



Case Nos: JR-2026-LON-002050
JR-2026-LON-002408

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)



Field House,
Brearms Buildings
London, EC4A 1WR

30th September 2026

Before:

JR-2026-LON-002408 **UPPER TRIBUNAL JUDGE LINDSLEY**

&

JR-2026-LON-002
50

Between:

THE KING
on the application of

HA (1)

MA (2)

LA (by their litigation friend HA) (3)

NA (by their litigation friend HA) (4)

AA (by their litigation friend HA) (5)

HA (1)

LS (2)

LA (by their litigation friend HA) (3)

IA (by their litigation friend HA) (4)

Applicants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Ms M Knorr, Ms A Patyna & Ms E Fitzsimons
(instructed by GMIAU), for the applicants

Mr R Dunlop KC & Mr J Holborn
(instructed by the Government Legal Department) for the respondent

Hearing dates: 9th & 15th September 2026

J U D G M E N T

Judge Lindsley:

Introduction

1. These two sets of applications were joined by order of Upper Tribunal Judge Mandalia on 26th August 2026 as they raise the same legal arguments on very similar facts. The applicants are all Palestinians from Gaza applying for family reunion following the grant of protection status to the first applicants. The challenges centre around requests for biometric excusal.
2. The first set of applicants will be known collectively as HAs, and separately as HA1-5, and the second set as LSs/LS1-5 to distinguish them. All applicants have been granted anonymity and the five minor children, all seven years old and younger, bring this litigation via their litigation friends, their fathers, both anonymised as HA and the first applicant in each group. Both applications were granted expedition and a rolled-up hearing in light of the life threatening and tragic circumstances of the applicants HAs 2-5 and LSs 2-4 which I detail below.
3. The decisions challenged were the refusal of pre-determination and biometrical excusal of the family reunion applications for HAs 2-5 made on 11th March 2026 and the refusal of biometric excusal for LSs 2-4 made on 12th June 2026, however at the beginning of the second day of the hearing, on 15th September 2026, the respondent informed the Tribunal that a decision had been taken to grant HAs 2-5 pre-determination by way of an exercise of discretion. As a result, the remaining challenges are by HAs 2-5 and LSs 2-4 to the refusal of biometric excusal. There are two grounds of challenge: firstly, that the decisions are irrational and secondly that the decisions breach the respondent's Article 8 ECHR obligations.

The Applicants

4. HA1 was granted humanitarian protection on 14th August 2025 having claimed asylum on arrival in the UK on 19th May 2025. Prior to being forced to leave Gaza HA1 lived with his wife, HA2, whom he married on 29th March 2016 in Khan Younis. HAs 3-5 are all girls, and are 7, 6 and 2 years old. HA3 & 4 were born in Khan Younis prior to the war which followed the 7th October 2023 attack by Hamas on Israel, and HA5 was born in Rafah after the applicants were displaced by the conflict. Prior to the current war they had a materially comfortable life owning their own property and HA1 running a poultry business, now HAs 2-5 are living on the sea front near Almawasi in a tent with no access to fresh water, they eat lentils and rice once a day and cook on wood, cloth or plastic as there is no gas or electricity. HA2 cannot afford to buy meat, fruit and vegetables. HAs 2-5 do not have sufficient food to eat, and HA2 now weighs just 45kg. HAs 3-5 have frequent diarrhoea and vomiting. There are rodents everywhere, including in the tent, and infestations of mosquitos and bed bugs, causing skin conditions. Despite the ceasefire in Gaza the bombing continues, people are shot by snipers, and they live in fear for their lives, with documented attacks in the Almawasi area. Since the onset of the recent war

HA1 has lost numerous family members including his grandparents and parents, and HA2 has lost her mother to illness due to a lack of medication in Gaza.

5. HA1 is diagnosed as suffering from PTSD due to repeated and prolonged exposure to war-related trauma while living in Gaza coupled with the continuous threat to HAs 2-5 survival. Refusals relating to HA1's family reunion application are seen as a factor likely to lead to a significant deterioration in his mental health and his acting upon suicidal ideation. HA2 is completely mentally and physically exhausted and feels she cannot continue; she and the children all miss HA1 terribly.
6. LS1 was granted humanitarian protection on 30th May 2025 having left Gaza in October 2024 and having entered the UK on 6th March 2025. Prior to leaving Gaza he lived with his wife, LS2, in Al-Nusarat. They married in April 2020. They have two children LS3 and LS4, who are now five and three years old. Before the war LS1 provided a home for his family in Deir Balah and worked as a security worker and in construction. Since the war LSs 2-4 have lived initially in a cave type building and now in a tent as the LSs family home was destroyed by bombing. They currently have no electricity or running water. They are subject to continuing bomb attacks despite the ceasefire. They have too little food and are suffering from malnutrition. They dare not go to US aid collection points as they are aware that people have been killed by Israeli forces at these places. There is insufficient clean water which causes stomach problems. LSs 2-4 are suffering from the skin condition impetigo which is very contagious and caused by lack of clean living conditions. LS2 suffers from trauma looking after LS3 and LS4 in a war zone.
7. LS1 suffers from PTSD and depression. He was exposed to traumatic events living in Gaza prior to the escalation of the conflict into war from October 2023. He currently suffers from nightmares, flashbacks, depression, anxiety, insomnia, lack of appetite and an inability to concentrate. Without family reunion the prognosis for his mental health is poor as until he has safety for his family and stability in his own life, he will not be in a position to benefit from trauma-focused treatment. If a life-threatening event were to occur to LSs 2-4 he would be vulnerable to heightened anxiety, distress and depression which would increase the possibility of self-harming thoughts.
- 8.

Biometrics

9. Regulation 3A of the Immigration (Biometric Registration) Regulations 2008 provides that a person subject to immigration control must apply for a biometric immigration document if he or she makes an application for entry clearance which would have effect as leave to enter. As HAs 2-5 and LSs 2-4 wish to apply to enter the UK they must therefore apply for a biometric immigration document. However, under Regulations 5 and 8 there is a broad discretion as to the date, time and location of appointments to obtain biometrics, and that is governed by policy. It is the position of the respondent, which is not challenged by the applicants in this application, that the taking of biometrics, which includes fingerprints and facial images, provides an important protection to the British public by ascertaining and fixing the identity of those entering the UK, and permitting checks to be made against existing datasets of those with criminal convictions or suspected terrorist connections.

10. As concisely set out by Mr Dunlop, normally biometrics will be taken at a VAC in the country of residence of the entry clearance applicant, but there are three other options which have been developed, two of which are set out in the Unsafe Journeys Policy (UJP), which has seen a number of iterations but the relevant one for these judicial review applications is agreed to be Version 4. A third option has emerged specific to the Gaza context. It does not feature in the UJP but involves the obtaining of predetermination from the respondent under the UJP, then a request for FCDO exceptional consular assistance, and then an application by the FCDO for an onward travel assurance (OTA) from the respondent.

The Unsafe Journeys Policy – Version 4

11. The UJP offers the possibility of two options to address difficulties of travel to the UK as a result of the biometric requirements: biometric deferment to after a conditional predetermination of the visa application or biometric excusal. Predetermination is defined as assessing whether an individual is likely to be granted entry clearance before the giving of biometrics and notifying them as to whether the respondent is minded to grant entry clearance subject to attendance to enrol biometrics at a VAC. Biometric excusal is defined as excusing the requirement to attend a VAC to enrol biometrics, normally until after the applicant has been granted entry clearance and has entered the UK. Predetermination is to be offered where this is “suitable” and “sufficient” (pages 6 and 11 of the UJP, pages 2412 & 2417 of the authorities bundle) rather than excusal due to the greater risk to national security of excusal, and in both cases grants are normally subject to the four criteria being satisfied. Decisions under this policy must be Article 8 ECHR compliant, as stated at page 12 of the policy, page 2418 of the authorities bundle.
12. The four criteria under the UJP are as follows:
- 1. Applicants need to satisfy the respondent about their identity to a reasonable degree of certainty before they come to the UK (for excusal) or on the balance of probabilities (for predetermination).
 - 2. Applicants need to provide the respondent with evidence that they are required to make an urgent journey to a VAC that is unsafe based on the current situation within the area they are located and along the route where they would need to travel to reach a VAC to enrol their biometrics, and they cannot delay their journey until later or use alternative routes.
 - 3. Applicants need to demonstrate that their circumstances go beyond simply joining relatives who are living in the UK and that they outweigh the interests of national and border security. For example, their UK based sponsor requires full-time care and there are no other viable alternatives to meet the sponsor’s or their young children’s needs.
 - 4. Applicants need to satisfy the respondent that they are able to travel to a VAC if they want their application to be predetermined (Criterion 4a), or where they are requesting excusal from the requirement to attend a VAC (Criterion 4b) to enrol their biometrics, they should explain why they cannot attend any VAC but are able to travel to the UK.
 - Applicants must generally meet each of the 4 criteria, but there is a discretion within the policy as found at paragraph 67 of MS & Ors v SSHD JR-2026-LON-000669 by reference to the words used such as “in most circumstances” and “ordinarily”, and on the basis of the witness statement of Ms Pickering at paragraph 30, filed in that judicial review (and to be found at page 658 of the HA hearing bundle) which confirms that discretion exists even where all of the criteria are not met.

13. At page 11 of the UJP it states that predetermination or excusal to enrol biometrics should not “ordinarily” be offered where there are “no reasonable prospects of being able to travel to the UK”, and this includes where applicants are “unable to leave their country due to the prevailing circumstances there”. At page 25 of the UJP it states that applicants for predetermination “must confirm that they will be able to travel to any VAC to enrol their biometric information within 240 days of submitting their online application”, and that it must be clear that no assistance is given to cross international borders. However, it is also states that “Where an individual claims they need their application to be predetermined to enable them to cross an international border to attend a VAC, they must provide evidence to support this.” Whilst the 240-day time period reads as a requirement in the UJP, in the case of LSs 2-4 the predetermination has not expired despite the elapse of a period of more than 360 days. In this circumstance I accept the submission of Ms Knorr that in the context of the difficult and changeable situation of Gaza where applicants are not in control of their departure the respondent has, at least de facto, often extended this timeframe and so conclude that the 240-day submission timeframe is not applied rigidly under the policy. Reading the policy as a whole I also find that predetermination is anticipated as being potentially available where this will assist with the crossing of borders. With respect to these applicants the possibility that the Foreign Commonwealth and Development Office (FCDO) will provide consular assistance crossing such borders is set out below.
14. As submitted by Mr Dunlop the UJP, which first came into being on 17th July 2023, was not formulated with the Gazan situation in mind where exits are all but impossible without assistance from other states but, with respect particularly to predetermination, was developed to deal instead with situations such as that which existed, and continues to exist, for Afghans having to make the possible but dangerous journeys over the border to a VAC in Pakistan.
15. In the UJP there are examples given with respect to excusal which include high profile individuals where they can fly to the UK but attendance at a VAC would place them and/or the UK’s national security interests at risk. A very different example where excusal was employed by the respondent is cited in the statement of Sabrina Pickering dated 21st November 2025 involving a young Somali woman, presumably with permission to remain in the UK, without a passport in a situation of forced marriage in Somalia. Excusal was ordered in HS & Ors JR-2024-LON-000457 by Mr Justice Picken, following an (ignored) order of Upper Tribunal Judge Kamara for the respondent to make a decision on whether to grant biometric excuse. The respondent complied with the order to excuse biometrics and issued visas to the applicants, the wife and minor children of HS (a Gazan Palestinian refugee), with the result that they were able to leave Gaza with the assistance of the FCDO, but, in the event, they provided biometrics and, as I understand, were actually issued with their visas from the VAC in Cairo. The applicants point out that excusal has also been granted on a group basis outside of the UJP in the context of the Ukrainian families’ scheme and with the Calais children.
16. From page 29 of the UJP (page 2435 of the authorities bundle) excusal is a decision which can only be made by a minister due to need to protect public safety.

Option 3 – Predetermination & Onward Travel Assurance

17. Mr Dunlop argues for the existence a third option to address difficulties with the providing of biometrics and family reunion. He argues that it lies in between predetermination and excusal, as set out in the UJP, and has been developed in the Gazan context by the respondent since Jordan started to tighten its requirements to require diplomatic assurances in September 2025. This option is not mentioned in the UJP. It consists of predetermination made under the discretion in the UJP, by the respondent in the case of protection family reunion applications, or a partner, for instance a university assessing a Chevening student, and then an onward travel assurance (OTA). An OTA does not excuse the giving of biometrics abroad, and the respondent therefore takes biometrics in Jordan at the VAC in Amman, along with processing the visas, during the 72-hour transit window allowed by Jordan. This ensures that biometric information is available to the respondent when the applicants arrive in the UK, although there is no option but to admit that person whatever the outcome of the biometric checks. The OTA grant process is by way of ministerial decision made on the basis of submissions prepared for the minister, an example of such submissions relating to a Gazan Palestinian family is set out in R (RKC1) v SSFCDA & SSHD [2026] EWHC 440 (Admin) at paragraph 57 at page 1880 of the authorities bundle. No applicant in these applicants' category of Gazan Palestinian protection family reunion has ever travelled to the UK using this process.

Consular Assistance in the Context of Gazan Family Reunion

18. The Foreign Commonwealth and Development Office (FCDO) would only normally provide assistance abroad to British citizens, some Commonwealth citizens or non-British citizen family members of British citizens. The normal position is that they cannot help nationals of other countries or their family members even if they live lawfully in the UK. However, a discretion exists to provide other assistance, and on 14th December 2023 "extended eligibility criteria" (EEC) were formulated so that assistance could be given to Palestinians wanting to leave Gaza who had strong links to the UK by having either a spouse or children under 18 living in the UK, and where the applicant had valid permission to enter or remain for more than 6 months. In addition, outside the published EEC, there is a discretion to exceptionally provide assistance. In a FCDO ministerial submission dated 7th August 2025 filed in RKC1 it was clarified that conditional entry clearance is relevant to that exceptional discretion. From material in the R (BEL & Ors) v SSFC&DA [2025] EWHC 1970 (Admin) case FCDO exceptional assistance outside the EEC relating to Gazans in family reunion cases has only ever been provided to those with positive pre-determination or in one case a positive family reunion determination from the First-tier Tribunal. These documents (visas, pre-determination and a positive First-tier Tribunal determination) have therefore, thus far, been found to be the ones amounting to demonstrating a close connection to the UK and thereby amounting to exceptional circumstances justifying the extension of the normal ambit of consular assistance. This assistance is not a matter within the jurisdiction of the ECHR or HRA, as found in RKC1.
19. From 6th May 2024 the Rafah crossing to Egypt has been largely closed, and from October 2024 the FCDO has primarily facilitated exits from Gaza via Kerem Shalom in Israel and Jordan. Israel conducts security checks on all Palestinians leaving Gaza which, whilst not the same as the checks that might be conducted with the use of UK biometrics, according to the evidence of Ms Crowe in RKC1, would be likely to pick up those linked

to regional terrorism and serious regional criminal activity such as with Hamas or Gaza based militants. Whilst Egypt and Jordan have always expected that those being assisted by the FCDO would leave their territories swiftly, from 1st September 2025 Jordan required diplomatic guarantees of departure called Onward Travel Assurance (OTAs) in cases where those given consular assistance do not have visas, as part of their policy of not encouraging Palestinian displacement from Gaza. There have continued to be assisted departures from Gaza via Jordan of students and British citizens since June 2026, so, with correct documentation, this remains a viable route out of Gaza.

Onward Travel Assurance

20. In this context OTAs are diplomatic assurances by the UK government to the Jordanian government that the applicants will leave Jordan within 72 hours. Both parties accepted for the purposes of this hearing that Article 8 ECHR does not extend to this diplomatic assurance process. This is the conclusion of Mr Justice Sheldon in RKC1 who concluded at paragraphs 120-121 of his judgement that positive obligations under Article 8 ECHR did not extend with respect to OTAs given to Jordan in line with the decision of Chamberlain J in BEL. OTAs are issued by the respondent, and not the FCDO, at ministerial level.
21. It has been decided by the respondent that OTAs will not be provided to Gazan family reunion cases as a cohort, as is reflected in the document dated 10th September 2025 which advises that this would undermine biometric policy and national security. It is also said in that same document that to provide the cohort with predetermination and FCDO support with OTAs would undermine the UJP by facilitating travel to a VAC and providing assurances of onward travel, as set out at page 837 of the LS hearing bundle. OTAs are however provided on a cohort basis to Medevac cases, to certain high-level scholarship student cases and family members of British citizens. Approximately 350 people in these cohorts have left Gaza utilising OTAs. In all these cases the applicants have been taken to the VAC in Amman, Jordan, where their biometrics have been taken and visas issued. A person with an OTA must be allowed to come to the UK regardless of the outcome of the biometric checks and visa issue process, but there is no evidence before me of this having been problematic in the Medevac, student cohort or indeed any other case where this has been issued.
22. 35 Palestinian family reunion applicants, related to those granted protection in the UK, put forward for OTAs by the FCDO have been refused, none have been granted and others remain waiting in a process which takes approximately 6 months. In RKC1 (point 15 page 1884 of the authorities bundle) the reasons given for the refusal of an OTA for that Gazan family might be summarised as the compassionate circumstances of the applicants, which are very similar to the ones identified in the cases before me, not outweighing the border/national security interest as the applicants come from a territory where terrorists operate and they could fail biometric tests, and in the group there are adults who can care for the child applicants with access to humanitarian aid and some medical care.
23. An OTA is not needed in addition to entry clearance, so if these or indeed any other applicants had biometrical excusal this document would not be needed.

The Applications & Decisions Under Challenge

24. HAs 2-5 made family reunion applications on 3rd September 2025, with requests under UJP being made on 20th October 2025 and 27th January 2027 primarily for biometric excuse but with a secondary application for pre-determination. The applicants HA2-5 argued they are able to meet the family reunion requirements of the Immigration Rules to join HA1, and to refuse them would be a breach of their right to respect for family life as the UK is the only country in which they can enjoy family life given HA1's protection status.
25. It is argued that the UJP for excusal is met in the following way. HAs 2-4 all hold valid Palestinian passports, and can provide copies of these passports for checks by the respondent, but cannot attend a VAC as the one in Gaza is closed due to the conflict. The 2-year-old HA5 has a birth certificate but not a passport but cannot be a risk to national security. It is argued therefore that the identity criterion 1 is met. With respect to the second criterion material is set out with respect to the conflict in Gaza which shows an imminent risk of death and injury with reliance placed upon the respondent's CPIN. It is accepted that the applicants are unable to leave Gaza unaided, but it is asserted that biometric excusal will enable the FCDO to assist the applicants via partners and the extended eligibility criteria, and that predetermination would not suffice due to Jordan's position on assurance for onward travel. It is emphasised however that the applicants are willing to give biometrics in Jordan or Egypt when and if they are facilitated to leave. It is thus argued that the unsafe journey criterion 2 is met. With respect to the criterion 3 it is argued that circumstances of HAs 1-5 are compelling given the objective evidence of the situation for HAs 2-5 and that guidance suggests that poor mental health of the sponsor (HA1) and separation from young children (HAs 3-5) are relevant. It is argued that the circumstances are beyond compelling. With respect to criterion 4 it is argued that this is met because it is not possible to leave Gaza except with an onward visa and consular assistance, which, in turn, will be provided if the applicants have visas. It is argued that this meets the requirement to be able to travel to the UK but not to a VAC, and that if it does not, and criterion 4 is not met, discretion should be exercised in the compelling circumstances to grant biometric excuse. It is argued that not to exercise such a discretion would be a disproportionate breach of the Article 8 ECHR rights of the applicants and that relevant to the exercise of discretion is that the identities have been accepted for pre-determination, that it is not likely that immigration fraud would be at play as this is a family reunion case, and three applicants are small children so are not conceivably a risk to public safety.
26. It is argued that in the alternative that biometric pre-determination should be granted to permit for the possibility that the border to Egypt via the Rafah crossing might open given the dynamic situation, with reliance being placed on a Guardian news report: "Israel agrees to "limited reopening" of Gaza's Rafah crossing once operation to locate hostage completed", dated 25th January 2026.
27. On 11th March 2026 the respondent refused to excuse the provision of biometrics and to pre-determine the visa applications. With respect to pre-determination criteria 1, 2 and 3 were all accepted as met, but not 4. With respect to excusal criteria 2 and 3 of the UJP were accepted to be met, but not criterion 4, and as a result the enhanced criterion 1 checks with respect to identity were not carried out. This means that the identity of HAs 2-5 is accepted on the balance of probabilities. No reasoning is provided with the acceptance of criteria 2 and 3. With respect to criterion 4 and excusal it is argued there is

no way in which the applicants can travel to the UK but not via a VAC as there are no direct flights/ other options to travel from Gaza to the UK, and so the applicants would have to go to a third country where there would be a VAC. There is no consideration of the use of discretion as argued for in the application.

28. As noted above the situation has now changed with the respondent agreeing as of 15th September 2026 to predetermine the applications of HAs 2-5 on the basis of an exercise of discretion, as explained by Mr Dunlop, despite finding criterion 4 is still not met. The Tribunal was not provided with any written document in relation to this change. Whilst there is nothing to confirm this I find that it is reasonable to assume that HAs 2-5 will now be positively predetermined on the basis of the materials before me, and they will then be in a position to request consular assistance from the FCDO, which again is likely to be granted, but which will then be held in abeyance whilst they await either a change of circumstances with respect to the Rafah crossing to Egypt or a decision from the respondent as to whether to issue OTAs, as outlined with respect to LSs 2-4 below.
29. LSs 2-4 made family reunion applications to join LS1 in the UK on 11th August 2025 together with a request for pre-determination on the basis that they would seek FCDO assistance to leave Gaza via Egypt. This application was granted by the respondent on 4th September 2025 on the basis that the circumstances were “sufficiently compelling to authorise their application to be predetermined”, and then on 16th September 2025 the respondent issued a letter stating she was minded to issue entry clearance subject to their attending a VAC to enrol their biometric information within 240 days of 29th July 2025 and the satisfactory completion of background suitability checks, which I understand to be the checks which will be done using the biometric data to be provided to the VAC. As a result of the acceptance of the pre-determination request the FCDO agreed in principle to provide LSs 2-4 with consular assistance on 15th June 2026 but has advised LSs 2-4 that they will be reliant on a decision from the respondent as to whether to issue them with OTAs for transit via Jordan. Currently this is the only route out of Gaza, although the FCDO advises that they “will continue to work to identify other options for departure, including the potential for travel via the Rafah crossing to Egypt should that be opened more widely”. The decision on whether to grant OTAs to LSs 2-4 is outstanding with the respondent, and is likely, I understand, to take about six months, so might be expected in December 2026.
30. LSs 2-4 made an additional request for biometric excusal on 13th February 2026. It was confirmed by the respondent in the letter of 11th February 2026 that this “would not impact the validity” of the applicants’ predeterminations (LS bundle page 332 paragraph 4). The applicants argue that the respondent has a wide power to excuse biometrics, which must be exercised in line with the respondent’s obligations under Article 8 ECHR and the best interests of affected children. It is noted that the UJP permits this discretion to be exercised where applicants cannot visit a VAC at all or safely, and notes that it has been exercised with respect to Medevac cases, in the Ukrainian schemes and to evacuate Afghans. It is argued that the applicants qualify both under the UJP and that if not discretion should be exercised because they can meet criterion 1 as they have provided passports; the respondent has found criterion 2 with respect to unsafe journey has been met and there is no safe journey option to leave Gaza without biometric excuse; and because criterion 3 has been found to be met as there are compelling circumstances with respect to LSs 1-4. It is argued that criterion 4 is met because the LSs 2-4 cannot leave Gaza without being excused biometrics, as that is the only way they can get the current

assistance of the FCDO to leave via Jordan and it is appropriate to grant as the individual circumstances are so compelling that they outweigh the public interest in conducting biometrics prior to UK entry. It is also noted that only “ordinarily” do all 4 criteria have to be met.

31. The biometric excusal application was initially refused by the respondent on 25th March 2026, but then that decision was withdrawn following a pre-action protocol letter and replaced by a refusal dated 12th June 2026. In this decision identity is accepted on the balance of probabilities, but the further checks to a reasonable degree of certainty are not conducted as criterion 4 is not found to be met. Criteria 2 and 3 are met as already found in the predetermination decision. With respect to criterion 4 it is argued that on the applicants’ own case they cannot travel to the UK but not via a VAC as they would have to leave Gaza via a third country with a VAC. It is said that it is not appropriate to exercise discretion with the giving of no reasons. It is said, with no specific reasons, that the decision complies with Article 8 ECHR.

The Grounds of Challenge

Ground 1: Irrationality of the Refusals of Biometric Excusal

32. My understanding is that the essence of the applicants’ claim is that the decisions are irrational for the following reasons:
- There is a failure to consider the exercise of discretion under the UJP, but outside of its literal criterion 4 requirements, as requested by the applicants (which includes the offer to give biometrics in Jordan prior to UK entry, which would appear to be practically possible given the experience with those with OTAs doing this), either at all, as in the HAs case, or, as in the LSs decision, without any substantive consideration. Material considerations are not therefore flexibly considered and engaged with as they should for a lawful decision under the UJP to be made.
 - It would be appropriate to exercise this discretion in the unusual circumstance where only by excusing biometrics under the UJP the applicants can leave Gaza and it should not be held against them (as it is a positive for the UK) that they would, if granted excusal, be in a position to give biometrics in Amman if assisted in this by the respondent. This is a matter which, it is argued, rationally counts in the applicants favour not against them.
 - That to rely in refusing upon the option of predetermination plus an OTA is to fetter discretion under the policy when biometric excuse ought to have been determined first as the OTA process cannot be seen as sufficient to complete an application to come to the UK on the facts; the OTA process is not Article 8 ECHR compliant as decisions under the UJP policy must be, as OTAs are outside the ambit of Article 8 ECHR; and in any case reliance on the OTA process is not part of the reasoning in the actual decisions refusing biometric excusal under challenge but just arises from submissions for the respondent. Overall, this process amounts to an offer of an arrangement which is illusory, or which is “impractical” and therefore contrary to the UJP at page 19, page 2425 of the authorities bundle.

Ground 2: The Refusals of Biometric Excusal breach Article 8 ECHR

33. My understanding is that the decisions are said to breach Article 8 ECHR for the following reasons:
- Decisions on the exercise of biometric discretion, including under the UJP, must be Article 8 ECHR compliant as is set out in the UJP policy.
 - Criterion 3 of the UJP involves a balancing of the public interest against the compelling circumstances of the applicants which has been found to be met for both sets of applicants and thus the view of the respondent is that in a balancing exercise the situation of the applicants wins out over the risk to public security. On top of this leaving Gaza will involve an Israeli security check which adds another layer of assurance; the identities of the applicants have been satisfied; family reunion applicants pose a lower risk of identity fraud; and in reality, if excusal is granted, biometrics can be taken in Jordan prior to UK entry.
 - The fact that ultimately a decision on excusal under the UJP must come from the minister does not mean that weight is not given to the findings in favour of the applicants under criterion 3 as decisions and reasons made by civil servants on ministers behalf have the same status as those made by the minister themselves, Shvidler v SSFCDA [2025] 3 WLR at paragraph 138 (authorities bundle p.1781)
 - The decision on predetermination does not currently put the applicants in a position to leave Gaza, for the reasons set out by the FCDO in their letter, and there are no real chances of them obtaining an OTA given the refusal to grant to Palestinian family reunion applicants as a cohort and the refusal, to date, of all other applicants in this cohort when considered on an individual basis. OTAs do not need to be Article 8 ECHR compliant and so overall this route is destined to fail, causes delay which puts the applicants in danger, and does not amount to an alternative Article 8 ECHR compliant pathway.
 - The balancing exercise which must be conducted in positive obligations cases is not lawfully done based on the material as set out in the applications.
 - When this exercise is done it comes down in favour of the applicants as their identities have been accepted; the sponsors and applicants have accepted Article 8 ECHR family life; the applicants can only have that family life in the UK; the Gazan applicants are recognised by the respondent as being in urgent need to move and as being in compelling circumstances applicants due to living in a dangerous and degrading war zone; as weight must be given to the best interest of the child applicants in leaving Gaza and the fact that separation in the circumstances prevailing in Gaza causes the sponsors documented serious mental health distress, and the fact that the Gazan applicants can satisfy the Immigration Rules to be reunited.
 - The Upper Tribunal must make a decision for itself as to whether there is a breach of Article 8 ECHR on consideration of the evidence and facts, as found by Lane J in R, on the application of BAA & Anor v SSHD (Dublin III: judicial review; SoS's duties) [2020] UKUT 00227 IAC at paragraph 61, which was upheld on appeal by the Court of Appeal, in R (BAA) v SSHD [2021] 4 WLR 124 at paragraphs 94-100, pages 1294-5 of the authorities bundle.

Respondent's Submissions in Response

Ground 1: Irrationality of the Refusals of Biometric Excusal

34. In short summary my understanding of the respondent's position on the irrationality ground is as follows:

- The refusal under the UJP for excusal was rational because the applicants would pass through Amman in Jordan where there is a VAC and so they cannot meet criterion 4b as if they can travel to the UK they can travel to a VAC.
- The decision to refuse discretionary excusal was rational as the third, intermediate pathway of predetermination and an OTA, is available to the applicants and provides greater biometric protection to the UK than excusal and has not reached a conclusion for either set of applicants.
- It is argued that the third pathway is a rational option given that although, if granted, it “presents risks to border and national security” “they are moderately lower risks than biometric excusal – at least the UK has advanced notice, before the individual arrives in the UK, as to what their biometrics reveal.”
- An OTA decision taken in this third pathway will balance the situations of the applicants and the public interest in border security and will be taken by a minister who is democratically accountable and should not be taken by a court, as it is outside the ambit of Article 8 ECHR.
- It is therefore rational for the respondent to refuse excusal during this process.
- The Upper Tribunal in MS v SSHD JR-2026-LON-000669 was wrong in finding that the applicants are in a “Catch 22” situation and the comments are obiter and should not be followed.

Ground 2: The Refusals of Biometric Excusal breach Article 8 ECHR

35. In short summary my understanding of the respondent’s position on the Article 8 ECHR ground is as follows:
- It is argued that the Upper Tribunal may not make a decision on whether Article 8 ECHR is breached as it is not accepted that this is appropriate in these cases as they concern the admission of non-citizens to the UK via a diplomatic assurance which stands outside the ambit of Article 8 ECHR.
 - It is argued that there must firstly be a decision of the respondent whether to admit the applicants from Gaza, and that it would not be lawful for the Upper Tribunal to make a decision on whether that should happen when the OTA decisions are outstanding and this should be a decision of a democratically accountable minister.
 - If the Upper Tribunal do nonetheless conduct a balancing exercise it is argued that procedurally the process is fair and that the time period is lawful and realistic given the complex and changeable situation in Gaza and the need for ministerial involvement. The Tribunal is reminded that there is no positive obligation under Article 8 ECHR to take diplomatic steps such as the grant of an OTA.
 - If the Upper Tribunal do nonetheless conduct a balancing exercise it is argued that there is no substantive breach of Article 8 ECHR because of the strong public interest in obtaining biometrics before persons enter the UK, and given ministers have refused to give permission for this cohort to enter without biometrics and have refused all of the similar Gazan cases. It is argued that the public interest in border security out-weighs the right to respect for family life of the applicants.

Conclusions – Ground 1 Rationality of the Decisions

36. It goes without saying that a finding of irrationality requires a high threshold to be crossed even in cases raising compelling humanitarian considerations and important human rights.
37. I find that the first step I must take is to make clear which decisions are under review in these applications for judicial review. They are not challenges to the FCDO provision of assistance or to the respondent in relation to the wait for consideration to issue OTAs. They are challenges to decisions made to refuse biometric excusal under the UJP. They are not therefore challenges to decisions which relate to the extension of diplomatic assistance to the applicants, but simply to regular home office decisions under the UJP with respect to biometric excusal, which must, as is clearly stated in the respondent's own UJP policy, be Article 8 ECHR compliant.
38. To the extent that the applicants continue to contend that they can meet the literal requirements of the UJP at 4b for excusal I find that they cannot as, I find, they cannot explain why they cannot attend any VAC but are able to travel to the UK. This factual scenario is simply not the one in which the applicants find themselves: if they are able to travel to the UK they will be going via a country with a VAC, either currently Jordan or perhaps in the future in Egypt, as there are no direct flights from Gaza, and they have said they would attend that VAC. The applicants' situations also bear no resemblance to the type of cases for which the policy was initially formulated to assist. The examples in UJP consist of high-profile individuals needing not to be identified by going to a VAC due to a risk of harm, perhaps due to their giving evidence in a criminal case to assist the UK, or where it is in the national security interests of the UK for them not to be identified by their attending a VAC. The actual situation for the applicants is that without excusal they cannot demonstrate an ability to go anywhere but with it they have offered to attend the VAC in Jordan, on route to the UK, but of course this would not have the same protective effect as it would normally have as they could not be refused onward travel to the UK as they would have full visas.
39. It is clear that discretion was explicitly requested by HAs 2-5 in their application, see the application at p213 of the HA hearing bundle, where it states: "In the alternative, it is noted, that the policy is discretionary, given the compelling circumstances of the Applicants it is submitted that the decision maker should apply their discretion to grant biometric excuse." As argued by the applicants I find that it was irrational for the respondent not to have exercised discretion in making the decision with respect to biometric excusal in the HA2-5 applications because a discretion is accepted to exist within the UJP by the respondent. This is the same conclusion reached by my colleague, Upper Tribunal Judge Norton-Taylor, in his very recent judgment in MS & Ors v SSHD JR-2026-LON-000669 based on the language of the UJP and the statement of Ms Pickering.
40. Further, as accepted by Mr Dunlop for the respondent, the UJP was not formulated with the Gaza situation in mind, and so, I find, discretion should have been recognised as being particularly pertinent. Further matters which I find mean that discretion ought clearly to have been considered are as follows. The fact that criteria 2 and 3, relating to compelling circumstances and urgency, were decided in the applicants' favour, and in so far as criterion 1 was assessed that also went in the applicants' favour. The fact that the applicants were able to add to the security of the UK by offering to give biometrics in Amman before entry to the UK despite being excused ought to have been a factor which

weighed in their favour as it gives greater security to the UK, as accepted by the respondent, than this not happening at all until after they arrive in the UK, and clearly this is something that actually happened in HS & Ors JR-2024-LON-000457 when biometric excuse was order by the Administrative Court but the applicants travelled via the VAC in Egypt giving their biometrics and obtaining their visas. It is also clear that excusal has actually been used in a number of very varied factual scenarios, not in the least factually similar to the high-profile person endangered by attending a VAC set out in the UJP, and not all which included situations where there was no VAC in the country of departure for the UK, such as with the Calais children and Ukrainian families. I find all these factors add to the irrationality of not exercising discretion to consider biometric excusal.

41. It is accepted by the respondent that LSs 2-4 requested discretion with respect to biometric excusal and it is equally clear that this request was acknowledged, but the response of the respondent is simply that it would not “be appropriate given the importance in conducting biometric checks before a decision is made on whether an individual may enter the UK.” I find that this approach fetters discretion and fails to consider material considerations and is inadequately reasoned to the point of irrationality. There is no denial that biometric checks are important in protecting the UK but as a decision which must comply with Article 8 ECHR an individualised balancing exercise must be conducted, particularly as within the third criterion of the UJP, found to be satisfied in LSs 2-4 case, a balance of their compelling compassionate circumstances against public security had been made in their favour.
42. The respondent argues that whatever is said in the decisions or indeed might be found to be lacking from them, that ultimately the refusals of biometric excuse are rational because biometric predetermination has now been granted to all of these Gaza based applicants, which then permits them to apply for FCDO assistance and for OTAs, which indeed LSs 2-4 have done, and which if granted will permit them to travel to the UK. I do not find that this suffices to make the decisions rational, however.
43. I find firstly that the applicants are entitled to adequately reasoned decisions on their requests for discretion, and if the respondent wishes to rely upon the FCDO assistance and OTAs, then this firstly needed to be part of a reasoned decision on discretion for the decision to be rational. Further, and more fundamentally, by deflecting the applicants into the OTA procedure the respondent is removing an Article 8 ECHR balancing exercise from the decision-making as the OTA procedure has no need to be Article 8 ECHR compliant as a diplomatic procedure. This is not a matter of arguing that decisions should be made by undemocratically accountable judges rather than ministers. Any decision under the UJP for excusal is always, as clearly stated in the policy, ultimately made by a minister. I find however that the applicants are entitled to an Article 8 ECHR compliant decision on their applications for family reunion which can only happen if a decision is taken under the UJP, which, as I have found, is the appropriate policy with adequate discretion to accommodate their request.
44. This might not have been ultimately material if the OTA procedure did provide an individualised balancing exercise, but the evidence before me suggests that no one in the situation of these Gaza based applicants (young adult mothers of very young children) has any realistic chance of being granted an OTA because whatever the compelling and dangerous circumstances in which the applicants find themselves, as set out in the OTA

decision in RKC1 at point 15 on page 1884 of the authorities bundle, refusal is justified as Gaza is a place where terrorists operate and biometrics could conceivably be failed by the adult applicants, and ultimately this is a mixed group of adults and children, and so it is likely to be found, in some very basic way, HA2 and LS2 can also care for the child applicants using humanitarian assistance. I emphasise that I do not find that decisions under the UJP for biometric excusal will, ultimately, necessarily be granted by the Minister, but the applicants are, I find, entitled to have their individualised circumstances considered, including an individualised rather than generalised assessment of the risk they pose to UK security which must then be balanced against their particular compelling circumstances and family life ties to the UK.

Article 8 ECHR

45. Firstly, I must clarify the parameters within which Article 8 ECHR operates for the purposes of family reunion applications. This is an example of a positive obligation under Article 8 ECHR, and what I must assess is whether a fair balance has been struck, as per the decision of the European Court of Human Rights in MA v Denmark, Application No. 6697/18 (9 July 2021). There can be no breach of Article 8 ECHR simply on the basis that the decisions are not in accordance with the law. As found by Lane J in BAA, [2020] UKUT 00227 (IAC), and upheld by the Court of Appeal ([2021] 4 WLR 124), it is a question for the Upper Tribunal whether there is a violation of Article 8 ECHR weighing the facts before it. As set out by the Court of Appeal in BAA I must only conduct this exercise however if I find the decision-making contains illegalities which are an operative cause interfering with family reunion rather than which were incidental to it. If the unlawful decisions were not operative in violating Article 8 ECHR, as was found in FWF v SSHD [2021] EWCA Civ 88, then the positive obligations of the UK may be met. As set out above I have found that the decisions with respect to biometric excusal in these two sets of applications are both flawed by reason of irrationality and that they are the operative decisions with respect to Article 8 ECHR in these cases.
46. IA & Ors v SSHD [2025] EWCA Civ 1516 holds that in a positive obligations case, such as this one, the main focus must be on the family life of the person within the UK's jurisdiction, and thus the sponsors, HA1 and LS1. In the context of positive obligations there must be a very strong claim with very compelling or exceptional circumstances in which the best interests of children are not a trump card, even in circumstances where those children live in a war zone, and significant weight must be given to the public interest in maintaining immigration control if applicants cannot meet the requirements of the Immigration Rules, although I note this is not a factor in these cases as this decision is made on the basis that the applicants are able to meet those Rules. If family life is found to exist then weight can be given to past family life, and the humanitarian situation in the country abroad, the best interests of the children in the family and the anxiety of the sponsor, but these factors must be weighed against the public interest in maintaining immigration control. In this scenario the public interest factor in play is the taking of biometrics prior to giving permission to enter the UK to provide securer borders.
47. I emphasise in conducting this balancing exercise that my approach must be an individualised consideration of the facts before me at the current time. If the respondent has other pertinent facts not before me, and in this case this could arise if I find in the applicants favour as the advanced identity checks have not been carried out under criterion 1 due to the finding of the applicants not meeting criterion 4, then there is

nothing to stop her making a new decision placing these found facts with those found to be relevant to the decision-making by the Upper Tribunal, in the balance. Likewise, if the applicants have new relevant facts they can, and no doubt will, place these before the respondent to be considered in the context of my findings too. The process I carry out is not to usurp the role of the executive or Parliament but simply to carry out my duties as a public authority to act compatibly with the ECHR under s.6 of the Human Rights Act 1998.

48. The applicants are entitled to an Article 8 ECHR compliant decision both in the sense that the procedures should, as set out in the respondent's summary case, sufficiently safeguard "flexibility, speed and efficiency" in the application process, and must also create a fair balance between the interests of the family and state. In this process I will give weight to all material before me relating to the public interest, and here, of course, specifically to the public interest in the protections provided by biometrics. I am fully aware that Article 8 ECHR rights are not absolute rights. I acknowledge that there may be lawful pre-conditions to family life applications imposed by states on applicants wishing to join those granted protection status, as set out in the European Court of Human Rights judgment in BF & Others v Switzerland (2024) 78 EHRR 14 which was drawn to my attention by the respondent. However, I also note that the protection family reunion UK Immigration Rules applied under by these applicants do not set out any such requirements. There is therefore no waiting period nor requirement for funds set by parliament that these applicants cannot or have not met. Further Ms Knorr emphasised that there is no delay challenge in these applications for judicial review.
49. I do not find that the process which ought to be available to the applicants under the UJP is one which contravenes the procedural safeguards to be flexible and effective. As noted above an application under the UJP clearly gives the opportunity to balance state security with respect to biometrics against the applicant's family life, urgency and compelling circumstances and has the added protection with respect to excusal of biometrics of needing ministerial approval. It was unclear from the submissions before me how long this would take, and whether it would take as long as the six months generally taken for OTAs, but I find nothing to suggest that it would be taken unlawfully slowly, and this was not argued for by the applicants. However, in terms of process I do find, as set out at paragraphs 41-43 above, that the current process of no lawful consideration under the UJP and substituting an OTA process is a breach of the procedural right to an Article 8 ECHR compliant decision for the reasons I have set out above.
50. In terms of the substantive balancing exercise on the material before me I find that this must come down in favour of the applicants for the following reasons.
51. In their favour are that both compelling circumstances and urgency are accepted by the respondent in their consideration of criteria 2 and 3 of the UJP. I remind myself what these compelling circumstances are: as set out at paragraphs 4-7 of this decision: HAs 2-5 and LSs 2-4 are living in vulnerable structures in a war zone, are malnourished, unwell and struggling psychologically and HA1 and LS1 are suffering from PTSD and depression, with worsening mental health due to the position of their loved ones and the fear that they will not survive much longer. These circumstances involved acute mental distress of applicants HA1 and LS1 living in the UK, and also the worsening condition of 5 young children under the age of 7 years, HAs 3-5 and LSs 3-4. The best interests of these children should be a primary consideration, and it cannot be in their best interests

to be afraid, undernourished and suffering from diseases of poverty and insanitary conditions without their fathers and no end in sight to that separation.

52. In terms of the public interest in protecting the security of the UK via taking biometrics the weight to be given to this interest is lessened by the decisions taken by the respondent favourable to the applicants under criterion 3 of the UJP which conclude that their compelling circumstances outweigh the interests of national and border security. In addition, if biometric excusal was granted the applicants would, just as the applicants in HS & Ors JR-2024-LON-000457 did and has been explicitly offered in these cases, give their biometrics in Jordan on route to the UK. This is clearly practicable as it is done in the cohort OTA cases, and is acknowledged by the respondent to reduce risk somewhat as the UK would have a heads up on any security risk identified by biometrics prior to entry. Finally, to leave via the proposed route the applicants would leave Gaza into Israel, and only then enter Jordan, and so would be subject to Israeli security checks, and whilst it is understood that these are not synonymous with those checks conducted by the UK using biometrics they clearly do mean anyone known or suspected as a terrorist by the Israeli security services would not be cleared to leave, and so could not leave and pose a threat to the UK.
53. I acknowledge that Gaza is a place where terrorists operate and the respondent chose not to grant OTAs to the cohort of protection family reunion applications. However, I find, on the material before me, that the Article 8 ECHR balancing exercise comes down in favour of these particular applicants as their right to respect for family life, family life being accepted by the respondent as the entry clearance applicants are the pre-flight wives and very young children of the UK sponsors, carries greater weight than the protection of the UK via biometrics taken in advance of the issuing of entry clearance, which is a risk that will be attenuated for the reasons I have set out above and has been found by the respondent at one point in her own calculations as being outweighed by the particularly compelling circumstances.
54. I do not address the damages claim as I find that this would be premature as it is unclear on the facts as to whether any liability will crystallise.



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

In the matter of an application for Judicial Review



JR-2026-LON-003464

The King on the application of

AA

SA

and

(by their litigation friend, AA)

MA

AX

LA

Applicants

and

Secretary of State for the Home Department

Respondent

NOTIFICATION of the Judge's decision

On the application for urgent consideration and expedition

Following consideration of the documents lodged by the parties

Order by Upper Tribunal Judge Ruddick:

1. The applicants' application for expedition is granted
2. The respondent shall file detailed grounds of defence by 15 October 2026.
3. The matter shall be listed for a rolled up hearing on the first available date after 6 November 2026.
4. The applicants are granted anonymity and will be referred to in these proceedings as follows: AA (the first applicant); SA (the second applicant); MA (the third applicant); AX (the fourth applicant) and LA (the fifth applicant).
5. No-one shall publish or reveal any information, including the name or address of the applicants, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.
6. The first applicant is appointed as the litigation friend for the third-fifth applicants.

Reasons

Application

- (1) The applicants are a man who has been granted humanitarian protection in the UK, his wife and their three minor children. The second through fifth applicants are currently

living in Gaza. They say that they are living in dangerous and inhuman and degrading conditions, and I consider that this is highly likely to be true.

- (2) The second through fifth applicants applied to join the first applicant in the UK under the immigration rules on 1 September 2025. They now seek to challenge the respondent's decision to refuse them biometric evidence and predetermination of their applications.
- (3) Expedition is appropriate given the conditions in which the applicants, and in particular the minor children, are living. Given the description of their current circumstances in the evidence before me, I consider that the onset of winter is likely to make those conditions considerably more difficult. There will be no significant difficulties for the respondent in defending this application on an expedited timescale, because the legal issues and the broad factual context are familiar ones, having recently been the subject of repeated litigation before this tribunal.

Anonymity

- (4) The applicants are granted anonymity because they are living in a vulnerable situation in which there is a reasonable likelihood that revealing their identity could put them at risk.

Litigation friend

- (5) I am satisfied on the evidence before me that the first applicant meets the criteria for being appointed as a litigation friend that are set out in the relevant presidential guidance.

Costs

- (6) Costs in the case

Signed: *E. Ruddick*

Upper Tribunal Judge Ruddick

Dated: 25 September 2026

The date on which this order was sent is given below

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): 25/09/2026

Solicitors: Leigh Day

Ref No.

Home Office Ref: 1212-0099-0055-4701



**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

HA (1)

MA (2)

LA (by their litigation friend HA) (3)

NA (by their litigation friend HA) (4)

AA (by their litigation friend HA) (5)

Applicants

JR-2026-LON-002050

and

Secretary of State for the Home Department

Respondent

FINAL ORDER

BEFORE Upper Tribunal Judge Lindsley

UPON hearing counsel for the Applicants, Michelle Knorr and Agata Patyna, and counsel for the Respondents, Rory Dunlop KC and Jack Holborn, at a hearing on 9 and 15 September 2026

AND UPON the Respondent agreeing on 15 September 2026 to predetermine the entry clearance applications of HAs 2-5 thus reversing the decision of 11 March 2026 with respect to predetermination.

AND UPON the Second to Fourth Applicants agreeing to arrange for their passports to be hand delivered to the VAC in Amman and collected the same day to allow the Respondent to complete checks on their passports;

AND UPON the Second to Fifth Applicants offering, if a decision is made to grant entry clearance, to provide their biometric data at a Visa Application Centre or other location as directed and arranged by the Respondent prior to travel to the UK.

IT IS ORDERED that:

1. Permission is granted on all the grounds set out in the Applicants' statements of facts and grounds.
2. The application for judicial review is granted for the reasons set out in the Judgment.
3. The Respondent's decision dated 11 March 2026 refusing biometric excuse is quashed.

4. There be a declaration that, on the facts known to the Upper Tribunal, the Respondent's decision of 11 March 2026 refusing biometric excuse breached the Applicants' rights under Article 8 ECHR.
5. The Respondent shall take new decisions on the Applicants' requests for biometric excuse in accordance with the Judgment and the Declaration at paragraph 4 of this Order within 3 weeks of completing the checks on the second and fourth Applicants' passports and if biometric excuse is agreed shall issue visas within 2 working days.
6. The Respondent do pay the Applicants' reasonable costs to be assessed if not agreed.
7. Pursuant to Upper Tribunal Procedure Rule 10(10): (1) Within 28 days of being served with a schedule of costs, the Respondent shall make a payment in the sum of 60% of the schedule unless within 14 days of service she has filed and served notice of particularised objection. (2) If notice of particularised objection has been filed and served, the Applicants shall within 14 days file and serve any response, after which (absent agreement between the parties) the Tribunal will decide on the papers whether to confirm or revise the amount.
8. The Applicants' legally aided costs be subject to a detailed assessment.
9. Permission to appeal is refused.

PERMISSION TO APPEAL: REASONS

1. Ground 1 has no realistic prospect of success. As set out in the decision of the Upper Tribunal the decision on biometric excusal for these applicants will ultimately be made by the Minister exercising her discretion under the UJP. The Upper Tribunal has done no more than to make findings on the material before it as required in a judicial review of a decision which must be Article 8 ECHR compliant, as set out in the respondent's own UJP.
2. Ground 2 has no realistic prospects of success. The Upper Tribunal has simply conducted a balancing exercise on the material before it and sets out the reasons why that material falls in favour of these particular applicants, thereby making a lawful and reasoned decision. It is open to the respondent to have other processes by which the applicants might be eligible to come to the UK but there was no evidence before the Upper Tribunal that these were Article 8 ECHR compliant and so could substitute for lawful decision-making under the UJP. There is no finding that biometrics must be waived for applicants in the situation in Gaza, or any similar situation, but simply a balancing exercise on the material before the Upper Tribunal for these particular applicants. It was rationally open to the Upper Tribunal to place weight on the decisions of the respondent in these particular cases that the compelling circumstances outweighed the public interest at criterion 3 of the UJP and to give weight to the agreement of the applicants that they would give biometrics in Amman given that they can only leave Gaza with FCDO consular assistance.
3. Ground 3 has no realistic prospects of success. The evidence before the Upper Tribunal from RKC1 was that there was no individualised Article 8

ECHR compliant balancing exercise in respect of OTAs as this was not required as the issuing of OTAs is a diplomatic procedure.

Signed: **Fiona Lindsley**
Upper Tribunal Judge Lindsley

Dated: **30th September 2026**

The date on which this order was sent is given below

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): 30/09/2026

Solicitors: Greater Manchester Immigration Aid Unit
Ref No. DBP26856PFC
Home Office Ref: GWF084876255, 1212-0099-0415-9168, GWF08487538

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction