Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06340/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 13 April 2015	**on 17 April 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, BEIRUT

Appellant

and

SAMIRA CAS YOUSEF
(no anonymity order requested or made)

Respondent

Representation:
For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr D Byrne, Advocate, instructed by Drummond Miller, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Syria whose date of birth is recorded as 1 January 1952. Under cover of a letter dated 12 February 2014 from her solicitors she sought clearance to enter the UK for family reunion with a refugee recognised in the UK. The application was made along with one by her brother. The sponsor is her brother's wife. She is a recognised

refugee in the UK. The application said that the appellant had lived with the sponsor in a family unit in Syria before the sponsor fled to the UK and that she was a single female with no children or other family of her own and no family members left in Syria. She asked for her application to be allowed under the Rules or under Article 8 of the ECHR.

3. The Entry Clearance Officer granted the application by the appellant's brother, but refused hers by a decision dated 25 April 2014, for the following reasons. She had not provided sufficient evidence about her personal and financial circumstances. As she claimed to live currently with her brother in Syria, she was not living alone in the most exceptional compassionate circumstances outside the UK. The ECO was not satisfied that if her brother was to join his wife she would have no other close relatives to whom she could turn. There was an absence of evidence to show that she is wholly or mainly financially dependent on the UK sponsor. Indeed, the supporting letter from solicitors says that her brother pays for her medical treatment and that she jointly owns her home in Syria with her brother. There was inadequate evidence about the proposed accommodation in the UK. As to Article 8, the decision simply states that in view of those facts any breach is proportionate.

4. First-tier Tribunal Judge Balloch allowed the appellant's appeal by determination promulgated on 4 December 2014. The appellant conceded that she could not meet the requirements of the Immigration Rules. At paragraph 29 the judge reminded herself of the public interest considerations set out in part 5A, sections 117A and B of the 2002 Act in all Article 8 cases. At paragraph 30 the judge found it an important consideration that the appellant had applied along with her brother for family reunion. At paragraph 31 she found that financial support and accommodation could be provided in the UK for the appellant without resort to benefits. She accepted at paragraph 32 that the sponsor, her husband and sister-in-law had lived together as a family unit since the sponsor's marriage [which was on 20 September 1983] and that she relied on her brother. The judge found that the appellant would be very vulnerable as a woman alone in Syria and particularly as a Christian. The judge cited paragraph 3.12.16 of the respondent's Operational Guidance Note (OGN). She concluded at paragraphs 34 and 35:

> Given the dangerous situation in Syria, that the appellant would be living there as a woman alone and as a member of a religious minority at a time when Christians are being attacked and having regard to the fact that the appellant has always lived as a close family member of her brother's family, I find the circumstances demonstrate a good arguable case outwith the Rules. The appellant would be accompanying her brother to the UK. There is accommodation and financial support available for her in the UK with her close family members and particularly her brother and sister-in-law.
>
> I have taken full account of the respondent's view of the State's obligations under Article 8 of the ECHR as set out in the Rules but in all the circumstances … having regard to all the factors I find that the appeal should be allowed … there has been demonstrated … that any interference in family life, occasioned by the respondent's decision, would be disproportionate.

5. The ECO's grounds of appeal to the Upper Tribunal are as follows:

   (a) The judge considers that the appellant would be living in Syria as a lone woman and would be at risk, but refers to no evidence that the particular risk is any more than another person living in Syria in similar circumstances.

   (b) The judge's approach to Article 8 appears to disclose engagement with matters at the date of the hearing rather than the relevant date, the date of decision.

   (c) … Article 8 is not a general dispensing power … if the appellant's circumstances have changed since she made her application then it is open to her to make a fresh application … *AS (Somalia)* [2009] UKHL 32, paragraph 9.

   (d) It is deeply pertinent to the proportionality assessment … that the appellant cannot bring herself within the ambit of the Rules. In the circumstances the public interest required refusal … as there is no basis to depart from the findings under the Rules.

   (e) The relationships relied upon do not disclose a breach and/or a disproportionate breach of those rights protected under Article 8 particularly in light of the weight to be afforded to maintenance of effective immigration control – section 117B(1).

   (f) … The judge's assessment under Article 8 is fundamentally flawed owing to a failure to lawfully engage with the public interest factors contained within part 5A of the 2002 Act (s.117) … It was incumbent upon the judge to have regard to those factors and other aspects relevant to the public interest in considering proportionality …

6. Mrs O'Brien submitted further to the grounds that the judge failed to identify any such factors as to allow her to embark on a freewheeling Article 8 exercise outside the Rules, ignoring all those factors which counted against the appellant in respect of her failure to meet the requirements of the Rules. The determination contained no consideration of the public interest or of the significance of failure to meet the Rules. The assessment at paragraphs 34 and 35 did not bring out any relevant factors on the respondent's side. That failure to apply the relevant requirements amounted to a material misdirection in law. Although the judge said that she had regard to "all factors" she did not say what they were. The determination should be set aside. A fresh decision should be substituted finding that the case did not engage Article 8.

7. Mr Byrne relied upon a written argument which submits that grounds (a) to (c) are misconceived; that there was in any event no evidence which did not appertain at the date of the decision; and that it is significant that the respondent in the First-tier Tribunal made no submissions about section 117 of the 2002 Act. Either the matter was not particularly material, or any error was on the side of the Entry Clearance Officer. There was nothing to show that any omission gave rise to any substantial prejudice to the Entry Clearance Officer or that as an informed reader the respondent could not understand why the decision had been reached. The essential factors were all set out and the decision was an adequate one which showed no misdirection of law. The Entry Clearance Officer did not

specify any further factor which should have been taken into account on that side. The judge had applied the correct test of a good arguable case and what followed was a matter for her. Even if the respondent might consider the outcome to be a generous one, it did not disclose any legal error.

8. Mrs O'Brien in response said that the structure of the determination failed to engage with the consequences of not meeting the Rules. The judge had simply not grappled with that issue. It had been conceded that the appellant could not meet the requirements of the Rules and so she was not a dependant falling within their scheme for reunion of members of a family unit. The case should not have reached the stage of any consideration outwith the Rules.

9. I indicated that I was not satisfied that the grounds disclosed any material error of law and that the determination would stand.

10. Ground (a): the case did not turn on a test of whether the appellant would be at greater risk than any other lone woman in Syria.

11. The circumstances as at the date of the hearing are not said to have been different from those at the date of decision, so ground (b) leads nowhere.

12. Ground (c): Article 8 is not a general dispensing power but that proposition does not show that this determination must be wrong. The applicant's case did not turn on change of circumstances since her application, so it would not have been an apt answer to suggest that she apply again.

13. Ground (d): cases have to meet a high standard to succeed under the rules, but such cases can arise.

14. As to ground (e) and (f), the judge was clearly aware that the case failed within the Rules and she acknowledged the public interest considerations as set out in statute. To cite these at length would not have served any purpose. The ECO does not say that any particular element of the public interest bore specifically and strongly on this case. These complaints are about form rather than substance.

15. The appellant has been a member of the family unit including her brother and the sponsor for half her lifetime, and for most of her adult life. She has no other family. Those findings are undisputed. The judge was plainly entitled to find that family life existed for Article 8 purposes. The conditions under which the appellant would be left in Syria as a Christian woman on her own were compelling. The judge was right to take account of the availability of support in the UK and absence of likely impact on public funds. The remaining stumbling block under the rules was that she was not financially dependent upon the sponsor. That was the factor to be outweighed. In my opinion, the grounds do not amount to more than disagreement with the judge's conclusions about the existence of a family life, the identification of a good arguable case outside the Rules, and the proportionality conclusion. Those findings were within the range open to the judge and her assessment is adequately explained in the determination.

16. The determination shall stand.

15 April 2015
Upper Tribunal Judge Macleman