IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000721
UI-2022-000722
First-tier Tribunal No:
HU/01691/2021
HU/01764/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TS
KS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Howard, Solicitor.
For the Respondent: Mr Gazge, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 10 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision promulgated following a hearing at Birmingham CJC on 6 October 2022 the Upper Tribunal found a judge of the First-tier Tribunal had erred in law, set that decision aside with preserved findings, and listed the appeal for a substantive hearing to enable it to substitute a decision to allow or dismiss the appeal, which has come before me today.

2. TS was born on 23 August 2005 and is nearly 17 years 5 months of age at the date of hearing. KS was born on 5 March 2003 and is nearly 20 years of age. They are both the biological children of their sponsor who is their father ('the Sponsor').

3. There are a number of findings from the First-tier decision relating to the relationship between TS, KS and their father, the Sponsors immigration history, the circumstances of TS and KS in so far as they are living in Damascus with their mother and sibling, the First-tier Judge's findings in relation to the Sponsors input and support given to TS and KS despite his not having seen them since 2010, and the inability of TS and KS to succeed under the Immigration Rules.

4. The First-tier Tribunal judge noted the appellant's father had married twice and that the appellants are children from his first marriage. The Sponsor went to work in the UAE in 1992, where he lived with his second wife and their children until 2018, with the appellants, their mother, and other siblings living in the family home in Damascus in Syria. The Sponsor's second wife and their children have joined him in the United Kingdom and were granted status in 2019.

5. It is not disputed that the Sponsor, did not return to Syria after 2010 which was the last time he visited the appellants and saw them face-to-face, although there is evidence that contact has been maintained through modern means of communication since. At the date of the last visit the appellants will have been 5 and 7 years of age respectively living in a household with their mother and four siblings, although their brother was subsequently killed as a result of an incident between the warring factions in Syria.

6. The application for the appellants to come to the United Kingdom was made pursuant to paragraph 352D of the Immigration Rules. That reads:

> 352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who has refugee leave or refugee permission to stay are that the applicant:
>
> (i) is the child of a parent who has refugee leave or refugee permission to stay granted under the Immigration Rules in the United Kingdom; and
>
> (ii) (a) is under the age of 18; or
>
> (b) is over 18 and there are exceptional circumstances (within the meaning of paragraph 352DB);
>
> (iii)is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum; and

(v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention (as defined in section 36 of the Nationality and Borders Act 2022) if they were to seek asylum in their own right; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

7. It is not disputed the Sponsor has been granted refugee status as he would have been in accordance with the Secretary of State's policy for those seeking international protection from Syria.

8. The reason the applications under paragraph 352D failed is because it was found the appellants cannot be viewed as part of their father's family unit when he left the UAE in 2018 to come to the UK. The Sponsor had been living and working in the UAE since 1992 with his second wife and their children, had not visited Syria since 2010, and his country of habitual residence was the UAE at the time he decides to come to the UK. It is preserved finding that the appellants cannot not satisfy the requirements of this provision of the Rules.

9. It is therefore necessary for consideration to be given to whether there is any other basis on which the appellants could be permitted to enter the United Kingdom. This requires consideration of the human rights situation including a proper consideration of Part 5A of the Nationality, Immigration Asylum Act 2002, the element of the First-tier Tribunal decision that was found to be missing as per the error of law finding.

10. The relevant sections are section 117A and B of the 2002 Act.

11. Section 117A reads:

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)

12. Section 117B reads:

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

13. The Secretary of State’s case is that the decision of the Entry Clearance Officer (ECO) is correct and proportionate when taking into account the public interest. The appellants’ case is that it is not, and that the refusal to allow them to enter

the United Kingdom is a disproportionate interference with a right protected by Article 8 ECHR.

14. In relation to the section 117 criteria, it is not disputed that the maintenance of effective immigration control is in the public interest.

15. It was maintained on the appellants behalf that they are able to speak English. There are within the appellants bundle letters written in English which demonstrate an ability to communicate in that language. The appellants have both received an education and certificates have been provided, the translations of which refer to a course and examination taken at the Syrian Positive Absolutely Establishment after which the appellants were awarded the qualification English language – C2. The certificate states the examination was taken in 'Damascus countryside' for which the appellants obtained a ranking of 'Excellent' on 30 October 2022. The same record of achievement appears for both appellants.

16. There is merit in the submission by Mr Gazge regarding as questionable the level the appellants are able to speak English and whether their English language skills are sufficient. There is a reference to 'C2' in the Certificates but nothing on the face of the document to show what this actually refers to by comparison or any proficiency scores achieved.

17. English level C2 is the sixth and final level of English in the Common European Framework of Reference (CEFR). It is often said that a well-educated native English speaker is technically at a C2 level. The relevant score to demonstrate that it is a C2 CEFR qualification that has been demonstrated as an EF SET score of 71-100.

18. There are of course a number of other recognised tests and the table below sets out details of those tests together with their score equivalent to the C2 level:

Test	**Score equivalent to the C2 level[1]**
EF SET	**71 – 100**
IELTS	**8.0 - 9.0**
TOEIC (R&L) Total	**n/a**
Cambridge English Scale	**200 – 230**
TOEFL iBT	**n/a**
Global Scale of English (Pearson)	**85 – 90**

19. If the appellants wrote the letters that are contained within the bundle that demonstrate a reasonable standard of written English but that is not sufficient,

per se, as the requirement of section 117B(2) refers to an ability to speak English.

20. I do not find the evidence properly establishes that the appellants are able to meet this provision of the immigration rules which is relevant, as a person who can speak English will be less of a burden on the taxpayer and better able to integrate into society. The comment by the Sponsor at [6] of his witness statement that the appellants speak and are fluent in English is noted but that that does not obviate the concerns recorded above.

21. A second difficulty for the appellants is that I am not satisfied it has been shown they can meet section 117B(3) which requires a person seeking leave to enter or remain in the United Kingdom to be financially independent.

22. Neither appellant works, the younger appellant remains in education, both wish to continue their education. The Sponsor lives in the United Kingdom in what he described in his evidence as “shared accommodation”. The property has five rooms of which he stated the other four are occupied. The appellant in his evidence confirms he lives in the property with his own family, namely himself, his wife, two daughters, and a son. The Sponsor claims that the property will not become overcrowded if the appellants are allowed to join him but issues did arise relating to the suitability of the accommodation during Mr Gazge’s submissions.

23. In addition to stating it was shared accommodation the Sponsor was asked about the number of rooms in the property to which he stated there were five. If the appellants join his family unit in the UK there will then be seven people living in that accommodation. Whilst acknowledging the Housing Act 1985 provides the relevant provision in terms of ratio of rooms to a permitted number for seven persons is a minimum of four rooms, and if all of the five rooms are available it might suggest that the accommodation is sufficient in size, it was found in S (Pakistan) [2004] UKIAT 00006 that adequacy of accommodation had to be assessed in the light of the facts of each individual case and the accommodation will not necessarily be adequate, in terms of the Immigration Rules, simply because it will not be statutorily overcrowded in terms of the Housing Act 1985.

24. The evidence did not allow me to take this issue any further and I find it a neutral factor on the evidence made available.

25. Even if the appellants have the standard of English the Sponsor asserts, and the available accommodation is suitable, of greater concern are the financial aspects. In his more recent witness statement the Sponsor confirmed he was now in employment earning £300 per month as a cleaner in a pizza shop. In his oral evidence he claimed he was earning a slightly higher figure of £495 a month but that will be clearly insufficient to support a family the size of that that which already exists within the UK without recourse to the public funds he already receives, even without the addition of the appellants.

26. It is clear from the evidence that if the appellants come to the United Kingdom there will be an increased financial burden upon the Sponsor, who is not self-sufficient, requiring a further injection of cash by way of additional public funds. Similarly, if larger accommodation is required that may increase the burden

upon the public purse if a greater level of housing benefit or other related support is required.

27. I do not find the appellants have established they will be financially independent either in their own right, which is logical as they have no income or resources of their own or based upon the available third-party support from the Sponsor. I find it has been established the appellants are likely to be a burden on the taxpayer which is relevant to assessing whether they are better able to integrate into society.

28. I note the intention of the sponsor to be able to provide for all his family which he has maintained from the swearing of his sponsorship declaration on 9 November 2020, at which he confirmed that he was not working and received Universal Credit, from which he sent the appellants around US$200 per month whenever he had money to send to them. I similarly do not dispute the fact that the Sponsor's desire for his children to come and live with him within the UK is genuine as is the strength of his feelings for all his children.

29. I find the appellants have failed to discharge the burden of proof upon them to establish that they are able to satisfy the requirements of section 117B of the 2002 Act or any aspect of the Immigration Rules that would enable them to enter the United Kingdom, which is relevant to the proportionality of the decision.

30. This is, as it always has been, a case that requires consideration outside the Immigration Rules with specific reference to Article 8 of the ECHR.

31. It is necessary in such a case to adopt the structured approach set out in Razgar v Secretary State the Home Department [2004] UKHL 27 where it is written:

> 17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:
>
> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

32. It was not disputed before me, as was found by the First-tier Tribunal, that family life exists between the appellants and their UK-based sponsor, their biological father. It was not disputed Article 8 is engaged on that basis.

33. The submissions that were made directly relate to the fifth of the Razgar questions, namely the proportionality of the decision.

34. The case on behalf of the appellants is set out in Mr Howard's skeleton argument of 9 January 2023 in the following terms:

> **d) Public interest considerations: Factors in Favour of the Appellants' Cases**
>
> 8. It will be argued that the Appellants speak fluent English. The Appellants provided handwritten statements in English.
>
> 9. The Sponsor has explained that he works and intends to be able to financially support the Appellants without recourse to public funds.
>
> **e) 'Balance Sheet Approach'**
>
> 10. It is respectfully contended that a 'balance sheet' approach should be undertaken when weighing up the public interest considerations and the Appellants' Article 8 ECHR considerations (*see Hesham Ali v Secretary of State for the Home Department [2016] 1 W.L.R. 4799).*
>
> 11. Whilst it is accepted that the maintenance of effective immigration controls is in the public interest in the Appellants in these particular cases do not satisfy the requirements as contained within Paragraph 352D of the Immigration Rules, it is respectfully contended that the Article 8 ECHR considerations of these particular Appellants with their particular factual matrices nevertheless outweigh the public interest considerations.
>
> 12. It is accepted that the Sponsor and Appellants are related as claimed. It is accepted that the Sponsor provides the Appellants with support, practical, emotional and psychological, throughout their childhoods. The FTT Judge accepted that the Appellant remained now fully dependent on their father (see [21] of FTT determination). It is contended that significant weight should be attached to these factors.
>
> 13. Furthermore, it should be noted that the Appellants were minors when making their entry clearance application. TS it is still currently under 18 years old. It is respectfully contended that the best interests of TS, as a child, should also be a primary consideration (*ZH (Tanzania) v SSHD [2011] UKSC 4 applied).* The FTT Judge accepted that the best interests of the Appellants was to leave their home country and join their father in the UK (see [21] of the FTT determination).

14. Furthermore, the circumstances in which the Appellants find themselves in were not circumstances of their own making (as accepted by the FTT Judge (see [22] of the FTT determination)).

15. The situation in Syria where the Appellants are remains unstable (as accepted by the FTT Judge (see [22] of the FTT determination)).

16. Appellants speak English and the Sponsor has confirmed that he intends to financially support both the Appellants in the United Kingdom.

f) <u>Conclusion</u>

17. The UT judge is invited to find, that upon a thorough evaluation of the Public Interest considerations and the Article 8 ECHR considerations of the individual Appellants in these particular cases, Article 8 ECHR considerations outweigh the public interest considerations.

18. The UT Judges invited to allow the Appeals about Appellants under Article 8 of the ECHR.

35. As a general observation, referring to findings made by the First-tier Tribunal in the determination set aside does not arguably assist the appellants unless those findings have been accepted as being preserved findings. It is also the case that submissions made regarding the relationship between the appellants and their father do not advance the case per se, as that is the basis on which it was accepted that family life exists between them sufficient to engage Article 8 ECHR.

36. The ages of the appellants are noted above and it is their age at the date of the appeal hearing which is relevant to an assessment pursuant to Article 8 ECHR.

37. Dealing with the other points raised, I have commented above upon the English language issue but even if it was accepted the appellants can speak English that is a neutral factor - '*An appellant can obtain no positive right from either section 117B(2) or (3) whatever the degree of his/her fluency in English, or the strength of his financial resources'* - <u>AM (s117B) Malawi</u> [2015] UKUT 260 (IAC).

38. The appellants applications for leave to enter the United Kingdom as a child of a person in the UK with refugee leave or humanitarian protection (family reunion) were unsuccessful for the reasons already found. The refugee family reunion policy allows a spouse or partner and children under the age of 18, or over the age of 18 if in exceptional circumstances defined in paragraph 352DB of the Immigration Rules, of those granted refugee status or humanitarian protection to reunite with them in the UK provided they formed part of the family unit before the sponsor fled their country of origin or habitual residence.

39. It is not disputed that families can become fragmented because of the nature of conflict and persecution and the speed and manner in which those seeking asylum are often forced to flee their country of origin as recognised in the Secretary of State's published guidance dealing with this issue. In this case, however, that is not the factual matrix. The reason the Sponsor became

separated from the appellants is because he chose to leave Syria to work in the UAE where he remained for a considerable number of years with his second family before coming to the UK. The reason that scenario is not recognised in the immigration rules in this appeal is because it is not a case involving immediate family members who formed part of the Sponsor's family unit before he fled his country of former habitual residence, UAE, to claim asylum in the UK.

40. In relation to those in Syria, the Secretary of State provided a Syrian Vulnerable Persons Resettlement Scheme (VPRS) in which they worked closely with the UN High Commission for Refugees (UNHCR) to identify those most at risk and bring them to the UK. That scheme was launched in 2014 to help those in greatest need including people requiring urgent medical treatment, survivors of violence and torture, and women and children at risk. That scheme was eventually closed and a further scheme announced, the Vulnerable Children's Resettlement scheme (VCR), which was open to vulnerable children and their families in Egypt, Iraq, Jordan, Lebanon and Turkey.

41. In this case there is no evidence the appellants or their family members who have remained in Syria have been forced to flee their home state as refugees to travel to either of these areas.

42. Of note in relation to this issue are the Visa application forms in which the appellants confirm that their home address is within a suburb of Damascus, within Syria, in a property owned by their father, where they have lived their entire lives.

43. There is reference in this application to a previous application for a Visa having been refused in October 2020, against which there was no appeal, in relation to an application for family reunion to join their father in the United Kingdom; which was rejected as it was not accepted that the appellants were still members of the Sponsors family unit nor that there will be a breach of Article 8 ECHR if the appellants were not permitted to enter the United Kingdom. The Visa application form confirms that the appellants travelled to Lebanon on 25 August 2020, where they remained until 2 September 2020 for the purposes of applying for the earlier visa to come to the UK, indicating that they may possibly have been in Lebanon at the time of the operation of the VPRS or VCR referred to above, but chose to return home to Damascus in Syria rather than seek protection from the UNHCR, on the evidence.

44. In relation to the reasons why the application was being made it is written:

> "I wish to join my father in the United Kingdom under the family reunion provisions. Paragraph 352 D of the Immigration Rules applies. My father is a recognised refugee in the United Kingdom BPR Ref RHX985268. I have not formed an independent family unit. I'm very close to my father. He provides me with both emotional and financial support. My father used to live with me around 2 to 3 months at a time every year up to 2010 when the uprising in Syria occurred. He subsequently came to the United Kingdom and claimed asylum. Since my father has been in the United Kingdom, I have been in regular contact with my father. In the United Kingdom I also have three siblings who already live with my father. I want to be able to enjoy my family and private life with my father and my siblings. My other sibling, K is also applying to join my father in the United Kingdom at the same time as me.

My father has adequate accommodation for us all to live together in the United Kingdom. I do not believe that it is in the best interests of myself or my siblings for us not to be reunited and lived together. I humbly request that my application is considered compassionately. I have a genuine subsisting daughter to father relationship with my father. This was subsisting before he came to the United Kingdom and claimed asylum. It will be a breach by Article 8 ECHR rights if I'm not permitted to join my father in the United Kingdom.

45. In his witness statement dated 24 November 2022 the Sponsor writes that he wants to be able to support his children but that it is extremely difficult to provide them with the emotional support that he wants from a distance. In addition he writes:

> 9. Furthermore, my brother traditionally wants to marry my daughters off at a young age. I am against this. It is hard for me to challenge this as they are in Syria and I am in the United Kingdom. It is impossible for me to safely return to Syria.
>
> 10. It is not safe for my children to remain in Syria. The situation in Syria currently is dire.
>
> 11. There is plenty of space in the accommodation that I currently live for my two daughters, TS and K, to join and live with me. It will not be overcrowded for them to live with me. The accommodation is safe for them to live with me.
>
> 12. I want to continue to be actively involved with the day-to-day upbringing of my children, TS and KS. I provide them both with emotional and financial support. I intend to do so permanently.

46. There is also within the bundle a letter in Arabic with accompanying translation written by the Sponsor first wife, the mother of the two appellants. In that letter she confirmed she is 50 years of age and that she lives with her three daughters after her husband's emigration and the death of their son. The letter confirms the application for family reunion being refused twice because her husband (the Sponsor) has two wives and her daughter is over 18 years of age. The author of the letter claims to live in "harsh and painful conditions" in terms of the conditions created by the war, waiting in queue for hours to get a little bread, and waiting months until she gets a gas cylinder and many other circumstances. The letter refers to the author living in a condition of anxiety because of the constant interrogation of repeated questions by the Syrian authorities about her son's death in the war, how he died, and the reason her husband emigrated. The letter continues:

> "I also live with my daughters in a condition of persecution and oppression in a rural and tribal society and authoritarian and extremist who imposes many restrictions and pressures on me and my daughters, the first of which is the imposition the hijab since the age of six, also preventing us from communicating with friends and neighbours, knowing that we have no right to object and any opinion issued by them is like there is no discussion of a law that applies, after the death of my son and the absence of my husband, the authoritarian uncles and grandparents with stony minds and injustice

uncles have the full right to dispose of our lives even though they share with us the little money that my husband sends us.

And I, even if it is not allowed for me to meet my husband and life partner, according to the law of your country, which forbids marrying two wives, but I do not imagine that there is a law in the whole world that prevents a father from reunite with his children and saving them from these tragic circumstances.

My little daughter is very sad because she lost the photos she reminds with her father and many memories that will last because of our frequent displacement from our home because of the war. She always tells me that she wishes she had wings to fly and meet her father because she misses him so much.

And I, in turn wish to make your decision and humanity the two wings that will bring my two daughters to your country, the country of freedom and humanity, and that you have a better future with study and education."

47. The letter from the appellant's mother is noted as she is the person "on the ground" who has cared for the appellants since their birth and continues to do so in Syria. The letter indicates that they are not alone as a family unit as there is a clear reference to male relatives, uncles and grandparents. That ties in with the Sponsor's own reference to his brother in Syria.

48. Although the letter records dissatisfaction with their life in Syria that reflects the reality of life for all within Syria, particularly women. It is not made out, for example, that being forced to wear the hijab, even if the appellants and their mother would prefer to have the choice of dressing as they choose, amounts to serious harm or inhuman or degrading treatment. If the appellants and their mother are Muslims, most Muslim women are obliged to wear the hijab as described in Islamic teachings and choose to do so.

49. It is not made out on the evidence that the appellants are at risk of being so disadvantaged by social, religious, cultural or family dynamics in Syria that they could not be expected to live there. There is insufficient evidence, for example, to show an impact upon the appellants fundamental rights that cannot reasonably be overcome which prevent their continuing to enjoy their family and private life within the reality of society in Syria.

50. It cannot be disputed that the civil war in Syria has led to widespread destruction of civilian infrastructure in places, with the largest number of internally displaced people (IDP) in the world, 6.9 million people, equating to 32% of the population. The evidence does not suggest, however, that the appellants and their family unit face being displaced; indicating that they live in what may be described as a more secure area within Syria, namely a suburb of Damascus.

51. It is accepted, as recorded in the Country policy and information note: humanitarian situation, Syria, June 2022, that there are areas within Syria with the highest number of people requiring assistance by way of food security, water, sanitation and hygiene and health care, and that Syria is facing its worst economic crisis since the Civil War began as a result of the combined effect of

currency depreciation, soaring prices for a food, fuel and basic goods, reduced fiscal spending and economic sanctions, likely to deepen the humanitarian crisis in Syria, particularly regarding food insecurity – see 2.4.7. It has not been shown, however, that this family unit, including the appellants, fall within the category of those facing extreme or catastrophic need. Although the appellant's mother refers to having to queue for bread, it does not say that she is not able to obtain the bread she requires. Similarly although it is recorded it can take time to obtain gas that does not indicate that means the appellants are unable to have adequate heating or a hot meal. The table in the CPIN showing a breakdown of the people in need in each of Syria's governorates at 4.2.3 shows Damascus, with a total population of 1.8 million people, has 50% of the population of that area in need, the fourth lowest of the 14 governorates. The highest is Quneitra with 100% of the population of that governorate in need and the lowest Lattakia with 31%.

52. In relation to education, is accepted that there are a substantial number of people in need of education assistance in Syria. The evidence suggests that 6.6 million people were in need of education assistance in the area of which 6.4 million, 97%, are children aged 3–17 years. In this appeal the appellant KS is an adult having completed her education but not yet working, with a desire to continue into higher or further education, and the younger, TS, coming towards the completion of her secondary education. The evidence does not suggest, therefore, that the appellants were denied education opportunities. Whilst they would like to be educated further, it is not made out that that is relevant to the family life assessment. Respect for an individual's private life pursuant to Article 8 does not include the right to work or study. It is not made out that this aspect would have an adverse impact upon the Sponsor who is within the UK. As found by the Court of Appeal in Secretary of State the Home Department v Abbas [2017] EWCA Civ 1393, there is no obligation upon an ECHR state to allow an alien to enter its territory to pursue private life as Article 1 of ECHR only requires a contracting state to protect human rights within its own jurisdiction.

53. If an individual wishes to study within the UK then, if they meet the necessary requirements under the Immigration Rules that provide a route by which an application can be made and if granted entry permitted for the period required to complete their studies, they can do so.

54. This is not a case in which it is made out that the appellants personally face any direct risk of harm within Syria as clearly they are protected within the family unit that continues to exist there, which they have always been an integral part of as a result of their father living his life elsewhere.

55. Comments in the appellants' mother's letter regarding the authoritarian regime within Syria and patriarchal nature of Syrian society reflect the norm for most within Syria and does not indicate any real risk to this family unit or that they have been targeted for adverse treatment by the authorities. Whilst the Sponsor records his objection to his believe his brother may seek to marry the appellants on, there is no evidence that this is an event that is actually occurring or in relation to which the appellant or other family would have no say. It is also not made out that if this was a thought in the mind of the appellants' uncle that this would result in the appellants suffering harm; as it is reasonable to assume that their best interest will be protected by the family within the norms of family life within Syria.

56. It is not made out on the evidence that either appellant has a mental or physical disability or serious illness requiring ongoing treatment or a particular course of action such as to make refusal disproportionate.

57. In relation to the best interests of children outside the UK, this was considered by the Upper Tribunal in Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88(IAC) in which the Tribunal held:

> (i) The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require;
>
> (ii) Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is "an action concerning children...undertaken by...administrative authorities" and so by Article 3 "the best interests of the child shall be a primary consideration";
>
> (iii) Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.

58. This aspect was considered by the ECO, but it not found that their best interests required a grant of leave for even though the appellants were, at the date of application, both minors it was not accepted they form part of the sponsor's family unit or that Article 8 ECHR was engaged.

59. The Supreme Court found in ZH (Tanzania) v Secretary of State for the Home Department [2013] UKSC 74 that *"... The best interests of the child are an integral part of the proportionality assessment under Article 8 of the Convention; in making that assessment, the best interests of the child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves at the status of paramount consideration..."*.

60. At the date of this hearing only one of the appellants, TS, is under the age of 18. In assessing her best interests it is necessary to have regard to the substance of the matters affecting her overall well-being as an individual. Such assessment requires consideration of all relevant factors in a particular case. The guidance to caseworker sets out factors relevant to the consideration of the child's best interests which will include the following (with a response to the points following);

- Whether their parent or parents is (are) expected to remain outside or to leave the UK; in this appeal whilst the Sponsor is expected to remain in the UK the child's mother, with whom the child has spent her entire life, will remain in Syria.

- The age of the child at the date of application. As this is a human rights appeal, rather than an appeal under the immigration rules, the relevant date is the date of the hearing; as noted above at the date of the hearing KS is 17 years and 5 months of age.

- The child's nationality, with a particular importance to be accorded to British citizenship where the child has this; the child is a Syrian national with no evidence of British citizenship.

- The child's current country of residence and length of residence there; the child lives within the family home in Damascus in Syria where she has lived her entire life.

- Family circumstances in which the child is living; the child lives with her mother, siblings, and with or near to other family members, within the family home owned by the Sponsor in Syria.

- Physical circumstances in which the child is living; although the evidence records difficulties in day-to-day life in Syria as a result of the economic situation and impact of the Civil War, the child has been able to continue with her education which she is near to completing at secondary level. There is insufficient evidence to show the physical circumstances in which the child is living within the family home have an adverse impact upon the child. Whilst it is accepted that the reality of life within Damascus may impact upon physical and emotional circumstances for the child, it is not made out on the evidence these cause the child direct or indirect significant harm.

- Child's relationship with their parent or parents overseas and in the UK; there is no evidence to suggest that the child's relationship with her mother, with whom she has always lived, is not good or fails to meet the child's physical and emotional needs as and when they arise. It is a preserved finding, as noted above, the relationship between the child and her father in the UK is good and the role that he has played in the lives of all his children, notwithstanding that he is not lived with them in Syria for some time.

- How long the child has been in education and what stage their education is reached; the evidence shows the child has been able to benefit from education in Syria and is shortly to complete her secondary education.

- The child's health; there is insufficient evidence to show the child or her now adult sister have adverse health needs.

- The child's connection with the country outside the UK in which their parents are, or one of their parents is, currently living or where the child is likely to live with their parents leave the UK; the child has a strong connection to Syria and to her home in Damascus. This is the country in which she was born and has always lived, where her mother lives, and where the appellant is likely to continue living if the application is refused. There is no suggestion the appellant's father will leave the UK.

- The extent to which the decision will interfere with, or the impact on the child's family or private life; the issue of private life is discussed further

below. In relation to family life there is insufficient evidence to show that the family life that currently exists between the child and her father would change beyond that which currently exists which is a family life supported by indirect contact through modern means of communication. The most obvious impact if the application is refused will be that it will prevent the further development and enhancement of family life between the child and her father which could occur if they are able to live together in the same household in the UK. The chronology indicates that the Sponsor, since he went to the UAE, has returned to the family home in Syria for visits, until he claims that was not possible from 2010, rather than living within that household on a permanent basis.

61. As the child resides overseas additional relevant factors include:

- The reasons for the child being overseas: in this appeal it is because the child is a national of Syria the country in which she was born and as always lived within the family home in Damascus.

- Where the child is a child of a previous relationship of the applicant or their partner; whether it has been shown that the applicant or their partner has sole parental responsibility for the child, or that the child's other parent has consented to the child to relocation to the UK and that this is in the child's best interests; the child is a child of the relationship between her father and her mother, the Sponsor's first wife. Although the Sponsor has been found to have involvement in the lives of all his children in Syria it has not been made out that he has been solely responsible for the child's care. As the child has continued to live with her mother in Syria, who has met the child's day-to-day needs, is more likely responsibility for the child has been shared between her parents. The evidence, by way of the child's mother's letter, shows that she consents to the child's relocation to the UK which she considers to be in the best interests of the child in light of the general situation in Syria, as noted in the letter, rather than there being any direct threat to the child or her siblings.

- Whether the child has siblings under the age of 18 overseas in the UK, and their age nationality; the evidence indicates that her sister, the other appellant, is over the age of 18. The age of the children of the Sponsor second marriage, who live with him in the UK, is not referred to in Mr Howard's skeleton argument. There is no evidence that any of the sponsor's children are British citizens and it is more likely that they are all of Syrian or other nationality.

- Whether the child or siblings were born in the UK; there is no evidence any of the siblings or the child in question was born in the UK.

- The child has previously visited or lived in the UK; the evidence is clear that the child has never previously visited or lived in the UK. The visa application form refers to a visit to Jordan for the purposes of making visa application in 2010 but nothing further.

62. The best interests of the child are to be able to continue to live in a safe, loving, and secure environment. When considering the evidence holistically, although

there may be advantages such as improved educational opportunities, and an environment not impacted by war or conflict, and the presence of her father and his extended family, I find the best interests of TS are, on balance, for the child to remain within the environment with which she is familiar namely that of her mother in the family home in Syria. I do not find it made out that there are compelling factors for entry clearance to be granted on this basis, which would not be determinative even if it was found that the best interests of TS were to come to the UK to join her father.

63. Whilst there are clearly advantages of the child coming to the United Kingdom, these are counter-balanced by the benefits of staying in Syria in a familiar environment, where she is able to draw on emotional support from her mother, extended family members, and friends with whom she currently enjoys a private life.

64. Guidance to caseworkers is to be found in the publication Family Policy, Family Life (as a partner or parent) and exceptional circumstances. Version 18.0, published on 11 August 2022. In that publication consideration is given to the absence of governance or security in another country referring to some circumstances where civil society has broken down as a result of conflict or natural disaster, and such breakdown extends to the country as a whole, which requiring family members to start living there may give rise to very serious hardship. This is not a case in which civil society has broken down as a result of conflict as a whole, but one in which certain areas of Syria clearly demonstrate concerns regarding security and on the humanitarian front, but not as a whole. There is a functioning government in Syria of President Bashar Hafez al-Assad supported by the intervention of Russia. It is not made out there is an absence of governance or security that would cause serious hardship on the evidence if the appellants were required to stay within Syria. Whilst the situation for the family as a whole in Syria, like for many living in Damascus, may be properly described as being at times harsh, the evidence does not support that the situation for the family of the appellants could be categorised as being unjustifiably harsh on the facts.

65. In this appeal it is not made out that if the refusal is maintained the appellants will not be able to continue to reside within the family unit in which they have always resided in Syria lawfully. Whilst it is accepted the Sponsor cannot return to live with the family in Syria, the respondent's country guidance indicating that his return from outside Syria may result in an adverse political opinion being imputed to him, leading to ill-treatment on return, this has not been made out for the other family members and specifically for the appellants. I find that the appellants and Sponsor have not discharged the burden upon them to show that it is not feasible for the family to remain in Syria and for family life to continue as it has to date between the appellants and their father.

66. It is accepted that the reason why the appellants could not come and join their father in the UK is because they have not been granted leave to do so as they have not established any right to be able to enter the UK under the Immigration Rules.

67. The evidence establishes a clear pattern of the appellants living in their family unit within Syria composed of their mother, other sibling, and other family members, with the Sponsor having established a separate lifestyle within the

UEA and now the UK. Whilst the evidence of the Sponsor, the appellants, and their mother, is that continuation of that arrangement is undesirable as the consequences of maintaining the arrangement are unduly harsh, that is not supported on the evidence considered as a whole.

68. I accept the Sponsor cannot go to live in Syria for reasons which resulted in the grant of refugee status, but it has not been established that the consequences of the same is such that it would be unduly harsh to expect the appellants and Sponsor to continue to live apart as they have. The issue of the ability to visit their father in the UK, if funds allow and the appellants can satisfy the Rules, may be another possible option for enabling them to see each other in the future.

69. The modern approach to the weight to be given to immigration control was set out by Lord Reed in Hesham Ali [2016] UKSC 60 at [46] and following and also by him in Agyarko [2017] UKSC also [46] and following. The immigration rules are statements of the practice to be followed, approved by Parliament, and based on the Secretary of State's policy as to how individual rights should be balanced against the competing public interests. Considerable weight should be attached to the Secretary of State's policy at a general level by the tribunal. That approach has been adopted when considering the weight to be given to the opposing argument, with additional consideration of the decision of the Supreme Court in MM (Lebanon) [2017] UKSC 10 in which it was said "*not everything in the rules need be treated as high policy or peculiarly within the province of the Secretary of State, nor as necessarily entitled to the same weight. The tribunal is entitled to see a difference in principle between the underlying public interest considerations, as set by the Secretary of State with the approval of Parliament, and the working out of that policy through the detailed machinery of the rules and its application to individual cases. The former naturally include issues such as the seriousness of levels of offending sufficient to require deportation in the public interest (Hesham Ali, para 46). Similar considerations would apply to rules reflecting the Secretary of State's assessment of levels of income required to avoid a burden on public resources, informed as it is by the specialist expertise of the Migration Advisory Committee. By contrast rules as to the quality of evidence necessary to satisfy that test in a particular case are, as the committee acknowledged, matters of practicality rather than principle; and as such matters on which the tribunal may more readily draw on its own experience and expertise*."

70. The fact that the Secretary of State had set out a clear policy in relation to refugee family reunion and the requirements to be met by an applicant is a powerful factor in any Article 8 proportionality assessment, especially when individual is unable to satisfy a key aspect of the relevant policy, as in this case.

71. In the error of law finding reference was made to the fact that even if there was sympathy for TS and KS it was held in MG (Serbia Montenegro) [2005] UKAIT 00113 that sympathy for an individual did not enhance a person's right under Article 8.

72. It is also a relevant principle that Article 8 does not allow a person to choose where they wish to live. Whilst permitting the appellants to come to the United Kingdom may allow them to continue their education and to live with their father away from the situation in Syria, the purpose of Article 8 is to provide

that there should be no interference by public authority with the exercise of (in this case) the right of family life except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the UK, for the prevention of crime or disorder, for the protection of health or morals, or for the protection of the rights and freedoms of others.

73. The Court of Appeal have reminded us on more than one occasion that the United Kingdom cannot be expected to either educate or medicate the world. Similarly it cannot, unless justified on the facts, be expected to take in those living within countries such as Syria, in the absence of evidence of risk of harm or destitution sufficient on the evidence to establish a right to enter and remain in the UK, with family or otherwise. The fact the situation in the home country may be harsh and their lives may be better if the individual is allowed to come to the UK is not, per se, sufficient.

74. I have also taken into account the protected rights of the Sponsor in the UK in accordance with the principles outlined in Beoku-Betts (FC) v SSHD 2008 UKHL 39. It was not made out there will be any adverse impact upon the Sponsor's family or private life in the UK which will continue as it has with his current family members.

75. In undertaking the required balancing exercise I find as follows:

In favour of the appellants:

- The existence of family life recognised by Article 8 ECHR between the appellants and their father, their Sponsor, in the UK.

- The desire of the Sponsor and the appellant's mother in Syria that they be allowed to join their father in the UK.

- The country situation in Syria from which the appellants will be removed if they are permitted to come to the UK.

- The opportunity for the appellants to be able to continue with their education.

- The ability of the appellants to live in a less oppressive environment, to be given greater respect as females, and the ability to observe freedom of choice within the UK.

- The opportunity to be reunited with their father who will be able to exercise greater control, influence, and protection for the appellants on a face-to-face basis than that which he claims he is able to do remotely.

- The benefit of face-to-face contact as opposed to remote contact by modern means of communication with their father.

In favour of the respondent:

- The inability of the appellants to go to satisfy the requirements of the Immigration Rules in relation to refugee family reunion with specific reference to the reasons for that decision, namely that the appellants did not form part of the refugees family at the point the Sponsor left the UEA to travel to the UK to seek asylum.

- The inability of the appellants to satisfy the requirements of section 117B of the Nationality, Immigration and Asylum Act 2002 which sets out the Secretary of State's position, in statutory terms, of the minimum requirements an individual needs to demonstrate they can satisfy as part of the proportionality balancing exercise.

- The existence of the appellant's mother, siblings, and other family members within Syria.

- That the appellant's mother has been their primary carer for their entire lives.

- That the appellants have not lived with the Sponsor for a considerable number of years and have never lived with him outside Syria.

- That sympathy for the appellants does not enhance otherwise exist in Article 8 ECHR claim.

- Article 8 ECHR does not give the person the right to choose where they wish to live.

- Whilst the situation in Syria may be harsh it is not made out it is unduly harsh or that the appellant's face the real risk of harm, physical, medical, or emotional.

- The situation within Syria for this family unit within Syrian society which is better than it is for many.

- It has not been established that the desire continue their education, that would form part of private life, is a protected right engaged in this appeal when the appellants live outside a Higher Contracting States to the ECHR.

- The best interests of the remaining minor child are to continue to live within the family unit where she has always lived.

76. In GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630 the Court of Appeal made the following observations about the test to be applied:

    (a) the Immigration Rules and section 117B have to be construed to ensure consistency with article 8;

    (b) national authorities have a margin of appreciation when setting the weighting to be applied to various factors in the proportionality assessment;

(c) the test for an assessment outside the Immigration Rules is whether a fair balance is struck between competing public and private interests;

(d) that proportionality test is to be applied to the circumstances of the individual case;

(e) there is a requirement for proper evidence;

(f) there is in principle no limit to the factors which might be relevant to an evaluation under article 8'

77. Having set out the pros and cons and considered the weight to be given to each of the relevant factors, I find the respondent has established that the weight to be given to the public interest in this appeal outweighs that to be given to those matters falling in favour of the appellants. It cannot be disputed the section 117B factors nor the requirements of the immigration rules can be met. The evidence does not establish that there are exceptional or compassionate circumstances in this case sufficient to outweigh the public interest on the evidence that is made available. Such a finding is compliant with Article 8.

78. Periods of separation are the inevitable consequence of a person choosing to move to another country whilst leaving family members behind. Whilst it is of course more difficult to enjoy family life through modern means of communication and occasional visits, I consider that this factor alone does not amount to serious or compelling circumstances. More than a desire for family members to be reunited in the UK is required to meet the serious and compelling threshold.

79. As the Secretary of State has established that any interference in the family life between the appellants' and their UK based sponsor is proportionate I have no option other than to dismiss the appeal.

Notice of Decision

80. I dismiss the appeals of both appellants.

Mr C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 January 2023