



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/12036/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 10 March 2020**

**Decision & Reasons Promulgated
On 27 April 2020**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**HM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Moran, Counsel, instructed by Alex Morgan
Immigration & Asylum

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a citizen of Syria born in 1987. She made an application on 7 April 2019 for entry clearance as the adult dependent relative of her sister, TM who, at the time of the application, had limited leave to remain. She now has refugee status and has a pending application for indefinite leave to remain as a refugee.

Her application was refused and her appeal came before First-tier Tribunal Judge Hussain ("the FtJ") at a hearing on 30 September 2019 which

resulted in the appeal being dismissed both under the Immigration Rules (“the Rules”) and under Article 8 of the ECHR. The appeal of her nephew was heard at the same time. His appeal against the refusal of entry clearance, in his case as a child dependant, was allowed. The present proceedings, therefore, concern only the above named appellant.

In his decision the Ftj decided, in relation to the appellant before me, that she did not have family life with her sister, TM, in the UK and, by implication, no family life with any other person in the UK.

At the hearing before me, it was conceded on behalf of the respondent that the Ftj erred in law in terms of his assessment of Article 8 because he failed to take into account the evidence as to family life between the appellant and her parents in the UK. It was further conceded that that error of law required his decision to be set aside.

After further discussion with the parties, it was agreed that the decision could be re-made on the basis of the evidence that was before the Ftj. I therefore heard submissions from the parties. In the course of those submissions, it was conceded on behalf of the respondent that the appellant had established that she has family life with her parents and sister in the UK. The issue to be determined was one of proportionality.

In order to set my decision in context, it is necessary to refer in more detail to the Ftj’s decision and those of his findings which are not infected by the error of law.

The Ftj’s decision

The Ftj summarised the respondent’s decision refusing entry clearance, making reference to paragraph E-ECDR.2.4 (eligibility for entry clearance as an adult dependent relative). The appellant needed to establish that as a result of age, illness or disability she requires long-term personal care to perform everyday tasks. The Entry Clearance Officer (“ECO”) was not satisfied that that requirement of the Rules was met and the Ftj agreed.

The Ftj referred to a medical report showing that the appellant underwent cataract extraction surgery and a posterior lens transplant in her right eye, and had laser correction surgery to her left eye, as well as the fact that she may require corrective operations in the future.

He referred to a further medical report dated 17 February 2019 from a psychiatrist which referred to the appellant suffering from various psychological issues, including suffering from severe fits of weeping and hysterical fits of unconsciousness. Those problems are said to have begun when the appellant experienced psychological pressures, including witnessing death at close quarters, and marital problems that led to her separation and having her children taken away from her.

The Ftj noted that the ECO did not dispute the evidence in relation to the appellant’s health. However, the ECO also noted that the appellant had

been accompanied to some of her medical appointments by her mother. The ECO had concluded that it was likely that the appellant did require support and medication but the appellant had not established that suitable treatment was not available for her.

In his findings, the FtJ summarised the appellant's circumstances, referring to her being one of many children of her parents. She married in 2003 and has five children. He noted the claim that she was repeatedly physically and mentally abused by her husband throughout their marriage, and that she suffered from such blows to the head that she needed eye surgery and has been left with impaired vision. The evidence was that her husband was also psychologically controlling.

The relationship ended in divorce in December 2017. The sponsor, TM, said that despite being divorced from her husband, with whom all of her children live, he refuses to allow her any contact with them and has started making death threats against her. Her evidence was that he tried to run her over with a car a few months earlier and recently threatened to shoot her. The appellant's case was that the threats were very real, given that there was little law and order in Syria. Due to the war she had been moving from relative to relative so that her ex-husband does not know where she is. She is said to have fallen into a terrible depression which is getting worse as time passes.

At [31] the FtJ said as follows:

“Whilst I make no finding in relation to the alleged physical and emotional abuse by her former husband, I take them at face value.”

He found that the appellant had not established that she needs assistance with personal care to perform everyday tasks, or that such arises from age, illness or disability.

At [36] he said that the medical reports seemed to suggest that the appellant suffers from psychological issues as a result of her marital problems and witnessing scenes of death. He did not doubt the reliability of that evidence.

At [39] he said that he appreciated the appellant's emotional needs may not at the moment be adequately fulfilled because of her separation from the rest of her family and her mental health condition. However, he found that that was not sufficient to meet the requirements of the Rules.

As regards Article 8, he found that the sponsor, her sister, has been in the UK since 2014 as a refugee and would not be able to return to Syria. He found that as siblings there are emotional ties between them but he did not accept that the depth of their ties and dependency were such as to give rise to a family life between them. He then went on to consider the situation for the other appellant before him.

It is also to be noted that he found in relation to the second appellant the offer of financial support from that appellant's maternal uncle was credible and that accommodation would be available for him. At [50] the FtJ referred to the appellant's mental health as "fragile" and finding that she is her nephew's sole carer in the circumstances of an ongoing civil war in Syria.

Submissions

In her submissions, Ms Everett, accepting that family life existed, also pointed out that no credibility issues were identified in relation to the witnesses before the FtJ. She submitted that notwithstanding that family life was engaged, the respondent relied on the fact that the appellant has led an independent life in Syria, albeit that her mother in the UK visits her. Ms Everett accepted, however, that what the FtJ said at [31] in terms of taking at face value the evidence in relation to the alleged physical and emotional abuse by her former husband, implied that he found that those events did take place.

In his submissions, Mr Moran argued that given that there was an existent family life between the appellant and her parents, the respondent's decision amounts to an interference with that family life in that family life cannot be effectively conducted at present. Her mother had returned twice from the UK to be with the appellant in Syria, at considerable personal risk, in 2018 for six weeks and for two months in 2019.

The appellant's father could not visit Syria at all, he having been recognised as a refugee. That is a further reason as to why family life could not be continued anywhere than in the UK.

The appellant has quite serious mental health problems and is vulnerable. It could not be proportionate for her to remain where she is and in the circumstances in which Syria is at present. Her mother's visits are not sufficient to allow her to "vindicate" her Article 8 rights.

Furthermore, she has accommodation in the UK and her uncle has offered financial support, as accepted by the FtJ in relation to the second appellant.

It was further submitted that Rules for adult dependent relatives are very specific and require specific evidence to be provided. Whilst the Rules are entitled to establish those requirements, the appellant's circumstances fall into a wider category in terms of an adult child who is particularly vulnerable, taking into account her specific circumstances, the civil war, domestic violence and the fact that most of her family have left the country.

Assessment and Conclusions

I agree with the concession made on behalf of the respondent as to error of law on the part of the FtJ and the need for the decision to be re-made. In

re-making the decision I have taken into account not only the submissions on behalf of the parties, as well as all the evidence before the FtJ, and the appellant's skeleton argument, to be found from page 15 of the appellant's bundle.

The fact that the appellant does not meet the requirements of the Rules for entry clearance on the basis of the application she made, with reference to E-ECDR.2.4, is a highly relevant factor in the Article 8 assessment. It also brings into play paragraph GEN.3.2. which provides as follows:

"GEN.3.2.(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2)Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application."

In applying GEN.3.2.(2), it is clear that the appellant's Article 8 rights would be affected by the decision to refuse entry clearance. In making an assessment of whether the refusal would result in "unjustifiably harsh consequences" it is really only the appellant's Article 8 rights that are in play on the facts of this particular case, as distinct from those of her family members, because she is the one most directly and significantly affected by the decision, given her personal circumstances.

It is now accepted that there is family life between the appellant and her family in the UK. The issue is in terms of whether the decision to refuse entry clearance is a proportionate response to the legitimate aim of maintaining immigration control.

I bear in mind the findings of fact made by the FtJ which are not infected by the error of law. Thus, the medical evidence, summarised at [9] above, was accepted, as was the evidence in relation to the physical and emotional abuse suffered by the appellant at the hands of her former husband. The FtJ found that the appellant's emotional needs are not adequately fulfilled because of her separation from the rest of the family and her mental health condition. Her mental state, as found by the FtJ, is fragile.

The evidence from TM in her witness statement dated 23 September 2019, reveals that because the appellant and her nephew were unable to cope, they both having lost their families, the appellant's mother had to fly to

Syria, putting her own safety at risk to look after them. Her evidence is also that her ex-husband continues to threaten her life and has attempted to kill her. She says that her depression at having to leave her own five children and her fear for her own safety are overwhelming.

Her earlier statement dated 24 August 2019 refers to the repeated physical and mental abuse suffered by the appellant from her husband throughout the marriage. The physical assaults were such that she needed eye surgery and has been left with impaired vision. That evidence is not disputed.

Her statement also refers to the appellant's ex-husband having taken the children and refusing to allow her any contact with them, and at that time started making death threats against her. He tried to run her over with a car when she was walking in the street in 2019. He has also threatened to shoot her.

The witness statement also refers to the appellant looking after their then 12-year-old nephew (the second appellant in the appeal before the FtJ), who is his mother's only son from her previous marriage. Both her parents had since remarried and he has not been accepted into either household.

At [6] of TM's witness statement dated 24 August 2019 it refers to the appellant having struggled to look after herself, let alone her nephew as well. As a lone woman in Syria she has no means of supporting herself financially since the breakdown of her marriage except what is sent to her from the UK. It refers to her being alone and especially vulnerable due to her poor vision and the circumstances in relation to her ex-husband. Those difficulties are compounded by the fact that they are living in a war zone with ongoing shortages of food, water, electricity and fuel for cooking, as well as other essentials.

At that time the appellant was said not to be eating or sleeping and was deeply depressed, suffering from panic attacks.

Her witness statement dated 8 April 2019 refers to family in the UK having pulled together to support the appellant, with their maternal uncle sending money to her through unofficial channels in the Syrian community.

There is a witness statement from the appellant's father dated 23 September 2009. It refers to the physical abuse that the appellant suffered at the hands of her husband and the visible signs of injury. He says that she had to be admitted to hospital as a result of the beatings. It gives various examples of the controlling behaviour of the appellant's ex-husband. He refers to her ex-husband having punched her in the stomach whilst she was pregnant, resulting in her having to have an abortion.

He refers to the lack of Social Services or support networks in Syria to help victims of domestic violence and it is always up to the family to provide that support. The civil war had exacerbated their situation and left the

appellant in a desperate situation through no fault of her own. He states that had it not been for the war the whole family would still be in Syria and they would all have been there to support each other.

A witness statement from one of the appellant's other sisters, TKM, dated 23 September 2019, supports the evidence of the other witnesses. Her uncle, TW, gives evidence in his witness statement of the financial support that he is able to offer and has been providing.

The appellant's mother's witness statement dated 8 April 2019 states that she was so worried about the appellant that she risked her own safety to visit her in Syria in August 2018 where she stayed there for six weeks. When she left, the appellant's mental state deteriorated.

As I have indicated, the FtJ did not suggest that any of that evidence was not credible. Together with the medical evidence it supports the contention that the appellant is very vulnerable and is heavily reliant on the emotional support from her family in the UK. The background evidence in relation to the situation in Syria is well-known.

I take into account section 117A-B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). There is no evidence that the appellant speaks English and thus, as a result of s.117B(2), this is a matter that weighs against her. As to financial independence (s.117B(3)), applying *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58, as referred to above, the appellant's uncle, TW, gives evidence in his witness statement of the financial support he has been providing. That evidence was found by the FtJ to be credible in relation to her nephew and was not contested on behalf of the respondent in terms of his ability to support the appellant financially in the UK.

I have considered what was said in *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11 in relation to the Secretary of State's then guidance on "exceptional circumstances" and "unjustifiably harsh consequences".

The family life that the appellant has with her parents in particular, as submitted on her behalf, cannot be continued anywhere else than in the UK. She has particular vulnerabilities, is the victim of domestic violence, and is living in circumstances of a civil conflict. She feels under threat from her ex-husband and the evidence indicates that she is at risk from him.

That combination of circumstances is particularly compelling. Whilst it is the case that the appellant is not able to meet the requirements of the Rules in terms of entry clearance as a dependant relative, and that that is a significant factor, I am not satisfied that the decision to refuse entry clearance is a proportionate response to the legitimate aim of maintaining immigration control. I am satisfied that refusal of entry clearance would have unjustifiably harsh consequences for the appellant in terms of her

mental state and her vulnerability, taking into account all the circumstances.

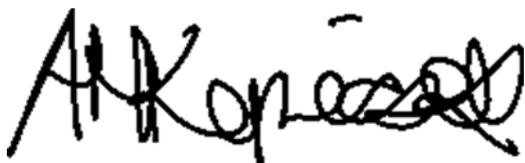
Accordingly, the appeal is allowed under Article 8 of the ECHR.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the decision is re-made, allowing the appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Upper Tribunal Judge Kopieczek
2020

Date 27 March

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email