



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2022-003434

HU/01319/2021

THE IMMIGRATION ACTS

**Heard at Birmingham's CJC
On the 1 November 2022**

**Decision & Reasons Promulgated
On the 21 November 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MHD WISAM ALAKHRAS
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Solanki instructed by Kalsi Solicitors.

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

DECISION AND REASONS

- 1.** The appellant, a citizen of Syria but who currently lives in Egypt, applied for leave to enter the United Kingdom as an adult dependent relative under Appendix FM of the Immigration Rules. That application

was refused by an Entry Clearance Officer in a decision dated 3 February 2021.

2. It was conceded by Ms Solanki before the First-tier Tribunal, and repeated before the Upper Tribunal today, that the inability of the appellant to satisfy the Immigration Rules is conceded and is not a live issue.
3. The appellant's appeal against the refusal, on human rights grounds outside the immigration rules, came before First-tier Tribunal Judge Young-Harry ('the Judge') who in a decision promulgated on 25 May 2022 dismissed the appellant's appeal on all grounds.
4. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 7 July 2022 the operative part of the grant being in the following terms:
 2. The grounds assert that the Judge erred in law in her assessment of the Appellant's claim under Article 8 of the ECHR.
 3. The Appellant appealed against the Respondent's decision refusing entry clearance, on the basis of his family life with his father and brother in the UK. The Judge found that there was family life between them and that Article 8 was engaged by the appeal (at [9] - [10] of the decision). It was not in dispute that the Appellant did not meet the adult dependent relative requirements under the Immigration Rules. The focus was on whether the refusal would result in unjustifiable harsh consequences (at [12]). The Judge considered both the Appellant's and his sponsors' circumstances (at [14] - [20]) and concluded that the public interest fell in favour of the Respondent (at [21]). Whilst the Judge did consider the financial circumstances of the Appellant, it appeared that a number of other factors relied upon in support of the appeal were either not considered by the Judge or, if they were, the Judge did not adequately explain how he had resolved them (including but not limited to the family's history of trauma and the impact of separation on the Appellant's half-siblings, who are minors).
 4. For those reasons, the grounds did disclose arguable errors of law and permission to appeal is granted. All grounds may be pursued.
5. Before the Upper Tribunal Mr Williams conceded that the Judge had erred in law in a manner material to the decision to dismiss the appeal for reasons set out in the ground seeking permission to appeal and the grant of permission to appeal. On that basis he did not oppose the appellant's application.
6. In relation to the future conduct of the appeal, both advocates agreed that in light of the failure of the Judge to consider all the evidence and failure to make sufficient and/or adequate findings upon that evidence, extensive fact-finding was still required in this appeal. It was proposed that the appeal be remitted to another judge sitting at the First-tier Tribunal Judge in Birmingham for the matter to be considered afresh.
7. I have had regard to the Presidential Guidance in relation to remittance to the First-tier Tribunal in addition to the view of the advocates. Having reviewed the case as a whole I agree that this is an appeal in which the overriding objective and the interests of justice

warrant remittal to the First-tier Tribunal the enable the matter to be considered afresh pursuant to Article 8 ECHR outside the Immigration Rules.

Decision

- 8. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Birmingham to be heard afresh in relation to the merits of the appeal outside the Immigration Rules by a judge other than Judge Young-Harry.**

Anonymity.

- 9. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.**

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 1 November 2022