Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08033/2013
AA/08034/2013
AA/08035/2013
AA/08036/2013
AA/08037/2013
AA/08040/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 28 July 2015	**On 27 October 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

FNZ
MAZ
MCZ
MOZ
PKZ
PAZ
~~**(Anonymity order not made)**~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr W Criggie, Hamilton Burns WS
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1) The appellants are a mother and her 5 children. They are all nationals of Lebanon. They appeal against a decision by Judge of the First-tier Tribunal Peter Grant-Hutchison dismissing their appeals on humanitarian protection and human rights grounds.

2) These appeals have a significant history. They were originally dismissed by a Judge of the First-tier Tribunal in November 2013. In July 2014 the Upper Tribunal remitted the appeals for a hearing before a different judge. The appeals were accordingly heard before Judge Peter Grant-Hutchison over two days in late 2014, with the decision issued in January 2015. The appeals now again come before the Upper Tribunal.

3) The appellants arrived in the UK as visitors in July 2013 and the first appellant claimed asylum the following day. According to the appellants, they had problems in Lebanon as the result of the activities of the first appellant's husband and the father of the other appellants. He worked as a loss adjuster preparing reports for court proceedings. This work exposed him to threats from people attempting to exert pressure upon him. The evidence before the First-tier Tribunal was that the first appellant's husband was prepared to tolerate the danger to which he was exposed in return for his earnings, which were significant. At the time of the hearing the first appellant's husband employed two bodyguards in Lebanon and slept in a different place each night.

Decision of the First-tier Tribunal

4) Before the First-tier Tribunal the first appellant gave evidence about the risks to which she claimed the family had been exposed in Lebanon. In one incident in June 2013 the family were returning in a car from a home in the mountains. They were followed by another car. The occupants of the other car forced the first appellant's husband out of his car and threatened him. The family asked the first appellant's husband to report this incident to the police but he was not interested in doing so. They nevertheless attended the police station and brief statements were taken.

5) The evidence of the first appellant was that her oldest daughter, PAZ, who was attending university in Lebanon, had been threatened. The threats were made by telephone. The daughter was told by the caller to tell her father to change a report or she would be in danger. Her father said he would not change the report. Around this time in April 2013 the daughter was being followed from the university. As a result of this she stopped attending university and the first appellant and the children moved to live at the first appellant's brother's house. After the incident in June 2013, when the family car was stopped, they moved between the first appellant's brother's and sister's houses in the centre of Beirut before

leaving Lebanon in July. The appellants experienced no further incidents after the one in June.

6) The first appellant's evidence was that her husband would not give up his occupation. He thought the family would be safe in Lebanon in hiding. Following her departure with the children she thought he would want custody of the children if they were in Lebanon.

7) The first appellant further claimed that the family would not be protected by the authorities in Lebanon. There had been a lot of kidnapping and break-ins and people had to use their own bodyguards. The police would not investigate break-ins. There was a police station near the family home but the police were short of staff. A friend of hers who was a priest was kidnapped and killed and nothing was done about it. As a woman in Lebanon she would have no power. Even though the incident when the family car was stopped was reported to the police, her husband would not give the police any names or details.

8) The oldest daughter, PAZ, gave evidence in which she referred to receiving threatening calls towards the end of April 2013. She received them every three to five days. When she told her father about the calls he said to her that she should not pay any attention and should not answer them. She referred to having been followed by cars from the beginning of April. If she was in a shop the car would stop. She thought the cars were following her because of her looks. This affected her education and she stopped attending lessons. She did not discuss this with her father. She gave evidence also about the family car being stopped in June 2013.

9) Two of the other children gave evidence before the First-tier Tribunal. One of these was PZ, who is not a party to this appeal but has been studying in the UK for 4 years. The other was PKZ.

10) The Judge of the First-tier Tribunal looked at the country information on Lebanon with regard to the claim by the first appellant that the authorities would not protect her. The judge was not satisfied that this was correct. He noted that according to the first appellant's evidence the police did produce a report in relation to the incident in June 2013 when the family car was stopped even though they were not given full information by the first appellant's husband. On the first appellant's own evidence she was able to stay for month with relatives in central Beirut after this incident without being threatened or molested. The judge was not satisfied that there was not a sufficiency of protection for the first appellant and the children in Lebanon. Even if this was not correct, there was a viable alternative of internal relocation and this would not be unduly harsh. The judge went on to make an adverse credibility finding in respect of the evidence of the appellants.

11) The judge considered the first appellant's claim that she would lose custody of her children in Lebanon. The judge had regard to the case of EM (Lebanon) [2006] EWCA Civ 1531. According to this case there was a risk that the right of the first appellant to care for her sons might not be recognised but there was no reason to suppose that she would be prevented from seeing her sons. The breaches of her Article 8 and Article 14 rights in this regard would not be such as to be flagrant.

12) Turning to the existence of family or private life in the UK, the judge noted that the appellants could not succeed under the Immigration Rules. They would be returning to Lebanon as family, apart from one son, PZ, who had chosen to study in the UK. Family life would resume in Lebanon. Any private life enjoyed in the UK had been only for a short period. It was not disproportionate under Article 8 for the family to return to Lebanon. The judge found no breach of either Articles 2 or 3 or of Article 8.

Application for permission to appeal

13) The first ground of the application for permission to appeal was based on a conclusion expressed by the judge at paragraph 20 of the decision in the following terms:

> "From the totality of the evidence and submissions before me, I find that if the appellant were to be returned to Lebanon that there would be a real risk of serious harm in terms of the humanitarian protection provisions."

14) It was submitted that because of this finding it was unclear why the appeal had been dismissed. The reader was left in doubt as to the judge's intentions and this constituted an error of law.

15) The second ground was that the judge had failed to consider adequately the best interests of the children. In terms of EM (Lebanon) it would be likely that the children would be returned to the care of their father. The judge discussed this case and accepted the evidence of supporting witnesses in relation to this matter. In view of this it was unclear whether the judge had given sufficient consideration to the best interests of the children, particularly as their father had a peripatetic lifestyle due to the threats he received and he relied on the protection of bodyguards.

16) The third ground was that the judge did not give adequate reasons for not accepting the evidence of the witnesses and finding their accounts to be lacking in credibility. Consistent evidence was given by five witnesses as to what had occurred in Lebanon in April/June 2013 and as to the family situation at the date of the hearing. The judge did not give sufficient reasons at paragraph 18 of the decision for finding that these witnesses were not credible.

17) Permission to appeal was granted on all of these grounds.

18) In a rule 24 notice dated 13 March 2015, the first contention was that in paragraph 20 of the decision, quoted at paragraph 13 above, the word "not" had clearly been omitted between the word "would" and the words "be a real risk of serious harm".

19) The notice then proceeded to state that the Judge of the First-tier Tribunal set out in three places, at paragraphs 16, 17 and 18, that he did not accept the evidence of the appellants. There was no reason to assume that the best interests of the children would lie anywhere else than remaining with their mother in the cultural context in which they were raised. The issue of custody was misconceived.

Hearing before the Upper Tribunal

20) The hearing before me was on the issue of whether there was an error of law in the decision of the Judge of the First-tier Tribunal. For the appellants Mr Criggie acknowledged that it was difficult to say that the alleged error in paragraph 20 was material. It was clear that the word "not" had been omitted from the sentence. Accordingly he would not rely on the first ground in the application for permission to appeal in an attempt to show that the decision was perverse.

21) In relation to the second ground, Mr Criggie observed that four of the children were under 18 at the date of the hearing before the First-tier Tribunal and he submitted that their interests had not been sufficiently considered. The oldest son, PZ, had a student visa. The children's father had a peripatetic lifestyle in Lebanon and was guarded by bodyguards. His living arrangements were fluid and were not secure. In Lebanon the father would be given custody of the children and this would lead to difficulties. They would be returning to a volatile living situation.

22) It was further pointed out that when the Judge of the First-tier Tribunal referred to EM (Lebanon) he cited the decision of the Court of Appeal, rather than the decision of the House of Lords. Mr Criggie submitted that it was the Court of Appeal decision which had been lodged by the respondent and it might be a further error for the judge not to have referred to the subsequent House of Lords' decision.

23) Mr Criggie acknowledged that there was no evidence from the children's father but there was evidence from people who knew him, as well as from the children. According to the evidence there had been a schism between the first appellant and the children's father following the incident in June 2013 because the father was unwilling to protect the family. The first appellant had not spoken to her husband since. The older children and a family friend were in contact.

24) On the third ground, Mr Criggie submitted that the judge had heard evidence from five witnesses, all members of the same family, but had given their evidence little weight or found it not credible. There were bound to be some inconsistencies between the witnesses. The judge did not give adequate reasoning for finding that the witnesses were not credible. He accepted the evidence of PKZ and of the family friend, Mr Bilan, in relation to how the children's father was living.

25) There was a discussion of the issue of whether there was a sufficiency of protection for the appellants in Lebanon, taking their evidence at its highest. In relation to this Mr Criggie submitted that the police in Lebanon were stretched to breaking point because of the situation in Syria. There was also corruption. The police could not be relied upon to provide a sufficiency of protection.

26) For the respondent, Mrs O'Brien referred to the rule 24 notice. She acknowledged that the decision was not "a perfect exposition" in respect of the assessment of credibility but points were made by the respondent in the reasons for refusal letter in relation to the issues of sufficiency of protection. There was a functioning government in Lebanon. The high standard for showing there was not substantive protection was not reached. The family could live elsewhere in Lebanon. The issue of custody was a secondary one. The family could not succeed with their claims under humanitarian protection or under Articles 2, 3 or 8 on the basis of their fear of crime in Lebanon.

Discussion

27) I have approached this appeal on the basis that an error of law made by the Judge of the First-tier Tribunal in respect of the assessment of credibility would not be material if, taking the appellants' evidence at its highest, there was no error of law in the judge's assessment of the risk on return and of the best interests of the children. In considering this I therefore assume that the family were threatened as they claim and this was the reason they left Lebanon.

28) The finding of the judge was that there was a functioning police force in Lebanon and that the police had, according to the family's evidence, taken statements following the incident in June 2013. The police had not been able to take further action because of the reluctance of the children's father to give details to the police. It was not suggested, however, that the police were unwilling or unable to act.

29) In relation to the threats to the eldest daughter and her evidence that she was followed on numerous occasions in April 2013, the evidence was that these matters were never reported to the police. Furthermore, the eldest daughter suffered no actual harm and there was no actual violence

against her. As the Presenting Officer submitted on behalf of the respondent at the hearing before the First-tier Tribunal, not only were the calls not reported to the police but the eldest daughter did not either change her telephone number or use a different telephone. There was no evidence that the police would not have acted in this matter if it had been brought to their attention.

30) The judge further concluded at paragraph 17 that on the first appellant's evidence even after the incident in June 2013, she was able to stay for a month with relatives in central Beirut without being threatened or molested. At paragraph 18 the judge stated that there was nothing to indicate that the people the first appellant feared would find her in another part of Beirut or another part of Lebanon.

31) Before the First-tier Tribunal it was acknowledged that the state authorities in Lebanon were "stretched" because of the number of Syrian refugees entering the country. The judge relied on a US report of June 2013 which stated that overall the police were responsive and had made significant improvements in rendering police assistance although they might have difficulty responding to crimes based on the time of day and location. This might lead to diminished levels of service and cases going unsolved or unresolved. The judge concluded, however, that the authorities were still functioning although they were under pressure. This is consistent with the appellant's own evidence about the police response to their report of the incident on June 2013. I conclude that the judge was entitled on the evidence and for the reasons given to find that there was a sufficiency of protection for the appellant and her family in Lebanon.

32) Even having made this finding, the judge went on to consider whether the appellants could relocate to avoid any further threats being made against them in an attempt to influence the children's father. Again, I note that the judge found that the appellants were able to stay with the relatives in central Beirut between June and July 2013 without difficulty. The first appellant feared they would be traced but the evidence does not support this claim. The appellant's evidence was that their car was stopped when returning from the mountains but this was on their return from a country home they occupied, the location of which might have become known to those who wanted to threaten the children's father.

33) The father himself is described as staying each night in a different place and having two bodyguards to protect him. The evidence of the first appellant was that it was not unusual in Lebanon for people to have bodyguards because of the level of crime and particularly of kidnapping. Even if people rely on bodyguards for their protection, it does not follow from this that there is not a sufficiency of protection provided by the authorities. The choice of having a bodyguard might be made by those who feel themselves particularly at risk, such as the appellant's father, or

those who have a particularly high fear of crime. On the basis of the evidence the children's father would not appear to have any financial difficulty in relation to the employment of bodyguards and the availability of extra protection of this nature is a matter which the judge would have been entitled to take into account.

34) I am satisfied that even taking the evidence at its highest, the judge gave adequate reasons for finding first that there was a sufficiency of protection for the appellants in Lebanon and, secondly, that even if this were not the case there was a viable alternative of internal protection, of which it would not be unreasonable or unduly harsh to expect the appellants to avail themselves. I do not consider that the Judge of the First-tier Tribunal erred in law in dismissing the appeals on the grounds of humanitarian protection and under Articles 2 and 3.

35) This leaves the issue of the best interests of the children in relation to Article 8. Here the judge assumed that it was in the best interests of the children to return with their mother to Lebanon, apart from the eldest son, PZ, who has chosen to study in the UK. On the face of it, it is difficult to see what other conclusion the judge might have reached in relation to the best interests of the children. At the date of the hearing before me they had been in the UK for just over two years. They arrived as visitors and they do not have a need for international protection. The judge noted that they had no adverse health issues, although the eldest daughter gave evidence that she was taking medication for scoliosis.

36) At the hearing before the First-tier Tribunal it was acknowledged on behalf of the respondent that on divorce the first appellant's husband would be given custody of the children. It was further submitted that he had not shown any interest in his family in the UK. Reliance was placed on the case of EM (Lebanon) to show that Shari'a Law, as applied in Lebanon, was not oppressive. The first appellant would still have access to the children. It could not be assumed that contact would be drastically reduced.

37) Mr Criggie pointed out that before the First-tier Tribunal the respondent relied on the Court of Appeal judgment in EM (Lebanon) rather than the decision of the House of Lords, reported as [2008] UKHL 64. Mr Criggie submitted before me that this in itself might amount to an error of law, although the point was not brought up before the First-tier Tribunal.

38) This point is of some potential significance. The House of Lords, of course, reached a different conclusion from the Court of Appeal and found that, if in the circumstances of that case custody was awarded to the father on the child's return to Lebanon, the right to respect for family life would not only be flagrantly violated but complete denied and nullified. This was in circumstances set out at paragraph 40 of the Court's decision, where it was pointed out that there was a bond of deep love and mutual

dependence between the appellant and her son and this could not be replaced by a new relationship between the son and his father, who had inflicted physical violence and psychological injury on the mother and who had been sent to prison for failing to support the son. The son had never consciously seen his father and felt strongly antagonistic towards him.

39) As was pointed out at paragraph 37 by the Court:

> "Families differ widely, in their composition and in the mutual relations which exist between the members, and marked changes are likely to occur over time within the same family. Thus there is no pre-determined model of family or family life to which Article 8 must be applied. The Article requires respect to be shown for the right to such family life as is or may be enjoyed by the particular applicant or applicants before the court, always bearing in mind, since any family must have at least two members, and may have many more, the participation of other members who share in the life of that family. In this context, as in most Convention contexts, the facts of the particular case are crucial."

40) In the circumstances of this appeal, there is no evidence that the children are irreconcilably estranged from their father. The evidence of PZ, though he is not one of the appellants, was that his father sponsors him at university in the UK and pays his fees. He has stayed with his father at his uncle's house, seemingly after his parents started living apart. The evidence of PKZ appeared to be that he has not had direct contact with his father since arriving in the UK and the evidence of the oldest daughter, PAZ, was that she has not had contact with her father since she left Lebanon.

41) Nevertheless, on the basis of the evidence the relationships between the children and their father are completely different from the relationship between the father and son described in EM (Lebanon). The principal point of law in EM (Lebanon) was that for Article 8 to be engaged in these circumstances the threshold test would require flagrant breach of the right to family life such as would completely deny or nullify the right in the destination country. A serious or discriminatory interference with the right protected would be insufficient. On the basis of the evidence in this appeal, there appears to be no suggestion that there would be a denial or nullification of family life between the appellants and their mother, even were custody of the minor children to be formally awarded to their father. Accordingly, the appellants have not shown that were they to return to Lebanon, and custody were to be awarded to their father in the event of a divorce, this would be a breach of Article 8 in the terms described in EM (Lebanon). I am therefore satisfied that even though the judge was not referred to the decision of the House of Lords in that case, the judge could not have found a breach of Article 8 arising from the issue of custody in the circumstances of this appeal.

42) In relation to Article 8 the judge did not refer to section 117B of the Nationality, Immigration and Asylum Act 2002, as amended. As was pointed out in AM (s 117B) Malawi [2015] UKUT 0260, it is not necessarily an error of law to fail to refer to section 117B. Nevertheless as pointed out in Deelah (section 117B - ambit) [2015] UKUT 515, section 117B applies to consideration of Article 8 outside the Rules. It is stated in section 117B that the maintenance of effective immigration controls is in the public interest and, in addition, little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Although the judge did not refer to up to date case law on the application of Article 8, it was stated in SS (Congo) [2015] EWCA Civ 387 that compelling circumstances are required for an appeal to succeed under Article 8 outwith the Rules.

43) At paragraph 23 of the decision the judge indicated that there was "no good arguable case" for considering Article 8 outwith the Rules. Although the higher courts have made it clear that there is no intermediate test of having a good arguable case before consideration may be given to Article 8 outwith the Rules (as, for example in Ashiq [2015] CSIH 31 at paragraph 6), on the evidence in this appeal there were no compelling circumstances which would have required the judge to consider the application of Article 8 outwith the Rules. In any event, as the judge observed, the return to the appellants to Lebanon would be proportionate having regard to the public interest in immigration controls.

44) The difficulty for the appellants in seeking to establish an error of law in respect of the judge's consideration of Article 8 is that, even again taking their case at the highest, it cannot be shown how the appellants would succeed under Article 8 on the basis that their removal would be a disproportionate interference with their right to respect for their private or family life. With this in mind it cannot be said that the judge erred in making his decision under Article 8 either in relation to the best interests of the children or in relation to the question of custody on divorce.

Conclusions

45) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

46) I do not set aside the decision.

Anonymity

~~47) The First-tier Tribunal did not make an order for anonymity. I have not been asked to make such an order and I see no reason of substance for such an order to be made.~~

Signed Date

Upper Tribunal Judge Deans