way in the Article 8 balancing exercise just because the government through the Rules does not make provision for the circumstances of a family in a particular type of situation.

6. Second, so far from effectively weighing the public interest reflected in the Rules against the claimants, the judge decided that the public interest itself was in favour of the claimants. At paragraph 13 the judge declares that “I am also persuaded that it is in the public interest that [the sponsor] is reunited with his family ...”. This declaration effectively negated the public interest side of the scales.
7. Thirdly, even though recognising that the claimants’ case depended on succeeding outside the Rules, the judge did not apply any test as to whether there were compelling circumstances outside the Rules.
8. Fourth, despite citing AT the judge did not appear to understand that the relevant passage of this decision (paragraph 36) was quite specific to the situation of the sponsor in that case, who had been head of the family before he fled Eritrea. It was at least incumbent on the judge to explain why the situation of the claimant (who was engaged in secondary education having recently done his GCSEs) could be compared with an adult sponsor who had been head of his family and was “under achieving as a person” in the UK.
9. Ms Revill sought to argue that the judge did consider public interest factors as set out in s.117B of the NIAA 2002, counting against the claimants that none of the claimants speak English and none will be financially independent. However, (leaving aside that s.117B is concerned with cases of persons who are in the UK), s.117 is not an exhaustive list and in the context of an entry clearance case the lack of financial independence was clearly a factor to which significant weight had to be attached. In any event, as explained earlier, the judge’s analysis effectively redefined the public interest so that it was in the public interest for the claimants to be granted entry clearance.
10. Ms Revill’s main effort to rescue the judge’s decision was to take aim of shortcomings in the grounds by reliance on the case of VV. I do not consider that that case assists the claimants’ cases. The ECO’s grounds clearly did identify a substantial issue between the parties, namely the flawed treatment of the public interest and also identified why it was considered the judge’s reasons for allowing the appeal betrayed an error of law.
11. I am persuaded that the legal errors in the judge’s decision were material because it cannot be excluded that if he had applied the relevant law correctly he may have reached a different conclusion.

12. For the above reasons I conclude that the judge materially erred in law.
13. Although the ECO's grounds do not challenge the judge's finding of fact as such, that does not really help because the judge's decision makes virtually none regarding the sponsor's and his family circumstances.
14. In such circumstances I see no alternative to a remittal to the FtT. The next FtT judge will require to hear from the sponsor and will also need to consider the supplementary bundle of evidence submitted by the claimants' representatives on 4 June 2018 and which include a medical report of 29 March 2018, a letter from the chair of Eastbourne networkx and documents relating to the medical health of the sponsor's father. It would be useful to the next judge to have further evidence about the sponsor's "wider family members" in Eastbourne whom the letter from the Eastbourne networkx dated 18 May 2017 says he is allowed to visit. One of the other matters the FtT judge will also need to consider is that albeit still a minor the sponsor is now aged 17½ and so even if his case is re-heard soon will very shortly be an adult. That may have significant implications for the balancing exercise to be conducted in assessing his best interests (age is one relevant factor) and also in considering whether it would be reasonably likely that the sponsor in time might be in a position to work and earn sufficient from work to meet the financial requirements of the Rules governing dependents of refugees.
15. Given the humanitarian dimension to the case I will direct the FtT to consider expediting the new hearing.
16. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge L K Gibbs).


**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the claimants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the claimants and to the ECO/SSHD. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 1 July 2018

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A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey  
Judge of the Upper Tribunal