



IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) UT case no: **UI-2022-003528 & 003529**

(FtT no: HU/55082/2021 & HU/55083/2021)
IA/12678/2021 & IA/12689/2021

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
on 15 February 2023

Decision Issued
On 4 April 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AYCHA & SAFAA ALOBIED
(no anonymity order)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr U Aslam, of Mukhtar Legal, Solicitors, Glasgow
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are adult sisters, citizens of Syria, living in Iraq. Their brother, "the sponsor", also an adult, is a refugee in the UK.
2. On 7 August 2021, the ECO refused to grant the appellants entry clearance, because their relationship with the sponsor did not fall within the terms of the immigration rules for refugee family reunion, and no exceptional circumstances or compassionate factors were found to justify leave outside the rules.
3. FtT Judge Farrelly dismissed the appellants' appeals by a decision dated 29 May 2022.

4. The appellant sought permission to appeal to the UT on grounds which are quite fully developed over their 5 pages. In summary, the grounds are:
 - (1) incorrect or inadequate reasons at [20-21] for giving little weight to a psychological report about the sponsor;
 - (2) no account taken at [25] of evidence of the extent of family life among the appellants and the sponsor; and
 - (3) no adequate or comprehensible reasons for saying at [29] that “the proportionality of the respondent’s decision must be viewed in the context of their [*the appellants*]’ society”.
5. On 18 July 2022 FtT Judge Roots gave permission, on the view that the first ground showed arguable error in giving the report no weight, but without limiting the grant.
6. Mr Aslam drew attention to *KF and others* (entry clearance, relatives of refugees) Syria [2019] UKUT 00413 (IAC). The relevant part of the headnote states:
 1. ... the starting and significant point in applications for entry clearance is the Article 8 rights of the sponsor or others in the UK. A fact sensitive analysis is essential.
 2. There is no blanket prohibition on the relatives of refugees other than a spouse and/or children.
 3. As was made clear in *Agyarko* [2017] UKSC 11 the purpose of the Immigration Rules is to enable decision makers to understand and apply the appropriate weight to be given to the public interest. That the appellants in an application for entry clearance do not meet the Immigration Rules is an adverse factor.
7. It is also worth noting that when turning to remake the decision in *KF* (in favour of the appellants), the UT set out “some important starting points”:
 14. First, it is the sponsor's rights under Article 8 which are engaged. It is he, and only he, who is in the UK. By Article 1 of the ECHR the UK undertook 'to secure to everyone within [its] jurisdiction the rights and freedoms defined in section 1 of this Convention'. Those rights and freedoms include, of course, Article 8. There are certain exceptions where the Convention has an extra-territorial reach, but none of them is relevant in the present context. As Ms Meredith [*counsel for the appellants*] submitted, there are cases where Article 8 has been held to require the admission of someone who is outside the UK, but that is because their exclusion would be an impermissible interference with the private or family life of a family member who is in the UK –see for instance *Secretary of State for the Home Department v Tahir Abbas* [2017] EWCA Civ 1393. We do not therefore agree with Ms Meredith that the Appellants themselves have Article 8 rights for present purposes since they are all in Jordan.

8. Mr Aslam turned to ground 1.
9. The FtT's decision deals with the medical report at [20 - 21]:

20. In this context I have regard to *JL* (medical reports-credibility) China [2013] UKUT 00145 (IAC) and the recent decision of *HA* (expert evidence; mental health) Sri Lanka [2022]UKUT 00111. The latter cautioned that an individual might wish to fabricate or exaggerate symptoms for their own benefit or in this case, a third party. The case emphasises the importance and the situation of GP records as painting a broader picture than a what's app meeting. The psychologist was of the view there was no exaggeration or manipulation of responses. Against this is it notably he had never assessed psychological therapy and no relevant medical records were considered.

21. I do not see anything in this report which indicates the consultant has stepped aside from what the sponsor is telling them to really assess the genuineness of the account. Instead, there appears to be an acceptance as a starting point.

10. Mr Aslam referred to *HA* at [148] where the UT noted that the expert had taken the appellant's word at face value without cross-reference to accessible medical records, and had in reality "assumed the role of advocate for the appellant"; at [159], where it was said to be naïve to discount the possibility of fabrication or exaggeration to defeat removal; and [160], where GP records were thought to be capable of painting a broader picture. He submitted that the present case is different because the expert did not overlook available records, but recorded that there were no records to consult; she considered why that was; she explicitly considered the possibility of exaggeration; and the sponsor was not seeking to avoid removal, being recognised as a refugee.
11. Mr Aslam also said that after discussing the report at [20 - 21], the Judge did not mention it further under his heading of "conclusions" at [24 - 34].
12. On ground 2, Mr Aslam said that it was not clear on what basis the FtT conducted its proportionality assessment. The Judge found that family life existed within the scope of article 8 but also appeared to find the appellants to have family life with other family members. He failed to mention the evidence of the strong nature of their family life with the sponsor. There was a lack of clear and specific findings. At [29] the Judge was "open to the possibility" that the appellant's father used force against them, which was not a finding at all.
13. Mr Aslam submitted that it was difficult to know what the Judge meant by the final sentence of [29], which is challenged in ground 3; and so the decision did not explain the basis on which proportionality was resolved.
14. Drawing the grounds together, Mr Aslam said that the decision was "all over the place" in terms of consideration of the psychological report, findings made or omitted, evidence overlooked, and the legal tests

applied, to the extent that it should be set aside, and the case remitted for an entirely fresh hearing.

15. Mr Mullen submitted as follows. The first sentence of [21] was a misstatement of the expert's role, but that did not matter, because the Judge's analysis found the report neutral. There was no need to take further account of it, as it was not capable of strengthening the article 8 claim. The appellants had their father, mother, and other siblings in Iraq. They appeared to live as part of one family household while some siblings had their own families. The appellants and the sponsor were all adults who had lived apart for many years. He did not appear to have tried to bring them to the UK until over 5 years after he was recognised as a refugee. The last sentence of [29] is opaque, but not a legal error. The appellants effectively tried to run an article 3 claim based on their difficulties in Iraq, which was simply not open to them. The final assessment of article 8 at [32] was brief but adequate. The decision should stand. Alternatively, if set aside, the case should be retained for further decision in the UT, as there was no need for further evidence or fact-finding.
16. I reserved my decision.
17. Mr Mullen's submissions tended towards arguments on the substantial merits, or lack of merits, of the claim, rather than on whether the FtT adequately resolved it. His submissions also hinted, without going quite that far, at an argument that this was a claim which could not realistically have succeeded.
18. Although parties in their submissions agreed that the Judge did not return in his conclusions to the psychological report, on closer reading I do not think that is quite right. At [32] the decision says:

It was suggested the appellants' presence would help the sponsor's mental health. However, I note he is in employment and had been in a relationship for a number of years albeit it is now at an end. I take the point made but find it adds little weight to the overall proportionality assessment.
19. The Judge was perhaps not assisted by the case being advanced at least as vigorously on the benefit to the appellants, being progressively minded young women, of escaping an oppressive paternalistic and authoritarian environment, as on the sponsor's article 8 rights. Those aspects are inter-linked, but whether pitched in terms of article 3 or article 8, the appellants' difficulties were unlikely to amount to a right of entry to the UK. The more relevant matter was how such factors played upon the sponsor.
20. I note the following passage in the psychological report:

[53] ... the risk of re-traumatisation occurs with "subsequent exposure to repeated upsetting reminders, subsequent adverse life events and financial or other trauma related losses". The present stressors associated with Mr

Obied's anxiety and panic in relation to the safety of his sisters in Iraq is increasing the risk of re-traumatisation.

[54] If the family reunion application is denied then Mr Obied would be at increased risk of being re-traumatised in terms of the PTSD and he would experience an exacerbation of his present depression.

[55] If the family reunion application is successful then I would expect recovery from the adjustment disorder with anxiety within 6 months.

21. The first sentence of the decision at [21] is not entirely wrong, in the way that Mr Mullen suggested. The genuineness of evidence is for a Judge to resolve, but it is well recognised in case law that evaluation of an account is a fundamental aspect of a practitioner's expertise. Paragraph [21] as a whole finds that the report was undermined in the same way as in *HA*, by failure to consider medical records and by an uncritical approach.
22. The possibility of exaggeration is not removed by the fact the sponsor has status and is seeking an advantage for his sisters.
23. The other criticisms made by Mr Aslam are well founded. There were no contradictory GP records to uncover. Exaggeration was considered. The report was not fundamentally flawed, as it was in *HA*. The Judge might have been entitled to find that it did not carry much weight in the final balance, but his specific reasoning does not stand up to scrutiny.
24. Ground 1 is made out.
25. Family life is essentially a question of fact. Beyond the paradigms of spouses and of parent and child, such as among adult siblings, something more than normal family ties, in the broad sense, is required for purposes of article 8 protection. The appellants appear to live with their mother and father and at least one other brother and one sister. There is mention in the evidence of the sponsor having nine sisters.
26. The decision at [25] finds that there has been "some dependency" and "on balance that family life exists" between the appellants and the sponsor, but "to a limited extent given their separation", and that they also have family life "where they are with their parents and siblings".
27. At [28] the Judge asks if there is a real risk of the appellants' human rights being breached. In light of *KF*, to which Mr Aslam correctly drew attention, it is dubious whether that was the correct question.
28. It was crucial to the appellants' prospects of success to obtain a finding of family life, for article 8 purposes, with the sponsor. There is also the difficulty, if they have family ties of similar or greater extent where they are, of finding disproportionate interference.
29. Ground 2 discloses a lack of analysis of the extent and nature of family life.

30. This is a matter which cuts both ways. Mr Aslam did not ask for the finding on family life, to the extent it is positive, to be preserved. His ground asks for further consideration of the extent of family life, which I do not think could sensibly be restricted by the vague findings in the decision. Clearer findings might operate either for or against the appellants' case.
31. Ground 3 is also well taken. Representatives agreed that the passage challenged has no clear meaning. If it is a reference to the ECHR being territorial rather than a world-wide guarantee of standards, that would be correct. To the extent that it seems to apply standards of another country in a proportionality exercise, that is highly doubtful.
32. This was an unusual and challenging case for the appellants to make, going beyond rules and policy on reuniting refugees in the UK with their relatives abroad; but it was not impossible. Mr Aslam's submissions on the 3 grounds, taken together, show that the FtT's resolution of the case cannot safely stand.
33. As to further procedure, I have considered part 3 of the Practice Direction and paragraph 7 of the Practice Statement; the general principle of retention in the UT; *AEB* [2022] EWCA Civ 1512; *Begum (Remaking or remittal)* Bangladesh [2023] UKUT 00046 (IAC); and representatives' submissions.
34. Further decision needs to begin with clear findings on the existence, extent, nature, and location of any family life the appellants have with other adults, and the extent and nature of any interference which the respondent's decisions cause with the private and family life of the sponsor. That is a primary exercise which should be undertaken by the FtT.
35. The decision of the FtT is set aside. It stands only as a record of what was before the tribunal. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the case is remitted for a fresh hearing, not before Judge Farrelly.
36. No anonymity direction has been requested or made.

Hugh Macleman

20 February 2023
UT Judge Macleman