



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

Appeal Number: OA/13793/2014  
OA/13791/2014  
OA/13792/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 August 2015**

**Determination Promulgated  
On 10 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**HOUDA ALFARROH  
EBRAHEEM AL FARROUH  
DOHA AL FARROH  
(ANONYMITY ORDER NOT MADE)**

**First Appellant  
Second Appellant  
Third Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

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

**DECISION AND REASONS**

- 1 The Appellants appeal against the decision of First tier Tribunal Judge Heynes dated 22 April 2015 dismissing their appeals against the separate decisions of the Respondent, each made on 19.10.14, refusing them entry clearance to the UK.

- 2 The Appellants are nationals of Syria. They are originally from Al Harra in the Daraa region of southern Syria, but moved to Damascus because of the civil war. The First Appellant is married to Walad Salah Al Farrouh ('the Sponsor'), a Syrian national with discretionary leave to remain in the UK valid from 8 December 2011 to 7 December 2014. The Second Appellant is their minor son, aged 14 at date of decision, and the Third Appellant is their adult daughter, aged 22 at date of decision.
- 3 Applications for entry clearance were made in August 2014 by the three Appellants notwithstanding that it was accepted that it was known that, as the Sponsor was not settled in the UK, that the First and Second Appellants could not succeed under Appendix FM, and that the Third Appellant could not be treated as a dependent of the Sponsor under the Rules, being an adult. However, the application was made on the basis that refusal of entry clearance would amount to a disproportionate and therefore unlawful interference with the family life enjoyed between the family members. The Sponsor made, on 4 December 2014, an application for further discretionary leave, and on 9 March 2015, varied that application (which had not yet been decided) to an application for indefinite leave to remain.
- 4 The Respondent refused the applications on the grounds that the rules were not met and that in the view of the Respondent, there were no sufficiently compelling considerations for a grant of leave to enter outside the Rules.
- 5 On appeal to the First tier Tribunal, the Judge held:
  - (a) there had been a considerable number of visits between the Appellants and the Sponsor, notwithstanding the difficulties in arranging them, and held that such visits still taking place so long after the sponsor came to the UK was an indication of the strength of family ties [17] (the evidence having been that between 2004 and 2011 the First Appellant had visited the Sponsor in the UK 11 times, the Second Appellant twice, and the Third Appellant once, and that the had Sponsor had visited the Appellants in Lebanon on three occasions since 2011 when they had travelled there to meet him);
  - (b) at [20], that weight needed to be given to the following factors, as set out by the Appellant's representatives, and as summarised by the Judge at [15]:
    - (i) the civil war in Syria;
    - (ii) only the immigration status of the sponsor stood in the way of a successful application for entry clearance for the First and Second Appellants (the Respondent having accepted in the refusal letter of the First Appellant that there were no issues with suitability, financial requirements, or English language requirements for the First Appellant);

- (iii) ... (the Judge did not accept that it was necessarily established that the Sponsor could not return to Syria because of his claimed problems with the security services there);
  - (iv) the Appellants have no right of residence elsewhere and it was becoming more difficult for them to meet in Lebanon;
  - (v) the Third Appellant could not be left in Syria alone in the current situation;
  - (vi) it was not in the best interests of the Third Appellant to remain in Syria;
  - (vii) the Sponsor was in a financially sound position to care for the family;
- (c) that the question for him to determine was whether the circumstances of the family were such that awaiting the outcome of an application that the Sponsor had made for ILR/requiring the Appellants to remake their applications if and when the sponsor is granted ILR, would be disproportionate [19], [21], [24] (which I find to be the same question);
- (d) the Respondent has a duty to enforce immigration control; to that end, it was legitimate to require that applications are not made until the relevant requirements are fulfilled [25];
- (e) Damascus was under the control of Government forces; the fact that the Third Appellant was, at the time of her application, studying pharmacy, was suggestive of some degree of normality, notwithstanding the strife in other parts of the country; there was no evidence that the situation in Syria had put an end to her study; the Appellants had chosen to remain in Damascus [26];
- (f) it was not disproportionate to require the applications to be made if and when the sponsor is granted ILR [27]. The appeal was dismissed.
- 6 The Appellants sought permission to appeal on the grounds that the Judge had erred in law (in summary):
- (i) in misdirecting himself in law in identifying the relevant question for determination as being whether the circumstances of the family were such that awaiting the outcome of an application that the Sponsor had made for ILR/requiring the Appellants to remake their applications if and when the sponsor is granted ILR, would be disproportionate ([21], [24], [27]); rather, the relevant question was: "do the decision under appeal constitute a disproportionate interference with the family life of the Appellants and their sponsor?";
  - (ii) in finding that there was some degree of normality for the Appellants in Damascus, had made a finding which was not supported by the evidence presented, which was undisputed, and the finding was therefore irrational; alternatively, if the evidence was disputed, no reasons had been given for the rejection of such evidence;

- (iii) failing in practice (notwithstanding his indirect reference to them at [20]), to attach weight to the factors set out at [15(i)-(ii) and (iv)-(vii)], in particular, to the best interests of the Second Appellant, a minor child; whether the Third Appellant could safely remain in Syria as a young single woman; and the fact that the Sponsor's income was said to be considerably in excess of the maintenance requirements, such that the Appellants' presence in the UK would not adversely affect the economic well-being of the UK;
- (iv) failing to make adequate findings as to why in the present case the maintenance of immigration control outweighed the Appellants' right to family life.

- 7 Permission to appeal was granted on these grounds by Judge of the First tier Tribunal Page on 16 July 2015.
- 8 In a rule 24 Response dated 29 July 2015 the Respondent defended the Judge's decision on the basis that the decision that the Appellants should await the outcome of the Sponsor's application for ILR was one which was open to him.
- 9 Before the hearing commenced before me on the day of hearing, I received a message that Mr Avery for the Respondent was without a Home Office file. I arranged for him to be provided with a spare 'core bundle' from the Upper Tribunal file; such bundle contains the Judge's decision, grounds of appeal, grant of permission, rule 24 notice, and a copy of the Respondent's bundle.
- 10 Upon the hearing commencing in the morning list, Mr Avery confirmed that he was in a position to proceed with the error of law hearing.
- 11 Upon my enquiring to Mr. Moran whether there had been any decision on the Sponsor's application for indefinite leave to remain, he confirmed that this had been granted in June 2015, although a residence card had not as yet been issued. That is a development which I cannot take into account either for the purposes of considering whether there was an error law in the Judge's decision, or in remaking the decision, if that were necessary; in an entry clearance appeal, the Tribunal is constrained to consider circumstances appertaining at the date of decision, even for Article 8 purposes; s.85A NIAA 2002 and AS (Somalia) v ECO [2009] UKHL 32.
- 12 Mr Moran, for the Appellant adopted his grounds of appeal. In relation in particular to the second ground (irrational finding that the Third Appellant's studying of pharmacy indicated a degree of normality in Damascus, he referred to page 83 of the Appellants' bundle where the Third Appellant mentions the studies that she was engaged in at that time (application dated 7 August 2014) but argued that there had been no questions put to the Sponsor, who gave evidence before the Judge, about that issue or how the Third Appellant carried out those studies.

- 13 He referred to evidence that had been before the Judge about the situation in and around Damascus, including a report of 4 April 2015 that ISIS had take over 90% of a refugee camp in the outskirts of Damascus, a few kilometres away from President al-Assad's seat of power [436-437]. I queried whether this was evidence which was relevant to the Judge's decision, post dating the date of decision by some months. However, Mr Moran referred to country information at [381]-[394] around the time of the decision which showed that fighting was take place on the 'doorstep' of Damascus, and the UNHCR report of October 2014 referred to fighting taking place in rural Damascus.
- 14 Mr Avery argued that the Judge had taken into account all the relevant considerations set out at [15] of his decision which were required to be taken into account, and had arrived at a conclusion about the 'normality' of the situation in Damascus based on the evidence that was before him, including the evidence that the Third Appellant had continued to study. The Judge had asked himself the right question, and his reference to waiting until the Sponsor had obtained ILR was merely a response to the way in which the case had been presented to him.
- 15 Mr Moran addressed me briefly by way of reply.

### **Discussion**

- 16 I find that there are material errors of law in the Judge's decision.
- 17 The grounds of appeal raise issues which interlink. In considering the Appellants' grounds (i) and (iv) together, I agree that the Judge asked himself the wrong question. The approach of the Judge, by asking whether:
- (i) the circumstances of the family were such that awaiting the outcome of an application that the Sponsor had made for ILR; and/or
  - (ii) requiring the Appellants to remake their applications if and when the sponsor is granted ILR,
- would be disproportionate, the Judge gives the impression of simply delaying a full and adequate assessment of the proportionality of the decisions refusing them entry clearance.
- 18 Further, I must respectfully disagree with the Judge when he suggests at [25] that "The Respondent has a duty to enforce immigration control. To that end, it is legitimate to require that applications are not made until the relevant requirements are fulfilled". The Appellants' grounds of appeal raise no objection to those words *per se* (Grounds, paragraph 25) but query whether the Judge has given adequate reason why in the present case the public interest outweighed the Appellants' right to family life.
- 19 However, I find that the Judge's words at [25] represent a misdirection in law. The Judge may be entitled to say that it is legitimate to normally 'expect' that applications are not made until the relevant requirements are

fulfilled, but not that it is legitimate to 'require' such a delay. The use of language at paras [21], and [24] in terms of the question that the Judge poses for himself, and the expression at [25], appearing to require an application to be delayed until the relevant requirements of the rules are fulfilled, gives the impression that the Judge is refusing the appeal against refusal of entry clearance principally on the basis that it is made outside of the rules, and that he requires an application to be made at a time when the application will come within the rules.

- 20 That rather misstates the point of the whole application, which was made outside the rules, and the application consciously requested a full consideration of the proportionality of the continued exclusion of the Appellants from the UK at the present time, notwithstanding the acknowledged fact that the Sponsor was not settled in the UK at the time of application.
- 21 I find that ground (iii), ie that the Judge errs in law in failing to have adequate regard to, or attach relevant weight to the issues set out at para 5(b)(i)-(ii) and (iv)-(vii) above, is made out. Although Mr Avery for the Respondent has sought to persuade me that by indicating at the beginning of [20] that he accepted that weight needs to be given to all of those matters, the Judge had indeed given them weight, but it is not apparent in the passages that follow thereafter that he has done so. The only specific issue that he refers to thereafter is that there was a degree of normality in Damascus.
- 22 I find that the Judge errs in law in failing to have regard to those relevant considerations. This compounds the error I have identified in [18-20] above, that the Judge gives the impression of dismissing the appeal largely on the basis that he requires the Appellants to wait to make their application until the Sponsor has ILR.
- 23 Ground (ii) stands more on its own; being a challenge that the Judge's finding of a degree of normality in Damascus, notwithstanding the strife in 'other parts of the country', is perverse. I agree with the ground, on the basis of its alternative formulation; not that the decision is perverse, but that if the Judge has had regard to relevant country information about the situation in and around Damascus, he has not given reasons which are adequate in law for dismissing it.
- 24 Noting Mr Moran's submissions on this point (see [12-13] above), I also note that the skeleton argument before the First tier, dated 8 April 2015, specifically referred at [7] to a request that the Appellants had made on 17 December 2014 for the First tier hearing to be expedited, and also refers to the evidence at [377]-[394] of the Appellant's bundle. This includes, on inspection, a witness statement of the Sponsor dated 17 December 2014 [379]-[380], and accompanying country evidence from:
  - (i) August 2014 [389], referring to fighting intensifying in the suburbs east of Damascus, daily air strikes in the suburbs outside Damascus,

and a daily barrage of rebel rockets and mortar shells being fired at the capital, Damascus, since the beginning of August, killing 45 people injuring 150, almost all civilians;

- (ii) September 2015 [387], describing rebels being 'closer to the doorstep of Damascus';
- (iii) October 2014 [385] regarding heavy fighting in the al-Ghouta region 'near Damascus'; and
- (iv) November 2014 [383] and [393] which describes heavy fighting in a Damascus suburb, Jobar, being the scene of some of the heaviest fighting the rebels holding the area have seen in the past year.

25 Further, at [39] of the Appellants' skeleton argument before the Judge, the Appellants refer to further elements of county information, eg [145]-[153], which includes:

- (i) a Human Rights Watch report dated January 2014 referring to a chemical weapons attack by government on the Damascus countryside/'areas near Damascus' in August 2013 which resulted in the deaths of hundreds of civilians;
- (ii) a BBC news report dated 17 June 2014 describing rebels having held in 2012 sections of Ghouta, the belt of suburbs and satellite towns on the perimeter of Damascus; although the rebels had since been driven back in some areas; they retain control of the area of Qaboun, a suburb of Damascus, 20 minutes from central Damascus, where fighting continues, and where shelling has damaged almost every building.

26 Although Mr Moran has not drawn my attention to objective evidence supporting the Sponsor's witness evidence that the Appellants' current accommodation in Dahadil neighbourhood was only around 1 km away from the front line with the opposition, and that neighbourhoods around them - Yarmouk, Qadam, Nahr Aisha, Darayya, and Al Hajar Al Aswad, are all the scenes of fierce urban battles (Sponsor's statement of 7 April 2014, at [18] of the Appellants' bundle), the evidence that Mr Moran has brought to my attention tends to support the Sponsor's assertions about the situation in Damascus, and the Judge described at [10] that there was little or no dispute as to fact.

27 In the light of such evidence about the situation in and around Damascus, something more, evidentially, would be required to support the apparent finding that the situation in Damascus was suggestive of a degree of normality, aside from the fact that the Third Appellant described that she had continued to study. By contrasting the situation in Damascus with strife in 'other parts of the country' the Judge draws a distinction which I find not to be real; the parts of the country where this strife is ongoing is, at best, a 20 minute journey from the centre of Damascus, and rocket and mortar attacks on the centre of Damascus were taking place around the time of the decision. The Judge erred in failing to have adequate regard to

that relevant evidence, which was specifically referred to in the Appellant's skeleton argument.

- 28 On that basis, I find that the decision of the First tier Tribunal involved the making of material errors of law, and I set it aside.
- 29 I announced that conclusion at the hearing, and I invited the parties to address me as to how the matter should then proceed. Mr Moran pressed me to re-hear evidence from the Sponsor, to hear submissions and to re-make the decision.
- 30 For his part, Mr Avery asserted that without his file of papers, he was not in a position to proceed to a re-hearing of the appeal. I pointed out that he had had an opportunity to peruse the 'core bundle' in the morning, and had been in a position to proceed with the error of law hearing. Further, Mr Moran also offered for Mr Avery to have access to his copy of the Appellant's bundle over the luncheon adjournment. There was no reason known as to why Mr Avery had not been provided with his file. I indicated to the parties that I considered it appropriate to proceed to re-hear the appeal after the luncheon adjournment.
- 31 When the matter was called on again in the afternoon, I indicated that the findings at [17] of the Judge's decision would be retained, not being vitiated by any error of law. Mr Moran called oral evidence from the Sponsor. He was asked (given that the issue had been of concern to the First tier Judge) about the Third Appellant's circumstances and how she was able to continue studying in Damascus.
- 32 The Sponsor adopted his witness statement of 7 April 2014 (which also reiterated the contents of his earlier statements). He explained through the interpreter that at the time of the application, his daughter was studying, but not continuously; she was studying at home, and going in for tests. She was unable to study continuously because there was no security - it was not peaceful; there were a lot of barriers on the way (by which I understood roadblocks). His family had moved from the home area of Al Harra two years beforehand when Al Harra was bombarded. This was 65 km away from Damascus. His daughter had not been able to attend university in Damascus regularly since the early months of 2014.
- 33 In cross examination, the Sponsor confirmed that his daughter's place of study in Damascus was about 10 km away from their current accommodation. The institution where she studied was called the European University. It was correct that she only attended for examinations. Some, 5-6, of her colleagues/friends attend and collect materials for her and come and provide these to her. He answered questions about his asylum claim in 2004; this was refused in 2005. He did not re-apply, but he kept signing/reporting. He confirmed that before the Appellants' applications in 2014, he had been meeting them in Lebanon. They had not tried to leave Syria before then because he was trying to make the application. The family had left Al-Harra in 2013, not 2012. At



that time, Damascus was a little bit safer than other parts of Syria. Later on it began to deteriorate. Places like Darra fell to terrorists - a lot of places around Damascus. There had been no fighting in the neighbourhood where they lived, but it was surrounded by a lot of fighting. He confirmed his witness statement evidence that there was fighting 1 km away.

- 34 There was no witness evidence from the Appellants directly because he was taking actions on their behalf according to what he knows. He confirmed that the Security Service had been to the house twice in 2015, the first time asking about whether his wife held the deeds to the property, and the second time they took some money.
- 35 In re-examination, the Sponsor confirmed that his normal contact with his family was by phone. He explained that some university colleagues attended college more than his daughter did - her female colleagues are targeted on the journey to university - it is the male colleagues who attend. He had not arranged for any witness statement from the Appellants because his representative had not suggested it.
- 36 In submissions Mr Avery relied on the refusal letter and the Entry Clearance manager's review of that decision. There was very little by way of direct evidence from the Appellants. The Sponsor was vague about why the Appellants had not tried to leave Syria before now. There was a degree of exaggeration about the situation in Damascus. The information indicated that the situation varied considerably from place to place. I needed to look carefully at the situation in Damascus.
- 37 On the Appellants' application for entry clearance under Article 8 ECHR, it was to be noted that the Appellants did not meet the relevant rules. The rules indicated Parliament's view as to where the public interest lies. The issue was not simply one about whether the sponsor could afford to maintain the Appellants. It was necessary to maintain public order and a fair effective immigration control. At the time of the application, the sponsor had limited leave to remain and his status was precarious. The Respondent's obligation to protect Article 8 rights in an entry clearance case was not as strong as its obligation to protect such rights in a removal case. This was the first real attempt to reunite the family since 2002, and this was relevant in the proportionality balancing exercise.
- 38 Mr Moran relied on his skeleton argument before the First tier (pages [1]-[12]), paragraph 4 in particular (this representing the series of relevant factors set out at [15] of the Judge's decision). He denied any exaggeration by the Sponsor as to the situation in and around Damascus; he could have falsely asserted that bullets had been coming through the Appellants' windows, but he did not. He referred to the evidence previously referred to in his error of law submissions. The reasons why no application for entry clearance had been made at an earlier time were that the Sponsor either did not have leave to remain at all, or his financial

position was not sufficiently strong to support the Appellants in the UK until recently. Regarding the Third Appellant' position, although she was over 18 , she was unmarried and had always lived with her mother; the situation for an unmarried young woman in Syria now would be very dangerous.

39 I reserved my decision on the remaking of the decision in these appeals.

### **Relevant law**

40 The Appellants do not come within the Immigration Rules and the decisions refusing them entry clearance are impugned on the basis that they represent disproportionate interference with their right to family life under Article 8 ECHR.

41 A five-stage approach should be taken when assessing Article 8 claims, as set out in *R v SSHD (ex p Razgar)* [2004] UKHL 27:

1. Will the proposed [action] be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
2. If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
3. If so, is such interference in accordance with the law?
4. If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
5. If so, is such interference proportionate to the legitimate public end sought to be achieved?

42 Referring to the authorities set out at paragraphs 20-24 of the Appellant's skeleton argument (and which I find the Respondent has had notice of): It has been recognised that family life may continue between parent and child even after the child has attained his majority: see *Etti-Adegbola v Secretary of State for the Home Department* [2009] EWCA Civ 1319, per Pill LJ at [23]; per Arden LJ at [35].

43 In *RP (Zimbabwe) & Anor v Secretary of State for the Home Department* [2008] EWCA Civ 825, a finding that a 23-year-old who had lived pretty well continuously with her parents and siblings all her life did not have family life with them "would have been quite unreal".

44 The ECtHR in *AA v United Kingdom* - 8000/08 [2011] ECHR 1345 refers at para 48 to paragraph 49 of the judgement in *Bousarra v. France*, no. 25672/07: [2010] ECHR 1999: a significant factor will be whether or not the adult child has founded a family of his own: "An examination of the Court's case-law would tend to suggest that the applicant, a young adult

of 24 years old, who resides with his mother and has not yet founded a family of his own can be regarded as having family life.”

- 45 It was established in *Beoku-Betts v SSHD* [2008] UKHL 39 that the effect on the entire family should be assessed when considering the proportionality of an action that interferes with family life under Article 8, not merely the effect on the applicant.
- 46 It was stated in *Huang v SSHD* [2007] UKHL 11 (at para 18) that in assessing whether Article 8 is engaged, “Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.”
- 47 Relevant to the two issues (i) the degree to which a failure to meet the immigration rules is relevant to the assessment of the proportionately of an immigration decision, and (ii) the appropriate starting point in that assessment) is the case of *SS (Congo) v SSHD* [2015] EWCA Civ 387 (23 April 2015). I understand the following points to have been made within the Court’s single judgment:
- (i) If there was a wide gap between the way in which immigration rules were framed, and the protection that was rightfully afforded under Article 8 ECHR, then the practical guidance from the rules as to public policy considerations in a proportionality balancing exercised was reduced [17].
  - (ii) On the other hand, if the rules were fashioned so as to strike an appropriate balance under Article 8, and any gap between the rules and what Article 8 required was narrow, the court will give weight to the Secretary of State’s formulation of the Rules as an assessment of what public interest required [17].
  - (iii) Following *MM v SSHD* [2014] EWCA Civ 985, there will generally be no or only a relatively small gap between the new LTE Rules as promulgated by the Secretary of State and the requirements of Article 8 in individual cases, including those involving Sponsors who are British citizens or refugees located in the United Kingdom [24]. Further, outside of the context of precarious family life or deportation: ‘...if the Secretary of State has sought to formulate Immigration Rules to reflect a fair balance of interests under Article 8 in the general run of cases falling within their scope, then, as explained above, the Rules themselves will provide significant evidence about the relevant public interest considerations which should be brought into account when a court or tribunal seeks to strike the proper balance of interests under Article 8 in making its own decision.’ [32].
  - (iv) Where the immigration rules were not satisfied, different types of cases required the presence of different factors to outweigh the public interest in the maintenance of immigration control:

- \* precarious in-country cases not involving children: exceptional factors [29];
  - \* deportation: very compelling reasons [30];
  - \* refusal of leave to remain or leave to enter cases: compelling circumstances [33], [40].
- (v) The state has a wider margin of appreciation in determining the conditions to be satisfied before LTE is granted, by contrast with the position in relation to decisions regarding LTR for persons with a (non-precarious) family life already established in the United Kingdom. The Secretary of State has already, in effect, made some use of this wider margin of appreciation by excluding section EX.1 as a basis for grant of LTE, although it is available as a basis for grant of LTR. [40].
- (vi) 'The LTE Rules therefore maintain, in general terms, a reasonable relationship with the requirements of Article 8 in the ordinary run of cases' [40].
- (vii) 'However, it remains possible to imagine cases where the individual interests at stake are of a particularly pressing nature so that a good claim for LTE can be established outside the Rules. In our view, the appropriate general formulation for this category is that such cases will arise where an applicant for LTE can show that compelling circumstances exist (which are not sufficiently recognised under the new Rules) to require the grant of such leave' [40].
- (viii) The approach to Article 8 in the light of the Rules in Appendix FM-SE should be the same as in respect of the substantive LTE and LTR Rules in Appendix FM. In other words, the same general position applies, that compelling circumstances would have to apply to justify a grant of LTE or LTR where the evidence Rules are not complied with [51].

48 Also, s.117A NIAA 2002 now provides that in determining "the public interest question", ie the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2), Tribunals and Courts must have regard to the following considerations (in a non-deport case) set out in s.117B:

"(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
- (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to—
- (a) a private life, or
  - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom."

49 It is not necessary to set out those provisions in terms in a decision, so long as it is apparent that the relevant test has been applied (Dube (ss.117A-117D) [2015] UKUT 90 (IAC)).

### **Discussion - remaking**

50 Considering the five steps in Razgar, I find on the evidence before me that there is a family life as between the three Appellants, and between the three Appellants and the Sponsor. Given the efforts that the family have gone to visit one another in difficult circumstances, this is a finding which is proper to make. I also find that the Third Appellant retains a family life with the other Appellants, and with the Sponsor, notwithstanding her age, given that the family remains in very regular telephone contact with each other, the Sponsor continues to financially support the family, and the Third Appellant is unmarried and continues to live with her family members, and applying the relevant authorities as set out at [42]-[45] above.

51 I find that the decision interferes with the Appellants' right to family life, as it has become very difficult for them to meet the Sponsor in another country. Insofar as the Respondent asserts that family life may reasonably

be expected to take place by the Sponsor's return to live in Syria, I find that this is not a sustainable argument. Even though, for the purposes of my consideration of this appeal, the Sponsor possessed only limited leave to remain, he expected to be able to apply for further leave, and an application for ILR would have faced no obvious impediment, (to borrow from the Judge's expression [23]). Given the situation in Syria as a whole, in the family's original home town of Al-Harra, and the situation in Damascus, as set out in the objective evidence set out at [24]-[25] above, I find that the Sponsor cannot reasonably be required to give up his residence and successful self employment in the United Kingdom, in order to live in circumstances in Damascus which at best could be described as perilous.

- 52 Assuming that the decisions were in accordance with the law, and were necessary in a democratic society (with a view to maintaining immigration control); I consider the 'public interest question' (s.117A(3) NIAA 2002) ie the question of whether the interference with the Appellants' right to respect for private and family life is justified under Article 8(2).
- 53 I find that the maintenance of effective immigration controls is in the public interest, and I give due weight to it (s.117B(1) NIAA 2002).
- 54 Further, although s.117B(2) NIAA provides that it is the public interest that persons seeking to enter or remain in the United Kingdom are able to speak English, the Respondent has held that the Appellants are exempt from the requirement to speak English, presumably on the basis that there is no test centre in Syria to undertake the relevant English language test. In any even one of the two stated reasons why speaking English is said to be important; because a person who speaks English is less of a burden on tax payers, is of less relevance because I find, considering s.117B(3), that the family would be financially independent; the Respondent accepts that the Appellants would satisfy the financial eligibility criteria in Appendix FM.
- 55 I take into account the provisions of s.117B(4) and (5). I find that although the Sponsor has been present in the UK unlawfully for a period of time, and later, with only limited leave to remain, weight is to be attached to his family life, which was not formed at a time when he had such status in the UK, but rather, long before; the couple have seven children. I find that s.117B(6) has no application.
- 56 I consider the guidance in SS (Congo) v SSHD, and I find that the outcome of the appeal is arrived at by considering the propositions contained within that judgment.
- 57 I find that there will be unusual cases where the family life of a person with only limited leave to remain in the UK, and his family members outside the UK, falls to be considered and respected. The rules do not make any accommodation for a person in the Sponsor or Appellants' position. I find that there is a gap between what the rules provide, and the protection that should rightfully afforded under Article 8 ECHR. Thus, the practical

guidance from the rules as to public policy considerations in a proportionality balancing exercised is reduced (SS (Congo) [17]). That gap may be narrow, however, because the Secretary of State's formulation of the Rules as an assessment of what public interest required it is likely to be intentional.

- 56 The present appeal is not amongst the 'ordinary run of cases' [40]. The Court of Appeal accepted that it remained possible to imagine cases where the individual interests at stake are of a particularly pressing nature so that a good claim for LTE can be established outside the Rules. Where the immigration rules were not satisfied, compelling circumstances need to be demonstrated to warrant entry clearance [40], [51].
- 59 I find that the circumstances of the Appellants are compelling. Their ability to enjoy family life with the Sponsor has been impeded by civil war. Neither they nor their Sponsor can live in their original home; that area was subject to a bombardment in the earlier stages of the war and is said to be held by terrorists. I have found that it is not reasonable for the Sponsor to be expected to return to Syria to attempt to live with the Appellants in Damascus. Although the Third Appellant has managed to continue her studies, the further oral evidence of the Sponsor, which I accept, having no good grounds to disbelieve him, is that his daughter's studies have been impeded by the war. I accept that safety of women in Syria is compromised and that there are legitimate concerns for the Third Appellant's safety in travelling around Damascus to study, or attempting to live alone in that city.
- 60 The family are no longer able to reunite in any third country. Their bonds are strong, but they are currently unable to see each other. Although s.55 Borders, Citizenship and Immigration Act 2009 does not apply to children outside the United Kingdom, I take the welfare of the Second Appellant into account in my decision as being one of a number of relevant considerations, and find that it is not in the best interests of the Second Appellant to remain in the situation he currently faces, which is one of continued separation from his father, and being in a position of some danger in a neighbourhood of Damascus where fighting is said to take place nearby.
- 61 Overall, I find that the continued refusal of entry clearance for the Appellants amounts to a disproportionate and therefore unlawful interference with their right to family life. Run of the mill, this case is not.

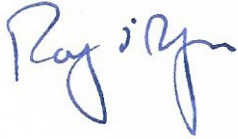
### **Decision**

- 62 (i) The making of the decision of the First tier Tribunal involved the making of a material error of law.
- (ii) I set aside the decision of the first Tier Tribunal.
- (iii) I remake the decision, allowing the appeals of the Appellants.

63 The Tribunal regrets the delay in making this decision.

Signed:

Date: 5.2.16

A handwritten signature in blue ink, appearing to read "Ray O'Ryan". The signature is written in a cursive, flowing style.

Deputy Upper Tribunal Judge O'Ryan