



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/14679/2013  
OA/14680/2013  
OA/14781/2013  
OA/14783/2013  
OA/14784/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 26<sup>th</sup> August 2014**

**Determination Promulgated  
On 3<sup>rd</sup> September 2014**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**ENTRY CLEARANCE OFFICER - ABU DHABI**

**Appellant**

**and**

**MOHAMMED ISHAQ  
MADINA ABDUL QAHER  
MOHAMMED OMAR  
ABDUL QAHIR MOHAMMED  
BIBI SOFIA**

**Respondents**

**Representation:**

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer  
For the Respondents: Mr Williams, Andrew Williams solicitors

## DETERMINATION AND REASONS

1. This is the Entry Clearance Officer's appeal against the decision of Judge Robson made following a hearing at Bradford on 23<sup>rd</sup> May 2014.
2. The background to this case is as follows. The Sponsor, the husband of the fifth Appellant and father of the first four Appellants, came to the UK in 2000 from Afghanistan and was granted indefinite leave to remain as a refugee on 8<sup>th</sup> February 2001. He lost contact with his family for some time but it was resumed in or around 2006. The Sponsor took advice in 2007 and applied for entry clearance for the family. The application was refused and subsequent appeal dismissed on the basis that the Immigration Judge was not satisfied that the Sponsor had proved a relationship with his wife and children. DNA evidence has subsequently shown that they are related as claimed.
3. The Sponsor became a British national in 2009. Tragically, in 2010, his eldest son was killed by a bomb blast, and another child wounded and he decided that the best course of action was for the family to leave Afghanistan and relocate to Dubai. He set up a business there called the Kandahar General Trading Company Limited and, by virtue of that business, he was able to successfully apply for a family residence permit in Dubai which was granted on 28<sup>th</sup> September 2010.
4. The present application for entry clearance was refused on the grounds that he had not provided the specified evidence to show that he earned an income of £37,397 from his newsagents business.
5. The judge accepted that in all respects, save for the production of the specified evidence, the Immigration Rules were satisfied. However, because there was a missing bank statement in the relevant year he was unable to allow the appeal under the Immigration Rules.
6. He did however allow the appeal on Article 8 grounds. He took into account the relevant case law and accepted the submission that the family's continued existence in Dubai was wholly dependent on the residence permits and they could not be guaranteed in the future. It was significant that the Sponsor had left Afghanistan for political reasons and that the family had suffered the disaster of the eldest son being killed by a bomb blast on 26<sup>th</sup> April 2010, and another son being injured in that incident. He considered that there were compelling and exceptional circumstances in this case which should be considered when applying Article 8 outside the Immigration Rules.

### The Grounds of Application

7. The Entry Clearance Officer sought permission to appeal on the grounds that the judge had failed to give adequate reasons for findings on a material matter.

8. First the Appellants have not lived with the Sponsor since he fled in 2000 and therefore no family life has been conducted in the UK.
9. Second he could continue to visit the Appellant in Dubai as he has done so far and there are no insurmountable obstacles to him going there. Article 8 does not of itself guarantee a person's right to live in the UK and the Tribunal has speculated that the permanent residence permits would not be guaranteed in Dubai in the future. The judge had insufficient regard to the Rules and not followed the proper approach as set out in Gulshan [2013] UKUT 00640 and Nagre [2013] EWHC 720 (Admin).
10. Permission to appeal was granted by Judge Lewis for the reasons stated in the grounds.

### **Submissions**

11. Mrs Pettersen relied on her grounds and submitted that the judge had erred in speculating as to the family's medium and long-term future in Dubai. He should have focused on the circumstances as at the date of decision and at the present time the family have residence permits in Dubai.
12. Mr Williams submitted that it was open to the judge to consider the precarious nature of the family's residency in Dubai, that the judge had properly followed the relevant case law and given adequate reasons for his decision.

### **Findings and Conclusions**

13. The grounds amount to a disagreement with the decision. Although the Appellants have not lived with the Sponsor since he fled in 2000 family life is presumed between husband and wife and parent and child. It does not appear to be in dispute that the Sponsor visits his family in Dubai and on the evidence has arranged his affairs with their safety and welfare in mind.
14. The fact that the Sponsor could continue to visit the family in Dubai was an argument in favour of the Entry Clearance Officer's position but not an argument that the judge was bound to accept.
15. Plainly the circumstances of this family are capable of being considered to be exceptional and compelling. The Sponsor has been recognised as a refugee. His application for family reunion was refused on what turns out to have been a mistaken premise, namely that the family were not related as claimed.
16. The situation of the family in Dubai is uncertain. They have no right to residence there. Given that they have already lost a child and another has been injured, they would understandably be very reluctant indeed to return to Afghanistan, and anxious about the prospect of being made to do so in the future.

17. Although Mrs Pettersen submitted that the judge had in practice adopted a near-miss approach, that is wrong. He did not allow the appeal simply on the basis that there was a missing bank statement but properly took into account all of the relevant matters, as he was required to do, including, unsurprisingly, the distressing history of this family.
18. The Entry Clearance Officer has not established any error of law in the judge's approach.

**Decision**

19. The judge's decision stands. The Appellants' appeals are allowed.

Signed

Date

Upper Tribunal Judge Taylor