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Country of Decision:

United Kingdom

Country of Applicant:

Kuwait

Date of Decision:

25-04-2017

Citation:

R (on the application of Al-Anizy) v Secretary of State for the Home Department (undocumented Bidoons - Home Office policy) [2017] UKUT 00197 (IAC)

Court Name:

Upper Tribunal Immigration and Asylum Chamber (The Honourable Mr Justice McCloskey, President)

Keywords:

Best interest of the child
Child Specific Considerations
Dependant (Dependent person)
Effective access to procedures
Family member
Family reunification
Family unity (right to)
Refugee Status
Relevant Facts
Responsibility for examining application

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 8](#) [2]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 23](#) [4]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#)

Headnote:

Judicial review to challenge the failure/refusal of the Secretary of State for the Home Department (?SoS?) to determine the application of the applicant's spouse and two youngest children for family reunification in the UK on the following grounds: a failure to apply the SoS published policy; irrationality; breach of all the family members' rights under Art. 8 ECHR; and (regarding the two children in the UK), breach of the duties owed under s.55 of the Borders, Citizenship and Immigration Act 2009 (?the 2009 Act?).

The Upper Tribunal found that:

- 1) the Home Office family reunification policy embraces a series of flexible possibilities for proof of identity;
- 2) the reunion applications were not examined and determined which involves a public law misdemeanour within the applicant's grounds for challenge; and
- 3) in any case where withdrawal or a consent order is proposed judicial scrutiny and adjudication are required.

Facts:

The applicant is a recognised refugee in the UK and father of a family unit of Kuwaiti Bidoons consisting of his spouse and four dependent children aged between 3 and 10 years. The two oldest children have also been granted refugee status. The oldest child lives with the applicant as a dependent. The applicant's spouse and two youngest children are asylum seekers registered with UNHCR living in Iraq having fled Kuwait.

Aided by the Red Cross (?RC?), the applicant twice submitted applications for family reunion. Visa Application Centres (?VAC?), first in Basra and subsequently in Baghdad, demanded the production of passports as a pre-requisite to considering applications; the demand of the VAC in Baghdad was made despite the RC having engaged in a formal complaint process with UK Visas and Immigration and having provided a letter explaining that being Kuwaiti Bidoons, the family did not possess identity or travel documents, drawing attention to the supporting passage of the Home Office Country Information and Guidance Publication concerning Kuwaiti Bidoons. Substantial documentary evidence as to the family's status and identity was also submitted by RC. The applicant then made a trip to the British Embassy in Jordan on the advice of the Baghdad VAC, which came to nothing. The applicant's solicitors engaged in formal correspondence with the Home Office to no avail. Pre-action protocol letters went unanswered.

Decision & Reasoning:

The SoS's policy guidance is the instrument upon which attention must be focussed to identify applicable legal principles. This type of document is not to be construed adopting the approach applicable to statute, deed or contract. The construction of every document is a question of law and ultimately a matter for the court. The ?Lumba? principle is engaged: public authorities should normally give full effect to their policies.

The reunion applications were not examined and determined which involves a public law

misdemeanour within the applicant's grounds for challenge, as follows:

- 1) the SoS's officials failed to give effect to the policy requirement to consider applications and examine proof of identity and family relations, and to consider explanations for the absence of documents. No justification for this was provided or identified;
- 2) the SoS's failure to consider the applications on their merits and determine them accordingly infringes the rights of all six family members under Art. 8(1) ECHR; and
- 3) it is manifestly in the best interests of the children concerned that the family be recomposed in the UK. Therefore, there has been a clear breach of s.55(1) of the 2009 Act (vis-à-vis the two older children) and the SoS's policy.

Outcome:

Application succeeded.

Observations/Comments:

At the eleventh hour, a draft Consent Order was submitted by the parties to withdraw the claim for judicial review. The draft was non-binding on the Tribunal as judicial review proceedings are not open for the parties to dictate the outcome and the withdrawal of any case before the Tribunal requires the approval of the Tribunal, which has the duty of adjudicating on the issues and terms of the withdrawal.

The Tribunal was persuaded marginally to approve the draft. In the absence of the Consent Order, the Tribunal would have issued a remedy quashing the SoS's refusal to examine the family reunification applications on their facts and merits, and ordering the SoS to consider the applications within 21 days.

This case summary was written by Sally Jackson, LLM student at Queen Mary University, London.

Attachment(s):



[AI-Anizy family reunification Art 8 ECHR.pdf](#)[7]

Other sources cited:

Tribunals (Upper Tribunal) Rules of Procedure 2008, Rules 17 and 39

Home Office Country Information and Guidance Publication

UKVI Family Reunification Guidance (July 2016)

National / Other Legislative Provisions:

[UK - Immigration Rules](#) [8]

[paras 352A to 352FJ of Part 11](#) [9]

[UK - Borders](#) [10]

[Citizenship and Immigration Act 2009](#) [11]

[sections 55](#) [12]

[55\(1\)](#) [13]

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [2] https://www.asylumlawdatabase.eu/node/195#toc_46
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#QD%20Art%2023>
- [5] <https://www.asylumlawdatabase.eu/node/353>
- [6] https://www.asylumlawdatabase.eu/node/353#toc_212
- [7] https://www.asylumlawdatabase.eu/sites/default/files/alfiles/Al-Anizy%20family%20reunification%20Art%208%20ECHR_0.pdf
- [8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1347>
- [9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/paras-352a-352fj-part-11>
- [10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7352>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8155>
- [12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/sections-55>
- [13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/551>