



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

**Appeal Numbers:  
HU/01500/2020 (UI-2022-000110)  
HU/01501/2020 (UI-2022-000111)  
HU/01503/2020 (UI-2022-000112)**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On the 22 July 2022**

**Decision & Reasons Promulgated  
On the 12 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MUNTAHA HAMIDI  
MERAL AL OKLA  
LIMAR AL OKLA**

Respondents

**Representation:**

For the Appellants: No appearance

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Ms Hamidi's appeal, and that of her two daughters, against the respondent's decision to refuse them entry clearance to the UK under Appendix FM of the Immigration Rules on the basis of their family life with the sponsor.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms Hamidi and her daughters as the appellants, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellants, a mother and her two daughters born on 4 August 2015 and 31 December 2016 respectively, are citizens of Syria. They applied on 27 November 2019 for entry clearance to join the first appellant's father-in-law and the second and third appellants' grandfather, Ahmad Okla Al Okla, a Syrian national with refugee status in the UK. It was claimed by the appellants that the first appellant's husband, and the father of the second and third appellants, had passed away and that they had no family able to take care of them and support them. The respondent refused the applications on 7 January 2020. With regard to the first appellant, the respondent considered that she could not meet the requirements of the immigration rules for adult dependent relatives, that there were no exceptional circumstances resulting in unjustifiably harsh consequences under GEN.3.1 and GEN.3.2 of Appendix FM and that there were no compassionate factors justifying a grant of entry clearance outside the immigration rules. With regard to the second and third appellants, the respondent considered that they could not meet the requirements of paragraph 319X of the immigration rules and that there were no compassionate factors justifying a grant of entry clearance outside the immigration rules.

4. The appellants appealed against the respective decisions and their appeals were heard together by First-tier Tribunal Judge Cole on 29 October 2021. It was conceded before the judge that the appellants could not meet the requirements of the mainstream immigration rules and that the relevant consideration was whether they could succeed on Article 8 grounds outside the rules. The judge had regard to the chronology of events leading to the separation of the appellants and the sponsor, noting that they had fled Syria together as a family unit, including the sponsor's son (the first appellant's husband) and lived together in Lebanon. They all applied to the UNHCR for resettlement. The sponsor and his wife and three of his children were resettled and brought to the UK. They hoped that the sponsor's son and the appellants would join him shortly after, but that did not happen. The family could not afford to remain in Lebanon without the sponsor and they then returned to Syria after six months and the sponsor's son (the appellants' husband/ father) was killed in May 2019. The sponsor continued to support the appellants financially.

5. The judge found that the appellants continued to have a protected family life with the sponsor and that the refusal of entry clearance interfered with that family life. Turning to the question of proportionality the judge, having regard to the dangerous and unstable situation in Syria and the risks faced by the appellants in Syria, and having found that the appellants could not realistically continue their family life in safety anywhere other than the UK, concluded that there were exceptional circumstances which rendered refusal of entry clearance a breach of Article 8 because it would result in unjustifiably harsh

consequences for the appellants. He concluded that the appellants' circumstances outweighed the public interest and that the respondent's decision to refuse entry clearance was not proportionate and was in breach of Article 8. He accordingly allowed the appeals.

6. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge failed to apply the correct weight to the public interest when undertaking the proportionality balancing exercise and failed to correctly consider the public interest factors in section 117B of the Nationality, Immigration and Asylum Act 2002.

7. Permission was granted in the First-tier Tribunal and the matter came before me for a hearing. There was no appearance on behalf of the appellants. It was noted that their previous solicitors were no longer representing them, but the Notice of Hearing appeared to have been properly served on the solicitors prior to their withdrawal and therefore the appellants would have had notice of the date, time and place of the hearing. In the circumstances I considered there to be no reason for the appeal not to proceed.

8. Mr McVeety made brief submissions. He accepted that the judge did not have to refer to section 117B specifically, but he submitted that the nub of the respondent's case was in relation to the judge's findings on public benefits as there was no evidence to show how the sponsor could support the three appellants. Having said that, Mr McVeety agreed that the case was finely balanced and that there were strong matters in favour of the appellants. He accepted that this was not a decision that a judge could not have come to, but that the question was whether the judge had adequately considered all negative factors in the proportionality balance.

## **Discussion**

9. It seems to me that this is simply a case of the respondent disagreeing with the weight the judge accorded to various factors and with his conclusions on the proportionality balancing exercise. It cannot be said that the judge failed to conduct a proportionality balancing exercise, when that was precisely what he did from [34] to [55]. It cannot be said that he failed to consider the section 117B public interest factors, when he clearly did, noting at [35] that the appellants' inability to meet the requirements of the immigration rules was a very weighty and significant matter. Neither can it be said that the judge failed to consider the economic well-being public interest factor in section 117B, when he clearly did, at [51] and [52], where he had regard to the sponsor's financial circumstances. Mr McVeety conceded that a failure to refer to the appellant's ability to speak English was not a material failing in itself.

10. The judge was fully aware that the question of recourse to public funds was the weakness in the appellants' side of the balance, but he was perfectly entitled to conclude that the strong compassionate and other factors in the appellants' favour outweighed that negative aspect. Indeed, whilst he found at [35] that the requirements of the immigration rules were not met, that was

clearly a reference to the 'mainstream' immigration rules to which he referred at [20], whereas his conclusion at [53] was effectively that the requirements of GEN.3.2 and GEN.3.3 of Appendix FM were met. Furthermore, the judge's conclusion that the balancing exercise had to be resolved in the appellants' favour was based upon the very specific circumstances of their case and the very compassionate circumstances including the risk of serious harm they faced in Syria and the fact that the second and third appellants were children whose best interests lay in being safely reunited with the sponsor in the UK. As Mr McVeety conceded, and as the judge found at [53], this was a finely balanced case with strong compassionate factors in favour of the appellants. It was on that basis, and having given careful consideration to the negative factors, that the judge found the balance ultimately to favour the appellants. That was a conclusion which was cogently reasoned and was fully and properly open to the judge. Accordingly, I find no error of law in his decision.

## **DECISION**

11. The Secretary of State's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. I do not set aside the decision. The decision to allow the appeals therefore stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Dated: 26 July 2022