



**In the Upper Tribunal  
(Immigration and Asylum Chamber)  
Judicial Review**

In the matter of an application for Judicial Review



The King on the application of  
HS, SS, GS\*, QS\*, SAS\* MS\*

(\*children by their litigation friend HS)

Applicant

versus

JR-2024-LON-000457

Secretary of State for the Home Department

Respondent

**NOTIFICATION of the Judge's decision**

**Order by Upper Tribunal Judge Kamara:**

UPON hearing Ms. C Kilroy KC, Counsel, instructed by Migrants' Law Project, for the Applicants and Mr A Payne KC, Counsel, instructed by the Government Legal Department, for the Respondent at a hearing held at Field House on 5 March 2024.

**AND UPON** the Tribunal making the Order, below, with reasons to follow.

**AND UPON** the Second to Sixth Applicants agreeing to send their passports to El-Sheikh Zayed Visa Application Centre, Building B9, 4<sup>th</sup> Floor, Capital Business Park, Western Periphery of El-Sheikh Zayed City, 6<sup>th</sup> of October, Egypt.

**AND UPON** the Second to Sixth Applicants further agreeing, if a decision is made to grant entry clearance, to provide their biometric data at the Visa Application Centre in Cairo when they attend and, if applicable, collect their passports and visa.

It is ORDERED AND DECLARED that:-

1. Permission is granted in respect of Ground 1 and Ground 2 (in respect of Article 8, only).
2. The Applicants claim for judicial review on Ground 1 and Ground 2 (in respect of Article 8, only) for reasons to follow is allowed.

3. The decision in relation to the remainder of the Grounds, not determined at paragraphs 1 and 2, is reserved.
4. The decisions dated 9 February 2024 and 15 February 2024 with respect to each Applicant refusing to defer or waive biometrics with respect to the Applicants entry clearance applications dated 21 December 2023 are quashed.
5. It is declared that in the Applicants' particular circumstances it is disproportionate, and thus in breach of Article 8 ECHR, to refuse to decide the Applicants' entry clearance applications prior to provision of biometrics (i.e. to issue visas or take in principle decisions on their applications prior to provision of biometrics which will be provided prior to entry to the UK).
6. The Respondent is ordered to decide whether to grant visas on each of the Applicants' entry clearance applications made on 21 December 2023 within 2 days of Tuesday 5 March 2024, i.e. by 4pm on Thursday 7 March 2024.
7. If the decision is to grant entry clearance, the Respondent is to notify the FCDO forthwith and on the same day as the decision to grant visas.
8. The Respondent do pay the Applicants' reasonable costs to be assessed if not agreed.
9. The Respondent shall make a payment on account of costs in the sum of 40% of the Applicants' bill of costs within 28 days of receipt of the same.
10. The Applicants' legally aided costs be subject to a detailed assessment.
11. The Respondent's application to appeal paragraph 4, above, is refused.
12. Any other application for permission to appeal may be made at the hand-down hearing.
13. The Applicants are to confirm whether they seek a damages remedy at the hand-down hearing on liability.

Signed: T Kamara

**Upper Tribunal Judge Kamara**

Dated: 5 March 2024

**The date on which this order was sent is given below**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's,

respondent's and any interested party's solicitors on (date): 06/03/2024

Solicitors:

Ref No.

Home Office Ref: KIU/7223307    GWF074646243    GWF074636556    GWF074644946    GWF074645436  
GWF074645855



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The King on the application of  
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friend HS)

Applicant

versus

Secretary of State for the Home Department

Respondent

JR-2024-LON-000457

**NOTIFICATION of the Judge's decision (AMENDED)**

**FURTHER TO** the Order dated 5 March 2024 requiring the Respondent to decide whether to grant visas on each of the Applicants' entry clearance applications made on 21 December 2023 within 2 days of Tuesday 5 March 2024, i.e. by 4pm on Thursday 7 March 2024;

**AND UPON** the Respondent having issued a decision on 6 March 2024 which accepts that the Applicants meet the requirements under Appendix Family Reunion (Protection) but which states that the grant of Entry Clearance is conditional on the enrolment of biometrics;

**AND UPON** the Respondent having submitted as of 8 March 2024 that the decision of 6 March 2024 is compliant with the Order of 5 March 2024

**IT IS ORDERED THAT:**

1. The Respondent's decision dated 6 March 2024 does not comply with paragraph 6 of the Order dated 5 March 2024.
2. **The Respondent is to comply with paragraph 6 of the Order of 5 March 2024 by 4pm on 8 March 2024.**
3. Liberty to apply.
4. Costs reserved.

REASONS:

The post-hearing discussions which led to the amended order of 5 March 2024 had no effect on its substance. The respondent was ordered to decide whether to grant visas to A2-A6, that is to make decisions on the basis of biometric excuse. The order was not for the respondent to make an in-principle decision with conditions attached. The applicants' offer to provide biometrics prior to arrival in the United Kingdom does not alter the respondent's obligations.

Signed: T Kamara

**Upper Tribunal Judge Kamara**

Dated: 8 March 2024

**The date on which this order was sent is given below**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 08/03/2024

Solicitors:

Ref No.

Home Office Ref:

**IN THE HIGH COURT OF JUSTICE  
BEFORE: MR JUSTICE PICKEN  
DATED: 08 MARCH 2024**

**Case: JR-2024-LON-000457**

**IN AN URGENT OUT OF HOURS  
APPLICATION IN RELATION TO A  
JUDICIAL REVIEW IN THE UPPER  
TRIBUNAL (IAC)**

**HS & Others**

**Applicants**

**-v-**

**Respondent**

**SSHD**

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**ORDER**

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**UPON** the Court hearing Ms Charlotte Kilroy KC and Ms Michelle Knorr on behalf of the Applicants and there being no attendance on behalf of the Respondent despite notice being given that an out of hours hearing on 8 March 2024 was being sought.

**AND UPON THE** Court concluding that the Respondent is prima facie in contempt of the Upper Tribunal's Orders of 5 and 8 March 2024.

**IT IS ORDERED THAT:**

1. The Respondent forthwith takes all steps available to him to issue a decision to grant the second to sixth Applicants a visa, and does so at the latest by 11 am on Saturday 9 March 2024
2. The Respondent produces a witness statement by 10 am on Monday 11 March 2024 explaining in full the circumstances which have led to him failing to comply with the Tribunal's Orders of 5 March 2024 and 8 March 2024
3. A hearing shall be listed at the earliest available date after 11 March 2024 to consider the question of the Respondent's contempt and the appropriate consequences.
4. The Respondent is to pay the Applicants' costs of this application, to be assessed if not agreed.
5. Liberty to apply, including specifically in relation to the costs order in paragraph 4 above.
6. The Applicants' legally aided costs be subject to a detailed assessment.

**Mr Justice Picken:**

This is an out of hours application which has been brought by the applicants, consisting of family - a mother and four children, the father being already in the jurisdiction, having been afforded refugee status some months ago.

The family is currently in Gaza, living in what appear to be extremely difficult circumstances and suffering from ill health. The children, I should say, range between the ages of 6 and 13. It is suggested on behalf of them by Miss Kilroy KC and Miss Knorr, whom she leads, that they are at imminent risk. They are in a place where there is quite obviously a risk to their lives, which is both serious and imminent - not least because there is some suggestion that Israel might launch a ground invasion of Rafa in the coming days.

The urgency of the matter is clear. Indeed, it is an urgency which has already been recognised by the fact that Upper Tribunal Judge Kamara has, in the past few days, held hearings leading to the orders which are now before me, namely 5 and 8 March, and which it is suggested the Secretary of State has failed to comply with. I am quite satisfied that, in the circumstances, this is a matter which is appropriately brought late at night in the way that it has been and that it would be wholly inappropriate to delay consideration of it until tomorrow in order to allow the Secretary of State to be represented by counsel.

The Secretary of State has been represented by counsel (indeed leading counsel in the hearings before Upper Tribunal Judge Kamara in the past week) and has been notified earlier this evening of the applicants' intention to bring the present application. If, in the event, the Secretary of State wishes to apply for the order which I propose to make to be discharged or varied, then, the Secretary of State can make that application, but I am not prepared, given what I read in the application before me, to delay matters for the convenience of counsel given the severity of the situation potentially facing the applicants.

That deals with the urgency of the matter and the fact that in effect this is an application being dealt with ex parte, albeit on notice.

As to the substance, I have already touched on the appalling situation which the applicants face. I need only add, relevantly, that, on the face of it, the Secretary of State is in breach of the orders which have been made specifically and most recently, the order made earlier today, requiring compliance by 4:00 pm with the requirement that a decision be made in respect to the applicants.

I am only being asked to conclude at this juncture that there is a prima facie case of contempt. I go no further than that for reasons which are obvious, and I do not, as I say, preclude the Secretary of State from persuading the Court (whether me or another judge) that there is, in fact, no contempt. However, on the face of it, the 4:00 pm deadline having passed without what is required by the 8 March order having been done, there would appear to be a contempt and, for reasons which I have already outlined, that is unacceptable.

I note in this respect that the Secretary of State earlier this evening himself made, or those acting for him made, an application effectively for a time extension. That application is not being brought on an urgent basis, yet, on the face of it, it should have been just as the present application has been. This is not a matter, for reasons I have touched upon already, which can be allowed to drift.

There are serious concerns for the applicants, the mother and the four children, which the Court is simply not prepared to overlook. In those circumstances and without delving into further detail other than to observe that the very helpful information set out in the out of hours application is information which I have fully taken into account and should be regarded as, in effect, incorporated into this short ruling.

I am quite clear that the order that I am being asked to make should, indeed, be made and it will be made forthwith.