



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000877
First-tier Tribunal No:
HU/53531/2023
LH/05874/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ABDULLAH ABO KHAROUB
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Jegaraja, Direct Access.

For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 13 August 2024

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Young-Harry ('the Judge'), promulgated following a hearing at Birmingham on 6 December 2023, in which the Judge dismissed the appellant's appeal against the refusal of an application for leave to enter the UK as an adult dependent relative pursuant to Appendix FM of the Immigration Rules dated 17 February 2023.
2. The Judge was somewhat hindered in the decision as a result of the failure of anybody to attend on the Appellant's behalf.
3. The Appellant is a citizen of Syria born on 1 January 1940. Having considered the evidence provided the Judge sets out findings of fact from [7] of the decision under challenge.
4. At [8] the Judge writes:
 8. The appellant relies on his family life with his son the sponsor in the UK. The sponsor has provided supporting evidence to show the appellant is financially dependent on the sponsor. Accordingly, I find despite their adult relationship, I accept the appellant has shown he is dependent on the sponsor. In line with

Kugathas [2003] EWCA Civ 31, I accept that more than normal emotional ties exist between the appellant and sponsor. I accept therefore, the appellant shares family life with the sponsor. Accordingly, Article 8 is engaged.

5. At [14 - 16] the Judge writes:
 14. On considering the limited evidence provided, it would appear that with the practical and financial help of the sponsor and his 12 siblings, 4 of whom the sponsor claims are in the UK, I find the appellant could receive the required level of care he needs. Accordingly, I find the appellant fails to meet the requirements of the rules, I find this carries significant weight on the respondent's side of the balance.
 15. Having considered the circumstances in this case, I do not find there are any circumstances over and above the rules which tip the balance in the appellant's favour. The appellant's siblings in the UK can arrange regular visits and maintain contact.
 16. In conclusion, I am not satisfied the appellant has shown that his rights to a family life, outweigh the weight I attach to the public interest. I find the respondent's decision, does not amount to a disproportionate interference with the appellant's Article 8 rights.
6. The Appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 5 March 2024. The operative part of the grant being in the following terms:
 2. Ground [1] asserts the Judge erred in law by failing to consider relevant evidence that the conflict and humanitarian crisis in Syria continues to impact the quality and availability of health services. There is some merit in this assertion. The skeleton argument refers background information on the availability of healthcare (see appeal bundle, page [268]) yet there is no indication that such evidence was considered by the Judge in the proportionality assessment.
 3. Ground [2] asserts that the Judge failed to adequately consider refugee family reunion principles. I consider there is also merit in this ground. Again, the skeleton argument sought to rely on the Respondent's policy, UNHCR guidelines and relevant caselaw, namely KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413, yet the Judge does not refer to those documents in her decision. Further, she finds the Appellant's relatives can arrange regular visits (see paragraph [15]) but it is not clear whether the Judge envisaged such visits would take place in Syria and, if so, whether she considered the fact that relatives recognised as refugees from Syria cannot be expected to travel there. 4. As such, the grounds have identified what is at least an arguable error of law. Permission is granted on both grounds.
7. Although there was no attendance in person before the Judge the evidence provided did include the skeleton argument prepared by Ms Jegaraja which makes reference to the material referred to in Ground 2.
8. As there was no Rule 24 reply the Respondent's view was sought from Mr Lawson at the outset of the appeal. He confirmed the appeal was not opposed. He accepted there was merit in the Grounds pleaded when one considers the contents of the determination and apparent failure to refer to or factor that material into the proportionality assessment, which amounted to procedural unfairness material to the decision.
9. On that basis I set the determination aside.
10. In relation to the future management of the appeal, in light of the procedural unfairness, which is material to the decision under challenge, I find there can be

no preserved findings. In light of extensive fact-finding required and having considered the Presidential Guidance in relation to the remitting of appeals, and guidance provided by the Upper Tribunal in case law, I find it is appropriate in all the circumstances for the appeal to be remitted to the First-tier Tribunal at Birmingham.

Notice of Decision

11. The First-tier Tribunal materially erred in law. The decision is set aside.
12. The appeal shall be remitted to the First-tier Tribunal sitting at Birmingham to be heard by a judge other than Judge Young-Harry on the first available date, subject to the availability of Ms Jegaraja.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 August 2024