



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

Case No: UI-2022-003385

First-tier Tribunal No: PA/55367/2021  
IA/16232/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 19<sup>th</sup> February 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA  
and  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**AZI  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**REPRESENTATION**

For the Appellant: Mr D Forbes, Lifeline Options Community Interest Company

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 14 February 2024**

**ANONYMITY**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

## DECISION AND REASONS

### INTRODUCTION

1. The appellant is a national of Iraq. He arrived in the United Kingdom in May 2014, with leave to enter as a student. He subsequently returned to Iraq with his wife and children in June 2015. The appellant again returned to the United Kingdom on 25 June 2015 and claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 26 November 2015. The appellant's appeal against that decision was dismissed, first by the First-tier Tribunal ("FtT"), and then on appeal, by the Upper Tribunal.
2. In November 2020 the appellant made further submissions to the respondent. In a decision dated 20 October 2021 the respondent concluded the appellant does not qualify for refugee status, humanitarian protection or for leave to remain on family and private life grounds. The appellant's appeal against that decision was dismissed on all grounds by FtT Judge Gribble for reasons set out in a decision dated 22 June 2022.
3. Permission to appeal to the upper Tribunal was granted by FtT Judge Singer on 12 July 2022. The judge said:

"...It is arguable that the Article 8 ECHR assessment was inadequate. It is arguable that, despite identifying [at paragraphs 57 and 88] that the Appellant's children were qualifying children, the Judge failed to make a clear decision as to whether it was reasonable to expect the children to leave the United Kingdom or not. It is arguable that, while the Judge did correctly identify the test of reasonableness at paragraph 89, and did make some findings about their best interests, no explicit finding was made in relation to whether it was reasonable for them to leave, before deciding that removal did not breach Article 8 ECHR."

4. The appeal was heard by Deputy Upper Tribunal Judge Chamberlain on 12 October 2023. The decision of FtT Judge Gribble to dismiss the appeal on asylum, humanitarian protection and on Article 3 grounds was upheld. However, the decision of FtT Judge Gribble to dismiss the appeal on Article 8 grounds was set aside for reasons set out in the error of law decision of Deputy Upper Tribunal Judge Chamberlain issued on 30 November 2023. Her reasons were encapsulated in paragraph [19] of the decision.

"I find that the Judge has given inadequate consideration to the children's circumstances. While acknowledging that there was not a great deal of evidence before her, she has not considered their circumstances holistically. In particular, she has given inadequate consideration to the position of eldest child, given his age. She has failed to give reasons for finding that the children speak Arabic. She has found that there is "no evidence to indicate the children would not be provided for in terms of education and welfare in Iraq", but she has made no clear findings as to how they will be provided for and by whom. This is all relevant to the question of whether it is reasonable to expect them to leave the United Kingdom. I find that her consideration of the children's situation with reference to section 117B(6) is inadequate, and involves the making of a material error of law."

5. Deputy Upper Tribunal Judge Chamberlain directed that the issue as to whether the decision to refuse leave to remain is a breach of Article 8, with reference to the appellant's children who are both "qualifying children" for the purposes of s117B(6) Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") is to be determined by the Upper Tribunal. It is against that background that the hearing of the appeal was listed for us to remake the decision.

#### **THE HEARING OF THE APPEAL BEFORE US**

6. At the outset of the hearing before us, Ms Arif on behalf of the respondent conceded that the respondent has now had the opportunity of considering the issue that arises in this appeal, and the evidence before the Tribunal. The respondent accepts that on the evidence, the public interest does not require the appellant's removal because the appellant has a genuine and subsisting parental relationship with his two children, who are "qualifying children", and that it would be unreasonable to expect the children to leave the United Kingdom.
7. The respondent therefore invites the Tribunal to allow the appeal on Article 8 ECHR grounds. For obvious reasons, Mr Forbes does not seek to persuade us to do anything else.
8. We are satisfied having considered the evidence before us, that the concession made by Ms Arif, is entirely appropriate and that we should allow the appeal on Article 8 ground. We do so.

#### **NOTICE OF DECISION**

9. The appellant's appeal against the respondent's decision to refuse his claim on Article 8 grounds is allowed.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 February 2024**