



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

Appeal nos: **OA 04545, 47-13**

**THE IMMIGRATION ACTS**

At **Field House**

Decision

signed:

on **23.05.2014**

sent out:

**23.05.2014**

on **28.05.2014**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**Rahgda KARO & another**

appellants

**and**

**Entry Clearance Officer, BEIRUT**

respondent

Representation:

For the appellant: Mr A Haq, solicitor, Haq Solicitors, Huddersfield

For the respondent: Mrs R Patterson

**DETERMINATION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Guy Robson), sitting at Bradford on 29 November 2013, to dismiss a wife's appeal by a citizen of Syria, born 17 December 1988, and her dependent son, born 10 August 2012. The sponsor, the (main) appellant's husband, also from Syria, has been recognized as a refugee in this country, and granted indefinite leave to remain in the course of 2013.

- 2.** The respondent refused the appellant a visa for four different reasons:
  - (a) the sponsor wasn't settled in this country: the grant of indefinite leave to remain meant that this was no longer in issue before the judge;
  - (b) their marriage was not genuine or subsisting: on this the judge found in their favour, and so this is no longer in issue either;
  - (c) there was no evidence to show the necessary funds: here the judge found against them, and this was not challenged before me;
  - (d) there was no English-language test certificate for the appellant.
- 3.** The only one of the original reasons which remains of interest is (d): however it is not the judge's dismissal of the appeal under the Rules which is challenged, but what he said about article 8. The question was whether,

as the presenting officer suggested, the appellant and the sponsor could carry on their relationship without him going to Syria, from which country he had been given asylum. This is what the judge said about that:

35. ... That I find is not necessarily a bar to the parties resuming or undertaking or continuing a relationship ...

36. It was said that as the couple now have a child together and travel outside Syria was very difficult [*sci. it would be impossible for them to meet, for example, in Jordan or the Lebanon*] I do not accept the situation to travel outside Syria is totally impossible, a state of affairs which has been recognised and recorded and indeed the media.


4. There are two clear errors of law in paragraph 36: first, the judge needed to give some indication, however brief, of what media reports he had relied on in reaching that decision, without which his reasons were incomplete; second, 'totally impossible', without more reasons to justify that test, does not seem to be the right one for deciding whether the inability of two parents and their young child to meet on neutral safe ground amounted to such 'exceptional' or 'compelling' features in the case (see *Gulshan* (Article 8 - new Rules - correct approach) Pakistan [2013] UKUT 640 (IAC), and *Shahzad* (Art 8: legitimate aim) Pakistan [2014] UKUT 85 (IAC)) as to require free-standing consideration of article 8.

5. On that basis, it was agreed that this appeal should be allowed, and the decision re-made. There was no time to do that myself, and so there will be a fresh hearing, solely on the appellant's article 8 appeal (in the light of *Gulshan*, *Shahzad* and other recent authorities) before another judge at Bradford. While that judge will have to make their decision in this out-of-country appeal on the somewhat artificial basis of the state of affairs at the date of the decision under appeal, they will also be able to take into account anything they think would have been reasonably foreseeable at that time.

6. Here it is worth noting that, though at the date of the decision under appeal Syria was not on the list of countries whose citizens did not need to produce an English-language test certificate when applying for a spouse visa, it has been on the list since November 2013. Even if the fresh judge could take the present situation into account, that would still not result in the appellant's having an arguable case under the Rules, because of the funding difficulty; but it may be of some relevance on the article 8 appeal.

**Home Office appeal allowed**

**Article 8 decision to be re-made on fresh hearing before another judge at Bradford**



(a judge of the Upper Tribunal)