R (BEL and others)

v

Secretary of State for Foreign, Commonwealth and Development Affairs

Press Summary: For release at 2pm, 28 July 2025

This summary is provided by the Court for the assistance of those reporting the Court's judgment, which was handed down this afternoon (neutral citation [2025] EWHC 1970 (Admin)). It does not form part of that judgment. References in square brackets are to numbered paragraphs of the judgment of the Court.

Introduction and summary

1 The claimants are a Palestinian family in Gaza. They are in constant danger of injury or death and have very little food. Following a successful appeal to the Upper Tribunal, the Home Secretary said that she would grant the family leave to enter the UK, conditional on satisfactory completion of biometric checks at a Visa Application Centre. The closest available is in Jordan, but the family cannot leave Gaza to get there without consular assistance from the Foreign, Commonwealth and Development Office.

2 A request on the family's behalf for consular assistance was refused by an official acting on behalf of the Foreign Secretary. The family brought proceedings for judicial review to challenge the refusal on two grounds.

3 Ground 1 is that the decision (i) was irrational, (ii) was procedurally unfair, and (iii) failed properly to apply the Secretary of State's own policy. Ground 2 is that the ongoing refusal to provide consular assistance is incompatible with the UK's positive obligations under Article 8 of the European Convention on Human Rights ("ECHR") and was therefore contrary to section 6 of the Human Rights Act 1998 ("HRA").

4 After a hearing on 9 July 2025, Mr Justice Chamberlain today handed down a judgment allowing the claim on ground 1 but rejecting ground 2. He addressed ground 2 first.

Ground 2

5 Mr Justice Chamberlain held that there was no authority of the European Court of Human Rights or the domestic courts supporting the proposition that Article 8 ECHR can imply a positive duty to provide either diplomatic protection or consular assistance to an individual who is located outside its territory.

6 In addition, the expansion of the scope of the Article 8 ECHR positive duty in the way contended for by the claimants would be impermissible in light of the Strasbourg Court's view of the jurisdictional limitations of the ECHR: see [79]-[88].

Ground 1

7 Mr Justice Chamberlain accepted three preliminary points made on behalf of the Foreign Secretary. First, the grant of entry clearance did not give rise to any obligation to provide consular assistance to enable the claimants to travel to the UK border. Secondly, the

claimants were not in an exceptional position simply because their entry clearance was granted following a successful appeal to the UT (rather than immediately on application to the Home Secretary). Thirdly, when considering whether to make an exception to an established policy in circumstances where the criteria for exceptionality are not set out, or when considering what information to gather before making a decision, it was for the decision-maker to decide what is relevant and/or reasonable subject only to rationality review: [105]-[107].

8 The judge concluded, however, that the decision of 6 June 2025 disclosed three related flaws. Taken cumulatively, these made the decision unlawful.

9 First, the claimants did and do have conditional entry clearance, granted on the basis of their close family connection to a UK national. That connection was, in the view of the UT, such as give rise—on the particular and exceptional facts of their case—to an obligation binding on the UK in international law to admit them to the UK. The defendant had to consider whether that was a sufficient basis for granting consular assistance or not. The significant of this status could have been considered as a basis for regarding the claimants' case as exceptional or as a basis for extending the Foreign Secretary's exceptional eligibility criteria ("EEC"). It was never grappled with in either of these two ways: [115]-[118].

10 Secondly and relatedly, since the limited terms of the EEC and the strictness of the exceptionality criteria were justified by the need to preserve the UK's diplomatic capital, it was relevant to consider how many others were likely to be in the same position as the claimants. The documents before the Foreign Secretary did not attempt to assess the size of the relevant group or the numbers of British nationals currently in Gaza seeking consular assistance: [119]-[122].

11 Thirdly, given the policy context, the defendant had to confront the question whether extending eligibility to those in the claimants' position would, in fact, run down the UK's diplomatic capital and, if so, by how much. Central to this question as whether the Israeli authorities were being asked to do something which, other things being equal, they did not wish to do. In these circumstances, a stance which regarded evidence of a change in Israeli policy and the viability of departure requests as categorically "irrelevant" was irrational: [123]-[125].

Conclusion and relief

12 Mr Justice Chamberlain held that the decision of 6 June 2025 was flawed and would have to be reconsidered. This did not mean that the Foreign Secretary was obliged to decide in the claimants' favour, just that he must think again. He invited submissions as to the appropriate form of relief: [128]-[130].

Ends