



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

**Appeal Number: OA/04298/2014**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Determination  
Promulgated**

**On: 18<sup>th</sup> November 2014**

**On 20<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Ghnwah Almdlal  
(no anonymity direction made)**

Appellant

**and**

**Entry Clearance Officer, Beirut**

Respondent

For the Appellant: Mr Moran, Alex Moran Immigration and Asylum  
For the Respondent: Ms Kenny, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Syria date of birth 28<sup>th</sup> March 1997. She appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge MR Oliver) to dismiss her appeal against the Respondent's decision to refuse to grant her entry clearance as the pre-flight spouse of a refugee.
2. The Appellant made her application for entry clearance under

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<sup>1</sup> Permission granted on the 2<sup>nd</sup> October 2014 by First-tier Tribunal Judge Reid

paragraph 352A of the Immigration Rules. In the refusal dated 13<sup>th</sup> March 2014 the Respondent took no issue with her ability to meet the requirements of that rule. The sole ground for refusal was the Appellant's age: at that time she was only 16 years old and so the application fell for refusal under paragraph 277 of the Rules:

277. Nothing in these Rules shall be construed as permitting a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as a spouse or civil partner of another if either the applicant or the sponsor will be aged under 18 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave would be granted. In these rules the term "sponsor" includes "partner" as defined in GEN 1.2 of Appendix FM.

3. In respect of Article 8 the Respondent found there to be no satisfactory evidence that the Appellant shared a family life with her husband; even if there was an interference it was deemed to be proportionate.
4. On appeal the First-tier Tribunal found "no reason to doubt the genuineness of their family life"<sup>2</sup> but dismissed the appeal with reference to paragraph 277. At paragraph 9 the determination refers to the "good reason for the existence" of that provision: "because of the public importance of preventing abuse I find that the rule is necessary in a democratic society". Having found that the decision would inevitably entail an interference with the Appellant's family life the Judge concluded that weighed against the "vice which underlies the rule" the decision is nevertheless proportionate. It is suggested that the Appellant is currently living in a safer part of Syria than she was previously. The appeal is dismissed under the Rules and Article 8.
5. The Appellant accepts that she cannot succeed under the Rules. The grounds of appeal are that the First-tier Tribunal erred in the following respects when considering Article 8:
  - i) The decision was found to be a proportionate interference with the Appellant's right to family life because of the "vice" underlying paragraph 277 of the Rule. The Appellant does not know what that means. If the Judge means that the rule is intended to prevent some kind of abuse, such as forced marriage, it was irrational to apply that rationale to this case, where he has found that there is no abuse or vice.
  - ii) The evidence was that the Appellant is currently living in an area of Syria where she is in constant danger. There was a failure to give appropriate, or any, weight to that factor.

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<sup>2</sup> This finding was based, it would seem, on the evidence of the Sponsor and the hundreds of pages of text message records of communications between the Sponsor and Appellant since his arrival in the UK.

6. The Respondent opposes the appeal on all grounds. It is submitted that there are sound public policy reasons for the existence of paragraph 277 and that these would render any decision to refuse the Appellant – still under 18 – proportionate.

### **Error of Law: Discussion and Findings**

7. The First-tier Tribunal found that there is a genuine family life shared between the Appellant and her husband. Although the spectre of forced marriage was clearly raised before the First-tier Tribunal, since it is at the centre of the debate in *ex parte Quila* [2011] UKSC 45, there is no suggestion in either the evidence, or the Tribunal's findings, that this issue has any application in this case. This is then a genuine marriage.
8. The nature of the relationship notwithstanding, the Appellant accepts that she cannot be granted entry clearance under the Rules because of the operation of paragraph 277. Her case has been squarely put on Article 8 grounds. Mr Moran's skeleton, submitted to the First-tier Tribunal, makes this clear. There is a family life, and the decision represents an interference with it, since the Sponsor, now recognized as a refugee, cannot be expected to go to Syria to be with his wife. As to whether the decision is taken in pursuit of a legitimate aim, the Appellant submits that this is not the usual "protection of the economy" framed as "immigration control". As the Respondent made clear in *Quila*, paragraph 277 is directed at another matter entirely: "It was not to control immigration. It was to deter forced marriages" [per Lord Wilson at paragraph 8]. Mr Moran submitted that since it is accepted that this is not a forced marriage, the analysis could stop here, the legitimate aim behind the rule having no bearing on this decision<sup>3</sup>. In the alternative he focused his submissions on whether the First-tier Tribunal had properly weighed this matter, and others, in the balance when assessing proportionality.
9. I am not going to here address the *Quila* question of whether this decision is rationally connected with the legitimate aim pursued. That question, in the case of 16 and 17 year olds, requires further debate and analysis. Although it is clear that paragraph 277 is not directed at "immigration control" but at other social issues, it is not so clear that it is confined to the prevention of forced marriage. In *Quila* the Supreme Court makes reference to Directive 2003/86/EC of the Council of the European Union which explicitly refers to the promotion of social integration as being an aim behind setting a minimum age for spousal settlement into the EU.

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<sup>3</sup> This was the line of argument supported by the Supreme Court in *Quila* in respect of 19-21 year olds, Lord Brown dissenting.

10. I need not address the 'legitimate aim' question raised by Mr Moran because I am satisfied that the proportionality assessment at paragraph 9 of this determination is flawed. The analysis consists of two points: the rule serves a legitimate purpose, and the Appellant has moved "to a safer part of Syria". In respect of the former the Tribunal appears to have placed great weight on this factor, with no attempt to balance against the legitimate public interest the fact that he had already found that this is not, in fact, a forced marriage. That is one problem. The second arises in respect of the finding that the Appellant has "moved to a safer part of Syria". Whilst that may be true, it was apparent from the evidence before him that this did not mean that it was actually *safe* there. There was country background evidence before the Tribunal that there were real difficulties in the Appellant surviving where she is currently living in Syria. The determination fails to take any of that evidence, or that of the sponsor, apparently accepted in all other respects, into account. The error of law is the failure to take this evidence into account when assessing proportionality. The decision is therefore set aside, with the findings of fact, and the dismissal under the Rules, preserved.

### **The Re-Made Decision**

11. I re-make the decision only in respect of whether the interference with the Appellant's family life is proportionate. Although the burden of proof lies on the Appellant to establish any relevant facts, it is for the Respondent to show that the decision is proportionate.
12. The Appellant and Sponsor are cousins from the Qadam neighbourhood of Damascus. They were married according to custom and Syrian law on the 6<sup>th</sup> January 2013. They lived together for three months after their marriage. In his witness statement dated 16<sup>th</sup> July 2014 the Sponsor explains that their home in Qadam was destroyed because the Syrian Free Army were active there and so they had moved to Suwayda:

"This area is majority Druze, who are mostly supporters of the current Assad regime. This means that it has been quieter than many other places, including Damascus, but there are still dangers, especially for my wife as a Sunni Muslim. There are checkpoints everywhere and her origin and residence is clear from her ID card. This can often cause problems because Qadam is a known centre of opposition to the regime and soldiers harass her because of this. I am afraid that she could be taken and abused one of these days, such stories are very common at the moment.

In fact my brothers Ghanim and Ghaid were arrested at checkpoints on their way from Damascus to Suwayda to see family there and have been in detention for over three months now. Ghanim's ID was recently returned to our family, which usually means that the person has died inside, but we are still trying to tell ourselves that this is not the case and that will not believe it until they return the body. We

fear the worst but are just hoping and praying that him and Ghaid are released alive.

To make matters worse for Ghnwah, the situation could get worse in Suwayda very quickly. The atmosphere is very tense amongst the Druze, especially with the extremist Islamic fighting groups frequently attacking the area”

13. The Appellant’s bundle contains certified translations of Al Jazeera news reports concerning the “protracted shelling” and siege of Qadam, a stronghold of the Syrian Free Army. The area came under heavy bombardment by the government during a siege lasting two months. This evidence accords with that of the Sponsor, and I accept that the Appellant has had to flee her home to live in Suwayda. I accept on a balance of probabilities that her ID card is likely to show Qadam as her place of origin and residence, and as such may attract adverse attention at government-operated checkpoints.
14. At the date of decision the Appellant was in Suwayda. She remains there today. A detailed article reproduced from the website “syriadeeply.org” is entitled “In Swaida, kidnappings and extremists finally lure Druze into conflict”. It explains how the Druze majority province had initially managed to escape much of the violence affecting the rest of the country and as such had become a haven for the internally displaced and humanitarian organisations. Since early 2013 that peace has been increasingly eroded by incursions by the Syrian Free Army and Islamic militants, with abductions and violence erupting between the Druze and jihadi groups hoping to provoke them into open conflict. A further article from the Arabic website “zamanalwsl.net” is entitled “Suwayda on the Brink of Sectarian Abyss” reports on frequent fighting between government forces there and Bedouin militias. The reports consistently report that the Druze leaders in this area are trying to maintain a neutral position. Having traditionally been seen as Assad supporters they are resisting calls from within their own community and from influential figures such as (Lebanese Druze leader) Walid Jumblatt to join the uprising. These tensions have produced numerous checkpoints and a heavy military presence aimed at maintaining government control of the region. The objective material does not support a conclusion that this area is safe. As a civilian Sunni in a government dominated area the Appellant is already in a precarious position. As a young woman without her husband, she is all the more vulnerable. The Appellant’s bundle contains numerous reports, from agencies such as the BBC, UNHCR, the Syrian Network for Human Rights, and the Lebanese Daily Star, about the prevalence of rape in the Syrian conflict. All the reports echo the findings of the Euro-Mediterranean Human Rights Network that these attacks are taking place “mostly during government raids, at checkpoints and within detention facilities” [page 88]. I find the subjective fears of the Appellant

and Sponsor to be objectively well-founded in this regard.

15. This is the factual background against which I assess whether the Appellant should be given entry clearance notwithstanding the purpose and operation of paragraph 277. In her submissions Ms Kenny picked up on the use of the phrase “exceptional, compassionate circumstances”, used in Quila in discussion of the Respondent’s residual discretion to grant entry clearance outside of the Rules<sup>4</sup>. She submitted that the Appellant was not facing any such circumstances. I cannot agree. Although her representatives have been careful to produce country background material relating specifically to her geographical location within Syria, I hardly think I needed it. As Mr Moran points out, if the Appellant arrived at our borders today it is overwhelmingly likely that she would be given international protection on the spot. The hearing of this matter has twice been expedited by the First-tier Tribunal in recognition of the “exceptional circumstances” pertaining to the Appellant. She is a seventeen-year old woman – sixteen at the date of decision – in the middle of a war zone. She meets all of the requirements of the substantive Rule – paragraph 352A – and in just over four months paragraph 277 will cease to apply and she will qualify for entry as a pre-flight spouse of a refugee. The Tribunal has accepted that this young lady was not forced to marry her sponsor. It is a genuine family life. I have weighed against these factors the legitimate purpose behind setting a minimum age for spousal settlement, including the increased prospects for social integration. That is an important consideration and I have afforded it considerable weight. It is not however enough to show this decision to be necessary in a democratic society; it does not outweigh the particular and exceptional factors in this case. I find there to be a disproportionate interference with the Appellant’s family life and allow the appeal on human rights grounds.

## Decisions

16. The determination of the First-tier Tribunal contains an error of law and it is set aside to the extent identified above. The finding that the appeal is dismissed under the Immigration Rules is preserved.
17. I re-make the decision in the appeal by allowing it on human rights grounds.
18. I direct that entry clearance be granted as soon as practicable.

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<sup>4</sup> See for instance Lord Wilson at paragraph 7.

Deputy Upper Tribunal Judge Bruce  
19<sup>th</sup> November 2014