



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-003093
UI-2023-003094-003095-003096-
003097
UI-2023-003098-003099-003100-
003101
UI-2023-003102-003103-003104

First-tier Tribunal Nos:
HU/54818/2022, HU/54819/2022
HU/55785/2022, HU/55784/2022
HU/55783/2022, HU/55782/2022
HU/54820/2022, HU/59274/2022
HU/55627/2022, HU/59278/2022
HU/55628/2022, HU/55629/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 October 2023**

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE MANUELL**

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**MN, MNN, SN, NN, ZN, KN, MNN, NN, MN, MN, MN, KN
(AMONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer
For the Respondent: Mr R Spurling, instructed by Times PBS Ltd

Heard at Field House on 13 October 2023

Although this is an appeal by the Entry Clearance Officer, we refer to the parties as they were in the First-tier Tribunal.

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants and/or any member of their family, likely to lead members of the public to identify the appellants and/or any member of their family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants are nationals of Afghanistan. The first appellant is married to the second appellant and they have four children. The seventh appellant is married to the eighth appellant and they have four children. The second and seventh appellants are brothers. The appellants applied for family reunion with the sponsor, the sister of the second and seventh appellants. The sponsor has indefinite leave to remain in the UK and is married to a British citizen. The sponsor and her husband have four children.
2. The respondent refused the applications under the immigration rules and because there were no exceptional circumstances which could or would result in a breach of Article 8. The appellants' appeals against the refusal of entry clearance were allowed by First-tier Tribunal Judge Wyman ("the judge") on 12 June 2023 on human rights grounds.
3. The respondent appealed on the grounds the judge erred in law and used Article 8 as a general dispensing tool. The grounds state:

"It is submitted there is no evidence of a family life between the appellants and sponsor such as to amount to an interference with the Article 8 rights of those concerned. GEN 3.2 is engaged where there is established family life being interfered with, there is no evidence of additional ties between the sponsor and his (sic) adult brothers and their families. In the absence of such additional ties Article 8 is not engaged (Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31)."
4. Permission was granted by First-tier Tribunal Judge L.C. Connal on 26 July 2023 for the following reasons:

"In the determination, the issue of whether there is family life between the sponsor, her brothers, and her brothers' wives and children, is considered at [69] to [76]. In an otherwise careful and considered determination, it is arguable that the Judge failed to provide adequate reasons for the finding that there was family life between the appellants and the sponsor for the purposes of Article 8, particularly in light of the Judge's careful assessment of the evidence in those paragraphs (I note that it may also be arguable that the Judge failed to make such a finding at all, in light of that stated at [76], namely (my emphasis), "...I accept that there may be family life between the sponsor and the appellants"). Permission to appeal is therefore granted."

5. The judge found the sponsor and her husband were credible witnesses and their oral evidence was supported by some of the documentary evidence. She found the appellants were related to the sponsor and went on to consider family life at [69] to [75]. At [76] the judge concluded:
“In the case of EM (Lebanon) v SSHD [2008] UKHL 64, Lord Bingham stated that “families differ widely in their composition...there is no pre-determined model of family life to which Article 8 must be applied. “ On this broader definition of family, I accept that there may be a family life between the sponsor and the appellants.”
6. At the start of the hearing, Ms Ahmed applied to amend the respondent’s grounds. There was no objection from Mr Spurling who accepted the ‘amended grounds’ clarified the grounds of appeal and dealt with the grant of permission. We accepted the amended grounds amplified the grounds upon which permission was granted and therefore permission to amend was not required.

Respondent’s submissions

7. Ms Ahmed relied on the grounds of appeal and her ‘amended grounds’. In summary, Ms Ahmed submitted the judge wrongly applied EM Lebanon given the judge’s limited credibility finding and subsequent negative observations. The judge had made adverse findings and therefore [37] of EM Lebanon could be distinguished on its facts and its context.
8. Ms Ahmed submitted there was no clear finding at [76] that family life was established. She referred to Uddin [2020] EWCA Civ 338 and submitted there was no presumption of family life. The appellants had to demonstrate real, effective or committed support from the sponsor. Ms Ahmed submitted the judge misdirected herself in law in finding that GEN 3.2 applied in the absence of a finding that family life existed between the appellants and the sponsor. She invited the Tribunal to remake the decision today and dismiss the appellants’ appeals.
9. In response to the appellants’ submissions set out below Ms Ahmed submitted that although the judge cited Kugathas she failed to properly apply it to the facts given her negative observations and findings on the evidence before her. She accepted the test in Uddin was the same as that in Kugathas and submitted the judge failed to apply that test.
10. Ms Ahmed submitted the judge made clear adverse findings on the limited evidence of financial support and contact. The judge’s finding that there ‘may’ be family life demonstrated the judge had failed to resolve this issue and the judge erred in law in relying on GEN 3.2. She submitted that EM Lebanon did not apply to this case. The judge failed to give adequate reasons for why it applied given her negative observations and adverse findings.

Appellants’ submissions

11. Mr Spurling submitted the grounds amounted to disagreements with the judge’s findings. There was no lack of reasoning because it was apparent from [89] and

[90] of the decision that the judge found Article 8 was engaged and there were exceptional and compassionate factors. The judge's reasoning was sufficient to show why the appeal was allowed and the respondent's refusal of entry clearance was disproportionate. The reasons given engaged with the relevant facts and law and the judge reached rational conclusions. The decision was not perverse.

12. Mr Spurling referred to several paragraphs of the decision in support of his argument and submitted the decision had to be read as a whole. At [64] the judge found the sponsor and her husband were credible witnesses. This was a broad finding and was not undermined by what the respondent referred to as negative observations. The judge found that the oral evidence was supported by some of the documentary evidence. The judge's subsequent findings describe the evidence and the judge noted the limitations of that evidence. However, she did not find that this undermined the credibility of the oral evidence. She did not reject the evidence of the sponsor and her husband at any point.
13. Mr Spurling submitted the judge stated what the appellants' evidence showed or failed to show and why it was not helpful. The judge did not reject the appellants' evidence. There were negative observations but the judge did not make adverse findings on the evidence. She found that the money sent by the sponsor to the appellants was unusual in the circumstances which went to show that there were more than normal emotional ties.
14. The evidence at [38] of continued and committed support for the appellants by the sponsor if visas were granted supported the positive credibility findings. Mr Spurling submitted we should not rely on the respondent's submission on EM Lebanon. The judge's reliance on EM Lebanon at [76] was to the effect that family life 'comes in different shapes and sizes' and was consistent with Uddin.
15. Mr Spurling submitted the judge's finding that there 'may' be family life was based on a proper application of the burden and standard of proof, the balance of probabilities. The test was not certainty and the judge did not reject the appellants' submission that family life existed between them and the sponsor. The respondent had taken this sentence at [76] out of context.
16. The judge did not reject the appellants' evidence of financial support, contact and credible evidence from the sponsor and her husband. The judge set out the correct test to be applied: Kugathas and applied the correct standard of proof. She concluded there was family life notwithstanding the difficulties she identified in the evidence.
17. Mr Spurling submitted the risk from the Taliban was relevant to the judge's balancing exercise and it was apparent from [83] that the judge found Article 8 was engaged. He submitted the judge found there were more than normal emotional ties in this case and none of the case law relied on by the respondent undermined that finding. The judge did not take into account irrelevant matters or disregard relevant matters. The judge properly considered GEN 3.2 and there was no error of law in the decision to allow the appeal under Article 8.

Conclusions and reasons

18. We are persuaded by Mr Spurling’s submissions. The grounds of appeal amount to a disagreement with the judge’s findings and disclose no material error of law. When read as a whole, the judge found that Article 8 was engaged. She properly directed herself in law and she took into account all relevant matters. The decision was open to the judge on the evidence before her.
19. The grounds do not allege the judge took into account irrelevant matters or failed to consider relevant matters. The grounds do not submit the decision is perverse. The respondent submits the judge failed to apply the correct test in Kugathas and failed to give adequate reasons.
20. It is apparent from [20] and [72] that the judge properly considered the relevant test. We are not persuaded by the respondent’s submission that the judge cited the test and did not apply it because the judge made clear findings why there were more than normal emotional ties at [73] and [74].
21. The judge was well aware of the deficiencies in the evidence and acknowledged this was a difficult case. She did not make adverse findings. She found the sponsor and her husband were credible witnesses and considered their evidence in the context of the documentary evidence. There was no error of law in the judge’s approach or assessment of the evidence.
22. We do not accept that the judge made adverse findings. She accepted the oral evidence and found the documentary evidence limited but supportive. She considered the totality of the evidence and found that Article 8 was engaged.
23. The judge’s finding at [76] that there ‘may’ be family life did not amount to an error of law. There was no misapplication of [37] of EM Lebanon which states:
“Families differ widely, in their composition and in the mutual relations which exist between the members, and marked changes are likely to occur over time within the same family. Thus there is no pre-determined model of family or family life to which article 8 must be applied. The article requires respect to be shown for the right to such family life as is or may be enjoyed by the particular applicant or applicants before the court, always bearing in mind (since any family must have at least two members, and may have many more) the participation of other members who share in the life of that family. In this context, as in most Convention contexts, the facts of the particular case are crucial.

The judge applied this broader definition of family life and made clear findings at [83] and [89] that Article 8 was engaged.

24. We find the judge took into account all relevant matters and considered the evidence in the round. She made sustainable findings of fact, properly directed herself on the burden and standard of proof and applied the relevant test of ‘more than normal emotional ties’. We find there was no misdirection in law and the judge gave adequate reasons for her conclusions.
25. We remind ourselves of Sicwebu v SSHD [2023] EWCA Civ 550 at [49]:
“Appeals to this court from the Upper Tribunal are limited to appeals on a point of law: see section 14(1) of the Tribunals, Courts and Enforcement Act 2007. Absent an error of law, the appeal must be dismissed. Furthermore, as a specialist fact-finding

tribunal, this court should not rush to find an error of law in the decision of the tribunal simply where it might have reached a different conclusion on the facts: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49, [2008] 1 AC 678 at paragraph 30. I have borne these principles in mind when considering the impugned decision in this case.”

26. Accordingly, we find there was no material error of law in the decision dated 12 June 2023 and we dismiss the respondent’s appeal.

Notice of Decision

The appeal is dismissed

J Frances
Judge of the Upper Tribunal
Immigration and Asylum Chamber
16 October 2023