IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2023-005461**
& UI-2023-005462
FtT No: IA/12678/2021
& IA/12679/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11th of June 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AYCHA & SAFAA Al OBIED

Appellant

and

Entry Clearance Officer

Respondent

For the Appellant: Mr U Aslam, Solicitor
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 29 May 2024

DECISION AND REASONS

1. The appellants are citizens of Syria, living in Erbil in the Independent Kurdish Region (IKR) of Iraq. They are the adult sisters of Mr Salih Al Obied, whose refugee status in the UK was recognised in 2015. They applied on 10 March 2021 for entry clearance to join the sponsor, which was refused on 7 August 2021. They accept that their relationship with the sponsor is not within the terms of the immigration rules for refugee family reunion. Their case, outside the rules, is that refusal of entry clearance breaches their and the sponsor's right to family life in terms of article 8 of the ECHR.

2. The appeal was dismissed by the FtT, then remitted, and again dismissed by FtT Judge Bell in her decision promulgated on 17 October 2023.

3. The 3 grounds of appeal to the UT are incorporated into and developed in the skeleton argument filed on 22 May 2024.

4. Ground 1 is that at [23], dealing with delay in applying from 2015 to 2016, the Judge failed to have regard to all relevant considerations, in that she both inferred that the sponsor was indifferent to the appellants' situation, and exaggerated its seriousness, without taking account of psychological and psychiatric reports; failed to have regard to his claims to have suffered from mental illness; and might otherwise have come to a different view on (i) the significance of delay, (ii) the existence, nature and extent of family life between appellants and sponsor, and (iii) the harshness of the appellants' situation in Iraq.

5. Ground 2 is that at [32] the Judge failed to apply the correct test on family life and failed to give adequate and comprehensible reasons for finding that it did not. The reasoning at [25 – 32] is summarised and said to imply that the decision is based on not being satisfied that "the appellants and sponsor were dependent on each other, in the sense of requiring each other's support". The submission continues:

> No doubt those considerations militate against a finding that family life exists. However, there is no requirement for a pre-flight family unit. Nor is there any absolute rule that family life cannot exist between an adult sibling who has formed an independent family unit and an adult sibling who remains within the family home. Nor yet, is there any absolute requirement for dependency, at least in the financial sense.
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> As Sir Ernest Ryder SPT explained in *Uddin v Secretary of State for the Home Department* [2020] 1 WLR 1562, at paragraph 31, "The irreducible minimum of what family life implies remains that which Sedley LJ described [in *Kugathas*] as being whether support is real or effective or committed".
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> It is respectfully submitted that there is no suggestion that that test was applied by the FTTJ.

6. The Judge is said to have concentrated "almost exclusively on factors that militated against the existence of family life" of family life.

7. Ground 3 challenges the proportionality assessment at [37] for error in overlooking evidence of risk of re-traumatisation of the sponsor if his sisters are not admitted to the UK, overlooking their claims of abuse by their father and brother, and in taking the appellants to have UNHCR recognition in Iraq, when the evidence was that they had expired leave as visitors.

8. Mr Aslam accepted that the case firstly depended on the finding of no family life being set aside on grounds 1 and 2. He argued that if so, the alternative proportionality assessment was also flawed, as shown by ground 3. The case had been fully advanced and there was no material change of circumstances. The decision should therefore be set aside and,

as further set out in the written submission, the outcome should be reversed.

9. Mr Mullen submitted that while everything possible had been advanced for the appellants, there was nothing wrong in the FtT's decision. Standing back, the reality at the heart of the appeal was that there had not been a family unit including the appellant and the sponsor for many years before he became a refugee. He lived an independent life from around 2001 – 2002. While family life might "come and go" over time, there was little to show that it had been reconstituted among the appellants and the sponsor. Medical reports on the sponsor were no explanation for the application not being made until 2021. That delay further weakened such family life as there might have been. The finding that adult siblings with no significant history of living together did not have a right to do so in the UK was adequately explained.

10. Mr Aslam in reply said that the requirement for pre-flight family life was in the rules, not within article 8; the family life was firstly interrupted only because the sponsor left Saudi Arabia to fulfil his military service obligation in Syria in 2001 – 2002; the evidence was undisputed that when he was with the family he saw to his sisters' breakfasts, readied them from school, intervened against their being married off, and so on; given his traumatic history and medical condition, delay was understandable; and the public interest did not weigh strongly against the entry of the appellants.

11. I reserved my decision.

12. Ground 1 does not show that the tribunal at [21 – 23] gave any more weight to delay than it was entitled to do. The sponsor has had psychological difficulties, and was not always aware of their extent. There was little or nothing, however, to translate those problems into an explanation for not pursuing reunion with family members.

13. There was nothing wrong with noting at [21] the appellant's explanation that he wanted his sisters to settle down first and to be sure it was safe "for them to be outside the family and traditions" – which might be thought to be a significant choice of phrase.

14. The delay is also the reason at [23] for taking the claim of abuse within the family in Iraq as exaggerated, which is again well within reason.

15. Ground 1 probes closely and disagrees, but discloses no legal error.

16. Ground 2 fails to show that the tribunal went wrong on a fine distinction of the legal test for family life. There is no meaningful difference between asking whether family members "depend on each other, in the sense of requiring each other's support" and asking whether their mutual support might be described as "real" or "committed" or "effective".

17. The resolution of this issue turned not on a fine analysis of the case law but on a realistic appraisal of a matter of fact and degree.

18. The finding that on the overall facts of this case the three adult siblings do not have family life within the protection of article 8 was within the tribunal's rational scope, and is not shown to be less than adequately explained.

19. Alternatively, if error were to be shown on this issue, I would have come, based on all the evidence and submissions, to the same conclusion. The appellants have lived all their lives with their mother, father, and other siblings. They are adults, with a readily understandable wish to leave Iraq and settle in the UK, and they have a significant bond with the sponsor; but it is not one which amounts to family life, protected by article 8.

20. If the case reached the stage of ground 3, I would not find that the tribunal overlooked anything material in its proportionality assessment. The risk of "re-traumatisation" is that the sponsor has to live with the knowledge of his sisters not having the right to come to the UK, but that is long-standing reality. His sisters' situation in Iraq is not all they might wish, but there is no error in the finding of an element of exaggeration. Their exact status in Iraq is not a turning point.

21. In the further alternative, giving those further matters such weight as they deserve, I would find that the refusal of entry clearance is not disproportionate.

22. Mr Aslam for the appellants has assiduously and thoughtfully advanced everything that might be said, both in the FtT and in the UT; but the FtT's resolution of the case is not shown to err on any point of law.

23. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
3 June 2024