



Tribunals Service

Asylum and Immigration Tribunal

**Upper Tribunal
(Immigration and
Appeal Number:**

**Asylum Chamber)
OA/02244/2014**

THE IMMIGRATION ACTS

Heard at Field House

On 5 September 2014

**Determination
Promulgated**

On 11 September 2014

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MISS SALLY KAYED
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Not Represented

For the respondent: Mr Kandola, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the home Department and the appellant is a national of Syria born on 1 January 1995. I shall however for the sake of Convenience, refer to the Secretary of State as the appellant and Miss Kayed as the appellant which other designations they had before the First-tier Tribunal.
2. The appellant appealed against the decision of the respondent dated 16 January 2014 to refuse the appellant's application to

remain in the United Kingdom pursuant to paragraph 352D of the Immigration Rules and Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge Rys-Davies allowed the appellant's appeal pursuant to Article 8 of the European Convention on Human Rights.

3. Permission to appeal was granted by first-tier Tribunal Judge Lever on 14 July 2014 stating that it is arguable that the Judge who accepted that the appellant could not succeed under the Immigration Rules but granting her appeal under Article 8. The Judge overly focusing on the appellant's younger brother and other individuals as opposed to the appellant's circumstances as to whether there were compelling circumstances that she could properly invoke Article 8.
4. The Judge in his determination in summary found the following.
 - i. It was accepted that the appellant does not satisfy paragraph 350 2D of the Immigration Rules because she was over 18 years old at the date of application and she does not seek to appeal that decision so there is no need to further address the issue.
 - ii. Applying the guidance of the upper Tribunal **in Gulshan (article 8-new rules-new rules) [2013] UKUT 640 (IAC)** and the fact that the respondent has conceded that there are arguably good reasons for granting leave to remain outside the Immigration Rules in this case.
 - iii. Applying the five stage test set out in the case of **Razgar [2004] UK HL 27**, there is family life between the appellant and her father and younger brother in the United Kingdom. The appellant is aged 19 and remains dependent upon her parents and has never lived separately from her family.
 - iv. The decision to refuse the appellant entry clearance is an interference with the appellant's right to respect for her family life and also the rights of her parents and her younger brother in respect of their family life pursuant to the case of **Bekou Betts**.
 - v. The decision is in accordance with the law and the proposed interferences necessary in the interests of maintaining effective immigration control. The only question remaining is proportionality.
 - vi. In assessing proportionality the best interests of any child affected by the decision must be the primary consideration

as required by section 55 of the Borders Act 2009. In this case the appellant's younger brother is affected by the decision to refuse to grant the appellant entry clearance because it is keeping him apart from his mother, who cannot leave Egypt to travel to the United Kingdom, because this would leave the appellant alone in Egypt.

- vii. Given the prevailing cultural and social norms in Egypt a young woman such as the appellant cannot be left living alone without any family to support and watch out for her. The interest of the appellant's brother is to live with both his parents. It is therefore in the appellant's brother's best interest to have his mother join him in the United Kingdom.
- viii. The respondent's decision to refuse the appellant entry clearance has the direct effect of keeping the appellant's mother and father apart. The appellant's father is a refugee and reunion of a refugee with the spouse is provided for within the Immigration Rules and has been accepted by the respondent as applicable in the present case as they granted the appellant's mother entry clearance.
- ix. It is not been suggested by the respondent that it would be appropriate for the appellant's younger brother and his father to return to Egypt or anywhere else in order to achieve family reunion with the appellant and his wife.
- x. The background evidence provided by the appellant about the situation in Egypt for Syrian refugees generally. Her situation is therefore somewhat precarious in Egypt.
- xi. Against these factors, it is borne in mind that the weight that is to be attached to the fact that the Immigration Rules are intended to set out where the public interest lies. The appellant cannot satisfy the Immigration Rules.
- xii. In all the circumstances of this case, the appellant's situation is compelling and not sufficiently recognised under the Immigration Rules. This is a case where the appellant's younger brother and the appellant's mother are entitled to join the appellant father in the United Kingdom and the appellant is excluded because she is just over 18 years of age.
- xiii. Regardless of the standard of accommodation or support that the appellant presently received in Egypt from a benefactor, the refusal of entry clearance will have her disproportionate and unduly harsh and unjustifiable consequences for the appellant and for the rest of her

family, particularly her younger brother was best interests are a paramount consideration and whose best interests are not outweighed by any single or combination of other factors in this appeal, including giving due deference to the requirements of the Immigration Rules.

- xiv. The appellant's appeal must be allowed under article 8 of the European Convention on Human Rights.

The grounds of appeal

5. The Secretary of State's grounds of appeal state the following which I summarise.

- i. It was accepted that the appellant could not meet the requirements of the Immigration Rules. To grant her leave to enter outside the Immigration Rules, it is necessary for the Judge to proceed to consider whether there are compelling circumstances not sufficiently recognised under the Rules, as per the case of **R (on the application of) Ngare v Secretary of State for the Home Department [2013] EWHC 720 (admin)**
- ii. Whilst there may be arguable good reasons for granting leave outside Immigration Rules, there are not compelling circumstances in this case. The appellant does not meet the requirements of the Immigration Rules as she is now an adult. Therefore, she is able to live an independent life without her family and would need to show something more than the normal emotional ties with her parents as per the case of **Kugathas v SS HD [2003] EWCA civ 31**. The appellant is being supported by Mr Mohamed Rabie Barakat in Egypt and is also able to receive support from the Syrian Refugee Association in Egypt and the UN High Commissioner for Refugees in Cairo.
- iii. Allowing the appellant to enter the United Kingdom would cause the family to resort to additional public funds, as the appellant's father has not yet secured employment.
- iv. The Judge has materially misdirected himself in law, in allowing the appeal and finding that there are compelling circumstances in the appellant's case.

The Rule 24 response

6. The respondent's reply to the grounds of appeal states the following which I summarise. In the grounds of appeal it is stated that the appellant has not demonstrated more than normal emotional ties with her parents and can continue to receive support in Egypt from various organisations. The respondent's grounds of appeal merely take issue with the findings of the First-tier Tribunal.
7. The Judge took into account the appellant's circumstances in Egypt and found that there was family life between the appellant and her family in the United Kingdom. The judge found that the appellant has never lived separately from her family. The appellant is only aged 19 and remains dependent on her parents. Given the prevailing cultural and social norms in Egypt, a young woman such as the appellant cannot be left living alone without any family to support and watch out for her. The appellant is relying on a benefactor in Egypt and given the deteriorating atmosphere in Egypt with Syrian refugees generally her situation is precarious.
8. The permission Judge who granted permission to appeal stated that it was arguable that Judge relied heavily on the effect of the refusal on the appellant's mother and younger brother rather than the appellant herself. However in the case of **Beoku Betts, [2008] UK HL 39** it is stated that the effect on the entire family should be assessed when considering the proportionality of an action that interferes with family life under Article 8, not merely the effect on the appellant. The Judge was therefore under a duty to assess the effect of the refusal on the appellant's mother, father and younger brother and did so entirely correctly.
9. The Judge also referred to his duty under section 55 of the Border's Citizenship and Immigration Act 2009 to treat the best interests of any child affected by the decision as a primary consideration. The Judge correctly applied the same in respect of the appellant's younger brother who is resident in the United Kingdom.
10. The Judge made reference to case law and statutory provisions which are directly relevant to the appellant and applied these correctly to the facts at hand. No other conclusion to the case was possible on the evidence and arguments presented at the hearing.

The Hearing

11. The Tribunal received a letter by fax dated 3 September 2014 from the appellant's representatives, stating "I write to inform

you that the respondent's representative will not be attending the appeal hearing in the case on Friday, 3 September 2014". She has since entered the United Kingdom by a non-lawful means and has called the Asylum Screening Unit in Croydon on 1 September 2014 to lodge a claim for asylum. (ASU call ref: 4947). We would invite the appellant to take what action she sees fit in light of this development.

12. In the submissions made by Mr Kandola, he relied on the respondent's grounds of appeal and said that the Judge materially erred in law in allowing the appellant's appeal pursuant to Article 8.

Decision on the error of law

13. The Judge was legally bound to consider the effect of the respondents denial of entry clearance to the appellant and the impact it had on the family life of all those who share family life with the appellant as required by the case of **Bekou-Betts**. Baroness Hale observed in that case, that 'the right to respect for the family life of one necessarily encompasses the right to respect for the family life of others, normally a spouse or minor children, with whom that family life is enjoyed'. The Judge therefore had a positive duty to take into account the impact of the respondent's decision on all those who share family life with the appellant.
14. It was common ground that the appellant cannot succeed pursuant to the Immigration Rules. It is, clear that the Judge was alive to the fact that there must be compelling circumstances present in the appellant's appeal for her to succeed under Article 8 when she cannot meet the requirements of the Immigration Rules.
15. The Judge found ample compelling circumstances in this case which are set out at length in his careful and detailed determination. The Judge was entitled to find that the appellant has family life with her father and younger brother and her relationship is over and above normal emotional ties expected between adults as the appellant has never lived without her family as she still dependent on her parents and has just recently passed her 18th birthday.
16. The Judge was entitled to conclude that by not granting the appellant entry clearance to United Kingdom has had the impact of breaking up the family unit as two members of the family are in the United Kingdom and two members of the family are in Egypt. He was entitled to conclude that the respondent's decision has the consequence of keeping the appellant's mother away

from her son and husband who are in the United Kingdom as she cannot leave the appellant alone in Egypt with a benefactor who is not related to the appellant.

17. The Judge was entitled to take into account that the appellant was only 19 years of age, living in Egypt with a benefactor and her situation was precarious. He was entitled to take into account the culture from which the appellant comes and background evidence which sets out that the deteriorating atmosphere in Egypt for Syrian refugees generally. He was also entitled to find on the evidence that the appellant was a young vulnerable woman living alone in Egypt.
18. It is implicit in the determination that the Judge considered that the appellant is not able to live on her own, without one of her parents which is why the appellant's mother stayed with the appellant even though she has been granted entry clearance the United Kingdom in line with her husband and son.
19. The respondent's grounds of appeal are no more than a quarrel with the Judge's findings on the facts and the conclusions reached thereon. The Judge correctly applied the law and came to a sustainable conclusion that the appellant's circumstances were sufficiently compelling that she should succeed pursuant to Article 8 even though she cannot succeed pursuant to the Immigration Rules. There is nothing perverse or irrational in the conclusions that the Judge reached on the evidence.
20. The Judge was also entitled to find the appellant's father who has been recognised as a refugee in the United Kingdom that family reunion cannot take place in any other country but in the United Kingdom.
21. I find there the Judge's reasoning was not perverse or irrational in his analysis of and his conclusion on the evidence. I therefore find that the respondent's grounds of appeal has no merit and the decision of the first-tier Tribunal stands.

21. It follows that the appeal is dismissed.

DECISION

I dismiss the Secretary of State's appeal.

Signed by

Mrs S Chana

A Deputy Judge of the Upper Tribunal
September 2014

Dated this 5th day of