



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003199
HU/00107/2022**

THE IMMIGRATION ACTS

**Heard at Field House
On the 21 December 2022**

**Decision & Reasons Promulgated
On the 23 January 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**AQ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: No representation

For the respondent: Ms Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants or their family. This direction applies to, amongst others, all

parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. This is an appeal against the decision issued on 11 May 2022 of First-tier Tribunal Judge Suffield-Thompson which dismissed the appellant's appeal against the refusal of entry clearance.
2. The appellant is a national of Syria and was born on 7 November 2004.
3. The appellant applied for entry clearance with his mother on 7 September 2021. At that time the appellant was a minor. The application was made under paragraph 319X of the Immigration Rules on the basis of family life with Mr AAQ who is the older brother of the appellant. AAQ had come to the UK and been recognised as a refugee. The materials indicate that the appellant's mother was unwell at that time and, sadly, that she died prior to a decision being made on entry clearance.
4. The application was refused as the appellant was not found to have met the Immigration Rules. It was not accepted that the appellant and the sponsor were related as claimed. The sponsor was granted indefinite leave to remain (ILR) in 2019 so was no longer a refugee, the status required under paragraph 319X. There was insufficient evidence showing that the sponsor supported the appellant financially. It had not been shown that maintenance and accommodation was available in the UK. The appellant's circumstances did not show that the refusal of entry clearance would breach Article 8 ECHR.
5. The appellant's case before the First-tier Tribunal was that even though he could not meet the maintenance and accommodation requirements of the Immigration Rules, his circumstances were such that refusal of entry clearance was a disproportionate interference with his rights under Article 8 ECHR. He was alone in Syria. His father had been imprisoned by the Syrian regime because of his work as a journalist. The appellant was at risk from the authorities because of his relationship to his father. His mother had died of cancer during the period of the entry clearance application. He was related as claimed to his brother in the UK and had been supported by him. He maintained that there were serious and compelling family or other considerations which made his exclusion undesirable and suitable arrangements would be made for his care. He maintained that his circumstances showed that it would be disproportionate to refuse entry clearance.
6. The decision of the First-tier Tribunal focussed almost exclusively on whether the provisions of paragraph 319X were met. The First-tier Tribunal accepted in paragraph 25 that the appellant and sponsor were related as claimed. The sponsor did not have the required status for paragraph 319X, however, having been granted ILR in 2019. There was insufficient evidence that the sponsor was sending meaningful financial support; see

paragraphs 29 to 31. There was no adequate accommodation; see paragraph 32.

7. The First-tier Tribunal then went on to make an assessment under Article 8 ECHR outside the Immigration Rules. That consideration is set out in paragraphs 34 to 36:

“34. In considering Article 8 of the ECHR, I bring forward all of the findings that I have made above.

35. In approaching a Human Rights appeal, I apply the five-stage approach recommended by Lord Bingham in **Razgar [2004] UKHL 27**.

36. I find that the Appellant does not have a family and/or private life in the UK such that he meets the test for an assessment as set out in **Razgar** outside the Rules.”

The appeal was then dismissed in paragraph 37.

8. The appellant appealed against that decision and was granted permission by the Upper Tribunal on 21 September 2022. The main thrust of the grounds, drafted by the sponsor, were that the decision failed to take into account the serious compelling circumstances in which the appellant was living.
9. The sponsor did not attend the hearing on 21 December 2022. However, the respondent conceded that the decision of the First-tier Tribunal disclosed errors of law such that it had to be set aside to be remade in the First-tier Tribunal. There was no consideration of whether the appellant could have met an alternative Immigration Rule, paragraph 297, as provided for by R v IAT and another ex parte Kwok On Tong [1981] Imm AR 214. The Article 8 decision lacked any reasoning, in particular as to why there was no family life between the appellant and sponsor and why the appellant’s evidence of his very difficult circumstances in Syria could not show that the decision was disproportionate. Where he was still a minor at that time, there was no reference to his best interests under s.55 as required by Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088(IAC).
10. Having considered the respondent’s concession, it was my conclusion for the same reasons that the decision of the First-tier Tribunal contained errors of law such that it had to be set aside to be remade and that the extent of the remaking required this to take place in the First-tier Tribunal. The finding that the appellant and sponsor are related as claimed is preserved.

11. Notice of Decision

12. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade afresh in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 21 December 2022

