



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

Appeal Number: VA/09456/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 July 2014**

**Oral Determination  
Promulgated  
On 30 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**MARIAM ALSHAIB**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: The appellant was not represented but the sponsor attended

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals against the determination of First-tier Tribunal Judge N M K Lawrence promulgated on 7 May 2014 in which he dismissed the appeal of the appellant, Mrs Mariam Alshaib, against the decision of the Entry Clearance Officer in Amman in the State of Jordan to refuse her

entry clearance to come to the United Kingdom as a visitor to visit her daughter and her family in the United Kingdom.

2. The remarkable thing about this case is that the appellant who is said to be a national of Palestine but has been living in Syria for many years has got an immigration history which cannot be faulted. She has been to the United Kingdom on a number of occasions and on each of those occasions she has sought entry clearance as a genuine visitor. She has been granted entry clearance as a genuine visitor. She has attended the United Kingdom as a genuine visitor and most importantly at the conclusion of each of those visits she has returned to her home in Syria. Not only has she returned to her home in Syria but she has also returned to her husband who has not applied to join her on this visit and will be remaining at all times in Syria.
3. The judge reached his decision on the basis of paragraph 10 of his determination. He said

“It is difficult to ignore the civil war in Syria and it is difficult to ignore the fact that the appellant is not a national of Syria but is said to be a Palestinian. These were the factors when she previously entered the UK four times since the start of the civil war and left without being in breach of the UK immigration laws. However, the increase in the intensity of the civil war, the use of chemical weapons and the indiscriminate killings undermines the claim that this is just a family visit.”

4. Pausing there, the inevitable consequences of the finding that the escalation in the civil war means that this appellant fails must inevitably be that there can be no Syrians coming into the United Kingdom who can satisfy the requirements of a family visitor because each of them would be subject to the same reasoning that the increase in the intensity of the civil war and the use of chemical weapons and the indiscriminate killings undermines each one of those claims to be a genuine family visitor. That must be wrong and it must be an error of law and I so find.
5. The matters referred to by the judge appear to be based upon what is an increase in the intensity of the civil war between the last time she visited, which the judge does not record, and the present. I would caution against such a finding because first of all we do not know what increase in intensity he was referring to. He does not set it out in his determination. In any event it becomes quite difficult to ascertain where a cut off point is reached in any escalation of warfare where all visa visits are unlikely to be genuine. There can be no discernible or rational line to be drawn as the judge did.
6. Secondly, he appears to have used his own anecdotal evidence about the intensity of the fighting which may not be altogether appropriate.

7. There is another reason as well. The intensity of fighting is something which is very local. There may well be, and I am sure there are, parts of Syria where, although the country as a whole is involved in a civil war, there are people who are relatively protected against the effect of civil war. It may be that there are numbers of people living in relatively affluent areas of the capital who are not affected in the same way. Consequently the general level of violence does not necessarily apply in their case.
8. The judge also referred to the fact that the appellant is a Palestinian as if, somehow, this rendered it less likely that she should return to Syria but I am bound to say I do not understand the reasoning of this remark and none is provided by the judge. It may be that a Syrian is just as much likely to be subjected to this situation as a person who has lived in Syria but happens to be Palestinian.
9. The judge goes on to say:

“The appellant's two [sons], at least are living outside Syria. They provide financial support, according to the sponsor's oral evidence, to the appellant and her husband. If the appellant's economic position is secure there is no need to be supported by her sons living in Europe.”
10. There is in my judgement an error in that reasoning. First, there is no reason why an expatriate providing funds to parents should be treated as an indication that there is a need for that support so that the judge can properly regard the appellant's economic position as insecure. There will be many people who in the diaspora will be providing assistance and help to relatively elderly parents and will be doing so because their own economic position is stronger. It does not seem to me that this affords the Entry Clearance Officer with a reason for refusing the application because of the assistance that can be provided.
11. For these reasons I am not satisfied that the judge acted rationally in reaching his decision. Furthermore, whilst he acknowledges the fact that there has been a quadruple demonstration of the appellant's good faith in the visits she has previously made to the United Kingdom that does not appear to me to have factored into the determination in a way whereby appropriate weight was attached to it. There are cases where an application for entry clearance can properly be questioned and undermined by the fact that there is a poor immigration history, either on the part of the appellant or on the sponsor but where there is a good immigration history, some weight must be given to the fact that there was a perfectly good reason for her wishing to come to the United Kingdom.
12. Finally, I do not consider that the judge paid sufficient weight to the fact that the appellant's husband remains in Syria and will remain in Syria during the course of the visit. This is a highly significant factor to be taken into account when considering a visit visa. If the appellant's motive is to leave her husband permanently, there should at least be some evidence

that the marriage is in difficulties or was broken down or that relations between the couple are at such a low ebb that it is likely that there is to be a separation. There was simply no information at all available to suggest that likelihood and that, too, factors into whether this is a genuine relationship. The sponsor attended before me accompanied by her husband who is a solicitor but is not permitted to appear in immigration cases. I did not call upon him to make submissions to me but I am satisfied that their presence in the hearing room provides at least some limited support to the reasons that I have provided. It is clear that they are wishing to support their mother or mother-in-law in this application for entry clearance.

13. In those circumstances I am satisfied that the judge made a material error of law and his determination shall be set aside. I substitute a determination granting entry clearance and I will give a direction that entry clearance should be granted in that capacity.

#### DECISION

1. The Judge made an error on a point of law and I substitute a decision allowing the appeal under the Immigration Rules.
2. I direct entry clearance in the capacity sought.

ANDREW JORDAN  
UPPER TRIBUNAL JUDGE

## Approval for Promulgation

Name of Upper Tribunal Judge issuing approval:	Mr A Jordan
Appellant's Name:	Mariam Alshaib
Case Number:	VA/09456/2013

Oral determination (please indicate) Yes

I approve the attached Determination for promulgation

Name: ANDREW JORDAN, UPPER TRIBUNAL JUDGE

Date: 27 July 2014

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:


Other Information: