



IAC-AH-CO-V1

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

Appeal Number: VA/03338/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 8 October 2015**

**Decision & Reasons Promulgated
On 7 January 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MAHA MESTO KOURDI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Ms S Naik, instructed by Kadmos Consultants

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Maha Mesto Kourdi, was born on 25 November 1954 and is a female citizen of Syria. She applied for entry clearance to the United Kingdom as a family visitor and her application was refused by a decision of the ECO Abu Dhabi dated 18 May 2014. The appellant appealed to the First-tier Tribunal (Judge Nightingale) which, in a decision promulgated on 13 February 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is a retired woman. Her daughter and son-in-law are British citizens and live in the United Kingdom. The Tribunal heard evidence from the sponsor (daughter) and her husband. Although the appellant is a Syrian citizen, she has lived in Egypt since 2012. [30] The judge found that the witnesses were “wholly credible” and found that she had “no doubt as to the genuine invitation issued to the appellant to come to the United Kingdom for a temporary purpose; that is to say to spend some time with Mr and Mrs Watti [the sponsor daughter and her husband] and their children”. The parties agreed that the appeal could not succeed under the Immigration Rules but only on Article 8 ECHR grounds. The judge found that Article 8 was not engaged since there was no family life which required the protection of Article 8. The appellant now challenges that finding by reference, in particular, to the decision in *Mostafa (Article 8 and entry clearance)* [2015] UKUT 00112 (IAC) and also the decision of the Supreme Court in *Quila* [2012] 1 AC 621. The Rule 24 notice dated 12 August 2015, the respondent relies in turn upon *Adjei (visit visas - Article 8)* [2015] UKUT 261 (IAC). The respondent asserts that, in the present case, the relationship did not fall within that “narrow range of claimants” referred to in *Mostafa* [24] being husband/wife, close life partners or parents/minor children.
3. It is fair to say there is some tension between the decisions of the Upper Tribunal and *Mostafa* and *Adjei*. What is most important is the facts of each and every case are considered on their own individual merits. Moreover, it was not acceptable for Article 8 to be rejected as a ground of appeal without a proper and detailed analysis of the relevant facts by the First-tier Tribunal. In the present case, the judge appears to have rejected the Entry Clearance Officer’s concerns as to the genuineness of the intended visit or to possible suspicion cast over the visit by the “political and economic situation” which currently exists in both Syria and Egypt. The judge’s findings as regards the credibility of the witnesses was unequivocal. At [37], the judge found that “on the evidence before me I am fully satisfied that this is a genuine family visit and, indeed, that the appellant would return to Egypt after this visit...” The judge found that Article 8 ECHR was not engaged at all. She accepted that a mother would wish to spend time with her daughter and grandchildren living abroad. She accepted that the appellant would wish to “forge a closer bond” with her family in the United Kingdom; the judge considered that to be “entirely normal natural and credible.” [33]. However, the judge did not find that family life existed. She reached that conclusion by applying what she perceived to be the principles contained in the Court of Appeal judgment in *Kugathas* [2003] EWCA Civ 31. The judge appears to have considered that it was necessary for there to be a relationship for dependency in order that Article 8 was engaged between an adult appellant and an adult sponsor.
4. The relevance of *Kugathas* is, perhaps, somewhat limited in an entry clearance case; *Kugathas* was concerned with removal from the United Kingdom. In the present case, there had been visits by the appellant to her adult child and her husband and also the grandchildren whose best

interests (since they are resident in the United Kingdom) should be a matter for consideration both in the ECO's decision and the appeal before the First-tier Tribunal. Given that there was a relationship in this case between an adult (the appellant) and minor children (albeit at a distance) it is not clear to me that why the ratio of *Kugathas* should have figured so centrally in the judge's analysis. Further, the judge found at [34] that there was "nothing on the evidence before me to indicate the welfare of the three grandchildren of the appellant is suffering as a result of the decision appealed." As Ms Naik, for the appellant, submitted, this appears to ignore the positive obligation arising out of Article 8 (first articulated in United Kingdom case law in the case of *Shamin Box* [2002] UKIAT 02212) for government authorities and the courts to seek to promote family life as well as to protect it from interference. In the present case, I am not satisfied that the judge was right in law to reject the submission that Article 8 was engaged. For that reason, I have decided to set aside the First-tier Tribunal determination and to remake the decision.

5. The respondent does not challenge the very positive findings made by the judge regarding the credibility of the witness and, more particularly, the genuineness of the proposed visit by the appellant. Stepping aside from the tension created between *Adjei* and *Mostafa*, I find, on the very particular facts of this case, that there is family life between the appellant and her United Kingdom daughter, son-in-law and grandchildren. I acknowledge that visits could take place in Egypt, but I have taken account of the political and economic situation of that country and the difficulties involved in transporting an entire family on a visit to Egypt as opposed to arranging for the appellant to come to the United Kingdom. Whether or not the ability of the appellant to meet all the requirements of paragraph 41 of HC 395 (as amended) may or may not be of relevance to the outcome of the Article 8 appeal, it is clear that the public interest concerned with excluding an individual who the respondent accepts will be a genuine visitor, who will return to her country of habitual residence at the end of her visit, who will not need to rely upon public funds during her visit and who will use her visit to foster and develop relationships with minor children living permanently in the United Kingdom (thereby promoting their best interests) is a relatively minor one. On the particular facts of this appeal, I find that the decision to refuse the appellant entry clearance for her visit will cause disproportionate interference with the family life of the individuals involved. Accordingly, I remake the decision by allowing the appellant's appeal against the Entry Clearance Officer's decision on human rights grounds (Article 8 ECHR).

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 13 February 2015 is set aside. The findings of fact of the First-tier Tribunal are preserved. I have remade the decision. The appellant's appeal against the Entry Clearance Officer's decision dated 18 May 2014 is allowed on human rights grounds (Article 8 ECHR).

No anonymity direction is made.

Signed

Date 20 November 2015

Upper Tribunal Judge Clive Lane