Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/04029/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 July 2016	**On 21 July 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

NAZAHAT [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – AMMAN, JORDAN

Respondent

Representation:

For the Appellant: Mr. B. Ali, Aman Solicitors
For the Respondent: Mr. T. Wilding, Home Office Presenting Officer

DECISION AND REASONS

THE HISTORY OF THE APPEAL

1. The Appellant, who was born on [ ] 1935 and who is now 81 years old, is a citizen of Syria. On 1 June 2014 she applied to visit her daughter in the United Kingdom. Her daughter is a British citizen. The Appellant's application was refused on 14 June 2014. The Entry Clearance Officer took into account the fact that there had been

explosions in her local area in Damascus and that she had transferred some savings to the United Kingdom. Therefore, he concluded that she was not a genuine visitor and did not intend to return at the end of her proposed visit.

2. The Appellant appealed on 22 July 2014 and said that she had always left the United Kingdom at the end of her visits and that, when she came to visit the United Kingdom in 2012, Syria was also very politically volatile. She explained that she transferred some of her savings to the United Kingdom because the Syrian lira was losing value day by day and she was seeking to protect her savings. In addition, she asserted that refusing to allow her to visit her daughter and her family breached Article 8 of the European Convention on Human Rights.

3. On 18 November 2014 the Entry Clearance Manager confirmed the decision and asserted that the situation in Syria had significantly changed for the worst since 2012 in Syria and speculated that money could have been transferred to Lebanon or Jordan. He also said that he did not understand the basis on which she asserted her Article 8 rights would be breached.

4. Her appeal came before First-tier Tribunal Judge Hanbury on 10 March 2015 but unfortunately neither the judge nor counsel for the Respondent addressed the fact that appeal rights for visitors had changed as section 88A of the Nationality, Immigration and Asylum Act 2002 had been amended by section 52 of the Crime and Courts Act 2013 on 25 June 2013 so that the Appellant was only entitled to appeal on human rights and/or racial discrimination grounds.

5. The Respondent appealed and was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Nicholson on 12 May 2014. I set aside First-tier Tribunal Judge Hanbury's decision at an error of law hearing on 25 September 2015 and retained the case in the Upper Tribunal for a *de novo* hearing. As the Appellant had not been represented at the error of law hearing, I listed the case for a case management hearing to enable the Appellant to take further legal advice. At the case management hearing on 11 January 2016 the Appellant indicated that she wished to continue with her appeal.

6. The *de novo* hearing was initially set down for 13 June 2016 but the Appellant did not receive notice of the hearing and did not attend. There was also no interpreter present. Therefore, I adjourned the hearing until today.

THE SUBSTANTIVE HEARING

7. At this hearing it was submitted on behalf of the Respondent that Article 8(1) of the European Convention on Human Rights was not engaged as the Appellant's daughter had lived here for 12 years and the Appellant had rarely visited her. He also said that there was little evidence of dependency and noted that the Upper Tribunal held in *Mostafa (Article 8 in entry clearance)* [2015] UKUT 00112 (IAC) that it

would only be in very unusual circumstances that a person other than a close relative would be able to show that the refusal of entry clearance comes within the scope of Article 8(1) of the ECHR.

8. He also relied on the fact that in *Kaur (visit appeals; Article 8)* [2015] UKUT 4878 (IAC) the Upper Tribunal held that unless an appellant can show that there are individual interests at stake covered by Article 8 "of a particular pressing nature" so as to give rise to a "strong claim that compelling circumstances may exist to justify the grant of LTE (Leave to Enter) outside the rules": (see *SS (Congo) & Others v Secretary of State for the Home Department* [2015] EWCA Civ 387)".

9. In response it was submitted on behalf of the Appellant that the test to engage Article 8(1) of the European Convention on Human Rights was a "modest" one. It was also submitted that in *Mostafa* the Upper Tribunal had also found that it would be "extremely foolish to be attempt to be prescriptive, given the intensely factual and contextual sensitivity of every case". In addition, the Appellant's representative said that it was not necessary to consider whether the decision was proportionate because she met the requirements of paragraph 41 of the Immigration Rules and therefore any breach of her Article 8 rights would be unlawful. In the alternative, he argued that any breach would be disproportionate.

DECISION

10. In *Adjei (visit visas – Article 8)* [2015] UKUT 0261 (IAC) the Upper Tribunal found that "the first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 of the ECHR is engaged at all. When addressing this question, I have reminded myself that in paragraph 28 of *AG (Eritrea) v Secretary of State for the Home Department* [2007] EWCA Civ 801 Sedley LJ found that "it follows, in our judgment, that while an interference with private and family life must be real if it is to engage article 8(1), the threshold of engagement (the "minimum level") is not a specially high one".

11. The Respondent submitted that the Appellant had not been able to establish that the Appellant enjoyed a family life with her daughter and grandchildren in the United Kingdom. He based this on the length of time the Appellant's daughter had been living here and the fact that the Appellant had only visited her on three previous occasions. However, in my view the circumstances are more complex. The Appellant visited her mother every two years between 2008 and 2012 and would have visited her in 2014 (and arguably in 2016) if she had not been refused entry clearance. In addition, when she did visit her she visited her for between two and three months and on one of those visits her mother moved in with her at her rented accommodation so that they could better enjoy their time together. I have also reminded myself that in *Mostafa (Article 8 in entry clearance)* [2015] UKUT 00112 (IAC) the President warned against taking too prescriptive an approach and that he did not rule out the fact that in some cases relationships could come within the scope of

Article 8(1) because of their very unusual circumstances. It is my view that the age of the Appellant and the fact that she is living in a country being torn apart by civil war and to which it would not be reasonable for her daughter and grandchildren to visit are factors which are capable of amounting to such very unusual circumstances.

12. The centrality of these visits to the maintenance of a family life between the Appellant and her daughter and also the Appellant and her grandchildren is underpinned by the fact that, in the current circumstances which exist in Syria and that area of the Middle East, it is not reasonable to suggest that the Appellant's daughter and grandchildren could visit her there. On the basis of this and the totality of the particular circumstances of this case, I find that the low threshold to engage Article 8(1) of the European Convention on Human Rights has been met.

13. I have then taken into account the various steps to be addressed for the purposes of Article 8(2) of the ECHR. Firstly, I have considered whether the decision reached was in accordance with the law. In particular, I have considered whether the Appellant was able to meet the requirements of paragraph 41 of the Immigration Rules. The Entry Clearance Officer doubted that the Appellant was a genuine visitor or that she intended to return to Syria at the end of her proposed visit.

14. It is my view that, when he considered these questions, he should have taken into account her age and the fact that she was settled in a Government controlled area of Damascus and had not sought to flee from this area to a neighbouring country or any other part of Europe at any time during the present civil war. He should also have taken into account that she had returned to Syria after a visit to her sponsor after the conflict had already begun. In addition, he would have been aware from previous applications that the Appellant's husband remained in Syria and was no longer seeking to visit with her on this occasion. He also failed to take into account that the proposed visit was part of a pattern of visits which had occurred in the past, as noted above.

15. Instead, the Entry Clearance Officer had relied on the fact that the Appellant lived in an area of Damascus targeted by rebel groups but he had not taken into account the nature of his area and its relative security because it was protected by Government forces.

16. He also relied on the fact that the Appellant had paid some savings into a bank in the United Kingdom. He noted that the Appellant had said that because of the civil unrest in Syria it was safer to do so. He did not explain why this was an indication that the Appellant would not return to Syria as opposed to a means by which she could protect her savings and ensure that she would be able to maintain herself and her husband in Syria.

17. He did not doubt the veracity of the title deeds submitted in support of her application but merely noted that she had not provided evidence to show that they did not generate the income asserted. In my view any such evidential shortcoming

should be viewed in the context of repeat visits and returns by the Appellant and her husband in the past and the fact that it was her unchallenged evidence that her other children remained in Syria.

18. The Entry Clearance Officer also doubted that the Appellant would be able to maintain and accommodate herself during her proposed visit without recourse to public funds. This was despite evidence that a deposit had been paid on a flat that she proposed to rent for her visit between 15 June 2014 and 1 September 2014 and that on previous visits she had rented her own accommodation as opposed to staying with relatives. This in my view indicates a person who was financially secure. As did the fact that she had a balance of £52,856.32 in her personal bank account with the NatWest in Edgware. Therefore, in my view there was no basis upon which to conclude that she could not maintain and accommodate herself during her proposed visit.

19. As a consequence, I find that the Appellant was able to meet the requirements of paragraph 41 of the Immigration Rules for the purposes of Article 8(2) of the Immigration Rules and that the decision to refuse her entry clearance was not in accordance with these Rules.

20. In the alternative, I have considered whether, in any event the decision to refuse the Appellant entry clearance was disproportionate for the purposes of Article 8(2) of the ECHR. When doing so, I have reminded myself that in *Kaur (visit appeals; Article 8)* [2015] UKUT 00487 (IAC) the Upper Tribunal found that "in visit appeals the Article 8 decision on an appeal cannot be made in a vacuum. Whilst judges only have jurisdiction to decide whether the decision is unlawful under s.6 of the Human Rights Act 1998 (or shows unlawful discrimination) (see *Mostafa (Article 8 in entry clearance)* [2015] UKUT 00112 (IAC) and *Adjei (visit visas – Article 8)* [2015] UKUT 0261 (IAC), the starting point for deciding that must be the state of the evidence about the appellant's ability to meet the requirements of paragraph 41 of the immigration rules".

21. I also note that in *Adjei* the Upper Tribunal held that "if article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to meet the requirements of the rule because that may inform the proportionality balancing exercise". For the reasons given above, it is my view that the Appellant is able to meet the requirements of paragraph 41 of the Immigration Rules.

22. When weighing up the proportionality balance I have taken into account the need to maintain strict immigration controls but, as noted above, I have found that the Appellant does meet the requirements of the Immigration Rules. I have also taken into account the fact that the Respondent accepts that the Appellant was previously granted visit visas which were valid for six months on each occasion in 2008, 2010 and 2012. The Appellant arrived in the United Kingdom on these visas on 27 February 2008, 13 June 2010 and 4 July 2012. On each occasion she remained between two and three months and left well before her visas expired.

23. I have also taken into account that because of the Appellant's age and the very dangerous location of her home, any delay caused by having to make a fresh application for a visitor's visas may lead to a situation where any such visa may become a nullity and her daughter and grandchildren are denied any contact or development of family life of any sort.

24. As a consequence, I also find that the refusal to grant the Appellant a visa to visit her daughter and grandchildren gave rise to a disproportionate breach of their family life rights for the purposes of Article 8 of the ECHR.

Decision

The Appellant's appeal is allowed on the basis that the refusal to grant her a visit visa amounted to a breach of Article 8 of the European Convention on Human Rights.

Signed Date: 21 July 2016

Nadine Finch

Upper Tribunal Judge Finch