



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA / 00331 / 2015

**THE IMMIGRATION ACTS**

Heard at Field House

**Decision & Reasons  
Promulgated**

On 12 May 2016

On 19 May 2016

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Entry Clearance Officer, Abu Dhabi

Appellant

And

RA  
(ANONYMITY ORDER MADE)

Respondent

**ANONYMITY ORDER**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) and given that this decision mentions involve minor children, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant referred to in this decision as the claimant or any of the members of her family or any of the children mentioned in this decision.

This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer.  
For the Respondent: Ms R Akther, of Counsel, instructed by Hudson Legal.

**DECISION AND REASONS**

1. The Entry Clearance Officer (“ECO”) has been granted permission to appeal to the Upper Tribunal against the decision of Judge of the First-tier Tribunal Thanki who allowed the appeal of RA (who I shall refer to hereafter as the “claimant”, to avoid confusion) on human rights grounds (Article 8) against the decision of the ECO of 3 December 2014 to refuse her application for entry clearance as a visitor to the United Kingdom for a period of 15 days under para 41 of the Statement of Changes in the Immigration Rules HC 395 (as amended) (hereafter referred to collectively as the “Rules” and individually as a “Rule”).
2. The claimant, a 33-year old national of Syria, had applied for entry clearance as a visitor in order to visit the children of her husband from his previous marriage. He has a son and a daughter, aged 15 years and 13 years respectively, by his previous marriage. They are British citizens. They live in the United Kingdom with their mother. There is a “*Residence and Prohibited Steps Order*” issued by the Family Court in March 2010 which prohibits the claimant's husband from removing the children from England and Wales or from the care of their mother or from their schools without the consent of the Court.
3. The claimant's husband is a British citizen. The claimant and her husband have a 3-year old son who is also a British citizen. They live in Dubai, where the claimant's mother and siblings also live. They have the relevant residence permits. The claimant and her husband have a successful business in Dubai. The claimant works full-time in the business.
4. The ECO did not accept that the claimant was a genuine visitor or that she would leave the United Kingdom at the conclusion of her visit. He therefore concluded that she did not satisfy the requirements in para 41(i) and (ii) of the rules.
5. The claimant appealed on human rights grounds under s.82(1)(c) of the Nationality, Immigration and Asylum Act 2002 (the “2002 Act”).

#### The judge's decision

6. The judge heard oral evidence from the claimant's husband.
7. The claimant's husband said, inter alia, that the claimant speaks with his children approximately 3-4 times a month on the telephone and that they also speak to the children through Skype. The judge also had witness statements from the claimant and her husband, describing their lives in Dubai. They described the efforts they make to ensure that their son has a close bond with his cousins in Dubai and their desire to ensure that he has a relationship with his step-siblings in the United Kingdom, as well as their desire for the claimant to meet the husband's children in the United Kingdom.
8. At paras 18 and 19 of the decision, the judge summarised the oral evidence of the claimant's husband about the contact between the claimant and her step-children as follows:
  - “18. He confirmed that he had produced a printout of his contact with his children in the UK through WhatsApp. When he was on the telephone to the children in the UK the [claimant] also spoke to the children. She spoke to the children 3-4 times a month.
  19. In re-examination he said he also spoke to the other children through Skype as did the [claimant] but they had no record to show today.”

9. The judge reminded himself that the burden of proof was upon the claimant and the standard of proof the balance of probabilities. He reminded himself of the restricted ground of appeal in s.82(1)(c) and head note 1 of the guidance in *Adjei* (visit visas – Article 8) [2015] UKUT 0261 (IAC), which reads:
- “1. The first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 of the ECHR is engaged at all. If it is not, which will not infrequently be the case, the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the rules and should not do so. If article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule because that may inform the proportionality balancing exercise that must follow<sup>1</sup>. *Mostafa* (Article 8 in entry clearance) [2015] UKUT 112 (IAC) is not authority for any contrary proposition.  
Footnote 1: Now see *SS (Congo) v Secretary of State for the Home Department* [2015] EWCA Civ 387.”
10. The judge found the claimant's husband a credible witness. He made his findings and gave his reasons at paras 30-39. In summary, he accepted that the claimant's husband visits his children in the United Kingdom. He maintains them financially. They cannot travel to Dubai to visit the claimant and their step-brother. He accepted the evidence of the claimant's husband that the 3-year old son was close to his mother, that it would be difficult if not impossible for the claimant's husband to bring the 3-year old to the United Kingdom to visit his step-siblings without the claimant and that the claimant also desires to meet her step-children.
11. The judge said that he accepted that family life was wider than the immediate nuclear family and found (at para 33) that “... *there exists family life from the [claimant's regular telephone and Skype contact with the British children in the UK]*”.
12. In relation to proportionality, he considered the application under para 41 of the Rules and found that the claimant was a genuine visitor and that there was no evidence that she would not return to Dubai at the end of her visit. His reasons for making these findings were, in essence that she is well settled in Dubai with lawful authority to do so from the evidence of her labour card. She works in her husband's firm and lives with her husband and their 3-year old son. She receives a monthly salary and her own family from Syria is also settled in Dubai. He considered that it was natural that she wishes to visit her husband's children by his previous marriage not only for herself but to enhance contact between her son and the step-children in the United Kingdom. He found that the claimant would wish to return to her normal life in Dubai through her employment and family life (including her own family). He therefore concluded that, “*in the proportionality analysis*”, the ECO's decision was not proportionate taking all the circumstances into account (para 38).

### The grounds

13. The grounds contend that:
- i) The judge failed to give adequate reasons why family life exists between the claimant and the children of her husband in the United Kingdom or between the her 3-year old son and his step-siblings in the United Kingdom.
  - ii) The finding that it would be difficult for the claimant's husband to travel to the United Kingdom without the claimant because she is required to look after their 3-year old son was “*curious*” given that he would be travelling with his own

father and that, in any event, she cannot be looking after the child full-time because she works full-time.

- iii) Given that the claimant's husband visits his children in the UK, the ECO's decision does not interfere with his visits to them. In any event, there was no finding that the children cannot visit them in Dubai accompanied by their mother.
- iv) Article 8 does not afford the claimant's husband the choice as to the location where the visits should take place or who should be permitted to accompany him for the purpose of caring for his child.
- v) The judge failed to have regard to the statutory public interest consideration as required by s.117B of the 2002 Act.

### Submissions

- 14. Ms Brocklesby-Weller submitted that the judge had failed to explain why family life was enjoyed between the claimant and her stepchildren. It was unclear from the judge's reasoning how the limited evidence of contact described at paras 18 and 19 of the decision was sufficient for the finding that family life exists. There was no suggestion that the claimant was involved in their upbringing and no evidence about the substance or the content of the telephone calls or nature of their contact. There was no explanation about the nature of the relationship and no evidence about the effect on the two children in the UK of being separated from the claimant. Ms Brocklesby-Weller submitted that this ground was determinative. However, she did address me briefly on the remaining grounds.
- 15. Ms Akther submitted that the presumption that family life exists between a minor child and his or her biological parent extends to include the partner/spouse of the biological parent. She had no authority to support this proposition but she submitted that it was common sense.
- 16. Ms Akther submitted that, in any event, the judge had given adequate reasons for his finding that family life exists between the claimant and her step-children. The judge had acknowledged that family life was wider than the immediate nuclear family. The reason for the limited evidence of contact by telephone and Skype was that this was the only means she had of enjoying family life with her stepchildren.
- 17. In relation to proportionality, Ms Akther submitted that the claimant's 3-year old son was effectively barred from coming to the United Kingdom to visit his step-siblings because he needs to travel with his mother. The judge correctly followed the approach in Adjei and reached a conclusion that was open to him.
- 18. I reserved my decision.

### Assessment

- 19. I consider first whether the judge erred by failing to give adequate reasons for his finding that family life exists between the claimant and her step-children.
- 20. I have no hesitation in rejecting Ms Akther's proposition that the presumption of family life between biological parents and their minor children extends to the partners of the biological parents irrespective of the circumstances. There is no authority for this proposition. It is difficult to see the justification for such a presumption which takes no

account of whether the step-parent has any contact with the children or indeed has any interest in them at all.

21. I agree with Ms Akther that the judge correctly reminded himself that family life can be found to exist in circumstances beyond the immediate nuclear family. Whilst at first sight, it does appear that the contact between the claimant and her step-children as evidenced by the summary of the husband's evidence at paras 18 and 19 of the judge's decision was insufficient, the judge had detailed witness statements from the claimant and her husband describing their desire to strengthen the relationship between the claimant and her son, on the one hand, and the children of the claimant's husband by his previous marriage, on the other hand. Importantly, the claimant states in her witness statement that she has regular Skype conversations with her step-children in the UK and that she "... is always trying [her] best to keep these bonds tight for the children's sake and their future...".
22. I have concluded that, taking into account the evidence in the witness statements, there was (just about) sufficient evidence before the judge for him to reach his finding that there was family life between the claimant and her step-children and that, on that evidence, he gave adequate reasons for his finding at para 33, that "*there exists family life from the [claimant's] regular telephone and Skype contact with the British children in the UK*".
23. There is nothing of any substance in the remainder of the grounds summarised at my para 13 above.
24. There was no need for the judge to make a finding that there was family life between the claimant's 3-year old and his step-siblings, since he did not need to appeal against a refusal of entry clearance.
25. The argument summarised at my paragraph 13 ii) amounts to no more than an attempt to re-argue the case.
26. In any event, the remaining grounds ignore the fact that the reason advanced for it being necessary for both the claimant and her young son to travel to the UK to meet the children in the UK is because her husband is prohibited from taking them out of the United Kingdom. I accept that there is nothing to show that the mother of the two children has been requested to travel with them to Dubai but the claimant did not need to establish her case before the judge on a standard of proof higher than the balance of probabilities.
27. The argument summarised at my para 13 v), that the judge failed to have regard to the statutory public interest in s.117B of the 2002 Act, ignores the fact that the judge found that the claimant satisfied the requirements of para 41 of the Rules as a visitor, i.e. that she is a genuine visitor and that she will leave the United Kingdom at the end of her visit. In those circumstances, I am satisfied that he took adequate account of the public interest. Para 34 shows that he was aware that the public interest in question was the maintenance of an effective immigration policy. At para 38, he said that he concluded that the respondent's decision was not proportionate taking all the circumstances in to account. It is difficult to see what else he could have said to demonstrate that he had taken full account of all that could be said on the state's side of the balancing exercise *in the particular circumstances of this case*, i.e. bearing in mind that the appeal concerned an application for entry clearance as a visitor for a

period of 15 days and that the judge found that the claimant was a genuine visitor who would leave the UK at the end of her visit.

**Decision**

The decision of the First-tier Tribunal did not involve the making of any error on a point of law. The Entry Clearance Officer's appeal to the Upper Tribunal is therefore dismissed.



Signed  
Upper Tribunal Judge Gill

Date: 16 May 2016