**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-005285
UI-2024-005286
UI-2024-005287
UI-2024-005289
UI-2024-005290
First tier number: HU/65136/2023
HU/65137/2023
HU/65138/2023
HU/65139/2023
HU/65140/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 13th of February 2025

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**AND**

**Rana Abdullah Abdulrahmen Al Iessa**
**Ahmed Khalid Ahmed Al-Rashid**
**Tasnim Khalid Ahmed Al-Rashid**
**Shihab Khalid Ahmed Al-Rashid**
**Abdullah Khalid Ahmed Al-Rashid**

Respondents

**Representation:**

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondents: Mr Wood, Immigration Advice Service

**Heard at Manchester Civil Justice Centre on 31 January 2025**

**DECISION AND REASONS**

1. The Re

for the purpose of family reunification with their sponsor, Mr Khaled Ahmed Abdulhafed Al Rashed. Mr Al Rashed is the husband of the First Respondent (born 1976) and the father of her four children (born 2007, 2010, 2012 and 2013).

2. On the

linked appeals on human rights grounds. The Secretary of State now has permission to appeal against that decision.

**Relevant Background**

3. Mr Al-R

protection on the same day. The basis of his claim was that as a former member of the Iraqi army, he faced a real risk of persecution from the Al Mahdi militia, an Al Qaeda affiliate. He claimed to have been detained and tortured by this group in 2012-2013.

4. For rea

claim being processed. By the time that the Home Office dealt with the claim on 11 November 2020 the events underpinning it were in the distant past. The decision-maker concluded that even if the claims were true (which was not accepted) there was no longer any current risk to Mr Al-Rashed in Iraq.

5. Mr Al-R

Malik, who dismissed the protection appeal on the grounds that given the passage of time, there was no current risk of harm. She found*, inter alia*, that "al-Qaeda are a spent force in Iraq" [§13], and that the al-Mahdi militia "are no longer interested in the appellant or his family" [§18].

6. Judge M

United Kingdom's obligations under Article 3 ECHR should Mr Al-Rashed be returned to Iraq. A medical report had been produced which stated that Mr Al-Rashed bore scars "diagnostic" of having been tortured; his GP reported that he suffered from severe anxiety and depression and lived in "constant fear of removal"; a consultant psychiatrist opined that his "mental state and behaviour were diagnostic of his having suffered significant trauma". All of this, coupled with his own consistent evidence, led Judge Malik to accept that his account of events preceding his departure from Iraq were true. She further accepted the expert testimony of a consultant psychiatrist that there would be a high risk of suicide and/or psychotic breakdown should Mr Al-Rashed should be removed to Iraq. The appeal was allowed on this basis, in a decision dated 7 September 2021.

7. As a re

to Remain on 16 November 2021.

8. It then certificates for the children, and then their Iraqi passports. They made their applications for entry clearance to join Mr Al-Rashed on 22 June 2022.

9. The En 2023. The primary reason given for refusal was that Mr Al-Rashed had neither refugee nor settled status. As someone with Discretionary Leave, there was no provision under the rules for his family members to join him. Although the claims had "raised compassionate factors" these were not considered to meet the threshold to justify the grant of leave outside of the immigration rules.

10. The Re Judge McQuillan.

11. Judge M directed herself to the appropriate legal framework: that applicable to Article 8 ECHR. He noted that where an applicant is unable to meet the requirements of the immigration rules the public interest normally lies in refusing leave to enter or remain. The exception is where the refusal results in unjustifiably harsh consequences for the appellant or his family member. He directed himself to have regard to the public interest considerations set out in section 117B of the Nationality Immigration and Asylum Act 2002. Against these matters he weighs the "compassionate factors" referred to in the refusal decision. This is a family who are unable to avail themselves of any route within the immigration rules. There is here a genuine family life, which can only be facilitated by the appeals being allowed. It is in the best interests of the children to be allowed to live with their father as well as their mother, and this is not diluted by the separation they have thus far endured. If the family were admitted to the United Kingdom their status would be continue to be determined with reference to that of the sponsor. If the Home Office, at some point in the future, determined that Mr Al-Rashed was able to safely return to Iraq, then obviously they could all go with him.

12. Having struck in the Respondents' favour and the appeals were allowed.

**Grounds of Appeal**

13. The En November 2024 by First-tier Tribunal Judge Rhys-Davies.

14. The gro submitted that the Tribunal failed to have regard to the public interest when allowing these appeals.

**Discussion and Findings**

15. Paragra

unable to act as a sponsor as he is currently in the UK with section 3C leave". Before me, Mr McVeety clarified that in fact a further grant of Discretionary Leave was made on, on Article 3 grounds, on the 21 October 2024. Mr Al-Rashed currently has leave until the 21st April 2027. That being the case, Mr McVeety quite properly withdrew reliance on paragraph 1. Presumably the author had intended to say that it could not be disproportionate to refuse entry to the family of an individual whose status was itself uncertain; whilst a grant of Discretionary Leave is technically 'precarious' the reality is that Mr Al-Rashed is on the ten-year route to settlement. This is a very different situation from that of somebody awaiting a decision and therefore on section 3C leave. This recent grant of leave materially supports the conclusion of the First-tier Tribunal that these are appeals which should be allowed, since it reveals an acceptance by the Secretary of State that this family life cannot continue in Iraq, since Mr Al-Rashed cannot be expected to return there. Nor can family life be maintained by visits. These are factors quite properly weighed in the balance by Judge McQuillan.

16. Paragra

had regard to the public interest factors set out in section 117B. It is however submitted that "proper weight" has not been attached to these matters. Weight is a matter for the trial judge. Absent perversity, it is not open to this Tribunal to interfere with its allocation. Mr McVeety did not seek to persuade me that this is a decision flawed for irrationality, and he was right not to do so. Although this is a decision which may well have gone the other way, it was certainly one within the range of reasonable responses.

17. As to th

regard to the specific sub-sections of s117B, this is without foundation. At its §18 the Tribunal expressly weighs against the applicants their inability to speak English, and the fact that they are not financially independent. The fact that the family are unable to apply under the Rules permeates the decision. I am quite satisfied that the Judge had this matter at the forefront of his mind.

18. Having

satisfied that this is a decision which must be upheld. The grounds are, properly analysed, simply a disagreement with the outcome.

19. I would

family have spent apart, and "whilst not attributing blame for this delay" considers this to be another factor weighing against the public interest in maintaining these refusals. I would myself have been less circumspect. Judge Malik accepted that the account advanced by Mr Al-Rashed was true. The reason she gives for dismissing his claim on protection grounds is that the passage of time had obviated the risks he once faced: she had before her expert country evidence explaining how the Al Qaeda affiliated militia he feared had, in those intervening years, been 'wiped out'. Although it is never possible to say with certainty what might have happened, there is at least a strong possibility that

had Mr Al-Rashed's claim for protection been considered promptly, he would have been granted refugee status. His wife and children would have qualified for family reunion, and would have been living in this country all that time.

**Decisions**

20. The de
is dismissed.

21. There i

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
1st February 2025