



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002381
First-tier Tribunal No:
HU/00485/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 December 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SAFAA AI HAJ ALI
(no anonymity order)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

Heard at Edinburgh on 22 November 2023

DECISION AND REASONS

1. The appellant is a citizen of Syria. At the time of her appeal hearing in the FtT she was living in Turkey. She is estranged from her husband. She has two minor children, living in Lebanon. Her father, mother and an adult brother are refugees, living in Scotland.
2. On 4 December 2020 the respondent declined to grant the appellant entry clearance, either under the immigration rules or under article 8 of the ECHR, outside the rules.
3. FtT Judge P A Grant-Hutchison dismissed the appellant's appeal by a decision promulgated on 22 November 2021.
4. On 3 February 2022, FtT Judge Robinson refused permission to appeal to the UT, partly on the view that the Judge correctly found that only article 8 rights of family in the UK applied, as the appellant's representative had accepted.
5. On 24 October 2022 UT Judge O'Callaghan granted permission: ...

3. Paragraph 1(i) of the grounds of appeal, relying upon the admissibility decision of the Strasbourg Court in *Khan v. United Kingdom* App. No 11987/11, (2014) 58 E.H.R.R. 2 SE15, at [27], and the Court of Appeal judgment in *Secretary of State for the Home Department v. Abbas* [2017] EWCA Civ 1393, [2018] Imm AR 319, at [16], is arguable.

4. The agreement of the appellant's representative to the approach adopted by the First-tier Tribunal, as identified at [8] of the decision, should properly be addressed before the Upper Tribunal at the error of law hearing.

5. Permission to appeal is granted on all grounds.

6. The FtT's approach at [8] was that the appeal "only applied to the article 8 rights of the sponsor and his family in the UK". Although brought about by the appellant, that understanding of the law is, at least, problematic.
7. The further grounds disclose a crucial deficiency in the decision. It contains no clear finding on whether the appellant's relationship with her relatives in the UK, all being adult, amounts to family life within the scope of article 8.
8. The SSHD concedes, correctly, that the decision errs in law and cannot stand.
9. It is unnecessary to resolve matters further at this stage, particularly in light of information provided at the hearing. The appellant's representatives understand from the sponsor that the appellant recently arrived (unlawfully) in the UK. She is thought to be in London and to have instructed solicitors there, but she has not updated her instructions to her representatives in these proceedings.
10. It seems likely that the appellant's status will be resolved with the respondent in some other form, and unlikely that the present appeal remains a useful vehicle. While the matter is up to the appellant, and her advisers, once she updates them, it may well be advisable to withdraw it.
11. As matters stand, the decision of the FtT is **set aside**, and the case is **remitted** for a fresh hearing before another Judge.
12. The appellant is **directed**, within 14 days of the date this decision is issued, to notify the FtT of her current whereabouts, and her position on continuing with these proceedings.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 November 2023