Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12569/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 14 November 2019	**On 11 December 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

OMAR MAHJAZI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - AMMAN

Respondent

Representation:
For the Appellant: Mr A Moran, Alex Moran Immigration & Asylum
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. This is the continuation of an appeal by the Appellant against the decision of the First-tier Tribunal (Judge L Murray) in which the Judge dismissed the appeal of the Appellant, a citizen of Syria, against the Entry Clearance Officer's decision to refuse entry clearance as an adult dependent relative under the Immigration Rules (section EC-DR of Appendix FM) and the Human Rights Convention.

2. At a hearing on 18 July 2019 we decided that the First-tier Tribunal erred in law in dismissing the appeal and set aside the decision of the First-tier Tribunal to be remade by the Upper Tribunal.

3. The primary reason that the decision was set aside was because the Judge failed to properly consider the evidence relevant to paragraph E-ECDR.2.5 of Appendix FM of the Immigration Rules. The finding that the Appellant met the requirements of paragraph E-ECDR.2.4 was upheld.

4. At the resumed hearing before us Mr Moran again appeared for the Appellant and submitted a supplementary bundle containing 209 pages and including a written skeleton argument. Mr Howells represented the Secretary of State and did not submit any additional documents.

5. At the outset Mr Moran indicated that he wished to call oral evidence from the Sponsor, Hussam Mehjazi, and that an interpreter would be needed. Permission to call oral evidence not having been requested and there being no interpreter present there was some discussion as to how this should be resolved. Mr Howells had no objection to the evidence being called and we agreed that it was in the interests of justice to admit oral evidence. The Sponsor's brother being present and fluent in English we agreed to delay the start of the hearing to enable the Sponsor's brother to read the Sponsor's witness statement to enable him to give evidence instead of the Sponsor. We were conscious of the fact that the Sponsor's witness statement before the First-tier Tribunal said that he and his brother proposed to share the responsibility of looking after the Appellant in the United Kingdom and that this was, in effect, a joint sponsorship.

6. For the Respondent Mr Howells agreed that there was subsisting family life enjoyed between the Appellant and his two sons and that if it was found that the Appellant met the requirements of paragraph E-ECDR.2.5 that would be determinative. Mr Howells said that it was not accepted that the Appellant lived in Rabia, as asserted in the Sponsor's witness statement, and referred to paragraph 22 of the Entry Clearance application which showed the Appellant's address as Latakia Tabiat.

Oral Evidence

7. Amer Mehjaze gave oral evidence in English and confirmed that he had read and adopted the witness statement of his brother Hussam Mehjazi as his own. He said that the Appellant lives in the Tabiat district of Rabia in the province of Latakia about 35km from Latakia city. It would take about 30 minutes to travel depending on checkpoints. He said if it were not for the war and wishing to avoid military service his brother would have stayed in Syria looking after their father.

8. Cross examined by Mr Howells the witness said he did not know of an area in Latakia City called Tabiat although it could be a street name. He said the security situation in Rabia was 'on and off' depending on the Free Syrian Army. They had not mentioned Rabia before because they had not been asked. Bustan Alrihan was where his father goes to the doctor, it's about 5km outside Latakia City. Referred to page 26 of the supplementary bundle the witness said that Wahid Aziz Zoubi ("Wahid") lives in Bustan,

he is the son of Aziz Zoubi ("Aziz") who lives next door to the Appellant in Rabia. This is why they used the doctor in Bustan. Wahid was hiding at his father's address to avoid military service and has now left for Turkey. Up to this point he had helped care for the Appellant for about 2 years. Now it is only Aziz who is 60 years old and has a bad back and he also looks after his wife who is not well. He cannot continue to provide personal care to the Appellant and is unable, for example, to lift him on to the toilet.

9. The witness said that to provide alternative personal care was not practical. There is no home care system. Women cannot be used for intimate personal care for religious reasons. There are no available men. Sending money to Syria would only result in abuse. They have no relatives left in Syria; everyone has left.

Submissions

10. For the Respondent, Mr Howells said that the correct approach is to consider the human rights appeal through the prism of the Immigration Rules. The issue is E-ECDR.2.5. The case of BRITCITS v SSHD [2017] EWCA Civ 268 at paragraph 59 established that provision of care must be reasonable both from the viewpoint of the individual concerned and the provider. The burden of proof is on the Appellant and where he lives is key. It does not appear to have been asserted in either the application or appeal that he lives in Rabia where the security situation is unstable. On the visa application his address is given as Latakia Tabiat. In response to the grounds of appeal the ECM review dealt with presumed place of residence as Latakia asserting that it was a government stronghold. In his statement before Judge Murray there is no reference to the ECM being wrong and no mention of Rabia. It is very surprising that if he was living in Rabia that this was never mentioned. Further the claim has been that Appellant has received personal care from his next-door neighbours, firstly Wahid and then from his father Aziz. The evidence indicated that the family lives in Bustan, not in Rabia, which is closer to Latakia.

11. The medical evidence before Judge Murray is now 21 months old. It refers to the unavailability of healthcare which means personal care and support. The second report also from 12 February 2018 refers to unavailability at place of residence. The new report of 2 November 2019 from Dr Sadiq is at page 29 of the supplementary bundle. This says the type of healthcare he needs is unavailable where he currently lives. There are two issues: first where in Syria he lives and secondly in Syria as a whole. Singh LJ made this point in Ribeli v ECO, Pretoria [2018] EWCA Civ 611 (at paragraph 49). He has been receiving personal care from male neighbours for 2-3 years. It seems the current arrangement can continue. He has not shown care cannot continue or if it stops that alternative care cannot be funded by UK sponsor.

12. Mr Howells' submitted that, looking at Article 8 outside the Rules, if he does not meet the requirements of the Rules he would need to show unjustifiably harsh consequences in accordance with Agyarko v SSHD [2017] UKSC 11. Judge Murray accepted various matters, so the Respondent accepts there is Article 8 family life and therefore that the issue is one of proportionality. The Appellant is 82 years old and suffers from several health conditions. He receives personal care and can arrange an alternative. The Respondent does not accept that he lives in Rabia, he lives closer to Latakia City. There is no evidence he has

suffered from violence or bombing. Section 117B(1) of the Nationality, Immigration and Asylum Act 2002 provides that the maintenance of immigration control is in public interest. If Appellant does not meet Rules and succeeds outside Rules there would be a burden on taxpayer in respect of medical and social care needs. Paragraph 69 of BRITCITS v SSHD put the cost of caring for an individual aged between 65 – 85 as approximately £75,000. The Respondent's decision is not disproportionate.

13. For the Appellant Mr Moran relied on his skeleton argument. He said that the first issue is one of credibility as to where the Appellant lives. The evidence is that Wahid was wanted for military service and was in hiding at his father's house and this issue was raised at the last hearing. The location was not raised, and the explanation is that no one asked. The documents refer to an address in Bustan and the witness has given an explanation. Taking the case at its lowest if the Appellant is living in Bustan rather than Rabia the analysis still needs to be made as to whether alternative arrangements are available. There is considerable background evidence in the bundle. We were referred specifically to Mr Moran's skeleton argument in this respect showing, said Mr Moran, that care centres for the elderly are hardly available. A woman who is not a relative cannot provide intimate care for cultural reasons. There are only women left in Latakia. Were it not for the war the Sponsor would not have left. For the same reason Wahid, who was capable of providing care, would not have left. It must be clear that there is unlikely to be an alternative male carer in the young man age group. There are two prongs to the care needed. First, physical care needs. There is some care in place, but Mr Moran submitted that it is not reasonable from the point of view of the carer and this impacts on the Appellant. If Wahid had remained the level of care was reasonable. The second prong is the emotional needs. The Sponsor talks about his father's feelings of isolation and not wanting to die alone. The doctor says he suffers from severe depression. This also impacts on the reasonableness of current care arrangements as does relying on the charity of a neighbour when his son would have done this.

14. Turning to Article 8 Mr Moran said that if the Rules were not met there are truly compelling circumstances. The Appellant's case is distinguishable from Ribeli in that the Sponsor cannot go back to Syria: he is a refugee. The Appellant is a disabled 82-year-old man with no family to care for him and little else in the way of care available.

15. We reserved our decision.

Discussion

16. The Appellant is 82 years old and a Syrian citizen. He sought entry clearance as an adult dependent relative to join his son, the Sponsor, who is a refugee in the United Kingdom. His other son who gave oral evidence is a British citizen. The Appellant suffers from various medical conditions and the finding of the First-tier Tribunal that he requires long term personal care to perform every-day tasks has been preserved. Mr Howells confirmed at the outset of the hearing that the Respondent was satisfied not only that the Appellant met the requirements of paragraph E-ECDR.2.4 of the Immigration Rules but also that he enjoyed family life with his sons for the purposes of Article 8 and agreed that if the Appellant met the requirements of paragraph E-ECDR.2.5 that would be determinative.

17. Paragraph E-ECDR.2.5 of Appendix FM provides

> "The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-
>
> (a) it is not available and there is no person in that country who can reasonably provide it; or
>
> (b) it is not affordable."

18. There is therefore a simple issue for us to decide and to do so we must consider the current care needs of the Appellant and the arrangements that are in place for the provision of that care. Central to this is determining where the Appellant lives.

19. At the First-tier Tribunal hearing it was accepted that he lives in Syria and, although there was no discussion as to his actual location within Syria the decision records (at paragraph 7), the Respondent's position was that he 'resided and originated from Latakia which had been a government stronghold'. For the first time at the hearing before us it was asserted that the Appellant lives in Rabia, a town some distance from Latakia City which, although within the province of Latakia, is a town where there has been significant conflict.

20. In his entry clearance application, the Appellant is shown as living in 'Latakia Tabiat'. The Syrian passport of the Appellant's neighbour, Aziz (page 20 of the Appellant's bundle,) shows his place of birth as 'Latakia'. The Civil Register for Wahid (Aziz's son) shows his place of birth as 'Latakia'. At the First-tier Tribunal hearing the Sponsor provided a witness statement. Paragraph 8 of that statement states "(the Appellant) is based in Latakia". The medical report (page 17 of the bundle before the First-tier Tribunal) shows a clinic address in Bustan Alrihan. The letter from Wahid (page 27 of the same bundle) shows his address as "Bustan Al Raihan … Near the mosque" and refers to the Appellant as "my dear neighbour". The DHL delivery receipt gives the address of the sender as "Bustan Alrihan, Neer Mousk … Lattakia".

21. The first mention of Rabia comes in the Sponsor's witness statement of 11 November 2019. At paragraph 3 he says that the Appellant lives:

> "... in the town of Rabia, which is in the north-east of the Latakia province in Northern Syria, not far from Idlib province to the east and from the border with Turkey to the north … The situation is Rabia is a world away from the city of Latakia on the coast".

Much is made in the statement of the Appellant's location in Rabia and the oral evidence in this respect is recorded above.

22. We have considered the documentary and oral evidence very carefully and having done so we not satisfied that the Appellant lives in Rabia as claimed by his sons. Everything in the documentary evidence points to an address in or near Latakia City. The only addresses mentioned are Latakia, Latakia Taibat and Bustan which the witness accepted are all in close proximity to Latakia City. There was no challenge to the Respondent's assertion that the Appellant lived in "Latakia, a government stronghold" before the First-tier Tribunal. This cannot conceivably, in our judgement, be because the Sponsor was not asked. If his

father did indeed live in a war-torn town he would have said so. We reject the assertion that the Appellant lives in Rabia and we find that the Appellant lives within the environs of Latakia City.

23. Given this finding the question remains whether the Appellant is unable, even with the practical and financial help of the Sponsor, to obtain the required level of care in Latakia, because it is not available and there is no person in Syria who can reasonably provide it or it is not affordable. In considering this and, despite our findings as to the credibility of both the Sponsor and his brother above, we have no difficulty in accepting the truth of their evidence concerning the Appellant's medical condition and the current arrangements for his care. We accept their evidence in this respect because it has been consistent, credible, corroborated and largely unchallenged. The fact that the Appellant is an 82-year-old man with no in country family support is unchallenged. He suffers from various medical conditions and this is not unusual for a man of his age. The latest medical report (pages 28-9 of the Appellant's bundle) confirms the effects of a stroke causing left sided paralysis, issues with vision and a hip replacement following a fall (suffered when applying for entry clearance resulting in this appeal). Given this condition it is not surprising, and of course it is accepted, that he needs long term personal care.

24. The evidence that care is currently provided by his neighbour is again unchallenged and of course corroborated by a letter from Wahid and WhatsApp messages from Wahid and Aziz. Wahid, the son, was looking after the Appellant whilst in hiding at his father's house. His evidence that he was in hiding to avoid military service is consistent and uncontroversial in that it accords with the unchallenged objective evidence in the Appellant's bundle:

> "Since the outbreak of protests in March 2011, Latakia City has been one of the most important strongholds for the Syrian government, acting as a reservoir of soldiers for its protected war against opposition factions. As a result, there has been a huge exodus of young men from Latakia, many of whom were killed or went missing." (Syriadirect.org/news - page 160)

That Wahid has left Syria for Turkey for the same reason is equally credible and unchallenged. Without Wahid the Appellant is in the care of Aziz a 60-year-old who it is said suffers from a bad back. Again, we have no difficulty accepting the evidence and the fact that a 60-year-old neighbour is not able to provide the required level of support for an 82-year-old man who needs long term personal care including lifting on to the toilet. The required level of care cannot in our judgement be reasonably provided by Aziz.

25. The next question is whether alternative care arrangements can be made. In our judgement they cannot and as such the question of affordability does not arise. Intimate personal care is needed as referred to above. We accept that such care cannot reasonably be provided by a female non-family carer. The Respondent's IDI on Adult Dependent Relatives notes

> "The ECO should bear in mind any relevant cultural factors, such as in countries where women are unlikely to be able to provide support in some circumstances".

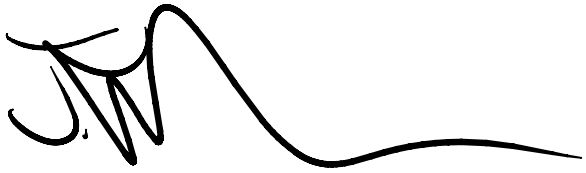
26. The objective evidence (pages 149-157 of the Appellant's bundle) emphasises that care of the elderly is largely dealt with by families and that there are virtually no care homes for the elderly in most of Syria. The evidence also shows that there is a distinct shortage of male labour in Latakia due to the shortage of men with many having been killed or having left the country due to the war (pages 158-160).

27. In our judgement, the required level of personal care is not available to the Appellant in Syria and there is no person who can reasonably provide it. He therefore meets the requirements of paragraph E-ECDR.2.5 and this was accepted by Mr Howells to be determinative given that the Respondent accepts that family life exists. So far as the required level of care is concerned the letter of 2 November 2019 from Dr Saqiq, referred to by Mr Howells in his submissions meets the documentary requirements of Appendix FM-SE, confirming as it does that care cannot be provided in the Appellant's home area. The background evidence combined with the individual circumstances of the Appellant satisfy us that the required and necessary level of care cannot be provided elsewhere in Syria. On this basis the appeal must be allowed.

28. Turning briefly to the situation outside the Immigration Rules and it being accepted that family life exists, it is our finding that even outside the Rules the Respondent's decision is disproportionate to the legitimate aim of immigration control. We make this finding on the basis that the Appellant is an elderly and immobile man living in a country that has been ravaged by the effects of a long term war who is without relatives to provide physical and emotional support. The Sponsor is unable to travel to Syria to even visit the Appellant because of his refugee status and the Sponsor's brother and the Appellant's other relatives are practically unable to travel to Syria because of the ongoing violence in that country. Not only does this mean that the Appellant's relatives are unable to visit him it essentially means that the Appellant will never see his children again. These, in our judgement, are truly compelling circumstances resulting in unjustifiably harsh consequences for the Appellant that not only bring Article 8 into play outside the prism of the Rules but also weigh the balance of proportionality heavily in the Appellant's favour.

Decision

29. The decision of the First-tier Tribunal has been set aside. We remake the decision and we allow the Appellant's appeal under Art 8.

Signed:  **Date: 4 December 2019**

J F W Phillips
Deputy Judge of the Upper Tribunal