**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: VA/02052/2015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 27th March 2018** | **On 12th April 2018** |

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

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

Appellant

**and**

**MS FEKRAT ALOULABI**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

***Representation:***
*For the Appellant: Ms Z Ahmad, Home Office Presenting Officer*
*For the Respondent: Dr Hala Alsafadi, sponsor*

**DECISION AND REASONS**

1. The appellant is the Secretary of State for the Home Department and to avoid confusion I shall refer to her as being, "the claimant".

2. The respondent is a citizen of Syria who was born on 8th June 1938. She made application for the grant of a visit visa on 27th February 2015, to the Entry Clearance Officer. The application was refused on 3rd March 2015.

3. The appellant appealed to the First-tier Tribunal solely on the basis of her rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was agreed between the parties that the respondent only had a limited right of appeal, given the change in the Immigration Rules which took place in 2013.

4. There was a first determination promulgated on 13th September 2016, in which the respondent succeeded under paragraph 41 of the Immigration Rules then in force, which was successfully appealed by the claimant without opposition on behalf of the respondent. That determination was subsequently set aside and the appeal remitted to the First-tier Tribunal for hearing afresh.

5. The matter was heard afresh on 25th September 2015, by First-tier Tribunal Judge Metzer. The judge had witness statements from Dr Alsafadi, from her husband and from her three children. The judge noted that on behalf of the claimant, the Presenting Officer accepted that the respondent had established a family life and the judge went on to consider the "*Razgar* test" (*see paragraph 17 of Razgar, R (on the Application of) v. Sectretary of State for the Home Department [2004] UKHL 27*) and whether or not the claimant's decision would be a disproportionate interference under Article 8(2). The judge found that it would and purported to allow the appeal.

6. The claimant challenged the decision and asserted that family life would not normally exist between adult siblings, parents and adult children. The grounds were lengthy and suggested that given the decisions in *MS (Article 8 – family life – dependency – proportionality) Uganda* [2004] UKIAT 00064, paragraph 25 of *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31 and *Ghisling and Others v Secretary of State for the Home Department* [2013] UKUT 00567, none of the criteria necessary are in place and the judge had erred by purporting to allow the appeal under Article 8.

7. At the hearing before me the sponsor appeared in person. The Presenting Officer indicated to me that she had already given to Dr Alsafadi a copy of the Court of Appeal decision in *Entry Clearance Officer Sierra Leone v Kopoi* [2017] EWCA Civ 1511 and told me that she relied on paragraph 16. She suggested that there was no interference with family life caused by the Entry Clearance Officer's decision and the appeal should not, therefore, have been allowed under Article 8.

8. I explained to Dr Alsafadi what this meant. I explained the purpose of the hearing and that before I could interfere with a judge's decision, I needed to be satisfied that the judge had made a material error of law. I explained that it appeared that the judge had materially erred in law because before allowing the respondent's appeal he should have asked himself if the decision of the Entry Clearance Officer interfered with either the private or the family life of the respondent. In this case the decision did not, in that to the extent that the respondent was able to enjoy a

family life with the sponsor and her family *before* the decision, she was still able to exercise the same rights *after* the decision.

9. Dr Alsafadi told me that she understood, but had hoped that there might be an exception. I explained that while I was sympathetic to the respondent's desire to come and see her family members, I was required to apply the law and that Article 8(2) required that there to be an interference with Article 8 before protection could be afforded. There has been no interference and, therefore, the judge was wrong to allow the appeal in the way he did. She appeared to accept this.

10. I have concluded that for the reasons set out above the decision of the Entry Clearance Officer to refuse entry clearance does not amount to a breach of the appellant's Article 8 rights and Judge Metzer was wrong to find that it did. **I set aside his determination and replace his decision with mine. The respondent's appeal is dismissed**.

***Richard Chalkley***

**Upper Tribunal Judge Chalkley** **Date: 12 April 2018**