



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

Appeal Numbers: HU/02474/2016
HU/02475/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2018**

**Decision & Reasons
Promulgated
On 28 March 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

ENTRY CLEARANCE OFFICER - AMMAN

Appellant

and

**MOHAMED ZOUHIR MARTINI
RAJA ALHAJA
(NO ANONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Ms A Everett, a Senior Home Office Presenting Officer

For the Respondents: Mr S Muquit, Counsel, instructed by Freemans Solicitors

DECISION AND REASONS

1. The Entry Clearance Officer appeals with permission against the decision of Judge Lucas in the First-tier Tribunal allowing the claimants' appeal on human rights grounds (private and family life).
2. The claimants live in Syria and the oral and written evidence in this appeal is not in dispute. The claimants are the parents of their adult daughter, who lives in the United Kingdom with their grandchildren and manages a

property which they own in Brighton. Before the conflict in Syria, the claimants were able to make regular visits to the United Kingdom to see the sponsor and their grandchildren, and the sponsor and her family also travelled often to Syria to see her parents.

3. Until the beginning of the Syrian conflict, the claimants' daughter would send part of the Brighton property rental proceeds back to her parents in Syria, keeping some of the money for her own use, by agreement with the claimants. The evidence before the First-tier Tribunal was that transmission of funds from the daughter to the claimants is no longer possible, and that the daughter and her children are no longer able to keep up the relationship with the claimants by visiting them in Syria.
4. The First-tier Judge found, on that evidence, that family life existed between the claimants and their adult daughter and at [26] stated that "it would be surprising if this were otherwise". No authority is given for this proposition and the First-tier Tribunal decision does not engage with the *Kugathas* dependency test.

Submissions

5. For the Entry Clearance Officer, Mr Everett relied on the grounds of appeal. I did not find it necessary to call on him to elucidate further.
6. For the claimants, Mr Muquit acknowledged the normal formulation for family life as set out at [4] of *Huang* in the judgment of Lady Hale as being the spouses, parents and minor children only. I asked Mr Muquit to address me on *Kugathas* dependency, but he could only advance evidence of financial arrangements around the property in Brighton, which the claimants own, and their daughter manages.
7. Mr Muquit argued that *Kugathas* dependency was always a question of fact. That is right but the facts in this appeal do not support a finding of such dependency. The statement at [26] that there is family life between the claimants and their daughter is a plain error of fact at the level of an error of law of the kind identified at [96] in the judgment of Lord Justice Brooke in *R (Iran) v Entry Clearance Officer for the Home Department* [2005] EWCA Civ 982. I am satisfied that this error is one which would have made a material difference to the outcome of the appeal.
8. Mr Muquit asserted that the First-tier Tribunal's reasoning on private life was inadequate, but accepted that this would not assist the claimants, since Article 8 ECHR imposes no positive obligation to facilitate family reunion and had no territorial reach in this respect (see [27] of the judgment of Lord Justice Burnett, with whom Lady Justice Gloster and the Senior President of Tribunals agreed, in *Abbas v Secretary of State for the Home Department* [2017] EWCA Civ 1393).

9. The decision was set aside at the hearing and I proceed to remake it, there being no dispute as to the material facts.

Remaking the decision

10. It is not disputed that these claimants have returned to Syria at the end of previous visits, nor is it disputed that their daughter can accommodate and maintain them during a visit to the United Kingdom. The Entry Clearance Officer refused entry clearance on the basis that the claimants although they had property in Syria also had property in the United Kingdom and that the Entry Clearance Officer and indeed the Entry Clearance Manager reviewing the decision were not satisfied that they would return at the end of their visit.
11. The Entry Clearance Officer's decision is rational on its face. Although another Entry Clearance Officer might have made a different decision I cannot find that this decision is legally erroneous and therefore I set aside the decision of the First-tier Tribunal and substitute the decision dismissing the appeals.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.

I re-make the decision in the appeal by dismissing it.

Signed: [Judith A J C Gleeson](#)
2018

Date: 26 March

Upper Tribunal Judge Gleeson