



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: HU/25472/2016

THE IMMIGRATION ACTS

Heard at: Field House  
On: 14 August 2017

Decision and Reasons Promulgated  
On: 5 September 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MS NOUR RAAD  
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Moran, Immigration & Asylum  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Syria, born on 26 May 1990. She appealed with permission against the decision of First-tier Tribunal Judge who, in a decision promulgated on 24 March 201, dismissed her application for entry clearance to the UK as a partner of her sponsor under Appendix FM of the Immigration Rules. He also dismissed her appeal under the European Convention on Human Rights (Article 8).
2. On 7 July 2017 the Upper Tribunal found that the decision of the First-tier Tribunal involved the making of an error of law on the basis that the Judge had regard to the decision of the Supreme Court in Agyarko, which was not germane to the appellant's

case, which was an appeal against the refusal of an entry clearance. The proper approach was set out in SS (Congo) v SSHD [2017] UKSC 10.

3. Further, no consideration was given to the difficulties posed to the appellant and her husband's enjoyment of family life in Syria having regard to the fact that the sponsor is the sole custodian of his British child. The finding that there were no compelling circumstances was thus also flawed.
4. Nor did the Judge find it necessary to make any findings on the issues raised by the respondent relating to the financial requirements under Appendix FM-SE. It had been contended that the sponsor failed to produce evidence that his relevant company tax return had been filed with HRMC. Nor had he provided a certificate of confirmation from his accountant relating to his unaudited accounts and had failed to provide payslips evidencing his director's salary, covering the same period as the company tax return, as required.
5. It was directed that the decision would be remade by the Upper Tribunal. Directions were given.

#### **The re-making of the decision**

6. At the outset Mr Moran produced the evidence relating to the financial requirements under Appendix FM- SE. He contended that the documents were provided as part of the application. Mr Moran, who represented the appellant at that stage, confirmed that the documents were sent. This includes the payslips at pages 135-140 for the period covered in the period of the tax return, i.e. 1 August 2015 until 31 July 2016. There are also payslips produced at page 135. He also produced a confirmation statement dated 28 October 2016 from the senior accountant acting for Golden Rose Trading Ltd, who computed and filed the company accounts for the year ending 31 July 2016 confirming that they are correct and accurate.
7. Mr Moran noted that in the ECM review dated 1 February 2017 it is conceded that the appellant has provided a confirmation statement from her sponsor's accountant as well as a P60 for the year 5 April 2016 and payslips. However, she has not provided her sponsor's CT600. Nor does the P60 show that the appellant met the financial threshold. Nor did the payslips provided cover the tax year required under Appendix FM-SE.
8. Mr Moran stated that the CT600 had in fact been sent as part of the application. It is produced at page 21 of bundle A. With regard to the P60 during the relevant qualifying period, the income is not purely salary but also constitutes dividends which are not set out in the P60. The combined receipts for the period exceeded £24,850.
9. Mr Moran also referred to the company accounts at pages 45-55. They were for the year ended 31 July 2016 showing the amount of £16,358. The directors' remuneration was £8,500. The payslips in line with the company tax return, i.e. between 1 August 2015 and 31 July 2016 were also in fact produced.
10. Mr Moran submitted that the financial requirements had been met.

**The appellant's case**

11. Mr Moran produced the appellant's recent IELTS A1 Speaking and Listening certificate which was administered by the British Council on 24 June 2017. The appellant again failed the test on 5 August 2017.
12. Mr Abdalstar Ziab attended the hearing and gave evidence. He adopted his witness statement dated 1 September 2016 at A7-8 and his further witness statement at A2 dated 19 June 2017 (page 4-5).
13. Mr Ziab stated that he is a naturalised British citizen of Syrian origin. He married a British citizen in Damascus in 2005 and returned to the UK in March 2007 with her. They had a child together, Mohamed Japriel Ziab, born in Oxford on 17 September 2007. He and his wife separated in 2010. He obtained custody of their son who has been living with him ever since.
14. He met the appellant online through mutual Facebook friends in 2011. The relationship developed and they agreed in 2015 to be married. It took until April 2017 for the decree nisi divorce proceedings to come through. He recently discovered that he needed a decree absolute which delayed matters further.
15. He had to travel to Lebanon to meet the appellant in person for the first time and to get married. In his earlier statement he stated that he will help her submit her UK application in Beirut.
16. It is not possible for him to travel to Syria due to the war so he has not been able to spend time with her in person. However, they get on extremely well and are in love.
17. Mr Zaib stated that he has adequate accommodation in Oxford.
18. He asserted that the appellant had been unable to study English in Syria on account of the ongoing conflict and is unable to travel to Lebanon to study there as the Lebanese authorities are no longer admitting Syrians unless they have an embassy appointment or a flight ticket from Beirut. They fully intend to enrol her in English classes once she arrives in the UK.
19. Damascus is still a war zone and life is difficult and dangerous. The appellant has been trying to improve her English but is so nervous and stressed that she is finding it nearly impossible.
20. There are no face to face language courses available in Damascus. Private tutors do not want to visit people's homes because of the dangers involved in travelling around the city. This applies to the appellant. There are checkpoints everywhere and as a young woman she often gets harassed.
21. She managed to arrange language tuition through a private tutor which would take place over the telephone. She has also tried to use online learning materials. She studied for over two months but felt that she made little progress because of her nervous state of mind. She found it impossible to concentrate as she can hear shelling, rocket fire and gun

battles near her home. There are also shortages of food, water, electricity, fuel for cooking and other basic supplies.

22. Since the Tribunal's decision she has travelled on two occasions to Lebanon to meet him, namely, from 9 April to 14 April 2017 and from 25 May to 2 June 2017. He cannot visit her in Syria as it is too dangerous to go, especially with his son.
23. They were both upset when on his second visit to Lebanon she failed the IELTS Life Skills Level A1 test on 27 May 2017.
24. The appellant is simply not in a state of mind to learn a new language, much less over the phone or online.
25. If she joins him in the UK he will enrol her in a face to face language course in one of the English language institutes in Oxford. When she is in a stable environment she will be able to access proper teaching and reach the required level with relative ease.
26. They are now living apart. He cannot relocate to Syria to live with her. He is worried that she will never be able to pass the English test. He claims that his lawyer told him that nearly all his other Syrian clients over the past 4-5 years have been granted an exemption from the English language requirement on the basis that it is too difficult to learn English in Syria in the current security environment<sup>1</sup>.
27. He confirmed that the appellant has sat the test on three occasions in Lebanon. She produced evidence from the British council before entering Lebanon, including the hotel booking. This she had to show to the authorities on entering.
28. She cannot study for the test in Lebanon. This is not possible because of the restriction on Syrians residing there. Nor would she be able to stay there alone as a single woman.
29. She is currently staying with her mother and father in Syria.
30. In cross-examination he said that since the decision to refuse, two attempts have been made to take the test. She tried to qualify herself over the phone with a private tutor. He said that the English language schools in Syria are all closed. Even the British Council has not been operating since 2012. He referred to page 9 at A2 which sets out English schools in Syria as well as the British Council there. At page 12 it is noted that the British Council does not currently offer face to face teaching in Syria.
31. He referred to an email at page 16 in which a message from the appellant's solicitor concerning English language courses in Damascus could not be delivered. There are currently no language schools offering courses in English nor any websites.
32. He said that his wife has tried to obtain a private tutor to teach her English at home. The tutor said he did not wish to have to travel to people's houses. You have to pass through checkpoints. They would not want to risk themselves.

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<sup>1</sup> Mr Moran stated that he is the lawyer referred to and confirmed that this is his first case in which a person in the appellant's position has been refused entry clearance simply on the basis of the English language requirement.

33. The appellant lives in southern Damascus which is under government control. Even if you want to go from place to place, there are over 60 checkpoints.
34. He tried to find someone local to teach. However, no-one was available. They will not go to her. The people who had taught her over the phone had initially been contacted over the phone. Information was given to her by some other people.
35. Her father paid for that telephone course. There were technical difficulties using the phone including crackling. There were also difficulties in pronouncing the words properly or being able to spell them.
36. He said that before the war in 2011, they used to communicate via the internet. At present she sometimes does not even receive a text from him for over four hours. There is not sufficient electricity available for use. She only has a mobile for internet access. She does not have a computer. Nor does her father.
37. He said that even if she could obtain a computer the current service there is very poor. To download a page can take up to two hours. There are continued outages. There is electricity for one of two hours and then it can be 'shut off' for up to six hours at a time.
38. Nor could the appellant enrol in an internet language provider using her phone. You need a well run service.
39. There was no re-examination.

#### Submissions

40. Mr Tarlow stated that he relied on the reasons for refusal. He did not make any further submissions.
41. On behalf of the appellant it was submitted that evidence has been produced showing the requirements of Appendix FM-SE have been met.
42. This is a human rights appeal. The issue is whether it is disproportionate to refuse the application even assuming that some of the documents were provided after the date of decision. No issue has been taken by the respondent that the appellant in fact meets the relevant Rules and in particular Appendix FM- SE.
43. Mr Moran referred to the letter at page 46 of the bundle as well as the HMRC tax calculations for 2016-2017. For the year ended 5 April 2017 the total income received was £32,800. That is well in excess of the threshold.
44. The relationship is still subsisting. The sponsor has recently been to Lebanon where he stayed with the appellant. He was in Beirut when she took the English test recently.
45. The Rule does not specify what exceptional circumstances are. It merely states that they need to be shown. He submitted that what had to be shown was that this was 'something out of the ordinary'. The vast majority of persons are not living in war torn areas. They can enrol and take courses again. Even those who are illiterate can be expected to take courses. However, the appellant lives in exceptional circumstances.

46. Mr Moran referred to the country information and guidance at pp. 34–39 of A2. In particular the Foreign and Commonwealth office advises against all travel to Syria. British nationals in Syria should leave by any practical means. The UK has suspended all services of the British embassy in Damascus and all diplomatic staff have been withdrawn from Syria. The situation remains extremely volatile and dangerous. There is widespread fighting throughout Syria including Damascus and its suburbs. Full scale military operations involving the use of small arms, tanks, artillery and aircraft are ongoing. The most recent estimates suggest that over 470,000 people have been killed in the Syrian conflict including over 55,000 children. The Syrian government no longer exercises control over large parts of Syria, notably in the north, south and east of the country. Areas of Eastern Syria are under the effective control of Daesh which is fiercely hostile to the United Kingdom.
47. He submitted that to insist in those circumstances that the appellant should attempt to obtain a course via the internet, is not to the point. The level of stress in the country means that the appellant’s nerves are likely to be frayed.
48. These are all exceptional circumstances. He referred to the Home Office guidelines. All the English language schools are closed. The appellant has made efforts. She has attempted to obtain a visa for two and a half years.
49. This is a case where there are compelling circumstances justifying consideration of her Article 8 claim outside the Rules. The appropriate response is to grant her leave to enter on the basis of her relationship. Family life cannot realistically take place elsewhere.

### Assessment

50. I have set out the evidence informing this appeal in some detail. The issue is whether or not the appellant has met the English language requirements set out in E-ECP.4.1. The applicant must provide the specified evidence that she is exempt from the English language requirement under paragraph E-ECP.4.2.
51. For the purpose of this appeal the appellant is exempt from that requirement if, at the date of application, there are exceptional circumstances which prevent her from being able to meet the requirement prior to entry to the UK. There is no definition of exceptional circumstances in this paragraph.
52. I have had regard to the relevant IDIs on Appendix FM relating to an application for an exemption from the English language requirement. This will be considered on its merits on a case by case basis.
- The applicant must demonstrate that as a result of exceptional circumstances they are unable to learn English before coming to the UK or it is not practicable or reasonable for them to travel to another country to take an approved English language test.
  - Evidence of the nature and impact of the exceptional circumstances must be clearly provided, e.g. of previous efforts to access learning materials or to travel overseas to

take an approved test and the obstacles to doing so. This must include evidence provided by an independent source capable of being verified by the decision maker.

- Examples of situations in which, subject to the necessary supporting evidence, the decision maker might conclude that there were exceptional circumstances, might include where the applicant is a long term resident of a country in international or internal armed conflict or where there has been a humanitarian disaster including in light of the infrastructure affected.

53. I found the evidence of the sponsor to be essentially credible and in accordance with the background evidence referred to.
54. The evidence provided on behalf of the appellant revealed that as at the date of the resumed hearing the appellant continues to live in a war zone in Syria. I have referred to the background evidence including the FCO advice against all travel to Syria contained in the latest update on 31 May 2017.
55. The situation remains extremely volatile and dangerous. There is widespread fighting throughout Syria including in Damascus and its suburbs. The government no longer exercises control of large parts of Syria, notably in the north, south and east.
56. There has been no contention that the assertions made by the sponsor as to the conditions operating in Syria are in any way exaggerated. The sponsor was questioned during cross examination as to the availability to the appellant of alternative means of learning English so as to be able to take the test successfully.
57. The appellant has attempted on three separate occasions to sit the relevant English language test in Beirut, including a very recent attempt. She has failed on each occasion. During the occasions when she attempted such tests in Lebanon, her sponsor has joined her.
58. I have also had regard to the background material produced relating to the current availability of appropriate language schools in Damascus. I am satisfied that such a facility is no longer realistically available. I have also had regard to attempts made by the appellant to receive tuition by telephone in order to enable her to take the tests successfully. However, the difficulty has been that the telephone crackles and that it is also difficult to follow correct pronunciations.
59. The appellant has no access to any computer and has no access to the internet. Even if learning English online were a realistic possibility, the position is that there are regular and consistent outages when electricity is not available, often lasting for periods of up to five to six hours at a time.
60. The appellant does not have a computer. She has a mobile phone. It is not realistic to expect her to be able to learn English over the telephone.
61. The dangerous situation in Syria continues. Having regard to the FCO report there is no reason to believe that this position will change.

62. The appellant has made efforts to learn English. However, I accept that in the current circumstances which are likely to continue, it is unlikely that she will be able to make sufficient progress to pass the test. On the other hand, if she resides in the relative calm of the UK she will be able to apply herself and concentrate on passing the appropriate English test which she would be required to do in any event after two and a half years before seeking to renew her visa.
63. I find that in the light of the continuing dangers and the situation in Syria in which there is internal armed conflict, that the appellant has shown that she is exempt from the English language requirements and that there are exceptional circumstances preventing her from being able to meet the requirements prior to entry to the UK.
64. The representatives agreed that there should be an assessment made under Article 8 of the Human Rights Convention in accordance with the questions set out by Lord Bingham in Razgar.
65. I am satisfied that family life exists between the appellant and her sponsor. I answer questions 2, 3 and 4 in the affirmative.
66. I accordingly consider whether the decision of the respondent to refuse a grant of entry clearance application constitutes a disproportionate interference with her right to respect for family life.
67. The appellant's sponsor, Mr Ziab, has custody of his son, Mohamed, who is a British citizen. He was born in the UK and attends school here. It is neither reasonable nor realistic to expect him to relocate in the current circumstances prevailing in Syria.
68. Moreover, neither the appellant nor her sponsor have any right of residence in any third country, including Lebanon.
69. The appellant will be properly accommodated and maintained in the UK. The public interest in her ability to speak English is capable of being achieved after she arrives in the UK.
70. Having regard to the circumstances as a whole, I find that the proposed interference of the respondent constitutes a disproportionate interference with her right to respect for both her and her husband's family life in the UK.

### **Notice of Decision**

The appeal is allowed on human rights grounds (Article 8).

No anonymity direction is made.



Signed

Date 2 September 2017

Deputy Upper Tribunal Judge C R Mailer