



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001359; UI-2023-001358;
UI-2023-001357; UI-2023-001360
[HU/57784/2021; HU/57785/2021;
HU/57787/2021; HU/57788/2021]

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 8 November 2023**

Before

**UPPER TRIBUNAL JUDGE L SMITH
DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

Between

**(1) EAINAAS ALYOUNIS
(2) EA
(3) AZA
(4) AMA
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Grigg, Counsel instructed by Diplock Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 25 October 2023

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the second to fourth appellants are granted anonymity as minor children.

No-one shall publish or reveal any information, including the name or address of the second to fourth appellants likely to lead members of the public to identify those appellants. Failure to comply with this order could amount to a contempt of court.

1. The appellants are Eainaas Alyounis (the first appellant) and her three children (the second, third and fourth appellants), all are nationals of Syria. They appealed to the First-tier Tribunal against the decisions of the Entry Clearance Officer dated 4 November 2021 to refuse their applications for entry clearance to join the first appellant's brothers in the UK.
2. First-tier Tribunal Feeney dismissed the appeals in a decision dated 24 February 2023. The appellants appealed to the Upper Tribunal and the panel found that there was an error of law in the First-tier Tribunal's decision and set the decision aside to be remade in the Upper Tribunal. Thus the appeal came before us.

Proceedings

3. The hearing took place in Field House. The appellants' sponsor and both representatives attended in person. The appellants remain in Syria and did not attend.
4. We had the following documents before us:
 - i) First-tier Tribunal stitched hearing bundle in respect of each appellant;
 - ii) Appellant's bundle for the hearing before us (78 pages);
 - iii) Error of law decision promulgated on 8 September 2023;
 - iv) Screenshot of map of Khan Arnabeh;
 - v) Screenshot of map of Mosque of Omar Ibn al-Khattab map;
 - vi) CPIN -Syria: Humanitarian situation June 2022;
 - vii) Copy decision in **Agyarko v SSHD [2017] UKSC 11**.
5. The documents at (iv)-(vii) above were submitted by Mr Clarke on the day before the hearing. As Mr Grigg had no objection we admitted these documents.
6. At the outset of the hearing Mr Grigg accepted that the second, third and fourth appellants cannot meet the requirements of paragraph 319X of the Immigration Rules as the sponsor is a British citizen.
7. Following discussion it was agreed that the issues before the tribunal are as follows:
 - i) Whether the first appellant meets the requirements of E-ECDR of Appendix FM of the Immigration Rules;
 - ii) Whether the refusal of entry clearance breaches the rights of the appellants and sponsors under Article 8 outside of the Immigration Rules.
8. The sponsor, Nouras Alyounis (one of the first appellant's brothers), gave oral evidence through an interpreter. We heard submissions from Mr Clarke and Mr Grigg and we reserved our decision.

Legal framework

9. The question is whether the refusal breaches the appellants' right to respect for private and family life under Article 8 ECHR. That right is qualified. The appellants must establish on the balance of probabilities the factual circumstances on which they rely, and that Article 8 (1) is engaged.

If it is, then we have to decide whether the interference with the appellants' rights is justified under Article 8 (2). If an appellant does not meet the Immigration Rules, the public interest is normally in refusing leave to enter or remain. The exception is where refusal results in unjustifiably harsh consequences for the appellant or a family member such that refusal is not proportionate. We take into account the factors set out in section 117B of the Nationality Immigration and Asylum Act 2002 and balance the public interest considerations against the factors relied upon by the appellants.

Findings

The Immigration Rules

First appellant - Appendix FM E-ECDR

10. In order to meet the requirements of the Rules the first appellant must demonstrate that:
 - as a result of age, illness or disability, she requires long-term personal care to perform everyday tasks (E-ECDR 2.4);
 - even with the practical and financial help of the sponsor, she is unable to obtain the required level of care in Syria 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 (E-ECDR 2.5);
 - she can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds (E-ECDR 3.1);
 - the sponsor has provided an undertaking confirming that the appellant will have no recourse to public funds, and that the sponsor will be responsible for her maintenance, accommodation and care, for a period of 5 years from the date she enters the UK if granted indefinite leave to enter (E-ECDR 3.2).

11. We have considered the medical evidence before us in relation to the first appellant. There is a letter from Dr Hassan al-Maleh, a consultant in psychiatry, dated 4 September 2022. The letter states that after several tests he found the appellant suffered from severe depression, crying, nervousness and tension. The report states that the first appellant is unable to undertake duties towards her children and needs her brothers to provide her daily care, pay for her medication and provide her with psychological support. However Dr Al Maleh does not refer to the first appellant's medical records, he does not explain what diagnostic tests he conducted to assess the first appellant's level of depression nor how long she has suffered from this condition. There is no reference to treatment or medications. He does not explain how he is aware that she is unable to undertake caring responsibilities for her children or how he is aware that she requires her brothers care for her daily tasks including medication and psychological support. There is no detail of his qualifications or experience. We attach limited weight to this letter and to the diagnosis.

12. We have considered the letter from Dr Hanna, a diabetic specialist, dated 1 September 2022. He states that the first appellant has type 1 diabetes and depends on insulin. He said that she also has acute anaemia caused by coeliac disease. He says she suffers from fatigue, dizziness and she falls to the ground. He says that she needs daily care in the absence of her

husband who used to take care of her. It is not clear whether Dr Hanna is the first appellant's treating physician or has just provided a report. He makes no reference to her medical records. He says that she needs daily care but does not say how he assessed her needs nor does he specify what care is required. Again, he does not provide detail of his qualifications or experience.

13. In the letter from Dr Hanna dated 4 July 2023 it is stated that the first appellant's blood sugar levels fluctuate and that she is generally fatigued and has malnutrition and that he recommended that she has close follow up and care, abide to the prescribed insulin doses and that her blood sugar levels should be measured in case of a recurrence of a diabetic coma. Dr Hanna does not state that the first appellant requires any assistance to monitor her insulin doses or measure her blood sugar. He gives no detail about the diabetic coma referred to in the letter.
14. There is before us a letter from Dr al-Najjar dated 4 August 2022 which states that the first appellant suffers from occasional iron deficiency (in contrast to Dr Hanna who states that she has acute anaemia). He says that she has coeliac disease and requires a gluten-free diet and continual medical follow up. He does not mention any restriction on the first appellant's ability to care for herself as a result of these medical conditions.
15. Dr al-Najjar provided a further report dated 4 July 2023 stating that the first appellant is unable to afford gluten-free foods which has resulted in a deterioration in her condition including severe anaemia and severe digestive symptoms. Dr al-Najjar recommends that the first appellant should follow a strict gluten-free diet and compensate for iron and vitamin deficiency. It is unclear whether any supplements or medications have been prescribed. Dr al-Najjar does not say how he is aware that the first appellant cannot afford gluten-free foods.
16. There is a conflict between Dr al-Najjar's report and the sponsor's oral evidence. The sponsor said that gluten-free food is not available in Syria whereas Dr al-Najjar said that the first appellant cannot afford it. This is a significant contradiction. There is no background or other evidence to corroborate the claim that gluten-free food is not available in Syria. The first appellant's financial circumstances are unclear in that there is no evidence of her income or outgoings (see below) and there is no evidence as to the cost of gluten-free food so it is not established on the evidence before us that she cannot afford gluten-free food.
17. In the report from Dr Chatty dated 2 August 2022 it is confirmed that the first appellant suffers from coeliac disease.
18. The first appellant provided a letter from Dr Sharba dated 4 July 2023 which states that the appellant suffers from depression, phobia and constant crying due to the absence of her husband. Dr Sharba states that the first appellant needs familial and psychological care from her brothers so that her children will not be affected as she is unable to care for her children due to her psychological condition. The letter makes no reference to any diagnostic tools used to make the diagnosis, there is no reference to the first appellant's medical records. Dr Sharba makes no suggestions to

available treatment or medication. These gaps undermine the weight we can attach to this report.

19. We have considered all of the medical evidence. On the basis of the evidence before us we accept that the first appellant suffers from diabetes and coeliac disease. It appears that she manages the diabetes with insulin and that she follows a gluten-free diet. The reports make reference to periods of poorly managed blood sugar control and poorly managed diet.
20. The reference to a diabetic coma in the report of Dr Hanna is lacking in detail. In his oral evidence the sponsor said that the first appellant had been in a diabetic coma in hospital for a month but he was unable to recall when this was. However, in circumstances where she has young children, it is not credible that the first appellant would not mention this in her witness statement or that the sponsor would not know when this occurred. We find that it has not been established that the first appellant suffered a month long diabetic coma as claimed.
21. In our view the medical evidence before us does not establish that the first appellant requires long-term personal care to perform everyday tasks as a result of age, illness or disability. As set out above, the references in the medical reports to the first appellant requiring care are general and unsubstantiated.
22. We note the letter from Hayat Quaider (undated) which was translated on 5 September 2022. She said that she was the neighbour of the appellants at Omar Ibn al-Khattab Mosque in Jdaydet Artouz and that she took care of the first appellant for about a year. She said that she cared for the first appellant without any wage, that she injected her with insulin. It is implied that Hayat Quaider assisted the first appellant with medicine and food, though this is unclear. It is unclear what daily assistance she provided for the first appellant. In any event she has not provided the first appellant with any assistance since Ms Quaider's husband was injured at work in September 2022.
23. In her witness statement the first appellant said that Hayat Quaider used to look after her and her children, she used to bathe, dress and feed the first appellant but stopped her support in September 2022. In her witness statement Hayat Quaider did not mention these tasks. In any event, the appellant on her own evidence has not had any outside care or assistance since September 2022. She says in her witness statement that her children try to look after her but they are very young (aged 9,7 and 5). She does not specify what daily tasks they undertake for her.
24. In oral evidence the sponsor said that since Hayat stopped helping her, the first appellant has been bathing, dressing and feeding herself with extreme difficulty and that her eldest son helps her if she is really struggling. He said that her son does not need to help her with bathing or toileting but helps her to handle things, look after the children and with moving around. He said that the first appellant does not need a carer daily but needs daily care because of her medical conditions. He said that she travels to her medical appointments by taxi or bus or one of her friend's husband's takes her or that she walks. He said that she walks around 10-12 minutes and that she walks to the pharmacy. It is apparent from this

evidence that the first appellant can undertake her own personal care and perform everyday tasks.

25. In his oral evidence the sponsor said that when the first appellant needs to attend medical consultations she goes out of the house with her face covered so that the military do not see her. He said that she went to the doctors to obtain the letters submitted for the appeal.
26. We find that the medical and other evidence before us does not establish that the first appellant requires long-term personal care to perform everyday tasks as a result of age, illness or disability.
27. Even if long term personal care is required by the first appellant, we are not satisfied that she is unable to obtain such care in Syria. The first appellant had assistance from her neighbour, at no cost between 2020 and 2022. There is no evidence that there have been any attempts to seek an alternative carer. She has assistance from friends and their husbands if required. According to the sponsor, when the first appellant was in a diabetic coma for a month a neighbour (whose name he did not know, not Hayat) looked after the children.
28. There is evidence of remittances from the sponsor and his brothers in the UK during 2021. There is no evidence of any remittances since then. There is no evidence as to the financial circumstances of the appellants in Syria. There is no evidence as to how they are supporting themselves.
29. There is a lack of evidence as to the appellants' circumstances in the Mosque where they are said to reside, for example as to whether they pay any rent, whether they reside in a house, flat or room within the Mosque, whether any food is provided or whether the first appellant works there in return for accommodation.
30. Further, there is a very significant inconsistency within the evidence as to where they reside. In her visa application form the first appellant gave her address as Mosque, Khan Arnabah, Qunaitra. However in her witness statement she said that she lives at Omar Ibn AlKhattab Mosque in Jdaydet Artouz. It was for this reason that the respondent produced the screenshots which we refer to at [4(iv-v)] above.
31. In his oral evidence the sponsor said that since she left her house the first appellant has lived at the same Mosque, except for one or two nights at another Mosque. He talked about her moving around and staying with friends. He said that he completed the application form and denied that he stated that that she was living in the Mosque in Khan Arnabah.
32. We found the sponsor's evidence on this matter to be vague and evasive. The first appellant did not refer to moving between Mosques or houses in her witness statement. The evidence in relation to where the appellants are living is therefore contradictory. There is no evidence from either Mosque to confirm that the appellants reside there or to confirm the circumstances of their residence there. In his oral evidence the sponsor said that the Mosque could not provide such evidence as the official might be killed. However he did not explain why an official would be at risk for providing such information. He went on to say that the evidence could be provided to him rather than through official channels, however he did not explain the

distinction between these methods of providing evidence from Syria, nor did he explain why he had not obtained any evidence from the Mosque where the appellants are residing.

33. Based on the evidence we have before us, the appellants are clearly able to survive without any ongoing financial support from the family in the UK. We are not satisfied that we have been provided with the full picture of the living circumstances of the appellants in Syria. We therefore cannot be satisfied that the first appellant is unable to obtain any care required in Syria or that she cannot afford any required care in Syria.
34. We have considered whether the first appellant can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds. The sponsor earns £1032 per month working in a restaurant. In oral evidence he confirmed that he pays rent of £75.56 per week and that he supports his wife and two children with the remainder of his earnings. In oral evidence the sponsor said that he has obtained a lorry licence and intends to leave his current employment in time to drive a lorry.
35. There is no breakdown of the sponsor's income and outgoings and no calculation as to adequacy of income such as to demonstrate that the first appellant and her children can be maintained by the sponsor, Nouras Alyounis, without recourse to public funds (**Ahmed (benefits: proof of receipt; evidence) [2013] UKUT 00084 (IAC)**). There is inadequate evidence as to the financial circumstances of Mohammed (one of the first appellant's other brothers living in the UK) nor about his willingness and ability to provide financial support to the appellants.
36. The sponsor provided evidence from South Tyneside Council assessing the suitability of his current accommodation for the first appellant. No evidence is provided to confirm that the property is suitable and adequate to accommodate all four appellants.
37. The sponsor provided a letter from his current employer and friend Mohammed Vaseem Mukhtar dated 4 September 2023 to state that he grants permission to the first appellant and her children to reside in a property he owns without rental charge for as long as they wish. We acknowledge Mr Mukhtar's intention to assist the sponsor and the appellants. However this does not amount to a tenancy agreement or any guarantee that this property will be available to the appellants if they come to the UK. Furthermore, the sponsor gave evidence that he intends to leave his current employment to find more a more lucrative job driving a lorry. When challenged about the potential impact this might have on Mr Mukhtar's continued willingness to assist the appellants, the sponsor said that he might still be able to work part-time in the restaurant. We were unconvinced by this evidence.
38. The first appellant has not demonstrated that she can be maintained and accommodated in the UK without recourse to public funds.
39. The sponsor and his two brothers in the UK have provided undertakings confirming that the appellant will have no recourse to public funds, and that the sponsor will be responsible for her maintenance, accommodation and care, for a period of 5 years from the date she enters the UK if granted

indefinite leave to enter. However there is inadequate evidence that they will be able to provide her with adequate accommodation and care or be able to afford her maintenance for a period of 5 years in accordance with their undertakings.

40. Considering all of the evidence in the round we find that it has not been established that the provisions of paragraph E-ECDR of Appendix FM as set out above are met. Therefore the first appellant has not demonstrated that she meets the requirements of the Immigration Rules.

The second, third and fourth appellants

41. Mr Grigg accepted that the appellants cannot meet the requirements of paragraph 319X of the Immigration Rules as the sponsor is a British citizen and not a relative with limited leave to remain as a refugee or with humanitarian protection.

Article 8 outside the Rules

42. We take account of the Article 8 rights of the sponsors and the appellants. We note that a fact sensitive analysis is essential, and, even if the provisions in the Immigration Rules do not extend to a particular category of family member, the starting point should be the identification of the nature of their relationship with the sponsor so as to identify the relevant Article 8(1) rights; **KF & Others (entry clearance, relatives of refugees) Syria [2019] UKUT 413.**
43. We therefore apply the principles in **R v SSHD ex parte Razgar [2004] UKHL 27**. We firstly consider whether the circumstances engage Article 8(1). That is whether there is 'family life' between the appellants and the sponsors within Article 8 (1). We note that the first appellant's three brothers are sponsors in the appeal. However there are no witness statements before us from Mohammed or Ali (the other two brothers).
44. We firstly consider the best interests of the second, third and fourth appellants who are all children. They live with their mother in Syria. Whilst it appears that their lives there are difficult due to the general situation and their father's disappearance, in the absence of evidence to the contrary, we find that their best interests are to remain with their mother wherever she is living. Whilst we accept that the circumstances in Syria are difficult, a move to the UK for children of the ages the second to fourth appellants are will inevitably involve a period of adjustment to an unfamiliar country which will also be difficult for them.
45. We have considered the medical evidence relating to Ali (one of the first appellant's brothers in the UK), in particular the report from Dr Abuah dated 13 January 2022. We note that Ali has a diagnosis of a Severe Learning Disability and symptoms suggestive of Post Traumatic Stress Disorder. The letter states that, since his mother died, Ali's sister, the first appellant, acted as his parent prior to relocation to the UK, it is stated that Ali has a nurturing relationship with the first appellant and that his mental health recovery would be assisted if she came to the UK.

46. In her witness statement the first appellant talks about her difficulties in Syria but does not talk about her relationship with her brothers in the UK. She makes no reference to her brother Ali or any parental bond with him.
47. In his oral evidence the sponsor said that he and his brothers, Ali and Mohammed, speak to the first appellant every 3-4 days, subject to the availability of the internet and electricity in Syria. The first appellant makes no reference in her witness statement to ongoing contact with her brothers in the UK. The sponsor said that the first appellant is Ali's 'spiritual mother', again the first appellant makes no reference to this relationship. The sponsor said that if the internet is good they speak on video calls and that the first appellant's focus is on Ali and that they both cry during these calls.
48. Whilst we accept that it may be difficult for Ali to provide evidence due to his vulnerabilities, Ali's carer is his half-brother Mohammed, who was his sponsor in his application for entry clearance. The absence of evidence from Mohammed has not been explained. We consider that in the absence of evidence from Ali, or Mohammed on his behalf, we do not have adequate evidence as to the full extent of the relationship between Ali and the first appellant. We note that Ali is now 21 years old and is therefore an adult, though we take into account that he has a Severe Learning Disability. On the evidence before us we do not find it established that the first appellant has a parental relationship with Ali. As we say, Ali's needs in the UK are catered for by his brother Mohammed who is his carer.
49. There is even less evidence of family life between the second, third and fourth appellants and the sponsors. The sponsor said that he and his brothers speak with the children when they speak with the first appellant. However the first appellant makes no reference to such contact in her witness statement and there is no evidence from Ali or Mohammed to confirm any ongoing contact or relationship.
50. On the basis of the factors set out above we find that the first appellant has not demonstrated that there are more than the normal emotional ties between her and the sponsors as adult siblings showing "real, committed or effective support or relationship between adult family members" (**Kugathas v. Secretary of State for the Home Department [2003] EWCA Civ 31**). We find that the second, third and fourth appellants have not established that their relationship with their uncles in the UK amounts to more than normal emotional ties between such family members. Accordingly we find that the appellants have not established that they have a family life with the sponsor and his family or the first appellant's other brothers in the UK within Article 8. We have already dealt with the issue of financial support when considering the first appellant's case within the Immigration Rules (see [28] to [33] above).
51. The appellants are outside the UK and cannot rely on interference with their private lives.
52. In the event that we are wrong in our conclusion concerning the engagement of the appellants' Article 8 rights, we consider the position on the alternative assumption that family life has been established.

53. The refusal of entry clearance amounts to an interference with the family life between the appellants and the sponsors. Is it in accordance with the Immigration Rules, the interference is in accordance with the law.
54. In accordance with the guidance in **KF & Others** [17] we consider whether there would be a disproportionate interference with the family life of the appellants or of the sponsor and the other family members in the UK if the refusal of the appellants' application for entry clearance were maintained.
55. We consider the factors which suggest that the refusal of entry clearance would be a disproportionate interference with the appellant and sponsor's private and family life.
- a) The first appellant suffers from diabetes and coeliac disease. However on the evidence before us she has access to medical care and medication and is mostly managing these conditions.
 - b) The sponsor gave evidence that he and his brothers are in contact with the appellant and her family in Syria. However there is a lack of evidence as to the claimed close family relationships between the first appellant and Mohammed and Ali. There is a lack of corroborative evidence from the first appellant and Mohammed and Ali as to the level of ongoing contact.
 - c) The living circumstances of the appellants in Syria are unclear but we acknowledge that their circumstances there are likely to be difficult in light of the ongoing hostilities there as outlined in the CPIN in evidence before us.
56. We consider the following factors which weigh in the balance in favour of the public interest :
- a) We consider the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002.
 - b) We take into account that the maintenance of effective immigration controls is in the public interest (s117B (1)). The appellants cannot meet the Immigration Rules. This is a matter of significant weight to be weighed in the public interest side of the proportionality assessment.
 - c) There is no evidence that the appellants can speak English, this is a factor against the grant of entry clearance (section 117B (2)).
 - d) The sponsor and his family have a limited income as set out above. There is inadequate evidence as to the financial circumstances of Ali and Mohammed. There is inadequate evidence to establish that the appellants would be financially independent. This is a factor against the grant of entry clearance (section 117B (3)).
 - e) None of the other provisions of section 117B apply as the appellants are outside the UK and any family life was established before the sponsor came to the UK (section 117B (4) and (5)). The appellants do not claim to have a parental relationship with a qualifying child (section 117B (6)).
57. We take into account our findings the Immigration Rules are not met for the reasons given above. We find that Article 8 (1) is not engaged. However, even if it is engaged, we find that the factors raised by the appellants are outweighed by the public interest because the appellants do

not meet the Immigration Rules and the other factors in section 117B weigh against them. Further, we are not satisfied, for the reasons set out above, as to the appellants' living circumstances in Syria and the extent of the family relationships with the family in the UK. It of course remains open to the appellants to make a further application for entry clearance with better evidence of the circumstances relied upon if they are able.

NOTICE OF DECISION

The appellants' appeals on human rights grounds are dismissed.

A G Grimes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 November 2023