



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/05230/2021

Appeal Number: UI-2023-001828
First Tier number: HU/51823/2021 &

THE IMMIGRATION ACTS

Heard at Field House

On 4 July 2023

**Decision & Reasons
Promulgated
On 11 August 2023**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

**KK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity Direction

**An anonymity direction was made by the First-tier Tribunal (“FtT”).
As this a family reunion claim, it is appropriate that a direction is
made. Unless and until a Tribunal or Court directs otherwise, KK is
granted anonymity. No report of these proceedings shall directly or
indirectly identify him or any member of his family. This direction
applies amongst others to all parties. Failure to comply with this
direction could lead to contempt of court proceedings.**

Representation:

For the Appellant: Mr T Lay, Garden Court Chambers

For the Respondent: Ms S Lecointe, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a national of Syria. On 11 December 2020 he applied for entry clearance as the family member of someone in the UK with refugee leave, that person being his sister, [KH], whom we shall refer to as the Sponsor. The Sponsor is in the UK with her three youngest children, [M], [S] and [I]. The Sponsor's fourth and eldest child is also in the UK but married and living an independent life. The application was refused by the Respondent for reasons set out in a decision dated 14 January 2021.
2. The Refusal Letter noted the Appellant had applied under the family reunion route but said that since 9 July 2012, applications by family members other than children or partners had been considered under the Adult Dependent Relative requirements of Appendix FM of the Immigration Rules (paragraph EC-DR.1.1.). It said the Appellant did not meet these requirements. As regards article 8 ECHR, the Respondent said it was not satisfied that there were exceptional circumstances which could or would render refusal a breach of Article 8 because it could or would result in unjustifiably harsh consequences for the Appellant or his family. Whilst it had been taken into account that the Sponsor and her children in the UK were said to need a male figure in their lives after the Sponsor's husband passed away, the Appellant had failed to provide any evidence to suggest that the Sponsor and children were reliant upon the Appellant; they had been in the UK since April 2019 and could continue to lead their independent family life here. The Appellant appealed.
3. The Respondent undertook a review of the matter on 27 January 2022 ("the Review") and said it continued to rely on the Refusal Letter. It agreed the issues to be determined on appeal were:

(i) Are there exceptional or compelling circumstances such that a grant of leave is in accordance with the Respondent's policy and therefore in accordance with Article 8 ECHR?

(ii) Would the refusal of the application be a disproportionate breach of Article 8 ECHR?

4. The Review went on to acknowledge the various documents submitted regarding the Sponsor and her children's situation and how they feel this would be improved if the Appellant were to join them in the UK. It accepted evidence from each of a NHS clinical psychologist and friend of the Sponsor's in the UK that it would be beneficial for the Sponsor if the Appellant were to join her in the UK. It also accepted that the Sponsor's children felt they would benefit from having the Appellant join them in the UK, as supported by the children's statements, a social worker assessment and school letter. However, it said those children were currently in education or training, and being assisted with their resettlement. The Respondent was therefore satisfied that the Sponsor and her children had access to ongoing treatment and support. As such it was still not accepted that there were exceptional circumstances, as explained in the Home Office Guidance: Family Reunion. It acknowledged the country information submitted in relation to the Appellant's situation in Turkey but said none of it specifically related to the Appellant and so was of limited evidential value.
5. In response to case management directions made by the FtT, the Respondent filed a letter dated 25 August 2022 confirming that, having considered a letter from the Appellant explaining his position (at Annex 9 of the Appellants bundle), it did not dispute the evidence within that letter. However, the Respondent's position remained as set out in the Review.
6. The appellant's appeal was dismissed by FtT Judge Gaskell for reasons set out in a decision promulgated on 9 March 2023. The Sponsor

attended the hearing of the appeal and was cross-examined. The Judge's consideration of the evidence and his findings are set out at paragraphs [47] to [54] of the decision as follows:

"[47] The appellant presents this case on the basis that he and the sponsor have always been part of the same household: that following the death of his mother when he was 12 years of age, the sponsor became his de facto mother; and that he has always been a second father to the sponsor's children. Accordingly, the circumstances whereby the sponsor and her family came to the UK without him, separated an established family which now seeks reunion.

[48] Accepting the evidence presented by the appellant and the sponsor, the case advanced and summarised in the preceding Paragraph is patently incorrect. The appellant and the sponsor lived together in the same household as children: but the sponsor is less than two years older than the appellant and whilst clearly she would have an enhanced role following the death of their mother, she would remain his older sister. When they became adults, both the sponsor and the appellant married. They formed their own independent households; children were born into those households. It was only in 2013 when the appellant was 39 years of age and the sponsor was 41, that the horror of the Syrian war brought a situation whereby their two families lived together for a time. Thereafter, they separated again for two years until they lived together again in Turkey. They were not treated as one household for the purposes of resettlement to the UK. And, of course, the appellant still has a family - last known to be living in Aleppo but in respect of whom no up-to-date information has been provided.

[49] I have no hesitation in finding that the Syrian war together with the untimely death of the sponsor's husband provide compelling circumstances which justified consideration of the appellant's case outside the Rules.

[50] If I were considering proportionality, it is likely that I would be persuaded that the plight of the sponsor and her family in the UK would render the decision to exclude the appellant disproportionate.

[51] But the difficulty facing the appellant in this case is that I do not consider proportionality unless and until I am satisfied that family life exists and that it will be interfered with.

[52] I have considered in particular paragraphs 24 and 25 of the judgement of a certain Stanley Bu[r]nton in Singh -v- SSHD. The burden of proof is on the appellant. On the evidence adduced before me, I am not satisfied to the requisite standard (the balance of probabilities) that family life exists between this sponsor and this appellant. What exists between them is the normal love and affection between adult siblings. But each of them has founded their own independent household; each of them has responsibilities towards their independent households; and, whilst the tragedy which has unfolded in the sponsor's life may make it desirable for her to have the support of the appellant, this cannot retrospectively confer upon them a state of "family life".

[53] My conclusion therefore is that family life does not exist between the sponsor and the appellant. As such there can be no interference and the questions of lawfulness (not questioned) and proportionality do not arise.

[54] Accordingly, and for these reasons, this appeal is dismissed on human rights grounds.”

7. The Appellant appealed on four grounds as follows:

- a. The Judge did not rationally approach the question (and undisputed evidence) of the Appellant’s separation/divorce from his former household in Aleppo;
- b. The issue of engagement of family life, in principle, was not in dispute at the hearing nor were issues relating to it raised by the Respondent following explicit pre-hearing directions nor was the Sponsor questioned about it in oral evidence – there had thus been a procedural unfairness in making adverse findings;
- c. The Judge did not have regard to the expert evidence corroborating the degree of dependence between the Appellant and Sponsor, which was directly relevant to the issue of engagement of Article 8 ECHR;
- d. The Judge failed to have regard to KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC).

8. Permission to appeal was granted by FtT Judge Mills on 6 June 2023, stating:

“[3]. It was accepted on behalf of the appellant that there was no applicable immigration rule that covered his circumstances, and that the appeal was to be considered ‘outside of the rules’. The Judge states that, had he got to the stage of considering proportionality, he would likely have allowed the appeal in light of the compassionate circumstances of the case. However, the Judge does not get to the question of proportionality because he does not find that Article 8 of the ECHR is engaged in the first place.

[4]. It is arguable, as contended in the appellant’s detailed grounds for permission to appeal, that the Judge has erred because the respondent

does not appear to have ever disputed that the appellant enjoyed a relationship with his sister and her family which amounted to family life for the purposes of Article 8.

[5]. In addition, the respondent had confirmed in writing before the hearing that he did not dispute the contents of the appellant's statement, including his account of having become entirely estranged from his own wife and children, but the Judge then appears to go behind that concession.

[6]. Permission to appeal is therefore granted."

9. No response was filed by the Respondent. The appeal came before us at Field House on 4 July 2023.

The Hearing

10. At the hearing, Ms Lecointe helpfully conceded that Judge Gaskell erred in law in finding that family life under article 8 was not engaged given, in particular, the Respondent's letter of 25 August 2022 had accepted the Appellant's assertion and evidence of family life in his letter at Annex 9 of the Appellant's bundle before the FtT. Ms Lecointe further conceded this error was material and so it was agreed that the decision of Judge Gaskell must be set aside.
11. We then considered whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both parties agreed that the decision could be remade by us and submissions followed. Also with the agreement of the parties, we did not take oral evidence at the hearing and proceeded by way of submissions only (we noted the report of Dr Rachel Thomas which recommended at [119] that the Sponsor be excused from giving oral evidence due to her mental state). It serves no purpose to recite those submissions in full here.
12. Essentially Mr Lay described the background and chronology of events and argued that the relationship between Appellant and Sponsor went above and beyond normal emotional ties between adult siblings, with effective and committed support, albeit not in a financial sense. Family

life was therefore clearly engaged and none of the evidence had been specifically disputed by the Respondent. He was candid in saying he could not assist further with the reasons as to why the Sponsor and Appellant were said to have had to apply separately for resettlement with the UNHCR. He accepted the Appellant did not fall into any of the categories provided for by the Immigration Rules and so could not meet their requirements; the application had only ever been made outside the rules and cumulatively, there were factors which constituted exceptional circumstances for the purpose of the proportionality exercise to be conducted under article 8.

13. Ms Lecointe replied to say that even though it has been accepted that there is family life between Appellant and Sponsor, that family life can be enjoyed (as it is now) via modern means of communication and visits. The children are now all adults and so no bests interests' assessment is needed. The Appellant does not meet the requirements of the immigration rules. The Sponsor and her children have been through education, are receiving assistance and have access to support. The refusal decision is not disproportionate.
14. Mr Lay briefly replied to draw attention to the social worker and mental health assessments which he said show the extreme impact the absence of the Appellant is having on the Sponsor and her children; for this family, taking into account the background context of the war in Syria, the loss of the Sponsor's husband and the trauma they have gone through, the consequences for them are unjustifiably harsh.

Discussion and Findings

15. This is an appeal brought under Article 8 of the European Convention on Human Rights ("ECHR"). The burden of proof is upon the Appellant to show, on the balance of probabilities, that he has established a family life and that his exclusion from the UK as a result of the Respondent's decision, would interfere with that right. It is then for the Respondent to

justify any interference caused. The Respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.

Family life and engagement of article 8

16. Both parties agreed that family life exists such that article 8 is engaged. There is no argument made that, since the Sponsor's children have all attained majority, family life does not exist between she and them, particularly since they all still cohabit. It is therefore family life between the Sponsor and her children on one hand, and the Appellant on the other that forms the basis for the appeal.
17. We say at the outset that the Respondent has not challenged any of the evidence in terms of its content, authenticity or reliability. She has not challenged the credibility of the evidence of any of the witnesses nor the qualifications, expertise or opinions of any of the professionals who have provided reports in support of the family's account of their circumstances.
18. The family's evidence was not tested in cross examination before us but looking at the documentary evidence before us, we note that the evidence of all witnesses has been consistent throughout, and tallies with and is supported by that of the experts, and thus we have no reason to doubt what any of the witnesses say.
19. We note in the case of Rai v Entry Clearance Officer [2017] EWCA Civ 320, Lindblom LJ set out the legal principles relevant to family life (albeit between parents and adult children) and stated as follows:-

"17. In Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31, Sedley L.J. said (in paragraph 17 of his judgment) that 'if dependency is read down as meaning 'support', in the personal sense, and if one adds, echoing the Strasbourg jurisprudence, 'real' or 'committed' or 'effective' to the

word 'support', then it represents ... the irreducible minimum of what family life implies'. Arden L.J. said (in paragraph 24 of her judgment) that the 'relevant factors ... include identifying who are the near relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom he has resided in the past, and the forms of contact he has maintained with the other members of the family with whom he claims to have a family life'. She acknowledged (at paragraph 25) that 'there is no presumption of family life'. Thus 'a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties'. She added that '[such] ties might exist if the appellant were dependent on his family or vice versa', but it was 'not ... essential that the members of the family should be in the same country'. In *Patel and others v Entry Clearance Officer, Mumbai* [2010] EWCA Civ 17, Sedley L.J. said (in paragraph 14 of his judgment, with which Longmore and Aikens L.J.J. agreed) that 'what may constitute an extant family life falls well short of what constitutes dependency, and a good many adult children ... may still have a family life with parents who are now settled here not by leave or by force of circumstance but by long-delayed right'.

20. Similar observations were made by Sir Stanley Burnton in *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 630 (in paragraph 24 of his judgment):

'24. In the case of adults, in the context of immigration control, there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in *Kugathas* did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8.'

21. We take from the relevant caselaw that continued cohabitation is a highly material factor to be taken into account and while not determinative, an adult still cohabiting with family beyond the attainment of majority is likely to be indicative of the continued bonds of effective, real or committed support that underpin a family life. Dependency is also another indicator but not a prerequisite, in order to show something more exists than normal emotional ties; what is needed is effective, real or committed support.

22. Applying the law to the evidence provided by the Appellant (which we discuss in detail below), in circumstances when both parties agree that family life exists, the Refusal Letter and Review did not challenge its existence, and the evidence itself (which we discuss in detail below) has not been challenged, we too are satisfied that it so exists.

Immigration Rules

23. The Appellant does not meet any of the immigration rules and has been candid in admitting as much. In this regard, the Appellant relies on KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC), the first three headnotes of which say:

1. In applications for entry clearance, the starting and significant point in applications for entry clearance is the Article 8 rights of the sponsor or others in the UK. A fact sensitive analysis is essential.

2. There is no blanket prohibition on the relatives of refugees other than a spouse and/or children.

3. As was made clear in Agyarko [2017] UKSC 11 the purpose of the Immigration Rules is to enable decision makers to understand and apply the appropriate weight to be given to the public interest. That the appellants in an application for entry clearance do not meet the Immigration Rules is an adverse factor.

24. We consider this to be of little assistance as it simply confirms that not meeting the rules is an adverse factor, but just because someone does not fall within the rules does not mean that they cannot succeed under article 8. A fact-specific exercise is required and this is what we shall now undertake.

Article 8

25. The Appellant relies on the cumulative effect of several factors to make his case 'outside the rules' and pursuant to article 8. We shall now discuss those factors, and the factors against him before undertaking the overall proportionality exercise required.

Appellant and Sponsor's shared history

26. We accept that the Appellant and Sponsor are not parent and child but nevertheless they are siblings. The Appellant says he has been close to his sister the Sponsor throughout their lives, with her initially playing a maternal role towards him after the death of their mother. The details of how she played this role, and how the Appellant and Sponsor interacted with each other prior to the outbreak of war in Syria, are quite vague. More detail is provided as to events after the outbreak of war, when the Appellant says he and the Sponsor cohabited with each other and their respective families whilst in Aleppo, for two periods of six months, the families moving together each time for safety. There then appears to be a period of around three years when the Sponsor and her own family moved to Latakia without the Appellant, who remained in Aleppo. They say they were in daily contact during this time but there is little other detail about what their respective families each did.
27. The Appellant said that, whilst he did marry, have children and live independently from the Sponsor whilst in Aleppo, he continued to be close with his sister during this time as "every day we used to visit her or she would come to stay in the family building, as her husband was constantly travelling for work".
28. The Appellant then says when the shelling in Syria got worse, he asked the Sponsor to travel to Turkey with her family, the Appellant already having moved there alone as his wife decided to remain in Aleppo. No real detail is provided as to why this choice was made but he says he went ahead first with the plan for his sister to join him later (para 5 his witness statement dated 12.12.22). It has been accepted (based on the letter at Appendix 9 Appellant's Bundle 'AB') that the evidence shows this separation from his wife occurred in 2014 and the Appellant has been estranged from his own family since then. He says this strengthens his desire to play a fatherly role in the lives of the Sponsor's children. He said he and the Sponsor's family cohabited in Turkey for four years,

during which time he played a paternal role to the Sponsor's children, including, he says significantly, the period when their own father was ill and passed away. We note a photograph has been provided which appears to show the Appellant next to the Sponsor's husband whilst he is in hospital, although it is undated.

29. We note the Appellant's statement with the application said:

"[The Sponsor] was forced to leave the children at home and to stay at the hospital in order to take care of her husband for a period of two years. I stayed with the children to watch over and take care of them, so that they did not feel the absence of their parents. I tried to be a friend to them, as well as their uncle, up until the time when their father passed away. I had to look after them more and even be a father to them at the same time. I used to take them to school, pay the rent, and see to the needs of the house. [M] and I worked for the same company: we went to work together, played billiards together, and spent time in cafes together as friends. I was able to make up for the loss of the children's father and they were able to make up for my separation from my own children. We stayed living together until the day of their travel. I was happy for their sake but also sad for myself as I would remain alone and lose my children for a second time."

30. The Sponsor's statement of 12.12.22 says of this period:

"[The Appellant] was with me in the hospital, and at home. And then there came a time when I couldn't go home at all. I was always in hospital, and he was with the children all the time. Looking after them, feeding them, everything".

31. We have seen the death certificate for the Sponsor's husband and the chronology of events is not disputed. Whilst more detail is given as to what the Appellant did with his nephew [M], as opposed to his nieces [S] and [I] during this time, we accept that taking the children to school, paying the rent, seeing to the needs of the house and generally spending time and living with the children are all things which a primary carer or father figure would do.

32. We note the role of the Appellant as father is supported by the comments in the letter of clinical psychologist Stephanie Minchin dated 4 November 2020 saying:

“[S] has spoken at length and in detail about how the Uncle has been positioned as a second father figure within the family, particularly following the passing away of [S]’s father due to a physical health illness. The love and care the Uncle has shown towards the family has been recounted in multiple stories, including [S] sharing an example of a time when the Uncle saved the lives of her and her siblings, protecting them from the war on the streets in Syria. [S] has also recounted stories of the Uncle supporting the family financially and practically by providing a home to stay during the years after leaving Syria and residing in Turkey. In Family Therapy sessions [the Sponsor] has spoken of the challenges in being a widower, a Syrian female, without a partner, devoid of family support, and struggling both emotionally and financially. Both [S] and [the Sponsor] have expressed how much they feel the family need the Uncle to join the family; without him, they continue to feel without hope.

In my professional judgement and clinical opinion, it would be beneficial for [S]’s mental and emotional wellbeing, and of that of the family, for the Uncle to join the family at home in the UK for emotional and practical support”.

33. We note that there is nothing to say that, if or once lost, family life cannot be regained, which is essentially what happened here, the Appellant having temporarily forged his own path with his own wife and children before reuniting with his sister. The Appellant’s separation from his wife occurred over eight years ago. We therefore accept that the family life the Appellant once shared with his wife has come to an end and did so some considerable time ago. We accept that family life between Sponsor and Appellant commenced (or recommenced) whilst they lived together in Turkey and that the Appellant was a father figure to the children and provided financial and general support to them and the Sponsor during this time.
34. The Appellant says the Sponsor and her children applied to be resettled in the UK separately from the Appellant due to having been advised to do so, in order to try and seek better medical treatment for the Sponsor’s husband. Detail has been provided as to the husband’s treatment and the delays in processing the family’s application which unfortunately resulted in his passing away before they were able to come to the UK. The Appellant says “We stayed living together until the day of their travel. I was happy for their sake but also sad for myself as I would remain alone and lose my children for a second time”. We note there is essentially no documentary evidence other than the witness

statements concerning the separate applications for resettlement but again, this has not been challenged by the Respondent and it is only of tangential relevance given it is accepted that family life exists despite the separation.

35. Overall, the Appellant says the Sponsor, her children and the Appellant have together experienced the horror and trauma of the war in Syria which has had a lasting impact on them. Due to these experiences, and due to the loss of the Sponsor's husband, they need the Appellant's physical, stabilising and fatherly presence in their life. They are also concerned about the Appellant's state of health and the risk to him in Turkey (discussed further below).

36. The evidence concerning the Sponsor and her family's experiences in Syria has not been disputed, including their moving 20 times after the breakout of war, living in areas where shelling occurred, their building being hit by a bomb in the night, the Sponsor's husband being kidnapped and she and her family being beaten. It is reasonable and we accept that these experiences were traumatic and have resulted in a lasting impact, particularly for the children for whom it occurred during their formative years.

37. The Sponsor in her statement says:

"I feel like crying because I cannot be with my brother at the end of all this suffering. I feel like a tree with no roots thrown into the desert"

and

"The responsibility is too much for me to cope with now because of my health condition. I get to the point where the responsibility is too big for me and I reach breaking point. Life is difficult here. I feel very lonely, I was one female amongst many males, and now I am alone, so the responsibility for me is huge now. I am not used to taking all this responsibility on my own".

38. [M] in his statement discusses this feeling of responsibility too, saying of his experiences and coming to England that "It has affected me on

a psychological level. I was extremely lonely and lonesome". He admits there has been some improvement since he starting working in a restaurant but that he still feels lonely. He provides detail about how close he has been to the Appellant and what would be different were the Appellant permitted to come to the UK in terms of being able to share the responsibility he feels and also have someone to lean on emotionally.

39. In this respect, the skeleton argument draws our attention to the letter dated 5 December 2020 of Robert Hughes dated 5 December 2020, a member of a group of volunteers who are assisting with the family's resettlement in London. Mr Hughes says:

"I have taken on a mentoring role towards [M], after meeting him shortly after his arrival in the UK in April 2019. [M] and I have met up frequently since his resettlement. It is clear to me that he faces an uphill battle in the UK. While he has escaped the immediate dangers of the Syrian civil war, his new life is in many ways extremely difficult, separated as he is from his friends and his wider family, and lacking the necessary qualifications to fit easily into a full-time educational course or job. [M] is trying to improve his English and has tried out a number of jobs, but neither is easy in an alien environment. He is currently directionless and vulnerable to bad influences. The illness and death of his father at a time when [M] was in his mid-teenage years and already a refugee can only have been an enormous additional emotional blow, from which I have no doubt he is still recovering. [M] often speaks fondly of his uncle .. with whom he lived in Izmir in Turkey. For [M] to have the additional emotional and practical support provided by a father figure in the UK would be immensely useful. It is one thing to be a teenage refugee trying to resettle and build a new life, but to have to grieve the passing of your father at the same time is unimaginably difficult. The presence of a father figure whom [M] respects and looks up to would surely go some way to help."

40. The application (appreciating it was made over two years ago) also said [I] and [S] were facing an uphill battle in their education in London, as they grapple with a new curriculum in a new language, while also helping their mother at home. They believe that there is no substitute for having the Appellant join them in the UK.

41. [S]'s letter supports this, stating of the Appellant:

"He is my closest confidante with whom I talk about all my worries. He rejoices when I am happy and feels pain when I am sad. We have fun together and

laugh together. I hope that he comes to live with me, so that I can become mentally stronger, feel the support of a father once again, follow my dreams, and achieve what I want to achieve”.

42. There is a letter from [I]’s school dated 23 September 2020 which also states that the additional support of the Appellant would greatly benefit [I] and her family. However, we attach only limited weight to this because, as well as now being rather dated, it is not clear whether this is the opinion of the author himself or the views of [I] as relayed to him. If they are his views, it is not clear on what basis he could have formed them other than through discussions with [I].

Sponsor’s mental health/impact on her children

43. The Appellant also says the Sponsor has significant mental health problems which would be improved by having the Appellant live with her in the UK and her vulnerability is a key factor in understanding her degree of past and present emotional dependence on the Appellant. He says [S] and the Sponsor are both meeting with an NHS psychiatrist and counsellor, in view of the traumatic experiences suffered both in Syria and in Turkey and she is struggling with the burden of managing the household in the new environment of London. The Sponsor’s witness statement describes this in detail (see above quotation). She says she suffers from jumpiness, short temper, forgetfulness, flashbacks, severe depression and “some physical symptoms like chronic pain because of my psychological state”. She says:

“The Home Office think that we are receiving all the support we need in the UK, however, going to a psychologist or psychiatrist does not substitute the support that I would feel from my brother. Of course a relationship with a psychologist can never replace or be as supportive as the relationship with my brother. After what I have been through I have no trust in anything or anybody. For example, with my situation people either react with complete indifference, or with pity. Those kinds of reactions leave me feeling judged. I feel judged by people who know nothing about me simply because I have the label of refugee. I feel isolated. For example if you hurt your hand who can feel it. Only you. For me it is like [the Appellant] is the same. I feel that he can feel things the same as me. And he understands.”

44. Clinical Psychologist Dr Stephanie Minchin's letter of 4 November 2020 says:

"[S] was offered an urgent appointment due to initial concerns of suicidal ideation. Following the urgent assessment with CAMHS colleague, Dr Juliet Singher, the current view of difficulties was identified as experiences of anxiety, depression, and Post Traumatic Stress Disorder (PTSD) in the context of having been a refugee and experienced abuse and war, having survived multiple losses. [S] was allocated to me as Care Coordinator, alongside the delivery of psychological therapy and wider systemic liaison. Since May, 2019, [S] and I have met regularly, on occasions joined by her mother.. between every x1-3 weeks".

45. After detailing the treatment being recommended and received by [S], Dr Minchin's letter concludes:

"In my professional judgement and clinical opinion, it would be beneficial for [S]'s mental and emotional wellbeing, and of that of the family, for the Uncle to join the family at home in the UK for emotional and practical support."

46. We note there is a report dated 15 November 2020 by L Parkinson of Social Workers Without Borders (completed after a single assessment of the family undertaken virtually on 18 September 2020 with two volunteer social workers and a third Interpreter/Volunteer present) which assessed the best interests of [S] and [I] (who were then minors), and the family in the UK as a whole, which states:

"[The Sponsor] discussed that these chronic and daily physical health issues make it difficult for her to carry out many parenting tasks such as shopping, cleaning, and any activity that requires lifting. She explained that she feels she would benefit from the assistance of an additional adult family member to help her with physical tasks inside and outside of the home, and that she is hoping her brother .. could assist her in these areas if he were able to join her in the UK."

...

"[The Sponsor] has been diagnosed as having recurrent depressive disorder to the extent that her General Practitioner considers that she is too unwell to work currently. Her emotional difficulties have led her to attempt suicide in April 2019 and she has experienced an episode of self-harm two years ago. [The Sponsor's] IOM health assessment further details that she has ongoing suicidal thoughts as well as experiencing fatigue and inability to feel pleasure. [The Sponsor] has discussed with her General Practitioner how she has low mood, issues with sleeping, and poor appetite due to the stress relating to being a Syrian refugee, the loss of her husband, and being away from her

support networks in a new country. She is currently receiving NHS psychological support for her emotional health difficulties.”

47. The report discusses each child individually and notes an impact on them not just due to their previous experience but also due to their mother’s state of mind, saying:

“Volunteers who worked with the family also raised concerns that [The Sponsor’s] emotional issues have prevented her children from being supported to leave the house to engage in activities and become more independent. [The Sponsor] stated that her mental health issues are exacerbated by her worries around her brother being unsafe in Turkey and at risk there given his health issues. She was clear that she feels if her brother could join her in the UK, this would greatly improve her mental state and would mean she has the support she needs with parenting from a close family member.”

“...[S] is prevented from developing some independence skills due to her mother being fearful about her, for example leaving the house alone to travel to a choir”

48. The report said that at the time, [I] and [S] were in school, [M] was learning to be a barber through a family friend’s barbershop near Woking “which he stated is going well” and the Sponsor was studying English, Maths and IT at college but had been declared unfit for work by her General Practitioner due to recurrent depression. It further said:

“The family is receiving support with tasks around independence from the North Hackney Welcome Project, which is due to formally end in April 2021. All of the volunteers from NHWP spoken to expressed concerns around the family’s ability to leave the house and organise their own affairs in the U.K. without support.”

49. It concludes:

"The family has experienced displacement, grief, loss, and trauma, which has left them with ongoing mental ill health and distress. The loss of the father of the family had a profound impact on them, within a landscape of experiencing and witnessing repeated severely traumatic events involving violence and death. The family's poor emotional wellbeing has left them struggling to cope with resettling in the UK, and a strong sense of dread that more negative events may occur in their lives.

The severity of the impact of their negative life experiences is clear from both the diagnosed conditions and observable behaviours of each member of the family. In particular, [the Sponsor’s] attempt to commit suicide is a stark example of her grave difficulty with her mental health.

My recommendation is that [the Appellant] comes to the UK to live with the family, stepping into the role of the father figure in the children's lives, and providing emotional and practical support to his sister. As the family has experienced such a high rate of difficult life events, it is clearly in their best interests that they could experience the relief of being able to live with their maternal uncle once again and feel a sense of safety and stability."

50. Those conclusions are preceded by a list of 'risk factors' currently existing and also a list of "factors that could contribute to keeping the children safe and well, if [the Appellant] comes to the UK", to which the Respondent has made no challenge.

51. We bear in mind that all of the children are now adults which means that the best interests of [I] and [S] are no longer a primary consideration but fall to be assessed equally with the other family members. Appreciating there is no 'bright line' between child and adult upon attaining majority, and given the report has in any case assessed the family as a whole, it is difficult to see how the children attaining majority affects the report's conclusions. The authors of the report had access to the family's medical records in the UK and were provided with a 'legal bundle' but it is not clear what this contained. They also spoke to other professionals as detailed in the report. We therefore accept that the report's conclusions are not solely based on the subjective views of the family and appear sound. We find the report is particularly persuasive given it was reviewed and supported by two other social workers. We therefore give it weight.

52. We also note the letter written by Ingrid Van Loo dated 8 November 2020, a member of the volunteer group assisting with the family's resettlement under the UK's Community Sponsorship scheme, which states that the Sponsor has become a fragile person, suffering from bouts of depression, pain and insomnia, making it hard to function and adjust to life in the UK. Ms Loo considers the Sponsor would:

"benefit hugely from having a male presence in the house, especially her brother who is so precious to her. Her children would feel more secure and happier too, as the burden of looking after their mother is huge".

53. We bear in mind that this letter is not in the form of a witness statement and that Ms Loos is not said to have any particular qualifications concerning mental health or social care, which factors lessen its evidential value, but its contents have not been challenged by the Respondent. We therefore give it some, but limited, weight.
54. It has now been over 18 months since much of this evidence was written and we have not been provided with any up-to-date witness statement evidence concerning how the family have fared since the support from North Hackney Welcome Project ended, however there is recent evidence going towards the Sponsor's state of health in particular, in the form of Dr Thomas's expert report.
55. Dr Rachel Thomas, Consultant Clinical Psychologist, in her report dated 27 April 2022, assessed the Sponsor's mental state. The report was written after [S] and [M] had both attained majority. Having reviewed this report in detail, we consider Dr Thomas's qualifications appropriate and relevant to the questions she is asked to answer. She was provided with the Respondent's Refusal Letter and review as well as the Appellant's own evidence. She discusses the diagnostic tools used to assess the Sponsor. The account of the Sponsor and her family's background relayed to her is unchanged from that in the other, earlier, evidence save for the additional detail that the Sponsor told Dr Thomas that the Appellant was now facing eviction as his financial position had become even more precarious than before. Given the consistency, we do not consider there to be an exaggeration of this account. Whilst the assessment was undertaken remotely, it lasted two hours which is a sufficient period of time and Dr Thomas considered that this did not affect her ability to make the assessment, with the technology working well and the Sponsor possibly feeling more at ease in her own surroundings. We note the Sponsor's description of several of her symptoms appear to be a continuation of what she has said in her earlier witness statements e.g. sleep disturbance, forgetfulness, anxiety and flashbacks. Overall, due to these factors, we attach considerable

weight to Dr Thomas's report, which has not been challenged in any way by the Respondent.

56. Dr Thomas states:

[65] At the time of this examination, presents with significant psychiatric symptoms leading to a primary diagnosis of Major Depressive Disorder (MDD) rated severe, with additional post-traumatic traits, psychotic features and features of Borderline/Emotionally Unstable Personality Disorder....

[67]. As [the Sponsor] is currently prescribed with psychiatric medication as reported by her in this consultation, the following account also describes her medicated, as opposed to unmedicated, psychiatric condition. The latter would inevitably be worse.

[84] ... "Notably, [the Sponsor] did not cite her children as a protective factor against suicide as might be expected. I consider that this indicates the seriousness of her suicidal ideation and augments her suicide risk in the face of any further traumatic life events".

[94]. Whilst not currently meeting the clinical threshold for a full diagnosis of PTSD, [the Sponsor] does currently display a number of post-traumatic traits. These place her at increased risk of developing full PTSD in the event of any further traumatic life events, such as her brother being unable to join her in the UK and/or if any further traumatic events occur to him in Turkey.

[100]. It is my opinion that the current psychiatric symptoms of Major Depressive Disorder with post-traumatic, psychotic and personality disordered traits displayed by [the Sponsor] primarily caused by the cumulatively traumatic life events which occurred to her and her family in Syria and their aftermath, including the death of her husband in traumatic circumstances, as described above.

[101]. I also consider that being separated again from her brother and her fears for his safety and welfare in Turkey are also augmenting [the Sponsor]'s current psychiatric disorder. I further consider that the onset of the Russia-Ukraine war has been directly re-traumatising (bringing back painful memories of the conflict in Syria) and that this has caused an escalation of her psychiatric symptoms in recent weeks from her self-report.

102. [The Sponsor] did not disclose any biological predisposing factors to her psychiatric disorder, such as a family history of mental illness, indicating the causation as far more likely to be environmental rather than organic. I am therefore satisfied that the above represent the principal causes of [the Sponsor]'s psychiatric condition."

57. Dr Thomas considers the possibility of the Sponsor's symptoms /account being fabricated at [103] - [110] of her report and concludes:

“I consider [the Sponsor] to be psychiatrically consistent and plausible and have no doubt that she is indeed suffering from significant symptoms of psychiatric disorder consequent on the experience of severe and sustained traumatic life events. “

58. At [118] she opines that the Sponsor’s conditions could “cause impairment to the ability to provide a coherent narrative” however, as above, we have found her account to be detailed and consistent.

59. As regards the relationship between Sponsor and Appellant, Dr Thomas notes:

“[127]. From an objective psychological perspective, it is consistent with Attachment Theory that, following the loss of one significant attachment figure ([the Sponsor]’s husband and the children’s father, through firstly his illness and incapacity and then his death), that all would then attach to another close, male, adult, family member acting in loco parentis, especially one who reportedly did as much for the family as did [the Sponsor]’s brother, perhaps as a means of his dealing with the loss of his own family who remained in Syria. It can equally be seen how, having then attached to [the Sponsor] as a paternal substitute, any separation from him by the children would be experienced with distress, bringing back, as it will, the loss of [the Sponsor]’s husband as well as representing a significant loss in its own right.

[132] Whilst the older children are no longer minors, I consider that the nature of the repeated traumatisations that they have reportedly experienced will be likely to render them as developmentally less advanced and as far more emotionally vulnerable than other young people of the same ages who have not endured such adversity. This adversity for them takes multiple forms in terms of repeated displacement and loss of home, friends, country and culture, bereavement of their father, loss of their uncle via separations and having to relocate and settle in a foreign country and culture. Their education has also been adversely impacted.

[133] I do consider that the Appellant’s presence, once again, within the family and this time on a permanent basis will greatly aid this security and stability and facilitate a marked improvement in the emotional wellbeing and psychological prognosis of all three children.

[134] I consider that the Appellant’s ability to join and settle with the family in the UK will also be significantly ameliorative in terms of [the Sponsor]’s mental health and prognosis. Whilst she will still require treatment to effect recovery as described further below, I consider that the presence of her brother in the UK will enable her to feel no longer alone with the responsibility of providing for the children practically, financially and emotionally alone, when she feels so depleted and lacking in capacity to do so. I also consider that this would be protective of her relationship with the children going forward, especially given her reports of angry outbursts towards them on a frequent basis due to her struggles to cope.

[136] 136. I note that the SSHD cites that [the Sponsor] receiving treatment by a Clinical Psychologist in the UK constitutes equivalent support for her that the presence of her brother would provide and thus that there is no need for him to be settled with her and the family in the UK (Respondent's Review, pages 2-3). I disagree with this view from an expert, psychological perspective. Regardless of the fact that the psychological intervention provided to [the Sponsor] in this instance was short-term and has now ended, the type of intervention provided by a Clinical Psychologist is of a therapeutic nature, usually for one hour once weekly and is a different thing entirely from family support which provides ongoing, daily, practical, financial, social and emotional support. For successful psychological therapy (as described further below), it is also highly beneficial for an individual to have robust social support systems in place. In summary, [the Sponsor] requires both psychological therapy and additional family support (in terms of her brother joining her in the UK) in my view to effect psychological recovery and neither family support or psychological therapy is a substitute for the other. [The Sponsor]'s psychological therapy needs are described further below.

[137]. The same applies to the SSHD's citation on page 3 of the Respondent's Review that [the Sponsor]'s children are already benefitting from support in the UK in terms of education, volunteer support and other professional services and thus already 'have access to support'(and thus, by implication, do not require further support in terms of the presence of [the Appellant]). As above, from a mental health perspective, professional supports whilst potentially invaluable, are necessarily time limited and are also not the same thing as family support which provides for entirely different psychological needs. The children, as their mother, require both family support and professional input from the evidence I have reviewed, given their complex needs and lived experiences. From a psychological perspective it is incorrect that a professional can provide the same support and input as a family member and vice versa.

[142]. [The Sponsor] said that she is also concerned that her brother is depressed due to the separation from her and the children and the lack of any social and family support for him in Turkey. I note that [the Appellant] confirms this within his own correspondence within the Appellants' Bundle. As noted above, I consider that it would be very damaging for [the Sponsor]'s mental health prognosis if her brother were to befall further traumatic events or, at worse, to die in Turkey and that this latter incident in particular could lead to a rapid and irreversible decline in [the Sponsor]'s mental health condition, particularly as it would represent a significant re-traumatisation in terms of the circumstances of her husband's prior death, also in Turkey.

[153]. I consider that [the Sponsor] is highly unlikely now to ever recover fully from her traumatic past experiences, as they have been too severe for this, but it is likely that she will at least have an opportunity to re-build her life, sustain existing support structures, form new, supportive relationships and undertake needed psychological therapy in a situation of external stability, supported by her family. As noted above, I consider that her psychological recovery would be significantly facilitated by her brother, [the Appellant], being able to join the family in the UK.

[154]. Without such treatment in a secure context (of the Appellant being permitted to join [the Sponsor] and her children in the UK), it is my opinion that not only will psychiatric recovery for her be highly unlikely now, but that, conversely, continued psychiatric deterioration, possibly resulting in a suicide attempt and/or psychiatric breakdown, would ultimately be a likely scenario.”

60. She concludes:

“[158]. I consider that [the Sponsor]’s mental health recovery would be greatly facilitated by having her brother join her and the children in the UK. I also consider that it would benefit the children’s emotional and psychological wellbeing from [the Sponsor]’s self-reports and based on the established literature relating to childhood and young adult development and attachment security. I consider that the SSHD’s assertion that professional supports in the UK are equivalent to familial support in terms of providing for [the Sponsor]’s and the children’s support needs is incorrect from a psychological perspective

161. If the Appellant is not permitted to join the family in the UK, or a decision on his application continues to be delayed, I consider that this will impede [the Sponsor] from feeling secure enough to commence psychological therapy. Without these things in place, I anticipate that her psychiatric condition is likely not to improve and, instead to deteriorate further over time, especially if any further adverse life events occur to her brother, herself and/or her children going forward.”

61. The contents and format of all of the expert and professional reports has not been challenged by the Respondent in any meaningful way, if at all. It is not clear to us that the Respondent has properly engaged with their contents. Given what the reports say, we cannot accept that the Sponsor and her children are being adequately treated and supported in the UK as it is clear that, even with such support and treatment as they have, the Sponsor and [S] in particular are still struggling with their mental health and the family as a whole is not yet in a position of stability as regards their wellbeing. It is not for us to speculate, but it is obvious that were the Sponsor to attempt suicide again and be successful, the children would be left without any parental figure in their lives in a place where they are already struggling to adjust. There is also the risk of the Appellant dying from his condition as well, and the family in the UK discuss their guilt and worry at his being left behind in Turkey to possibly suffer this fate alone.

Appellant's health

62. The Appellant says he himself also has significant health problems, having previously had two heart attacks, and is not really fit to work but has no choice but to do so in order to survive. Paras 10-13 of his witness statement dated 12.12.22 describe his condition for which he has received medical treatment in Turkey. He says he is concerned that, as with the Sponsor's late husband, the hospital in Buja is not providing him with an adequate standard of care and his chances of survival are likely to be higher in the UK. His undated letter at Appendix 9 AB goes into detail about his condition and hospital stays and the impact on him. The Appellant's assertion that he has not able to provide evidence of his condition due to difficulties in obtaining documentation from his treating hospital has not been challenged and what evidence there is has been accepted by the Respondent. We note, however, that some evidence was actually provided at pages 87-98 of the Appellant's supplementary bundle before the FtT which show various heart diagrams, but we cannot see that this was translated, and the most recent date shown on it is 11.10.19, making it of limited use. The Sponsor says her worry for the Appellant is also impacting on her mental health as it reminds her of what she went through with her husband and because she is afraid she may lose the Appellant as well.
63. Overall, we accept that the Appellant has a heart condition for which he is being treated in Turkey. We accept the severity of this condition based on his own evidence which has not been challenged. We also accept that he perceives that he may be getting, or is at risk of getting, a lower standard of treatment due to his Syrian nationality and due to increasing prejudice against Syrian refugees in Turkey. We have noted his objective evidence in this regard, which again has not been challenged. However, we cannot make a finding that he is in fact getting

a lower standard of care, as our attention has not been drawn to any evidence which specifically says this.

Maintenance of family life

64. As regards the Respondent's assertion that family life could be maintained by modern means of communication and visits, aside from what the evidence says in opposition to this in psychological terms, the Appellant says he and the Sponsor do not have the means to support each other financially and would be unable to fund visits to each other as a result. We accept from the application that the Sponsor's income which comprises of universal credit "and ad-hoc support from a group of volunteers assisting with her resettlement as a refugee as part of the UK Government's Community Sponsorship scheme" is used to support her and her children. We therefore accept that the Sponsor is unlikely to be in a financial position to travel abroad to visit the Appellant. Given the unchallenged evidence about his also being in a financially precarious position, we accept that he is also unlikely to be able to fund travel for visits.
65. Whilst they have daily contact by phone and electronic means, we accept that this is not a replacement for the family life they previously enjoyed when they lived together, particularly given the challenges they are all now facing, and is not an appropriate substitute going forwards, based in particular on what the report of Dr Thomas says.
66. Addressing the test in Razgar [2004] UKHL 27, we have found that there is family life between the Appellant and Sponsor and family and we note that the threshold for interference is low and reached here. Although the interference is in accordance with the law and necessary in the interests of the economic well-being of the country, we must consider whether the interference is proportionate to the legitimate aim of having efficient immigration controls (see below).

Refugee status?

67. The Appellant in his skeleton argument asks the Respondent to concede that the Appellant is a refugee under the terms of the 1951 Convention, saying that he would therefore be entitled to settle in the UK if he travelled here illegally but has sought to take a legal route; this is in keeping with the Respondent's policy imperatives and so the need to maintain immigration control cannot operate against him. We cannot see that any such concession has been made by the Respondent and it is beyond the scope of this appeal for us to determine this question. We do note, however, that the Sponsor and her children have been recognised as refugees such that on the face of it, setting aside the residence in Turkey, it is difficult to see on what basis the Appellant would not similarly be so recognised. Having said that, choosing to come to the UK via a legal rather than illegal route is a neutral, rather than positive, factor.
68. We accept that the Sponsor cannot be expected to relocate to Syria to facilitate family reunion given her status as a Syrian refugee. We also accept that, given the Sponsor and her children were resettled from Turkey and now have status in the UK, and against the background of their experiences and the Sponsor's poor mental health, it would be unreasonable to expect them to relocate back to Turkey. The Appellant's objective evidence (such as the article "Syrian refugees recount harassment, abuse in Turkey") that Turkey is becoming increasingly hostile to the Syrian refugee population has not been challenged in general terms, only to say none of it has been demonstrated to apply to the Appellant in particular. The Appellant himself says in his letter at Appendix 9 AB that he has suffered ill treatment and racism due to being Syrian. We accept from this evidence that being Syrian does carry some stigma in Turkey and that some people have been forcibly repatriated to Syria from Turkey such that there is a risk of ill treatment. However we do not consider this evidence is sufficient to give rise to a breach of article 3, as Mr Lay was candid in admitting.

Discussion of factors against the Appellant

69. We note there are some factors which could be said to count against the Appellant's position as follows:
70. He and the Sponsor have not always lived together and have previously chosen to live lives independently of each other, notably each choosing to live separately, marry and have children whilst living in Aleppo, and again when the Sponsor and her children applied to resettle in the UK without the Appellant. As above, we have accepted that family life between Sponsor and Appellant was reformed when they lived together in Turkey for four years and has continued since even though they no longer cohabit. We have noted there is little evidence of what was said to the Sponsor and Appellant concerning their resettlement applications having to be made separately. The Appellant's statement accompanying in his original application says "[The Sponsor] went to register herself at the United Nations in order to travel to Britain, and I was among the family at the point of registration. Unfortunately, though, I had to register myself". He uses the word 'had' as if he had no choice but he does not explain why this was the case. Overall, we do not consider we have sufficient information on which to base a finding in this respect but as above, find it is only of tangential, relevance in any case.
71. The Appellant has now lived in Turkey without the Sponsor for four years, and has a residence permit allowing him to work there. His undated letter at Appendix 9 AB states "I have been living in Turkey as registered resident since 2014 and I have acquired a Turkish ID card, dated 23/02/2015. I have begun working in a company specialising in the manufacture of household furniture". There is no evidence to indicate this situation cannot continue in practical terms and Mr Lay confirmed it was not being argued that the Appellant's current living circumstances (in terms of the general humanitarian situation and risk of destitution) were such as to amount to a breach of article 3 ECHR.

However, we accept that the Appellant and Sponsor are saying the need to be together is for reasons other than practicality.

72. The Appellant has other relatives in Turkey, Mr Lay referring us to the original application in which the Appellant said

“I have two brothers in Turkey (around 2-2.5 hours by car from where I live); I have another brother living in Lebanon and another in Germany, while my sister [the Sponsor] lives in the UK...Occasionally, my brother or friends lend me money to enable me to pay the rent”.

73. We cannot see there is any evidence of the Appellant interacting or having family life with these relatives beyond some financial support. The Respondent does not allege that this exists. If the Appellant is living in a precarious financial situation with considerable health conditions and yet those relatives in the same country are not visiting or assisting him to any great extent now, it is difficult to see how it can be argued that he could look to them for the emotional support he is saying the Sponsor is providing instead.

Proportionality and balancing exercise

74. As the Appellant cannot meet the requirements of the immigration rules, the question is whether, on the basis of the evidence provided by the Appellant, there are exceptional circumstances because maintaining the refusal would result in unjustifiably harsh consequences for him or his family members.
75. Unjustifiably harsh means a harsh outcome which is not justified by the public interest taking into account all the facts of the case and bearing in mind that if family life has been established in ‘precarious’ circumstances then something ‘very compelling’ is required to outweigh the public interest in refusal - Agyarko [2017] UKSC 11. The case of Rhuppiah [2018] UKSC 58 established that ‘precarious’ means any residence short of indefinite leave to remain. We note from the Social Workers without Borders report that the Sponsor and her children have

Leave to Remain for five years from April 2019 and there is no dispute that the relationships in question were formed before that leave was granted.

76. We have considered the case of GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630 which included the following observations about the test to be applied:
- a. the test for an assessment outside the immigration rules was whether a fair balance was struck between competing public and private interests;
 - b. that proportionality test was to be applied to the circumstances of the individual case.
77. Taking s.117B into consideration, it is in the public interest that the Appellant is financially independent. He currently is, being in work and also receiving some financial support from relatives. No challenge has been made to the Sponsor being able to adequately provide for him in terms of finance and accommodation. However, given that he is adequately provided for at the moment in Turkey, this factor is neutral in the balance.
78. Also neutral is that the Appellant has applied to come to the UK by a 'legal' route rather than attempting to come clandestinely. As citizens are expected to abide by the law, this cannot be something that is positive in his favour.
79. On the one side of the balance:
- a. the maintenance of effective immigration controls is in the public interest. It is agreed that the Appellant does not fall within the categories of person permitted by the Immigration Rules.

- b. it is in the public interest that the Appellant can speak English. There is no evidence that he can.
- c. the current situation, in practical terms, can continue, with the Appellant being supported and receiving medical treatment in Turkey and communicating with the Sponsor and her children daily by phone and social media. There is no financial dependency.
- d. The Sponsor and her children have each other for support and are receiving medical treatment and assistance to help them settle in London.

80. On the other side of the balance:

- a. We have found the Appellant and Sponsor and her children enjoy family life together. Even though the children have all reached majority now such that their best interests are not a primary consideration, there is clear and compelling evidence that being separated is having an adverse impact on the whole family, they are not fully able to participate in society due to this impact and their needs and that they would all benefit from being together.
- b. The Appellant is suffering from severe health conditions and although he is receiving medical treatment for them in Turkey, is not in good health and is without the support of his close family and vice versa.
- c. We have accepted there is evidence of stigma and poor treatment of Syrian refugees in Turkey such that, especially given their past experiences, resettlement and the Sponsor's health conditions, the Sponsor and her children cannot reasonably be expected to return there. They therefore cannot return to Turkey to continue family life with the Appellant there.

d. We have found that, due to their respective financial positions, the Appellant and Sponsor would not be able to fund visits to see each other, whether in Turkey or a third country. As such, their separation is for the foreseeable future and could be indefinite.

81. In our judgment, the Appellant's rights under article 8 outweigh the public interest and we are satisfied that the interference is disproportionate to the legitimate public end sought to be achieved in this particular case. We find this is not simply a case of a family having been separated by war and wishing to be reunited again. There are compelling factors due to the family's experiences during the war, their relocation to Turkey, the Sponsor's husband falling ill then passing away during which time the Appellant took on the role of father figure, the Sponsor's poor mental health (including suicide attempt and continued suicidal ideation) and the Appellant's poor physical health having already suffered two heart attacks.
82. It follows that we remake the decision and allow the appeal on Article 8 grounds.

NOTICE OF DECISION

83. The decision of First-tier Tribunal Judge Gaskell is set aside.
84. The decision is remade by us, and we allow the appeal on Article 8 ECHR grounds.

Signed **L. Shepherd**

Date: 31 July 2023

Deputy Upper Tribunal Judge Shepherd