



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

Appeal Number: **HU/04771/2020**
HU/04774/2020

THE IMMIGRATION ACTS

**Heard at Bradford
Via Teams
On 5 January 2022**

**Decision & Reasons Promulgated
On 10 March 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**DALAL AL ABOAISH
HEYAM HORIA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Aslam, instructed by Rea Law

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Syria who were born on 4 July 1982 and 22 October 1941 respectively. They appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer dated 6 December 2019 refusing their applications for entry clearance to settle with Rim Sheleh (hereafter the sponsor) who is the daughter of the second appellant and the sister of the first appellant. The sponsor was recognised as a refugee in the United Kingdom in January 2019. The First-tier Tribunal, in a decision promulgated

on 15 June 2021, dismissed the appellants' appeals. The appellants now appeal, with permission, to the Upper Tribunal. A further appellant before the First-tier Tribunal (Husan Aldine Al Sheleh) died in October 2021 (in so far as it is necessary to evidence his death, permission is granted, pursuant to paragraph 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, to the remaining appellants to adduce additional evidence in the form of a death certificate).

2. The parties agree that the appellants cannot succeed under the Immigration Rules. The appeal was advanced on human rights (Article 8 ECHR) grounds. There are three grounds of appeal. First, the appellants assert that the judge fell into error by failing to 'give adequate and comprehensible reasons for finding that family life did not exist.' At [18] and [19], the judge wrote:

18. In the circumstances of this case the Sponsor has her own family. She left her mother in Syria when she moved to Saudi Arabia in 2003 and thereafter, she went to the UK. On leaving Syria she left siblings there. No doubt they could have been called upon to help care for her mother. In any event her sister-in-law certainly cared for her mother and brother in on or about 2013-2014. At paragraph 13 of the Appellants' Skeleton Argument it is stated:

"In respect of the case of Ghising (family life-adults-Gurka policy) [2012] UKUT 160 (IAC) we would rely on the Upper Tribunal's view that there should not be a blanket ban on other family members that may not be the "nucleus" members of the family. Having relied on this we would also argue that a mother and brother is a nucleus family."

In the foregoing circumstances the nucleus of the Sponsor's family life quite properly is her husband and son.

19. ...it is entirely reasonable and appropriate for the Sponsor to go to Saudi Arabia with her husband and in the pursuit of the best interests of her child. I also accept that the Sponsor and her son visited the Appellants for long parts of the year while in Saudi Arabia and continue to do so after the situation developed into a war zone. The Sponsor's actions are to her credit. Her actions are that of a caring adult daughter and sibling. I have no doubt that the Sponsor continues to care while in the UK. However, none of the foregoing elevates the relationship of the Appellants and the Sponsor into what the law currently recognises as a family life. I do however accept that as a caring relative Sponsor engages a somewhat attenuated private life with the Appellants.

3. The grounds cite *Uddin* [2020] EWCA Civ 338 at [31]:

Dependency, in the *Kugathas* sense, is accordingly not a term of art. It is a question of fact, a matter of substance not form. The irreducible minimum of what family life implies remains that which Sedley LJ described as being **whether support is real or effective or committed**. [my emphasis]

4. The appellants submit that the judge, despite considering the actions of the sponsor having been 'to her credit', failed to determine whether the

relationship between her and the appellants 'real, effective or committed' and, if not, why not. The judge's reasons for finding that there did not exist a family life between the sponsor and the appellants, it is argued, are not clearly and fully articulated.

5. In an otherwise careful and thorough decision, I find that, in his consideration of the existence and nature of family life, the judge has fallen into error. At [18], which I have quoted in full above, the judge goes no further than identifying the sponsor's 'nuclear' family and, having done so, does not, as *Gissing* indicates he should, then consider whether, beyond that 'nucleus', other relationships have characteristics entitling them to Article 8 ECHR protection. Part of the ratio of *Gissing* is that 'that there should not be a blanket ban on other family members that may not be the "nucleus" members of the family.' However, having found that the appellants are not part of the sponsor's 'nuclear' family, the decision reads as if the judge did not consider it necessary to go on and determine whether her relationship with the appellants is 'real or effective or committed.'
6. I find also that Ground 2 is made out. The judge's analysis did not engage with the Home Office policy relevant to any consideration of 'exceptional' circumstances beyond the requirements of the Immigration Rules which might justify a grant of entry clearance under Article 8 ECHR (Family Policy Family life (as a partner or parent), private life and exceptional circumstances, Version 13.0, 28 January 2021). In her statement at [3] the sponsor wrote:

... they say we can just meet up in a safe third country. Firstly, I don't have a refugee travel document. My family have Syrian passports, but as everyone knows, they are not allowed to enter so many countries because they may claim asylum there or stay there and become a burden on the state. Lebanon is not accepting travel documents and they are not letting Syrians in because of the situation with Syrians in Lebanon. But I also want to say, I don't want to meet them for a short visit. I want to be reunited with the family I used to live with. I want to care for my mother who needs round-the-clock care. She wouldn't be able to travel anyway because of her health...

I accept the submission of Mr Aslam (who appeared for the appellants at the Upper Tribunal initial hearing) that the Home Office policy acknowledges that logistical difficulties preventing family members from having direct contact can render the consequences of separation unduly harsh. The judge did not engage with these difficulties, to which the sponsor refers in her statement, before reaching his conclusions.

7. At [24], the judge wrote:

Given the Appellants are living in a camp in a zone then irrespective of the nature of the medical problems that they may have it would be fair to describe the situation as being harsh. However, I remind myself that the terms of Article 8 **rights it is the rights of the Sponsor and her son that I must have regard to. [my emphasis]**

8. The appellants argue that, by focusing only on the sponsor and her son, the judge failed to have regard to the Article 8 ECHR rights of the whole family (*Beoku-Betts v Secretary of State for the Home Department* [2009] 1 AC 115).
9. The point made in the Ground 3 is strictly correct; the Article 8 ECHR rights of the whole family were engaged and the judge appears to have restricted his analysis to the sponsor and her son. However, here, as with the other grounds, I have to consider whether the judge's errors are of such significance that I should set aside his decision. Mr Diwnycz, who appeared for the Entry Clearance Officer at the Upper Tribunal initial hearing, did not seek to persuade me that the errors are not material. Even so, I have hesitated before interfering with a decision of a judge who had the opportunity of considering all the evidence and whose task was to make robust findings of fact on the evidence. Had the only errors been those set out in Grounds 2 and 3, I would have refrained from setting the decision aside. However, as regards the rejection of the appellants' claim to enjoy family life with the sponsor, I consider that the judge's reasoning is simply not clear and is incomplete. The appellants were entitled to know why they lost their appeals and, on the evidence, I find that, whilst the test of exceptionality outside the Rules is a demanding one, it cannot be said that these appeals were bound to fail. Accordingly, I set aside the decision. None of the findings of fact shall stand. There wrong in law need to be a new fact-finding exercise (which will, *inter alia*, address the changed circumstances of the appellants following the death of the sponsor's brother). That exercise is better conducted in the First-tier Tribunal to which the appeals are returned for that Tribunal to remake the decision following a hearing *de novo*.

Notice of Decision

I set aside the decision of the First-tier Tribunal. None of the findings of fact shall stand. The appeals are returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Listing Directions: first available date at Glasgow First-tier Tribunal; the First-tier Tribunal to determine whether hearing shall be face to face or remote; not Judge Peter Grant-Hutchison; 2 hours; Arabic (Syria) interpreter;

Signed

Date 6 January 2022

Upper Tribunal Judge Lane