



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/05089/2014**

Appeal Numbers:

OA/05090/2014

OA/05093/2014

THE IMMIGRATION ACTS

Heard at Field House

On 25th January 2016

**Decision & Reasons
Promulgated
On 4th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR MOHAMMED ALHALABI
MISS SAMAYA SAMAYA ALHALABI
MISS AYAH ALHALABI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Jacobs (Counsel)

For the Respondent: Ms K Pal (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellants' appeals against decisions to refuse them entry clearance to join their mother, a refugee in the United Kingdom, were dismissed by a First-tier Tribunal Judge in a decision promulgated on 20th January 2015. That decision was set aside, as containing material errors of law, in a decision promulgated on 20th January 2016. The decision came before me on 25th January this year to be remade. Certain findings of fact made in the First-tier Tribunal, which were not in issue, were preserved.
2. The critical question, for the purposes of the Immigration Rules ("the rules"), is whether the appellants formed part of their mother's family unit at the time she fled Syria and so fell within paragraph 352D(iv) of the rules.
3. Mr Jacobs relied upon the skeleton argument he prepared in readiness for the error of law hearing in November 2015. A bundle of documents relied upon by the appellants contained a short witness statement made by the appellants' mother, in which she set out the extent of the contact she has maintained with them since arriving in the United Kingdom and details of journeys to visit them in Lebanon in 2014, Turkey in July 2015 and again in Lebanon in October that year and copy documents regarding her travel arrangements and a substantial number of "WhatsApp" messages, in Arabic and (largely) in English translation. The messages recorded contact between each of the appellants and their mother. Also before me were photographs, amounting to 30 in all, showing the appellants with their mother during the visits she made to Turkey and Lebanon.
4. The appellants' sponsor, Ms Fatima Abdou, gave evidence. I was satisfied that she and the interpreter, Mr A Kachou understood each other in Arabic (Middle Eastern) and they confirmed to me that this was so.
5. Mr Jacobs opened the case by recalling the findings of fact made by the First-tier Tribunal which were not in issue. The appellants lived with Ms Abdou from their birth in Syria until 2009. Ms Abdou and the children were then separated following her divorce, Syrian law awarding custody of the children to their father as they were teenagers. Ms Abdou attempted to stay in contact with the children before fleeing Syria and re-established contact following her arrival here. The children moved to the care of their maternal grandmother in 2011. Ms Abdou maintained her stance that the children's father disappeared, the First-tier Tribunal judge making an adverse finding in this context. In any event, it appeared from the available evidence that the children's father agreed that they should leave Syria to be with their mother.
6. Ms Abdou adopted the witness statement she made on 20th January 2016. In it, she described three visits made to see her children since she arrived in the United Kingdom. The first was to Lebanon in 2014 and there were two visits the following year, to Turkey in July and Lebanon in October. Ms Abdou said that the children still lived with her mother. She then explained the photographs, which showed her with each of her children

during the visits. Mr Jacobs numbered each of the photographs as they were placed before Ms Abdou and added a short description. I have recorded the numbers and summarised the description of each item in the Record of Proceedings.

7. Ms Abdou said that she has many photographs but was only able to obtain copies of the ones she brought along. Her telephone contained a lot of them.
8. The “WhatsApp” records in the bundle showed telephone contact with her children. She would speak to them every day so long as the internet was available, talking to them until the internet “dropped down”. The most recent telephone call was at 3 a.m. on 25th January 2016 (the day of the hearing). The records showed the names of each of her children and “Fufu”, Ms Abdou herself.
9. In cross-examination by Ms Pal, Ms Abdou said that she maintained contact with her children by the same means prior to 2015, when the records in the bundle began. Ms Pal asked why there were no transcripts of earlier conversations. Ms Abdou replied that she had brought papers to court but was unable until recently to obtain translations. It was her mother who brought the children to Turkey and Lebanon for the visits. The children were now back in Syria, living with her mother.
10. There was no re-examination.
11. In submissions, Ms Pal said that the key issue was whether the children formed part of their sponsor’s family unit when she left Syria. The decisions to refuse entry clearance were before the Tribunal. The ECO was not satisfied on the evidence which accompanied the application. The evidence of the visits and the substantial level of contact between the appellants and their sponsor had substantial weight and bore on both the critical question under the rules and the extent of the family life claimed.
12. Mr Jacobs said that there was indeed family life and the evidence of the visits and contact shed light on the circumstances as they were when the appellants’ sponsor fled Syria and when the applications for entry clearance were made. It was not in issue that by 2011, the children were residing with their maternal grandmother and their sponsor fled Syria in November that year. The children were with their mother’s side of the family. As noted in the error of law decision, this left open the question of whether paragraph 352D(iv) applied, notwithstanding the adverse findings made by the judge in dismissing the appeals. The family unit survived divorce and the impact of the discriminatory Syrian code. The evidence showed that there was a strong maternal bond. The children were only apart from their mother for a short period of time, between 2009 and 2011, when they returned to her side of the family. The evidence showed that she made attempts to contact them although the extent of those attempts was doubted by the First-tier Tribunal judge. The fact that the

entry clearance applications were made at a time when the children lived with their maternal grandmother also pointed to the survival of the family unit.

13. Guidance was given in BM [2007] UKIAT 00055. A purposive construction of paragraph 352D was required and the benefit of that paragraph was not limited to children who lived in the same household as the refugee. In the present appeal, there was no evidence suggesting any cessation of responsibility on the part of the appellants' mother and the separation of mother and children was a consequence of the custody award under Syrian law. Access was very difficult. The divorce clearly did not displace the family unit. The appellants did not suggest that the divorce code was persecutory but it clearly was discriminatory. The custody order in their father's favour could not lawfully be a bar to the operation of paragraph 352D. In any event, it appeared that the appellants' father supported the entry clearance applications. The appeal fell to be allowed under paragraph 352D of the rules and, alternatively, under Article 8.
14. At the end of the hearing, I announced my decision to allow the appeals under the rules.

Findings and Conclusions

15. In these appeals, the burden lies with the appellants to prove the facts and matters they rely upon and the standard of proof is that of a balance of probabilities. As these are entry clearance appeals, the Tribunal may consider only the circumstances "appertaining at" the time of the adverse decisions, by virtue of section 85A of the 2002 Act, preserved for these purposes. Entry clearance was refused in each case on 20th March 2014, those decisions being upheld following a review in August that year, the overseas post concluding that the appellants were not part of their sponsor's family unit at the time she left Syria.
16. Ms Abdou's evidence, the photographs and the "WhatsApp" records all show the extent of the contact maintained by the appellants' sponsor with her children since her arrival in the United Kingdom. The evidence shows an entirely natural, and strong, maternal relationship which does indeed, as Mr Jacobs submitted, shed light on the circumstances "appertaining at" the date of refusal of entry clearance.
17. As noted above, the key question is whether the appellants formed part of their mother's family unit at the time she fled Syria in November 2011. Taking into account the findings of fact made by the judge which were not in dispute and adding to the picture the evidence before me, I conclude that the children were part of Ms Abdou's family unit at the relevant time. The children lived with their mother from birth until 2009 and were then separated from her in consequence of her divorce from their father and the award of custody to him. The country evidence before me, which included the United States' State Department Report on Syria, shows (and

it has not been disputed by the Secretary of State) that Syrian law is discriminatory in this regard.

18. In any event, by 2011 the children were placed with Ms Abdou's mother, who provided essential support to enable the entry clearance applications to be made from Lebanon. The evidence before the First-tier Tribunal was that Ms Abdou made determined efforts to maintain contact with her children. The judge made an adverse finding regarding this part of the case but, even giving due weight to his finding that the whereabouts of the appellants' father is probably known, the evidence simply does not show that Ms Abdou gave up responsibility for her children or that she and they were separated to such an extent that she played no part in their lives or had a very reduced role. Taking into account the movement of the children to Ms Abdou's mother in 2011 and the clear engagement in their lives during the applications for entry clearance, I find that the appellants did form part of her family unit prior to her flight from Syria, for the purposes of paragraph 352D(iv) of the rules. As is clear from BM, this is a question of fact and the benefit of the rule is not confined to children who have lived in the same household as a refugee. The reduction in contact between the appellants and their mother between 2009 and 2011 was, I find, not a matter of choice at all. It was a consequence of the divorce and the discriminatory code.
19. The appeal is allowed under the rules. There is no need to consider Article 8 in any detail, save that I accept Mr Jacobs' submission that the evidence does show family life and, as the requirements of the rules are met in relation to family reunion, refusal of entry clearance would plainly be a disproportionate step.

Notice of Decision

The appeal is allowed under the Immigration Rules.

Anonymity

No anonymity direction has been sought and none is made.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal, I make a fee award, exercising powers available to the First-tier Tribunal, in respect of any fee which has been paid or is payable in these proceedings.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell