Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/21328/2013
OA/18260/2013, OA/21334/2013
OA/21329/2013, OA/21332/2013
& OA/21330/2013

THE IMMIGRATION ACTS

Heard at : IAC Stoke	**Determination Promulgated**
On 6 July 2015	**On 9 July 2015**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ADEL ALKHALIL
SAFAA AL DAIRI
KATANA NADA
KENAN ALKHALIL
BASHAR ALKHALIL
MAHER ALKHALIL

Appellants

and

ENTRY CLEARANCE OFFICER, BEIRUT

Respondent

Representation:
For the Appellant: Mr Z Jafferji, instructed by Burton & Burton Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, the sponsor's father, step-mother/aunt, grandmother and three brothers, are nationals of Syria. They have been given permission to appeal against the

decision of First-tier Tribunal Judge Row dismissing their appeals against the respondent's decisions of 7 October 2013 to refuse them entry clearance to the United Kingdom for family reunion.

2. The appellants applied, in June 2013, for entry clearance to the United Kingdom to join the sponsor, Aalae Alkhalil, who had been granted refugee status in April 2013 after leaving Syria in 2008 in order to study for a Ph.D in the United Kingdom. Their applications were refused by the respondent on 7 October 2013 on the grounds that they could not meet the requirements of paragraph 319V of the Immigration Rules and that there were no exceptional circumstances justifying a grant of leave outside the Rules.

3. In their grounds of appeal against the respondent's decision, the appellants relied upon the deteriorating situation in Syria in asserting that the decisions were in breach of the sponsor's right to a family life under Article 8 of the ECHR and asserted that the financial circumstances of the family were not relevant in considering family reunion.

4. The appeals were heard by First-tier Tribunal Judge Row on 10 December 2014 and were dismissed in a decision promulgated on 2 January 2015. It was conceded before the judge that the appellants could not meet the requirements of the Immigration Rules since there was no financial dependence by the appellants upon the sponsor. The judge found in addition that the accommodation and maintenance requirements of the Rules could not be met. It was submitted before the judge that there were exceptional compassionate circumstances justifying a grant of leave outside the Rules, given the war in Syria and the danger in which the family found themselves as a result of being associated with the medical profession (the sponsor's father was a plastic surgeon and her brothers were medical students) and as a result of the area from which they originated. The judge found, in effect, that there was no family life for the purposes of Article 8, but in any event went on to consider proportionality and concluded that there was nothing compelling or compassionate in the appellants' circumstances so as to justify a grant of entry clearance outside the Immigration Rules. The appeals were accordingly dismissed under the Immigration Rules and on human rights grounds.

5. Permission to appeal to the Upper Tribunal was sought on the grounds that the judge had failed to consider the application of the Home Office policy, aside from an Article 8 consideration, and that the Article 8 assessment was inadequate.

6. Permission to appeal was granted on 4 March 2015 in relation to the family reunion concession.

Appeal hearing and submissions

7. The appeal came before me on 6 July 2015. I sought initially to clarify the nature and existence of the family reunion policy to which the grounds and the grant of permission referred, but neither party was able to assist and it did not appear that there was any such policy or concession.

8. Mr Jafferji submitted that in any event there was an exercise of discretion by the respondent outside the rules, as was made clear by the entry clearance officer's decision and that of the entry clearance manager, and that that discretion had been exercised wrongly. He submitted that the only reason given by the respondent for concluding that the appellants' case was not exceptional was that relocation within Syria or to a neighbouring country was not an insurmountable option, whereas the appellants' evidence and that of the sponsor was that relocation was impossible. The appellants were persecuted and at risk in Syria. Accordingly discretion should have been exercised in the appellants' favour and the appeals should be allowed on that basis. He submitted that the same issue had not been considered properly by the judge in assessing Article 8.

9. Mr McVeety submitted that there was no relevant policy and the ECO had not referred to such a policy. It was merely a matter of consideration outside the Rules. The judge could not have done any more than he did. It was for the appellants to make an asylum claim from outside the United Kingdom and that was not a matter for the judge in these appeals.

10. Mr Jafferji reiterated his earlier submissions in response.

Consideration and findings.

11. I do not find that the judge made any errors of law in his decision. The appellants have not identified or produced the policy to which they refer and the term appears to have been used loosely. There is in fact no relevant policy. Whilst I am aware that a family reunion policy existed in the past there is no indication of it having survived the introduction of the new Immigration Rules and under Appendix FM. The question of the respondent's decision not being in accordance with the terms of her policy, as considered in detail in the case of AG and others (Policies; executive discretions; Tribunal's powers) Kosovo [2007] UKAIT 00082, is therefore not one which arises here.

12. It is submitted that the judge nevertheless erred by failing to consider the exercise of discretion by the respondent outside the Immigration Rules. However the respondent's exercise of discretion was not a matter with which he was entitled to interfere, other than in considering Article 8 outside the scope of the Rules, which is what he did.

13. The judge properly found, or at least indicated, that Article 8 was not even engaged, since there was no dependency and no established family life between the appellants and the sponsor. Thus, whilst he went on to consider proportionality there was in fact no need for him to do so and the matter ended there. In any event, in considering proportionality, he was fully entitled, and indeed required by case law and statute, to take into account the appellants' inability to meet the requirements of the Immigration Rules and public interest considerations. He properly found, at paragraphs 24 and 25 of his decision, that this was not a case of a family seeking to be reunited but was in effect an attempt to escape the war which, as understandable as that may be in the circumstances, was not a situation that would or could justify a grant of leave outside the Rules on the basis of family reunion. Plainly the judge was fully aware of the appellants' circumstances and the problems which

they faced in Syria but was nevertheless properly aware of the limits of his jurisdiction and was entitled to conclude that the appellants' circumstances were not such as to entitle them to succeed under Article 8.

14. For all of those reasons I find that the judge took account of all relevant considerations and matters and was entitled to conclude as he did. He did not err in law.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeals stands.

Signed Date

Upper Tribunal Judge Kebede