OUTER HOUSE, COURT OF SESSION

[2026] CSOH 41

P307/26

OPINION OF LORD BRAID

in Petition of

A and B

Petitioners

for

Judicial Review of an ongoing failure by the Secretary of State for Foreign, Commonwealth and Development Affairs to issue a decision on the petitioners' request for consular assistance on an exceptional basis

Petitioner: Shabbir; Drummond Miller LLP
Respondent: Pirie KC, Breen; Office of the Advocate General

24 April 2026

Introduction

[1] The question for decision is whether the Secretary of State for Foreign, Commonwealth and Development Affairs (the respondent) has unlawfully delayed issuing a decision on the request of the petitioners, who are foreign nationals, for consular assistance to leave Gaza with a view to their entering the UK. The request was made on 6 October 2025. No decision has yet been made (or, at least, communicated to the petitioners).

The petitioners' claim for leave to enter the UK: the need to attend a VAC

[2] The petitioners, a mother and her son aged 16, are nationals of the State of Palestine, currently residing in Gaza in a tent. The first petitioners' husband, C, made a protection claim in the UK which was granted on 19 February 2024 for a period of 5 years as a refugee. He currently resides in Glasgow. The petitioners submitted an application under the Family Reunion scheme for leave to join C in the UK. A requirement of the Immigration Rules is that the petitioners must provide biometric information, in the form of fingerprints and facial images, before a decision on their immigration applications can be taken. That involves making an appointment at, and attending, a Visa Application Centre (VAC).

[3] The VAC in Gaza closed on 7 October 2023 due to the situation between Palestine and Israel, and continues to be closed following the more recent conflict in the Middle East. It is therefore necessary for the petitioners to travel to a VAC elsewhere, the closest one being in the Kingdom of Jordan. They are unable to do so, for the reasons set out below.

The SSHD policy and the petitioners' request thereunder

[4] The Secretary of State for the Home Department (SSHD) has a published policy, "Unable to travel to a Visa Application Centre to enrol biometrics (overseas applications) (version 4.0)", which directs decision-makers on how to handle requests from individuals who are applying to come to the UK from overseas and claim it is too unsafe for them to travel to a VAC to enrol their biometrics. The policy provides that individuals may ask to be excused from having to attend a VAC before travelling to the UK because the journey is unsafe, or that an application may be "predetermined". In that regard, it states:

> "The purpose of predetermining an application is to enable individuals to assess the risks of making an unsafe journey before travelling to a VAC. It is not intended to be used for the purposes of aiding other authority exit permits or entry visa

> requirements to enable individuals to travel to other countries...Neither [Home Office decision-makers] [n]or the [FCDO] are responsible for facilitating individuals to cross international borders...Where individuals request their application is predetermined, they 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, before they travel to the UK if you informed them you are minded to grant their application subject to satisfactory biometric and biographic background checks. Where individuals fail to comply with this requirement their application may be disregarded under the Immigration (Biometric Registration) Regulations 2008."

[5] In accordance with that policy, the petitioners made an application to the SSHD that they be excused from attending a VAC. That request was refused, but on 9 October 2025 the petitioners were issued with predetermination letters, stating that the SSHD was minded to grant the petitioners entry clearance subject to their attending a VAC to enrol their biometric information within 240 days of the submission of their applications. As the petitioners accept, that letter does not guarantee that they will be granted leave to enter the UK.

The petitioners' request for consular assistance

[6] Being unable to leave Gaza themselves, on 6 October 2025 the petitioners made a request of the respondent that they be granted consular assistance to exit Gaza and travel to the VAC in Jordan. Although such assistance is not usually provided to nationals of other countries, on 14 December 2023, following the outbreak of hostilities in Gaza, the respondent adopted Extended Eligibility Criteria (EEC), which provide that consular assistance in exiting Gaza may be given to certain non-British nationals. On 17 October 2025, the respondent notified the petitioners that although they met one of the criteria under the EEC, they did not meet the other. That decision is not challenged. However, the respondent retains a residual discretion, in the exercise of the Royal Prerogative, to provide consular assistance to other non-British nationals in exceptional cases. She therefore requested

further information from the petitioners to enable further consideration to be given to the claim that the family should be assisted on an exceptional basis, which was provided on 19 October 2025. On 9 December 2025, the respondent told the petitioners that she "continued to consider whether support to exit Gaza can be extended to [the petitioners] on an exceptional basis. We will inform you of that decision as soon as we are able." Communications to similar effect were sent on 23 January 2026 and 26 February 2026, but as at the date of the hearing of this petition, 26 March 2026, no decision had yet been reached on the petitioners' request.

The orders sought

[7] It is that delay which is the subject of the petition. The petitioners seek two substantive orders from the court: first, declarator that the respondent's ongoing failure to decide their request for consular assistance on an exceptional basis is unlawful by reason of being irrational; and second, an order *ad factum praestandum* ordaining the respondent to produce an "individualised" decision on the petitioners' request within 48 hours, and in any event (as the petition was originally framed) by 25 March 2026.

The significance of the 240-day period

[8] The significance of 25 March 2026 is that, as has been seen, the SSHD's policy requires that the petitioners attend a VAC within 240 days of submitting their application for leave to enter the UK. That 240-day period was due to expire in the petitioners' case on 31 March 2026. Even by the time the petition was presented (on 16 March 2026) and more so by the time it was heard on 26 March 2026, in practical terms it was no longer possible for the petitioners to comply with that deadline: partly because no decision has yet been

reached on their application for consular assistance; and partly because, as set out below in more detail, it is simply not possible for the petitioners to leave Gaza by then. The consequence of the expiry of the 240-day period is that, in line with the SSHD's policy, the petitioners' applications would be rejected, with the consequence they would require to reapply. Since the Family Reunion scheme under which the petitioners applied is no longer available, that would involve an application applying under a different route, which would delay their applications by several months or longer, for a variety of reasons I need not go into here. However, the petitioners' agents asked the SSHD to extend the 240-day deadline by a further 240 days. The refusal of that request (on 20 March 2026) is the subject of a separate judicial review (the parallel petition) in which an interim order has now been made which has the effect of extending the deadline by a further 240 days. Accordingly, some of the urgency, in particular the apparent need to issue a decision before 31 March 2026, has evaporated from the present petition; and, indeed, from the decision-making process itself.

The progress of the petition

[9] Nonetheless, the petition was dealt with on an expedited basis, the hearing taking place 9 days after the first order for intimation and service. In support of her position, the respondent lodged a detailed affidavit of Sarah Price, the Foreign Secretary's head of the consular assistance department. Counsel for the petitioners faintly objected to receipt of that, on the basis that it was lodged only the day prior to the hearing, although he tempered that opposition by submitting that since he had not had the opportunity to consider it fully, the court should attach little weight to it. In the event, he himself relied upon parts of the affidavit, in addition to which much of the affidavit confirmed, in more detail, the petitioners' own pleadings; and, in the event, counsel did not identify any part of the

affidavit which he wished the court to disregard. The court having required the respondent to answer the petition and lodge productions within a very tight timeframe, I consider that it would be unfair not to allow her to answer the petition fully or to provide the court with as much information as she is able. I therefore do allow the affidavit to be lodged; and I see no reason not to attach weight to it.

The current situation in Gaza: the petitioners' inability to leave

[10] Turning to Ms Price's affidavit, then, she said that the current situation in Gaza, and the available means of exiting there, continues to evolve. There are two possible routes out: (i) through the Rafah border crossing with Egypt; and (ii) through the Kerem Shalom crossing into Israel, with travel then on to Jordan. The Rafah crossing, which had been closed, has recently re-opened but only for a limited number of medical evacuations and accompanying family members. For evacuations through the Kerem Shalom crossing: (i) permission to leave Gaza is given by Israel's Coordination of Government Activities in the Territories (COGAT); (ii) COGAT has not permitted any civilians to leave Gaza for Jordan since 23 February 2026; (iii) COGAT has paused permitting civilians to leave Gaza, and cancelled departures planned for March 2026, because of the situation on the ground; (iv) officials of the Foreign, Commonwealth and Development Office (FCDO) have asked COGAT when it will permit civilians to leave again but COGAT has not responded to the request; and (v) the British Embassy in Tel Aviv considers it unlikely that COGAT will permit civilians to leave Gaza while the current military conflict is ongoing. Further, Israel will not consider requests for people to leave Gaza without first receiving confirmation that Jordan has granted them entry for the purpose of transit. The Jordanian authorities will not grant that permission unless the UK Government gives it an express guarantee, known as an

onward travel assurance (OTA), that the person entering Jordan will leave Jordan and enter the UK. The grant or refusal of an OTA is a function of the SSHD and since 15 September 2025 she has had a policy to give OTAs for limited categories of case that does not include the petitioners. In short, there is currently no operational route for individuals in the position of the petitioners to leave Gaza and, for reasons outwith the control of the UK Government, it is presently impossible for the petitioners to do so. Were the situation on the ground to change, the conditions for the petitioners' evacuation to Jordan with consular assistance from the United Kingdom would be: (a) that the respondent exercises her discretion to give assistance; (b) that the SSHD exercises her discretion to give the Jordanian authorities an OTA in relation to the petitioners; (c) that the Jordanian authorities authorise entry to Jordan; and (d) that the Israeli authorities permit the petitioners to exit Gaza.

Consideration of the petitioners' requests for consular assistance

[11] The following information also derives from Ms Price's affidavit. As regards the progress of the petitioners' requests for consular assistance: (i) on 22 October 2025, FCDO officials sent a submission to the Minister for the Middle East and North Africa and to the respondent asking for a decision whether to give consular assistance to the petitioners and seven other groups of individuals to try to leave Gaza. The officials wrote that the combination of Jordan's requirement of, and the SSHD's policy on, OTAs meant that exit to Jordan was not possible and that any positive decision would be conditional on a resolution of this issue; (ii) on 28 October 2025, the Minister informed his officials that he was minded to offer assistance, noting that any help would likely have to be via the Rafah crossing once it re-opened; (iii) on 17 November 2025, the respondent's private office asked FCDO officials for more information about the circumstances of the petitioners, and other

individuals who had made equivalent applications, in order to come to a decision; (iv) on 18 November 2025, the FCDO officials provided that information to the respondent's private office. The respondent agreed to provide assistance to an 8-year-old child whose mother had travelled to the UK to study before the conflict started and whose father had been killed in the war; after the necessary formalities and guarantees had been given, the child departed Gaza on 15 December 2025; (v) on 5 December 2025, the petitioners' legal representatives wrote to the respondent advising that the petitioners were fully ready for evacuation and requesting urgent action; that request was responded to on 9 December 2025, the respondent noting that a decision on whether to offer support was still being considered; (vi) on 23 December 2025, the respondent instructed FCDO officials to work with Home Office officials in order to agree systems and processes to work together most effectively when processing cases like the petitioners; (vii) on 19 January 2026, Minister Falconer of the FCDO and Minister Tapp (Parliamentary Under Secretary of State in the Home Office) met to discuss systems and processes. Considerations included: ongoing litigation about current procedures; uncertainty about when the Rafah crossing would open; the Home Office's policy on OTAs preventing the FCDO giving effect to decisions to give consular assistance; and the Home Office's concern about the security risks of providing OTAs in respect of people who have not yet provided biometric information for checking. The Ministers noted that any offers of support were only to be made to families once agreed across both departments, that an imminent decision in *R (RKC 1)* v *Secretary of State for the Home Department* [now [2026] EWHC 440 (Admin)] would be important and that they should meet again; (viii) on 30 January 2026 the petitioners' legal representative again wrote, asking for a response within 7 days on whether the FCDO would provide assistance or not; (ix) on 3 February 2026, Minister Tapp wrote to

Minister Falconer indicating his view that decisions on consular support where an OTA is required should be taken jointly by the Home Office and the FCDO. Minister Tapp noted that he would like to discuss this with the Minister once the decision in *R (RKC 1)* had been issued; (x) on 16 February 2026, Minister Falconer replied to Minister Tapp discussing the problem further; (xi) on 27 February 2026, the FCDO responded to the petitioners' agents' email of 30 January 2026, noting that the request for assistance continued to be considered. On the same day, the High Court handed down its judgment in *R (RKC 1)*; (xii) since 27 February 2026, FCDO and Home Office officials have been working on proposals for ministers about how to take decisions in cases (such as the petitioners') in which the FCDO has not yet made a decision whether to provide exceptional consular assistance. Considerations included: that the situation on the ground and the requirements of third countries will determine whether an offer of support would be effective; the need for consistency; and the effect on consular services in other countries and future crises (especially FCDO capacity to provide consular services to British nationals); (xiii) Since 28 February 2026, FCDO and Home Office ministers and officials had been dealing with the effect of the regional conflict in the Middle East, including responding to a significant number of British nationals in the region; (xiv) on 24 March 2026, FCDO officials made a submission to Minister Falconer inviting him to make a decision on the petitioners' application for exceptional consular assistance. The recommendation to the Minister is that he refuse the request. A decision on that submission is awaited and it is not known how long that will take. In the event of a positive decision, a request for OTAs would then be made to the SSHD.

The issues

[12] The issues for the court to determine are:

(i) Has the respondent unlawfully delayed in determining the petitioners' application for exceptional consular assistance? Both parties accept that the delay will be unlawful only if it can be held to be irrational.

(ii) Is the petition academic?

(iii) In any event, is it equitable for the court, in the exercise of its residual discretion, to refuse to grant the orders sought?

Submissions

Petitioner

Irrationality

[13] In inviting the court to make the orders of declarator and reduction sought, counsel for the petitioners stressed that the case was not about whether the respondent should agree to provide consular assistance, but simply whether she was entitled to continue not to make a decision. He advanced three broad propositions:

(i) The test was one of irrationality. The court must examine all the circumstances, including the reasons for an absence of a decision, and whether the person affected by the delay had suffered any prejudice. A delay might be so gross that the court should grant relief: *R (on the application of K)* v *SSHD* [2014] EWHC 2477 (Admin) at 15. The petitioners had suffered substantial prejudice through the respondent's failure to make an earlier decision. Either they could have left Gaza sooner, when the exit routes remained open; or the delay had

deprived them of the opportunity to challenge the decision (if negative) by judicial review.

(ii) Although the respondent had a discretion, she had to exercise that discretion. A refusal to consider the petitioners' request would be unlawful: *cf R (Abbasi)* v *SSFCA* [2002] EWCA Civ 1598, paragraph 104. Although the present case did not involve a refusal, the practical effect was the same: no decision had been made. The respondent's approach would, if correct, allow a public authority to avoid scrutiny simply by maintaining that a matter remained under consideration while time ran out.

(iii) If unlawfulness were established, the ordinary starting point was that the court should grant a remedy: *Greenpeace Limited* v *Advocate General for Scotland* [2025] CSOH 10, Lord Ericht at para [90]. The relevant factors here were the practical effect of the order; the public interest in good administration; prejudice to the petitioners; and the conduct of the parties: *cf Greenpeace*, paras [92]-[95] and [120]. These all pointed towards the making of the orders sought. The petition was not academic, at least if the 240-day time limit were extended.

[14] Insofar as irrationality was concerned, the respondent had known from the outset that there was a fixed biometric deadline and that the petitioners would not be able to leave Gaza without consular assistance. Further, while the respondent had pointed to things which were done between October 2025, when the request was first made, and now, the fact was that a submission to the Minister had been made only on 24 March 2026, expressly in response to the petition. That ran contrary to the narrative the respondent was seeking to present of a careful and onerous decision-making process. While the recommendation to the Minister was to refuse the request, he was also given the option of granting it. That was

instructive, since it showed that a grant of the request would be meaningful, even if it could not be implemented immediately. The submission recognised that steps could be taken following the grant, including seeking an OTA from the SSHD; and additionally, that as the situation in the Middle East developed other exit routes might become available (as they had been in the relatively recent past, including after the date when the petitioners first requested assistance). Insofar as the respondent's arguments were concerned, she relied heavily on an OTA being required for the petitioners to enter Jordan, almost as if that were an external obstacle, but in reality the provision of an OTA was part of the decision which had to be made. Insofar as she referred to the seven other groups who were in a similar position, the petitioners did not rely upon any differential treatment. The fact that other people had also been left waiting for a decision in circumstances about which we knew nothing did not have any bearing on whether the treatment of the petitioners was irrational. As regards the respondent's argument that the petition was academic, it conflated the need for a decision now with the ability to implement that decision. The situation was evolving and would not be permanent. The argument that nothing could be achieved by the longstop date of 31 March 2026 would fall away if interim orders were granted in the other petition (as they have been); and it could not be right for a public authority to argue that a case was academic, or that it was equitable to refuse to grant any remedy, because of its own delay.

Respondent

[15] Senior counsel for the respondent submitted that whatever the position when the petition had been presented, it now had an air of unreality. The Minister had the submission, had been briefed by officials and now had to have a reasonable time to consider

it. The petition should be refused for three reasons: first, there had been no irrational delay; second, the petition was academic; and third, it was equitable to refuse any remedy.

[16] As regards irrationality, the applicable principles were summarised by Garnham J in *R (on the application of O)* v *Secretary of State for the Home Department* [2019] EWHC 148 Admin, and accepted by the Lord Ordinary in *AS* v *Advocate General for Scotland* 2021 SLT 1492. In a case of this type, where there was no established right on the part of the petitioners, the material principles insofar as relevant to this case were (i) that delay was unlawful only if was shown to result from actions or inactions that were irrational, and (ii) that the court would not generally involve itself in questions concerning the internal management of a government department. Delay was likely to be irrational only in exceptional circumstances and if it was so excessive as to be regarded as manifestly unreasonable: *AS*, above, para [13], referring to what Collins J said in *R (FH)* v *Secretary of State for the Home Department* [2007] EWHC 1571 (Admin) at paragraph 30; although he also referred to the possibility of a claimant suffering some particular detriment, in fact he was talking about arguability in the context of whether permission should be granted (see also paragraph 28) in respect of delays in dealing with asylum claims where there was a large backlog. Particular detriment was not a sufficient condition for irrationality. *R (FH)* was cited with approval by Elisabeth Laing LJ, delivering the leading judgment of the Court of Appeal in *R (Ullah)* v *Secretary of State for the Home Department* [2022] EWCA Civ 550, paragraph 62. Further, the court recognised that in situations involving policy and international relations, the judgment of the decision-maker should be given particular weight: *R* v *Minister of Defence ex parte Smith* [1996] QB 517, per Sir Thomas Bingham MR at 556 B to C; *R (Al Rawi)* v *Secretary of State for Foreign and Commonwealth Affairs* [2008] QB 289, paragraphs 140 to 141.

[17] Turning to the facts, as the SSHD's policy made clear, the responsibility for getting to the VAC rested on the petitioners. The predetermination decision was not an indication that onwards travel was guaranteed nor did it imply that an individual would be able to travel to a VAC. The current situation was not likely to change in the near future. The steps taken by the respondent in dealing with the request were reasonable and rational. Approaching the Minister's consideration of the petitioners' application with the necessary caution, the court should not interfere.

[18] The petitioners were wrong to say that the respondent had irrationally created a situation whereby the petitioners' application for leave to enter the UK may fail purely because of the absence of a decision. The grant of clearance did not give rise to any obligation to provide consular assistance: *R (BEL)* v *SSFCDA* [2025] 4 WLR 103 (per Chamberlain J at paragraph 105). *A fortiori*, the same was true where a request for consular assistance remained under consideration. Further, the weight to be attached to the existence of a predetermination decision, in considering whether speedy determination was required, was but one factor to be weighed in the balance along with the myriad of competing factors, and was a matter for the Minister to judge.

[19] As regards whether the petition was academic, the court should not grant a remedy that served no practical purpose: *King* v *East Ayrshire Council* 1998 SC 182 at p 194C-H. The purpose of the remedies sought was to enable the petitioners to travel to a VAC to submit biometric information before the 240-day time-limit in their predetermination decisions expired, but as Ms Price explained, it was simply not possible for this to be achieved. Senior counsel acknowledged this argument would lose much of its force if the 240-day limit were extended by dint of the petitioners' parallel petition.

[20] Finally, even if the court was satisfied that the delay was unlawful and that the petition was not academic, it should decline to pronounce the orders sought. The court had a discretion to refuse a remedy on equitable grounds: *Eba* v *Advocate General* (2012) SC (UKSC) 1 at paragraph 27. The principles governing the exercise of that discretion were considered in *Greenpeace Ltd* v *Advocate General for Scotland*, above. Relevant factors included the practical effect that a remedy would achieve; the public interest in good administration; prejudice to public interests; and the conduct of the parties including delay in raising proceedings. In the present case, the following factors made it equitable for the court to refuse a remedy. First, it was unlikely that the order would serve any practical purpose. Second, it would prejudice the public interest in good administration and decision-making because (a) it would not give officials in the Home Office and FCDO the time they thought they needed to consider the petitioners' case before giving advice to the Minister; (b) it would require the Minister to prioritise the decision ahead of other pressing commitments driven by the Middle East conflict, and to prioritise the petitioners ahead of others in the same position as them; and (c) it would conflict with a political determination by those accountable for it to Parliament that decisions as to whether to facilitate the exit of individuals from Gaza should be taken collaboratively by the FCDO and the Home Office; that determination arose from overlapping considerations of national security on the one hand, and the United Kingdom's diplomatic relations with other states (including Jordan, in particular) on the other. The court should not cut across ongoing work which served the twin public interests in maintaining national security and maintaining good foreign relations with the UK's international allies. Third, the petitioners had delayed unreasonably in raising the proceedings.

Decision

Irrationality

[21] The parties agree that the delay in reaching a decision in this case (where the petitioners have no established right) will be unlawful only if it is shown to be irrational, and, subject to one exception, there is no difference between the parties as to the principles to be applied in considering irrationality. In the context of delay, as opposed to irrationality in the decision once made, it has been authoritatively said that delay is likely to be held to be irrational only where it is so excessive as to be manifestly unreasonable: *R (Ullah)* v *Secretary of State for the Home Department*, above. However, the length of time taken, on its own, cannot be considered in the abstract without considering what caused the delay. One of the principles approved in *AS*, above, is that delay may be unlawful if it is shown to result from actions or inactions that were irrational. I take from this that in assessing whether or not the delay in any particular case is excessive to the extent that it is manifestly unreasonable, the court must also consider the rationality of the actions (or inactions) on the part of the decision-maker which led to that delay. If, for example, there was no rational system in place for considering a request and if the decision-maker simply did nothing at all, then a relatively short period of delay might be held to be irrational, depending on the surrounding circumstances. Such a case might well be equated with the example given in *Abbasi*, above, at paragraph 104, where the court said that were there to be a refusal even to consider whether to make diplomatic representations on behalf of a subject whose fundamental rights were being violated, it would be appropriate for the court to make a mandatory order to the Foreign Secretary to give due consideration to the applicant's case. On the other hand, even a relatively long delay may be rational and therefore lawful if it is the product of a rational process. As was said by Collins J in *R (FH)*, above, at paragraph 11, after acknowledging

that it was not the court's function to determine for itself whether a different and perhaps better approach might have existed, "the court can and must consider whether what has produced the delay has resulted from a rational system". Accordingly, while I agree with the Lord Ordinary in *AS* at para [13], where she said that irrationality cannot be determined in the abstract, before going on to observe that in that case no materials, eg of a comparative nature, had been placed before the court to make any real assessment of whether the time that had passed was irrational, I do not accept that such comparative materials will always be necessary, or indeed relevant, or that the mere passage of time is the sole measure of irrationality.

[22] The one area where the parties' submissions are not aligned is in relation to prejudice. Counsel for the petitioners appeared to argue not only that prejudice is a relevant consideration but that it is sufficient, without more, to give rise to irrationality. Senior counsel for the respondent did not accept that proposition. The starting point is that prejudice is not one of the factors listed by Garnham J, and approved by the Lord Ordinary in *AS*. Nonetheless, the Lord Ordinary in that case, at para [13] quoted with approval Collin J's observation in *FH*, that "claims such as these" would be likely to succeed only if the delay was so excessive as to be manifestly unreasonable *or* (emphasis added) if the claimant was suffering some particular detriment which the Home Office (the decision-maker in that case) had failed to alleviate, and only in such circumstances might a claim "be entertained by the court". However, as those closing words indicate, and as is apparent from elsewhere in the judgment, that remark was made in the context of considering arguability and whether to grant permission. Nothing that the Court of Appeal said in *Ullah*, which endorsed the "manifestly unreasonable" test, suggests that the court in that case considered that prejudice, even "particular detriment", was a *sufficient* condition

for an irrationality claim based on delay to succeed, although paragraph 59 suggests that it is a *necessary* condition. Accordingly, *FH* is a somewhat shaky basis on which to hold that prejudice alone, even serious prejudice, would be a sufficient basis on which to find irrationality. It seems to me that the correct approach is that prejudice is not a sufficient condition for holding a delay to be irrational, but rather to treat it as a relevant factor, at least if it is something known to the decision-maker, in assessing whether the delay meets the "manifestly unreasonable" test.

[23] The other relevant guiding principle is that the courts should be slow to interfere in decisions of a policy-laden nature or involving foreign relations: *R* v *Minister of Defence ex parte Smith* and *R (Al Rawi)* v *Secretary of State for Foreign and Commonwealth Affairs*, both above. As Sir Thomas Bingham MR (as he then was) said in *Smith* at 556 B to C:

> "The greater the policy content of a decision, and the more remote the subject matter of a decision from ordinary judicial experience, the more hesitant the court must necessarily be in holding a decision to be irrational. That is good law and, like most good law, common sense. Where decisions of a policy-laden, esoteric or security-based nature are in issue even greater caution than normal must be shown in applying the test, but the test itself is sufficiently flexible to cover all situations."

The test to which he was referring was that to be irrational, the decision must be unreasonable in the sense that it was beyond the range of responses open to a reasonable decision-maker. While that *dictum* applies more obviously to an actual decision than to delay in taking one, by a parity of reasoning similar deference must be afforded to any reasons put forward by a minister for not taking, or at least not yet taking, a decision in matters involving policy or international relations. That the threshold for interfering in such cases is understandably high is illustrated by *R (Al Rawi)* v *Secretary of State for Foreign and Commonwealth Affairs* [2008] QB 289, a further example of the courts being loth to intervene in a decision involving the conduct of foreign relations, the Court of Appeal observing at

paragraph 141 that for the claimants to have succeeded they would have required to show that the Foreign Secretary's judgment was perverse.

[24] As senior counsel for the respondent submitted, whether to provide exceptional consular support to facilitate the petitioners' exit from Gaza was and remains a complex decision that requires to be taken in the context of a rapidly evolving situation in the Middle East. Stated shortly, the material before the court shows the following, among other things:

a. The UK Government has been considering the petitioners' request for consular assistance continuously since it was made.

b. The context of that consideration includes both legal uncertainty (the implications of the awaited court judgment in *R (RKC 1)*) and factual uncertainty (whether, and if so when, the Rafah crossing will re-open).

c. That consideration has included consideration by the respondent personally and by ministers and officials in two different departments.

d. There are a number of components to the decision, which is inherently bound up with the separate decision whether OTAs should be granted to the petitioners, with the risks that would entail; and the need to co-ordinate the decision-making of different departments with different responsibilities.

e. The war that started on 28 February 2026 has put extra demands on FCDO resources.

[25] Viewed as a whole, these factors provide cogent reasons as to why the Minister has not yet made a decision in respect of the petitioners' applications. Whether the court agrees with those reasons or thinks that a decision might have been taken more efficiently or more speedily, is immaterial. Although a decision whether to grant consular assistance does not involve the making of foreign policy, it cannot be denied that it at least involves matters of

policy, foreign affairs and national security. In particular, I observe that much of the delay has been caused by the collaboration between ministers of the FCDO and the Home Office, and the apparent agreement between them that any decision to provide consular assistance should be reached jointly. That is very much a matter of policy; and it is not for the court to tell the government that that approach is wrong or irrational. I also note from the submission to the Minister on 24 March 2026 that if the decision is not to grant consular assistance, the petitioners will be informed at once; but if the Minister is minded to grant assistance, the petitioners will not be informed until the Home Office has considered provision of OTAs, which, as the submissions acknowledges, "could take some time". It is unclear whether that means that a "minded to grant assistance" response would become a refusal if OTAs were not provided; or simply that, in that event, the petitioners would be informed that their request had been granted but that they could not exit via Jordan. Again, it is not for the court to interfere with that approach, however frustrating the petitioners might find it. Ultimately, it cannot be said that a delay caused by the desire to reach a decision which, if positive, can actually be implemented, is irrational.

[26] While on the subject of the submission to the Minister, the petitioners place much reliance on the timing of that, arguing that it was prompted by the present petition (as the submission itself acknowledges), which, they say, shows that the present difficulties in leaving Gaza are not an insuperable problem nor a reason for not taking a decision; rather they are something to be grappled with in the event that the decision is that they should be given consular assistance. However, the issue is not whether the petitioners' request could have been referred for a decision earlier, but whether the failure to do so was irrational, which it was not.

[27] In further support of their argument that the delay was irrational, counsel for the petitioners pointed out that the respondent had known three critical things: that the petitioners could not travel to a visa application centre without consular assistance; that there was a fixed deadline by which biometrics must be enrolled; and that failure to meet that deadline will result in the applications being rejected. Despite all of that, she had not decided whether to provide assistance which, in practical terms, had determined the outcome of the petitioners' request, without any substantive decision ever being taken, which was prejudicial and irrational. That argument focuses on the consequences of the delay, rather than on the processes which led to it, but there are three answers to it. First, as senior counsel for the respondent pointed out, those things may well all have been known to the respondent, but they were not the only factors which she was required to take into account; how much weight to attach to them is a matter for her (or at least, her Minister). In particular she would also be entitled to have in mind, as already observed, that the predetermination letter carried no assurances whatsoever that the petitioners would be able to travel to a VAC within the 240 days. Second, any prejudice suffered by the petitioners is illusory. The petitioners have not identified the date when the failure to take a decision first became manifestly unreasonable. They have not shown that the delay in taking a decision by that date has led to their being unable to exit Gaza when they would otherwise have been able to do so. The difficulties in leaving Gaza are a contributing factor to the cause of the delay, rather than a product of the delay. Third, as it has transpired by reason of the interim orders granted in the parallel judicial review, the biometrics deadline has, in practice, proved not to be immutable anyway; and so the delay has not had the effect of determining the petitioners' request.

[28] For completeness, I attach no real weight to the fact that there are other persons in the same position as the petitioners who also await a decision from the respondent on whether they are to be afforded consular assistance. As counsel for the petitioners submitted, we know nothing of their circumstances; and the fact that other persons are in the same position as the petitioners awaiting a decision is neutral as to whether the delay is irrational or not. At best for the respondent, the fact that others are being treated in the same way as the petitioners shows consistency on her part. To the extent that an 8-year old child was treated differently, that was for rational and understandable reasons.

[29] For all of the foregoing reasons, I conclude that the delay in reaching and issuing a decision is not unlawful, but is the product of a rational process involving matters of foreign affairs and policy in which the court ought not to interfere. The petitioners are, therefore, not entitled to the orders sought and the petition falls to be refused.

Is the petition academic?

[30] That being so, whether the petition is academic is itself an academic question. However, for completeness, if I had found the ongoing delay to be irrational, I would not have considered the petition to be academic. The interim orders granted in the parallel petition on 30 March 2026 include an order that the SSHD must treat the biometric enrolment period as extended by a further 240 days and must not take any steps to invalidate or reject the petitioners' applications for Family Reunion leave to enter the UK during that extended period. Accordingly, in the event that the delay had been found to be irrational, there would have been benefit to the petitioners in securing a declarator to that effect and an order requiring the respondent to issue a decision, in order that a decision, if positive, would be reached in sufficient time for it to be implemented. Senior counsel for

the respondent complained that the court could not know how long the Minister would need to reach a decision now that a submission had been made to him. Had that been a live issue, I would have invited further submissions, but in circumstances where there has already been an irrational delay, it cannot be beyond the wit or power of the court to bring that to an end by requiring a decision within a reasonable time.

The court's residual discretion to refuse a remedy

[31] This question, too, is academic. It more commonly arises in relation to a decision, where the question is whether it ought to be reduced, rather than in relation to whether a decision ought to be taken at all. However, again, had I found the delay to be irrational, I would have seen no reason not to grant the remedies sought. The respondent's arguments, properly analysed, are in the main arguments as to why the delay is not irrational in the first place, rather than reasons for not making an order in the event that it was held to be irrational. As I have observed in the previous paragraph, the order would have had a practical purpose. It would promote, rather than prejudice, the public interest in good decision-making, because it is not in the public interest that there should be an irrational delay in taking decisions. Any delay in raising proceedings was not unreasonable, in the face of the repeated assurances by the respondent that the matter was under consideration and, in any event, it would not behove the respondent to complain of delay by the petitioners had her own delay itself been unlawful. As for the remaining arguments about national security, these go to the merits of the decision on irrationality.

Disposal

[32] I will sustain the respondent's second, third and fifth pleas-in-law, repelling all other pleas-in-law by both parties, and refuse the petition, reserving all questions of expenses.