Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/10540/2017**
HU/10543/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On September 26, 2018	**On October 4, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[K M]
AZIZA [A]
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Moran (Solicitor)
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity order is made.

2. The appellants are nationals of Syria currently residing in Lebanon. The appellants applied for entry clearance as the brother and mother of the sponsor respectively.

3. The respondent refused their applications in decisions dated July 24, 2017 as it was considered that the appellants could not succeed under the Immigration Rules because they could not demonstrate that the second-named appellant required long-term personal care to perform everyday duties nor had it been demonstrated the sponsor could not provide the necessary practical and financial help for both appellants. The respondent refused the applications on article 8 grounds because he was not satisfied there were any exceptional circumstances that would enable either application to succeed outside the Immigration Rules.

4. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 16, 2017. The grounds referred to the fact that these appellants had applied together with the sponsor's wife and daughter and their applications had been allowed and the decision to refuse their applications contravened section 6 of the Human Rights Act 1998.

5. Their appeals came before Judge of the First-tier Tribunal Ross (hereinafter called "the Judge") on February 6, 2018 and in a decision promulgated on March 5, 2018 the Judge dismissed their appeals under article 8 ECHR.

6. The appellants appealed this decision and permission to appeal was initially refused by Judge of the First-tier Tribunal Lever on April 24, 2018. Permission to appeal was renewed to the Upper Tribunal on May 24, 2018 and on July 2, 2018 Upper Tribunal Judge Storey granted permission to appeal. In particular, he commented that it was arguable the Judge was wrong to refer to a concession regarding the sponsor's ability to adequately maintain and accommodate at the date of hearing given what had been said in the skeleton argument and with regard to ground four he found that ground to be weak.

7. No Rule 24 response was filed by the respondent in this appeal and at the commencement of the hearing Mr Tufan confirmed the application was opposed.

SUBMISSIONS

8. Mr Moran adopted his grounds of appeal and stated that the numbering of his grounds reflected their importance.

9. Mr Moran argued:

   (a) The Judge had failed to make a proper assessment of the first-named appellant's claim bearing in mind he was a only 12 years of age at the date of hearing. In particular, paragraph 21 of the decision failed to set out any of the first-named appellant's circumstances.

(b) The Judge wrongly considered the issue of whether there was family life existing between the sponsor and the second-named appellant. They had been living together as a family before the sponsor fled and was granted refugee status in the United Kingdom. There was no proper assessment of dependency in paragraph 18 of the decision and in particular there was no assessment of the emotional support offered and their cultural circumstances he submitted that the Judge had applied too strict a test.

(c) The Judge failed to consider the position at the date of hearing and ignored evidence that was before the Tribunal. The Judge should have considered the evidence at the date of hearing.

(d) The Judge failed to take into account when considering proportionality whether either section E-ECDR of Appendix FM or paragraph 319X (ii) were met. The Judge should have taken compliance with these sections into account when considering proportionality.

10. Mr Tufan rejected the arguments advanced by Mr Moran and submitted that with regard to the first-named appellant there was no risk of harm as both he and his mother had refugee status in Lebanon and the second-named appellant was receiving medical treatment. There was no evidence that the first-named appellant was not being educated nor that the second-named appellant was not being medically treated. Their applications could not be granted simply because they would be better off in the United Kingdom. The Judge had found that article 8 ECHR was not engaged and had found that the appellants had failed to demonstrate a "high degree of dependency". He submitted that the words used by the Judge did not undermine the decision of Kugathas v SSHD [2003] EWCA Civ 31. He referred the Tribunal to Britcis v SSHD [2017] EWCA Civ 368.

11. Mr Moran argued that the appellant did not actually have refugee status because Lebanon was not a signatory to the Convention and there was a wealth of evidence that demonstrated problems facing Syrian refugees in Lebanon. The Judge simply did not consider all the evidence and the fact the second-named appellant could access hospital treatment was not the issue when considering personal care. He accepted that neither appellant could satisfy the Immigration Rules because at the date of application there was neither suitable financial support nor suitable accommodation. However, he submitted that at the date of hearing the accommodation issue had been resolved and there was a "hope" that work could be obtained.

FINDINGS

12. The background to the current appeal is that these appellants made applications to join the sponsor at the same time as the sponsor's wife and child made an application under the Immigration Rules to join the sponsor.

13. The evidence before the Tribunal was that prior to the sponsor arriving in the United Kingdom he, the appellants together with his wife and child all lived together.

14. The sponsor's wife and child were granted entry clearance under paragraph 352A and D HC 395. The Immigration Rules did not permit these appellants to join the sponsor without meeting specific requirements set out either under Appendix FM of the Immigration Rules or paragraph 319X HC 395. Paragraphs 352 A and D HC 395 did not apply to these appellants.

15. In considering the applications put forward by these appellants the Judge had regard to the sponsor's statement and oral evidence together with a large bundle of documents that had been submitted on their behalf by Mr Moran. At paragraph 7 of the decision the Judge referred to the fact that an expedited hearing had been sought because the appellants were living in difficult circumstances in Lebanon and the second-named appellant was in very poor health and needed care on a daily basis.

16. The Judge recorded at paragraph 8 that the sponsor conceded that he could neither maintain or accommodate the appellants and that the application was based on article 8 ECHR with specific reference to the best interests of the first-named appellant and the general needs of the appellants themselves. The Judge noted the second-named appellant had been pictured in hospital and at a clinic and that the sponsor had last seen the appellant's in August 2015. The sponsor told the Judge the appellants were registered as refugees in Lebanon. At paragraph 10 of the decision the Judge noted the medical report which set out the second-named appellant's medical condition. This evidence persuaded the Judge that there was medical care available in Lebanon and that they were being cared for by the United Nations.

17. Mr Moran argued that the Judge erred in his approach to the Immigration Rules. The Judge considered the Immigration Rules at paragraphs 13 to 16 of the decision. Mr Moran accepted that at the date of application the appellants could not meet the Immigration Rules because the sponsor could neither provide adequate maintenance nor accommodation. Mr Moran submitted in Ground Four of his grounds of appeal that the Judge should have considered which key requirements of the Immigration Rules were met but I am satisfied that the fact neither appellant met the Rules at the date of application was sufficient when considering proportionality in the sense that this would be the starting point when carrying out a proportionality assessment. However, whilst I accept that the Judge would had to consider the personal circumstances of each appellant in that proportionality assessment this is different to arguing the Rules were met.

18. The Judge's assessment of article 8 can be found from paragraph 18 of the decision onwards. The Judge had to decide whether there was family life in existence between the appellants and the sponsor.

19. Contrary to Mr Moran's submission that the Judge failed to have regard to the circumstances I am satisfied that at paragraph 80 the Judge had regard to the various factors that were today advanced by Mr Moran. The Judge noted the second-named appellant had medical problems and found

that medical care was being provided in Lebanon and being paid for by the United Nations. The Judge went on to consider the position of the first-named appellant and concluded that he could neither demonstrate he was dependent on the sponsor nor that family life existed between them because he lived with his mother and was supported by the UN.

20. Despite reaching this conclusion the Judge went on to consider the case on the basis that there may be family life and at paragraph 20 the Judge accepted that it would be hard for the family to be separated in the way it currently was but went on to find that the sponsor's wife and child had been admitted under different Rules and that these appellants could not benefit from the same Rule.

21. Mr Moran criticised the Judge's approach in paragraph 21 of the decision and submitted that the Judge failed to properly consider the individual circumstances of the first-named appellant. Mr Moran submitted that the Judge ignored both the child's circumstances and the sponsor's evidence but I find that paragraph 21 of the Judge's decision should not be looked at in isolation to the rest of the decision.

22. I am satisfied the Judge was aware of the current circumstances facing both appellants and the Judge had regard to the fact both appellants were being supported and cared for by the United Nations. Mr Moran challenged the Judge's wording in paragraph 18 of the decision but that submission overlooks the fact that the Judge was clearly aware of their circumstances and the Judge made a clear finding that not only were the appellants were being cared for by the United Nations but also that the sponsor did not provide any assistance over and above the contact that was described in paragraph 9 of the decision.

23. The first-named appellant was living with his mother and as the Judge correctly pointed out it was in his best interests to live with his mother and currently that is what this appellant was doing. His finding in paragraph 21 was therefore a finding open to him as was his conclusions that the United Kingdom was not required to provide him with either education or healthcare. There was no evidence before the Judge that the first-named appellant was not being educated or medically provided for.

24. The Judge went on to consider section 117B of the Nationality, Immigration and Asylum Act 2002. Mr Moran argued that the Judge should have made a finding there was adequate maintenance available but conceded that the sponsor's evidence at the hearing amounted to no more than a "hope" that financial support would be available.

25. Appeals under article 8 ECHR fact sensitive and the Judge hearing such appeals will be aware that in allowing such appeals he would be granting the appellants discretionary leave to remain. There was a balancing act carried out by the Judge and the Judge was not persuaded that these appellants should have that discretion exercised in their favour and it is

not the role of the Upper Tribunal to substitute an alternative decision unless a material error in law has been demonstrated.

26. Having carefully considered the grounds and submissions advanced by both representatives I am satisfied that the decision reached by the Judge was one that was open to him.

DECISION

27. The appeal is dismissed and I uphold the original decision.

Signed Date 29/09/2018

Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

I make no alteration to the fee direction made by the First-tier Judge.

Signed Date 29/09/2018

Deputy Upper Tribunal Judge Alis