Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/36506/2013**

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On 5 November 2014	**On 18 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

FAYZEH ABDULNOUR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms J Rothwell instructed by Bureau for Migrant Advice and Policy
For the Respondent:	Ms S Sreeraman, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Syria and the United States of America, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse her application for leave to remain and to remove her from the UK. First-tier Tribunal Judge C M Phillips dismissed the appeal and the appellant now appeal with permission to this Tribunal.

2. The background to this appeal is not in dispute. The appellant is now aged 82. According to her statement, between 1960 and 1994 she lived in various

parts of the world with her husband as he worked for the Arab League and then the United Nations. When her husband retired in 1994 the couple returned to live in Aleppo in Syria where the appellant still has a home. When the couple were visiting the UK in May 2006 the appellant's husband suffered a heart attack and died and his body was flown back to Syria for burial. The appellant's sister lives in Geneva. She has three sons. The oldest lives in Saudi Arabia, the middle son lives in New York and the youngest lives in the UK where he is married with 2 children. The appellant has a UN pension and has UN provided health care. The appellant says that, although she has US citizenship she has not lived there since 2000. Since about 2010/2011 the appellant has been travelling from one relative to another until the situation in Syria improves. The appellant travelled to the UK in January 2013 with a visit visa giving her leave to enter until 11 July 2013. She says that she has grown weak over the last few years and that she now needs help with everyday tasks. She suffers from glaucoma, hypertension, dizziness and memory loss and in early 2014 she had a fall. She says that as a result of this deterioration she is completely dependant on her son and his wife in the UK. She says that she cannot live with her son in Saudi Arabia as he has diplomatic status and is therefore not entitled to obtain the required visa for her. She says that she cannot live with her son in the USA as he and his wife work erratic hours and live in one-bed roomed accommodation and therefore cannot provide her with the care she needs.

3. It was accepted by the appellant's representative before the First-tier Tribunal that the appellant did not meet the requirements of the relevant Immigration Rules. The First-tier Tribunal Judge therefore went on to consider the appeal under Article 8 of the European Convention on Human Rights. The First-tier Tribunal Judge firstly found that the appellant has not established a family life in the UK. She went on to find that, if she was wrong about that, any interference does not engage Article 8 but that if it does removal is proportionate to the legitimate aim. The Judge considered whether the appellant has established a private life in the UK. She said at paragraph 37;

> "In line with *Nasim* I remind myself of the limited utility of Article 8 in private life cases such as the appellant's that are far removed from the protection of an individual's moral and physical integrity. …"

4. The Judge found that Article 8 is not engaged on the basis of the appellant's private life but in the alternative the appellant's removal would be proportionate if she has established a private life.

Error of law

5. The grounds of appeal to the Upper Tribunal contend that the Judge applied too high a standard in finding that the appellant had not established a family life in the UK as the threshold is relatively low (as per AG (Eritrea)v Secretary of State for the Home Department [2007] EWCA Civ 801). It is

further contended that the Judge failed to identify the public interest in removing the appellant in her circumstances. Ms Rothwell submitted that in considering the public interest the Judge should have considered section 117B of the Nationality, Immigration and Asylum Act 2002. She submitted that the Judge had not carried out a proper balancing exercise in considering her alternative findings as to proportionality.

6. Ms Sreeraman submitted that the Judge directed herself appropriately and gave due weight to the Immigration Rules. She submitted that the Judge did have due regard to the public interest and undertook a proper proportionality assessment.

7. I am satisfied that the Judge did make a material error of law in her consideration of this appeal. The Judge failed to give adequate reasons for finding that there is no family life in this case. This appellant is a woman in her 80s with health problems requiring care and assistance in her daily life who has been living with her son and his family in the UK since January 2013. In light of the failure to adequately reason the decision that there is no family life the alternative findings are inadequate. In considering proportionality the Judge has not engaged with the issues in the case or carried out a proper proportionality balancing exercise.

8. I therefore set the First-tier Tribunal Judge's decision aside and remake it. In setting the decision aside I note that there was no factual dispute and the findings of fact up to the end of the third sentence in paragraph 33 of the First-tier Tribunal Judge's decision are preserved.

Remaking the decision

9. In remaking the decision I note that it was accepted that the appellant cannot meet the requirements of he Immigration Rules. She was in the UK as a visitor at the time of her application and her status means that she cannot meet the requirements of Appendix FM as an Adult Dependant Relative.

10. Recent case law including R (Nagre) v SSHD [2013] EWHC 720 (Admin), Gulshan (Article 8 – new Rules – correct approach) Pakistan [2013] UKUT 640 (IAC), Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC) and R (MM & Others) v SSHD [2014] EWCA Civ 985 make it clear that there is a need to look at the evidence to see if there is anything which has not already been adequately considered in the context of the Immigration Rules and which could lead to a successful Article 8 claim.

11. In the circumstances of this case I am satisfied that all of the factors of this case have not been adequately considered under the Immigration Rules and I go on to consider the appeal under Article 8.

12. In considering the case under Article 8 I consider the 5 stages set out in R v SSHD ex parte Razgar [2004] UKHL 27 Lord Bingham set out the following

five questions to be addressed where removal is resisted in reliance on Article 8;

> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life?
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
> (3) If so, is such interference in accordance with the law?
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

13. In relation to question (1) I take into account of the fact that the appellant has been living with her son, his wife and their children since January 2013, a period of almost two years and that prior to that she has spent a lot of time with her family in the UK. I take the medical evidence into account. I accept that the appellant is now dependant on her son and daughter-in-law for her daily care. The appellant is 82 years old and by virtue of her age and health conditions dependant on the help of her family. In these circumstances I accept that the ties between the appellant and her son and his family are more than the usual emotional ties between adult family members. Given the low threshold I am satisfied that there will be an interference with that family life if the appellant is removed from the UK (question (2)). As she does not meet the requirements of the Immigration Rules the answer to question (3) is that the decision is in accordance with the law.

14. Questions (4) and (5) go to the proportionality of the decision. In considering the public interest I take account of the fact that the appellant cannot meet the requirements of the Immigration Rules as an Adult Dependant Relative because of her immigration status. The appellant entered the UK in a temporary capacity, as a visitor and now seeks to remain on a long term basis. According to the papers before me the appellant is a national of Syria. It has not been suggested by the respondent that it would be reasonable to expect her to return there. She is also a national of the USA and could live there as she has a pension. She could also access medical care there under her health insurance. If she was removed to the USA she would have some support from her son there, albeit she would be unable to live with him or receive day-to-day care from him. Her sons are all professionals and could provide her with financial support if she were in the USA.

15. In considering the public interest, that is whether the interference with the appellant's private and family life is justified under Article 8(2) of the ECHR,

I must have regard to the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002. This provides as follows;

> '(1) The maintenance of effective immigration controls is in the public interest.
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English because persons who can speak English-
> (a) are less of a burden on taxpayers, and
> (b) are better able to integrate into society.
> (3) It is in the public interest, and in particular in the interest of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons-
> (a) are not a burden on taxpayers, and
> (b) are better able to integrate into society.
> (4) Little weight should be given to –
> (a) a private life, or
> (b) a relationship formed with a qualifying partner,
> that is established by a person at a time when the person is in the United Kingdom unlawfully.
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
> (b) it would not be reasonable to expect the child to leave the United Kingdom.'

16. In considering section 117B I take account of the fact that the appellant speaks English, this was not disputed by Ms Sreeraman. The appellant has a pension of around $900 (about £600) a month and is accommodated by her son who is in employment. She is therefore financially independent. The appellant's family life was not established when she was in the UK unlawfully. These are all factors which weigh in the appellant's favour. However against that I take account of the fact that her family life in the UK was established during previous periods with leave to enter as a visitor and during and after her last period of entry as a visitor. If she were to be removed to the USA the appellant's UK based son and his family could visit her there.

17. As against the public interest I weigh the appellant's advanced age and health circumstances. She has private health insurance and is financially independent and will not therefore be a burden on the state. Her family have been caring for her and intend to and are willing and able to continue to

provide that care. The appellant last lived in the USA in 2000 when she was younger and fitter. She would be unable to live with her son there because of the size of his accommodation and his work commitments. She cannot go to live with her son in Saudi Arabia. There is no suggestion that she could return to live in Aleppo where her family home is and where her husband is buried. According to her statement the appellant still hopes to return to Syria. The only realistic alternative option to remaining with her family in the UK would be for her to go to the USA and secure supported accommodation there. Given her age and health issues this would be very difficult for her. Many of the factors in section 117B weigh in the appellant's favour.

18. Weighing the public interest in this case against all of the factors in the appellant's favour I am satisfied that the balance falls on the appellant's side in the particular circumstances of this case.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of a material error on point of law.

I set the decision aside preserving the findings of fact.

I remake the decision by allowing the appeal under Article 8 of the ECHR.

Signed Date: 17 December 2014

A Grimes
Deputy Judge of the Upper Tribunal