



IAC-FH-AR-V1

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

Appeal Number: AA/04014/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th November 2015**

**Decision & Reasons Promulgated
On 1st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**YAHY BAQER HADI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Canter, Counsel, instructed by AMZ Law

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iraq, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 25th February 2015 to refuse his application for asylum in the UK. First-tier Tribunal Judge Parker dismissed the appeal on asylum grounds and on the basis of Article 8 of the European Convention on Human Rights. The Appellant appeals with permission to this Tribunal.
2. The background to this appeal is that the Appellant originally entered the UK on 11th May 2004 and subsequently married a Portuguese national and

applied for a residence card as a family member of an EEA national. This application was refused and the appeal against that decision was dismissed. The appellant then claimed asylum on 13th September 2006 but was encountered on 22nd February 2007 working and produced a false Danish passport. He was convicted on two counts of obtaining leave to enter the UK by means of deception and was sentenced to two years and six months imprisonment and was subsequently served with notice to deport, his appeal against that decision was dismissed and he was deported on 9th May 2011. However he re-entered the UK on 16th March 2014 and was arrested and subsequently convicted on 19th June 2014 of entering the UK in breach of a Deportation Order and sentenced to six months imprisonment. He claimed asylum on the basis that he has been threatened by Al-Sadar militants as a result of a dispute over ownership of his father's land. The First-tier Tribunal Judge found that the appellant's account was not credible and that, even if the appellant was under threat from the militant organisation, there would be an internal relocation option.

3. The appellant also claimed that his removal would breach his right to private and family life under Article 8 of the European Convention on Human Rights based on his relationship with his parents who live in the UK. The Judge considered this part of the appeal under Article 8 and found that the Appellant has a family life with his parents [45] but that his removal would be proportionate. The Judge found that there was a conflict in the evidence as to the care undertaken by the Appellant. The Judge found that the Appellant does help his father but that his behaviour is *'in no way exceptional or beyond the norm'* and that there are others who help the Appellant's father [52], namely the Appellant's mother and sister [49].
4. In granting permission to appeal First-tier Tribunal Judge Andrew indicated that she considered that the grounds criticising the judge's decision in relation to the asylum aspects did not disclose any material errors. However, First-tier Tribunal Judge Andrew did accept that the judge made contrary findings in the decision as to whether or not the Appellant enjoys family life in the UK and found that this is an arguable error of law. At the outset of the hearing Mr Canter accepted that the grant of permission was limited to Article 8 only.
5. Mr Canter relied on the Grounds of Appeal and submitted that the judge made material errors of law in relation to his assessment of family life and in relation to his assessment of proportionality. In relation to family life, Mr Canter submitted that the First-tier Tribunal Judge contradicted himself as to whether family life is engaged. He pointed out that at paragraph 45 of the determination the judge said that the Appellant has a family life with his parents but that at paragraph 52, having set out the relevant case law, the judge found that the Appellant's family life with his father was *'in no way exceptional or beyond the norm'*.

6. He submitted that there were further errors in relation to the assessment as to family life. He submitted that one of the reasons given for the apparent finding at paragraph 52 that there was no family life was that the Appellant did not mention in his asylum interview that he gave any personal care to his father. However, Mr Canter referred to questions 119, 120 and 121 of the asylum interview where the Appellant said that his father was dependent on him as, since his father's accident, he takes him to hospital sometimes three times a week and translate for him and that his mother is elderly as she is almost 79. He submitted that the Appellant described his father's medical condition in answer to question 120 and in answer to question 121 he said that he also took care of his father at home and also did the shopping for his parents. Mr Canter submitted that, in failing to take account of these answers, the First-tier Tribunal Judge did not arrive at his conclusion safely.
7. Mr Canter also submitted that in the final sentence of paragraph 52 where the judge said; *'There are others who can help the father and they do so'*, he took account of an irrelevant factor in determining whether the Appellant has family life with his father. He submitted therefore that there was an error in relation to the first stage of Article 8.
8. Mr Canter submitted also that the judge also made an error in his assessment of proportionality. He submitted that it would be impossible to reach a correct proportionality assessment given the first mistake but that there were also other mistakes. He submitted that the judge made a mistake at paragraph 57 where he said that Sections 117B (4) and (5) require the Tribunal to ascribe little weight where a person has formed a private or family life whilst in the UK unlawfully *'as in this case'*. He submitted that this provision does not apply in relation to family life.
9. Mr Canter submitted also that the judge erred in the first sentence in paragraph 58 where he said; *'However, no exceptions apply'*. He submitted that this appears to indicate that the judge was applying an exceptionality test. Mr Canter submitted that the judge made an error at paragraph 55 where he says that the Appellant is a financial burden on society whereas in fact he says there was no evidence at the hearing in relation to the Appellant's financial circumstances, the Appellant is not in receipt of any benefit and in fact he cares for and translates for his father which is a saving on public finances. The Appellant's parents are both refugees, the Appellant lives with them and he said that the financial circumstances were not an issue at the appeal. He submitted that there is a further error at paragraph 58 where in the third sentence the judge appears to take into account the factors at Section 117D whereas in fact this is not a deportation case, this is an asylum appeal.
10. He submitted that the judge did not set out the correct question at paragraph 58. The correct question would have been whether the Respondent has justified the interference with the Appellant's family life. He submitted that this is a material error and the Article 8 issue needs to be addressed properly.

11. Mr Staunton submitted that the judge did properly deal with the Appellant's answers in the asylum interview at paragraph 48 of the determination. This, read with paragraph 52, indicates that the judge did find that the Appellant does help with his father and in fact there are no contradictory findings here. The judge said that the Appellant helps with his father but not to the extent claimed in oral evidence. He submitted that it was open to the judge to find that there are others who can help the Appellant's father. He submitted that the Appellant's evidence about his claimed assistance to his father was inconsistent and it was open to the judge to make the findings he did.
12. In relation to paragraph 58 Mr Staunton submitted that there was an application in this case to withdraw this decision for the Secretary of State to remake it by considering making a deportation order. The judge refused that application but indicated that this was a matter that could be dealt with in the course of the hearing. This is dealt with at paragraphs 12 and 13 of the judge's determination. He submitted that that is why the judge considered Section 117D.
13. Mr Canter responded by submitting that the judge did fail to set out what the Appellant said in the interview. He submitted that there was no reason put forward by the judge for not believing what the Appellant claimed he does for his father and there was no basis for his findings. He submitted that the judge confused himself in relation to family life and made a distorted assessment.

Error of Law

14. I have considered all of the evidence and the submissions in this case. I accept that the judge could perhaps have structured his assessment under Article 8 better. Although he found at paragraph 45 that the Appellant has a family life with his parents the judge then set out the relevant case law and concluded at paragraph 52 that the Appellant's behaviour was not '*exceptional or beyond the norm*', a reference to the test set out in Etti-Adegbola v SSHD [2009] EWCA Civ 1319. I do not consider that these findings are contradictory in this case. It would have been open to the judge, on the basis of this conclusion, to have found that there is no family life between the Appellant and his parents over and above that normally found between parents and adult children. However the judge did not so find but went on to conduct a full proportionality assessment. This may have been over and above what was necessary in this case given the conclusions at paragraph 52 but this does not make such consideration a material error.
15. In considering proportionality the judge considered all relevant matters. I note in particular at paragraph 48 that the judge did consider the answers in the asylum interview in relation to the care said to be provided by the Appellant and found that these were different from the oral evidence given by the Appellant. This was a finding open to the judge. The judge expanded on this finding at paragraph 52 when he noted that the

Appellant did not mention any personal care provided to his father in the asylum interview. This is correct. The Appellant mentioned taking his father to hospital appointments and translating for him and he mentioned doing shopping for his father and mentioned helping him at home but did not specify any personal care. Therefore the judge's conclusions were open to him.

16. I consider that it is clear from reading the assessment under Article 8 as a whole that the judge found that the Appellant does help his father but not to the level claimed and not to a level which would bring their relationship into the sphere of '*exceptional or beyond the norm*' as required to show family life between parents and adult children.
17. In terms of the proportionality assessment, I do not consider it material that the judge found that the Appellant is a financial burden on society. The issue is whether under Section 117B an Appellant can show that they are financially independent. Mr Canter submitted that there was no evidence before the judge in relation to this and the judge would have been entitled to conclude that there was no evidence that the Appellant was financially independent. However as there was no evidence as to this matter before the Judge he could not have concluded that the Appellant is financially independent. It is not enough to say that this was not an issue at the hearing in the First-tier Tribunal. This was a matter the Judge was required by statute to take into account and it was up to the Appellant to submit evidence to support any claim that he is financially independent. Therefore the wording at the end of paragraph 55 is not a material error.
18. I do not consider that the first sentence of paragraph 58, '*However, no exceptions apply*', amounts to a requirement of exceptionality. The judge goes on to say that there are no qualifying children and it is in this context that the judge referred to exceptions to the public interest provisions.
19. I accept that the fourth sentence of paragraph 58, which refers to section 117D and the deportation rules, is confusingly worded. However this Appellant was previously deported and there was an application at the outset of the hearing for the matter to be withdrawn in order that a revocation of deportation order decision could be made and in these circumstances these issues may have been in the judge's mind. The Judge made no material error in referring to section 117D.
20. The judge took account of the fact that the Appellant had used deception in the past, made a false immigration claim and had entered the UK in breach of his deportation order. The judge took account of the circumstances of the Appellant and his parents who live with his adult sister and 8 year old nephew. I consider that reading the judge's assessment of Article 8 as a whole the judge took account of all relevant factors in assessing family life and proportionality and considering all of this section as a whole I am satisfied that the judge made no material error in his assessment of Article 8.

Notice of Decision

21. The judge made no material error of law and the decision of the First-tier Tribunal shall stand.

29. No anonymity direction is made.

Signed

Date: 25th November 2015

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 25th November 2015

Deputy Upper Tribunal Judge Grimes