



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/05359/2015

THE IMMIGRATION ACTS

Heard at Field House
On 20 April 2018

Decision & Reasons Promulgated
On 14 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MISS V D
(ANONYMITY DIRECTION MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S. Jegarajah, counsel instructed by AMZ Law
For the Respondent: Mr. S. Kotas, Senior Presenting Officer

DECISION & REASONS

1. The Appellant is a child of Palestinian origin, residing in a refugee camp in Lebanon with her elderly grandparents. The appeal came before me for hearing on 14 March 2018, when I found an error of law and adjourned the appeal for a resumed hearing, due to the lack of availability of an Arabic interpreter. A copy of that decision is appended.

2. At the resumed hearing, Ms Jegarajah sought to serve an UNRWA slip from Nida R. Abussaid, clinical psychiatrist in respect of the Appellant dated 20 April 2018. Mr Kotas had no objection to its admission. Ms Jegarajah confirmed that she was relying on two bundles and a skeleton argument. The parties further agreed that the issue of accommodation had been accepted by the First tier Tribunal and that finding had not been challenged and that the issues to be determined were in respect of paragraph 297(i)(e) and (f) and (v) of the Immigration Rules *viz* maintenance; sole responsibility and serious and compelling reasons for making the exclusion of the Appellant undesirable. Ms Jegarajah informed me that she was not seeking to rely on Article 8 outside the Rules and drew attention to the fact that it was an “old-style” appeal under the Immigration Rules, given that the date of decision was 19 February 2015.

3. Ms Jegarajah called the Sponsor to give evidence, when he adopted his statement dated 19 May 2017. He sought to clarify one aspect of his evidence at the hearing before the last Judge, which was that he had bought the earrings for his daughter, rather than his wife. When asked about his daughter’s circumstances after the last appeal and the UNRWA action slip from Dr Nida Abusaid dated 20 April 2018, that it was approximately 7-8 months ago that he realised she was being affected mentally. He found out because he speaks to her on an almost daily basis. He said she had told him that children at school had stopped talking to her because her clothing is very dirty. This is because there is nobody to care for her as her grandparents are really very old people and need someone to look after them.

4. When asked how that made her feel, the Sponsor said that when he visited her one month ago she held onto him and did not want him to leave. He said that she had grown into a really beautiful girl but unfortunately she is not being looked after well. He said that she takes it upon herself to do the shopping but this is a refugee camp and is very dangerous. In terms of her mental health, the Sponsor said that she is happier when he is there.

5. The Sponsor then described the place she is living in, which is a one bedroom house in the refugee camp made of breezeblocks and concrete. He said that his father and mother and his daughter all sleep in the same room. He said that the neighbour, Fatme, is aged between 60-65 and lives on her own nearby and is a friend of his mother. The Sponsor said that Fatme comes and checks on them and helps them and sometimes his brothers who live away from his parents also come to check on them every few weeks. However, in terms of their day to day life, his daughter makes breakfast; looks after his parents; gets herself ready for school and goes to school by herself and comes back by herself. He said that the school is 5-10 minutes away as it is in the camp, but that this was not safe for a little girl on her own as there are shootings and girls go missing and get kidnapped and women are

raped. He said that it is easy for people who are strangers to come into the camp and there are no restrictions and that outlaws and terrorist groups are to be found in every camp.

6. The Sponsor was asked how he was able to cope with this knowledge to which he responded: *"What can I say and do: I have been to court twenty times doing my best to bring her here."* He was asked about his former wife and whether she helped and he said that she got married again and her husband restricted her from seeing any members of her family including her daughter. When asked why Fatme, the neighbour, could not take his daughter to school he said that she works for the Red Crescent and that his daughter goes early to school and the neighbour is an old woman. He confirmed that he still had £8000 in his savings account. He was asked about the whereabouts of his flat and he said that it was two roads away from his current wife's children's school. He said that his wife's children eat dinner at his house. He said that he last talked to his daughter yesterday and that they facetime every day.

7. In response to questions from me, the Sponsor stated that Fatme, the neighbour, lives four doors away from his parents and daughter. He confirmed that his daughter lives with her grandparents and that Fatme is a family friend who looks after his daughter.

8. In cross-examination, the Sponsor confirmed that he came to the United Kingdom in 1997 as a refugee and that he was granted ILR in 2000. He stated that he and his daughter's mother had divorced in June 2010, having been married for about three years. He said that it had been an arranged marriage and that his family had selected several girls and he chose one. He said he had tried to bring his wife to the United Kingdom but her application had been refused by the Home Office. He said that he had divorced soon after his daughter's birth because his wife's father was a very strict man and because he could not bring his wife to live with him in the United Kingdom her father decided she should ask for a divorce.

9. The Sponsor said he was not present for his daughter's birth but he arrived one week after, as he had been working. He had stayed for 15 days to 1 month he thought. When asked to give the court examples of important decisions he had taken in his daughter's life he said that it was for her to live a good, respectful life and that he would like her to come and live with him and be British. He was asked who decided which school she should attend, however, this was inapplicable given that there is only one school in the camp. The Sponsor said that he spoke to his daughter's school once or twice a week and sometimes speaks to the headmaster. He said that he was responsible for providing money to her and whilst he did not have to pay for schooling he paid for her clothes etc. The Sponsor confirmed that he spoke to her every day. When asked for examples of instructions he had given his daughter, the Sponsor said these were not to go outside as a female; to look after herself;

that she should be careful when she goes out; to care for herself and clean herself and to study and look after her education. The Sponsor was asked how many visits he had made and he said that he had visited many times, sometimes three or four times in a year. The Sponsor was asked how he was able to be responsible for his daughter after he had his accident at work in 2011 and he said that, at that time, he went to stay with his parents and daughter for around 11 months.

10. In response to my questions, the Sponsor stated that he had been granted refugee status on the basis that he is a stateless Palestinian. He said that the Appellant is his only child. In terms of how he contacts her he said that she is not allowed to have a mobile phone and he rings her on his parents' mobile phone.

11. The Sponsor's (current) wife, Ms [S], then gave evidence and confirmed the contents of her statement. She said that she speaks to the Appellant on the phone and that this was usually after school and before she sleeps. She said that she had accompanied her husband to Lebanon a month ago to visit the Appellant. When asked how she was, the witness said that she was not like any child would like to be and that her children's lives were better than her life, because she has no-one to look after her. The witness said that she went to the Appellant's school and spoke to her headteacher and he told her that the Appellant's behaviour is not good and that her mental health and wellbeing has changed because they had promised that her father would bring her to the United Kingdom. The headmaster referred the Appellant to a psychiatrist because her mental wellbeing has changed completely. She said that the Appellant was happy when they visited her and felt she had a family and friends and she was very proud they were there.

12. The witness confirmed that she had gone to the Appellant's home. In terms of her routine, the witness said that the Appellant does everything as her grandmother is disabled and her grandfather is old. She said that the Appellant's hygiene is very bad because no-one cares for her and she smells and that she needs the neighbour to come and help. The witness said that there was no bathroom in the house and that the foreign toilet is broken and so they do not use it. She said that there is a shower but the water is not running in order to use it. So that to wash, it is necessary to get water from the tap and to heat this up. The witness said that she had sent the Appellant two bottles of head lice medicine and always had to check her for lice. She said that the difference when they are there is noticeable.

13. The witness said that last summer her daughter got married in Lebanon and they all attended. Her younger 11 year old daughter was concerned about the Appellant and told the witness that she deserves a better life than she has there. The witness referred to the photographs in the supplementary bundle and the photograph of the Appellant in a red dress, which was taken at the

wedding of her elder daughter. She also drew attention to page 4, which is a photograph of the witness and the Appellant attending another wedding. The Appellant is wearing a dress the witness bought her. She said that the Appellant calls her "Mummy".

14. In respect of the situation in the United Kingdom, she confirmed that her husband has a flat near the children's school. She said that they do not live together because she has young daughters and it is culturally inappropriate. The witness said that she takes the little kids to school and spends the day with her husband when the kids are at school. She said that he visits and he cooks. When asked how separation from his daughter is affecting him, she said that it makes him unwell. When asked how her daughters get on with the Appellant the witness said that they love her; that her grown up daughter sent her clothes when the witness' brother went to Lebanon to see their mother who had had an operation. The Appellant had come to her crying because the children at school describe her as homeless and say: "*now you are clean but when your family go you will be dirty again.*"

15. The witness said that the Appellant's journey to and from school is very bad and that she would not trust her daughter who is 15 to go alone. She said that she felt so afraid about her because there are a lot of people from outside in the camp and there is a lot of rape and kidnapping. Not long ago her husband was stressed out badly because there was shooting in the camp. When asked about Fatme, the witness said that she is not a young lady and is 63 years old, however, she feels bad for the Appellant as there is no-one to care for her and so every now and then she goes to see if she needs anything. The witness said that the Appellant would not be able to live with Fatme because she has not offered and would not accept that.

16. In response to my questions, the witness said that her family were not living in the camp but were living in a small village about half an hour away. She said that she and her husband stay in the house with the Appellant and her husband's parents when they visit.

17. The witness was cross-examined by Mr Kotas. When asked who was responsible for making decisions about the Appellant's life after the divorce, she said that it was her husband. When asked about any important decisions he had made on her behalf she mentioned school; any school trips and that they have the headteacher's phone number and that of one of the teachers. She confirmed that her husband contacts the Appellant every day after school and that she finishes school at 2 pm and Lebanon is 2 hours ahead.

18. In his submissions, Mr Kotas submitted that the relevant date was the date of decision i.e. 9 February 2015. At that time the Appellant was 5 years old. Mr Kotas expressly accepted the credibility of both witnesses and that the Sponsor had sole responsibility. However, he submitted it was still incumbent

on the Appellant's representatives to show that the Appellant could be maintained without recourse to public funds.

19. In her submissions, Ms Jegarajah focused on the issue of maintenance. She submitted that the Sponsor sends money to the Appellant for her entire living expenses and that these funds were not coming from the £8,000 in the Sponsor's savings account. She submitted that it was not in dispute that the Appellant is being maintained by her father from remittances. Ms Jegarajah further submitted that the Sponsor cannot be seen in isolation from the family as a whole, given that this wife has children, including adult children, who help support the family. She submitted that the Sponsor's wife has taken on the role of mother in respect of the Appellant and she knows as much about this child's life as her own daughters. Ms Jegarajah submitted that there will be food and there will be provision for the Appellant, who was not going to add much in terms of costs as she will go to school with everyone else and have a school lunch and she will be fed with all the other children in the evening. Given that the Sponsor's wife has five daughters, there would be clothes and ample provision for a little girl.

20. Ms Jegarajah drew attention to the fact that the money in the Sponsor's savings account had been preserved and this could be utilised to support the Appellant if necessary. Whilst the adequacy of accommodation had been accepted she drew attention to page 37 of the Appellant's bundle, which is a floor plan of the Sponsor's flat, demonstrating that he has a large reception room and a bedroom. She submitted that the Immigration Rules have to be compliant with the rights of the child and it was clearly in her best interests to join her father, particularly given that she is living in an unsafe environment. She asked if I were minded to allow the appeal, to make a direction that a visa is granted forthwith given that the Appellant is clearly vulnerable.

21. I decided to allow the appeal and issued my decision at the end of the hearing. I now give my reasons.

Findings

22. In light of Mr Kotas' helpful concession that the sole responsibility requirement *viz* paragraph 297(i)(e) was met, the only remaining issue is that of maintenance. Mr Kotas expressly accepted the credibility of the Sponsor and his wife, Ms [S], who has taken on a maternal role in respect of the Appellant. She has five daughters and two sons, of whom the three eldest daughters are working and or studying and contribute small amounts to the family's finances. The remaining four children are daughters currently aged 17 and 13 years and sons aged 11 and 4 years. They are supported by their father in the sum of £400 a month. The evidence that the family eat dinner together and that the Appellant will benefit from the care and support, including financial support from the [S] family has not been challenged.

23. In respect of the Sponsor's finances, it is accepted that he has retained £8000 in savings following compensation paid after he suffered an accident at work in 2011. There is evidence to this effect in the bundle. He is supported by benefits, specifically Employment & Support Allowance (ESA), Housing Benefit and council tax benefit. Given that the appeal falls to be determined under paragraph 297 of the Immigration Rules, the test in respect of maintenance, pursuant to the transitional provisions set out in paragraph 280(b) of the Rules, is whether the Appellant could be maintained adequately without (further) recourse to public funds. In *KA and Others* (Adequacy of maintenance) Pakistan [2006] UKAIT 00065, the Upper Tribunal established that income support is an appropriate comparator when deciding whether maintenance is adequate. ESA is currently paid as £73.10 for a person over the age of 25, whether or not a single person or a lone parent. The same applies to Housing Benefit and council tax benefit. Moreover, ESA is currently paid at the same rate as income support.

24. I have concluded that, whilst the Sponsor is paid benefits for himself only, admission of his daughter would not result in further recourse to public funds in that it would make no difference to his housing or council tax benefit and he has preserved £8000 in a savings account expressly to provide for any future additional expenses for his daughter. I also accept that, if needed, the Sponsor and Appellant would turn to the [S] family, given that the Appellant will become part of that family upon her admission to the United Kingdom.

Decision

25. The appeal is allowed under paragraph 297 of the Immigration Rules. I direct pursuant to section 87(1) of the NIAA 2002, that entry clearance be granted. I would request that this is done as soon as possible, given that the Appellant is a young child who is living separately from both her parents, in adverse circumstances, which runs contrary to her best interests and her admission will enable her to join her father in the United Kingdom.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

4 May 2018