



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: VA/07025/2013  
& VA/07031/2013

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 17 November 2014

Determination Promulgated  
On 19 November 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

The ENTRY CLEARANCE OFFICER Beirut

Appellant

and

Daher Midaa

Terez Egho

[No anonymity direction made]

Claimants

**Representation:**

For the claimants:

Mr G McIndoe, instructed by Latitude Law

For the appellant:

Mr A McVeety Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The claimants, Daher Midaa, date of birth 9.6.44, and his wife, Terez Egho, date of birth 1.1.51, are citizens of Syria.
2. This is the appeal of the Entry Clearance Officer against the determination of First-tier Tribunal Judge Mulvenna, who allowed the claimants appeals against the decisions of the Entry Clearance Officer, dated 23.3.13, to refuse entry clearance to

the United Kingdom as family visitors pursuant to paragraph 41 of the Immigration Rules. The Judge heard the appeal on 31.3.14.

3. First-tier Tribunal Judge Ford granted permission to appeal on 21.5.14.
4. Thus the matter came before me on 17.11.14 as an appeal in the Upper Tribunal.

### **Error of Law**

5. Only the appeals of the first two of the four claimants are listed before me, Judge Mulvenna having dismissed the appeals of the third and fourth appellants who had since sought asylum in Sweden.
6. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Mulvenna should be set aside.
7. In granting permission to appeal, Judge Ford found it arguable that Judge Mulvenna's findings that the requirements of paragraph 41 were met were contrary to the weight of the evidence and inadequately reasoned. "The appellants originally applied for visit visas with their daughter and her husband. The applications of their daughter and her husband were also refused and they, along with their children then travelled to Sweden. They entered Sweden clandestinely and claimed asylum. The appellant's son has claimed humanitarian protection in the UK. This evidence was before Judge Mulvenna. There is an arguable error of law."
8. The grounds of appeal point out that the judge made two erroneous statements at §14 and §27, to the effect that the Entry Clearance Officer/ Secretary of State did not challenge the sponsor's evidence as to accommodation and maintenance or that the appellants would return. The refusal decision and the record of proceeding show that the representative did challenge both issues. In the circumstances, it may be that the First-tier Tribunal Judge has failed to take into account the challenges to both issues.
9. Further, it appears to me that the conclusion that the claimants intended to make only a short visit to the UK and then return to Syria flies in the face of the evidence and the judge's findings in relation to the third and fourth claimants, who were all part of one joint application for entry as visitors. At §21 the judge found that the family had a subjective fear of persecution in Syria and at §27 stated that, "the temptation to infer that the first and second appellants would follow the same course (as the third and fourth appellants) looms large." It is difficult to understand how the judge could reach the conclusion on intention justifying allowing the appeal. I find that it was against the weight of the evidence and appears to have been made with inadequate reasoning in §28.
10. I am satisfied that there are such errors in the making of the decision of the First-tier Tribunal that it should be set aside and remade.

11. In his oral evidence before me, the sponsor explained that his business of which he is the sole owner has an income of £140,000 p.a. Only he, his wife and daughter live in the family home. In the circumstances, I was satisfied on the evidence in relation to both accommodation and maintenance that the two claimants would be able to be adequately maintained and accommodated by the sponsor.
12. However, I am not satisfied on the evidence, including to the extent that it is relevant the additional evidence submitted on behalf of the claimants, that they intend to leave the UK on conclusion of their visit and within the time limit of leave. I bear in mind that as this is an out of country appeal, I have to decide it on the basis of the circumstances prevailing at the date of decision 23.3.13. However, subsequent evidence may well be relevant to understanding the intentions of the claimants as at that date and it is difficult to make any real distinction between the present situation and that in March 2013.
13. Then as now, the situation in Syria is dire. The sponsor told me that it was not great and not ideal, but he asserted that it was better than other parts of Syria. The area of the claimants' residence is to the north east of Syria. Recently, the two neighbouring towns fell to IS and there are many refugees who fled to safety in the claimants' town.
14. He relied on the fact that they had been to Lebanon and returned to Syria and insisted that they would return to Syria if they came to the UK for a short visit. He would want them to stay in the UK if they came, but that does not mean they would stay, he said. However, it appears relevant to me that there would be no desire on the part of the sponsor for his parents to leave and return to Syria.
15. I also have to take into account that two of the four applicants for the visit visa, on being refused, fled Syria for Sweden where they claimed asylum. A son of the claimants has claimed humanitarian protection in the UK. The claimants may also be aware that the Secretary of State is not returning people to Syria at the present time. In his oral evidence, the sponsor said, that his sister's husband is a dentist and that they left for Sweden in a hurry, "they felt they had to leave," he said. He confirmed they lived in the same town as his parents. He described the situation as "dire," but insisted that it is relatively safe. However, he said that there are kidnappings for ransom, and many people are leaving. Most of the claimants' friends are leaving, he said. He also explained that his parents are Christians. It thus follows that they would be at particular risk from Muslim extremists. Despite that, the sponsor said that they had got used to the situation, including the kidnappings, and it was "part of daily life."
16. It would be unfair to refuse all applications from Syria just because of the situation of unrest. However, the burden is on the claimants to demonstrate on the balance of probabilities that this is a genuine application for a short family visit and that they intend to leave the UK following their visit and within the period of leave. It is patently obvious that there are very strong motivations to leave the situation of unrest in Syria and that there is a potential risk to the lives of the claimants. I bear in

mind the assertions of the sponsor that they intend to leave. However, taking the evidence as a whole, including the actions of the other two appellants, and their son, in claiming international protection and having fled Syria, I am far from satisfied that these are genuine applications for a short family visit. It would appear that the rest of the immediate family is now outside Syria and that the children of the claimants would support a decision not to return to Syria. I do not accept their assertions that they would return as credible in the light of the circumstances prevailing in March 2013, which are little different today. I further find that the evidence of the sponsor, as set out above, adds greater concern as to the intentions of the claimants, undermining the credibility of the claim that they will leave the UK. Other members of the family felt that they had to leave and claim asylum in Sweden, even though they had applied for a visit to the UK. It is quite clear that they had those appellants been able to enter the UK they would not have left, but claimed asylum. I recognise that the circumstances of these two claimants is somewhat different, but taking all the evidence together in the round, I find it impossible to accept that they would leave the UK to return.

17. In all the circumstances and for the reasons set out above, I find that the claimants have failed to demonstrate on the balance of probabilities that this is a genuine application for a short family visit following which they intend to leave the UK. Thus the appeals must fail as not meeting the requirements of the Immigration Rules.

### **Conclusion & Decision**

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside set aside the decision.

I re-make the decision by dismissing the appeal of each claimant.



Signed:

Date: 18 November 2014

Deputy Upper Tribunal Judge Pickup

### **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeals having been dismissed, there can be no fee award.



Signed:

Date: 18 November 2014

Deputy Upper Tribunal Judge Pickup