



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2024-000976**  
**HU/52248/2022**  
**IA/00008/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 05 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Ousaima Aloulabi**  
**(no anonymity order made)**

Appellant

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: Ms R. Alkayyam, Sponsor

For the Respondent: Mr M. Diwnycz, Senior Home Office Presenting Officer

**Heard in Edinburgh on the 5<sup>th</sup> September 2024**

**DECISION AND REASONS**

1. The Appellant is a national of Syria date of birth 1<sup>st</sup> January 1944. She appeals with permission against the decision of the First-tier Tribunal (Judge Buchanan) to dismiss her human rights appeal against a decision to refuse to grant her entry clearance in order to join her daughter in the United Kingdom. Her daughter is Ms Reem Alkayyam, who appeared before me at today's hearing.

**Factual Background and Decision of the First-tier Tribunal**

2. None of the facts in this appeal are contested. The facts are as follows.
3. Before she left Syria in October 2015 Reem Alkayyam always lived with her parents in their Damascus home. She has two brothers who both married and established independent lives, but in accordance with custom, Ms Alkayyam, who is unmarried, remained at home with her mother and father. They were always very close.
4. In 2015 Ms Alkayyam successfully obtained a scholarship to come to the University of Edinburgh to study for a MSc degree. Against the background of the conflict in Syria the family collectively considered that this was too good an opportunity for her to miss and it was agreed that she would take up this offer. At that time Ms Alkayyam's brother Ghaith was living in Saudi Arabia and the family resolved that the Appellant and her husband (then aged 79) would temporarily reside with him whilst the Sponsor undertook her studies in the UK.
5. As it happened Ms Alkayyam never returned to Syria. Issues arising from the ongoing conflict and instability in Syria prompted her to claim asylum on the 12<sup>th</sup> January 2017. She was granted refugee status on the 28<sup>th</sup> April 2017. She subsequently gained indefinite leave to remain and has been, since December 2023, a British citizen. She now lives in Edinburgh, where she is employed as an architect.
6. In April 2018 Ghaith's work permit, which enabled him to reside in Saudi Arabia, expired. He and his parents were therefore required to leave that country. Ghaith is a dual Syrian-Canadian national and he decided to return to Canada. He was unable to return to Syria with his parents because he was wanted as a draft evader. As Ms Alkayyam explained, the family were at that time extremely concerned about any of them returning to their home in Damascus, which is in an area near to Eastern Ghouta, then the scene of heavy fighting. For that reason applications for entry clearance to Canada were made on behalf of the Appellant and her husband, the plan being that they would go to live with Ghaith in his home near Toronto. These applications were unsuccessful. The Appellant and her husband had no choice but to return to the family home in Damascus.
7. Next, the family tried to have the Appellant and her husband come to the UK to join Ms Alkayyam here. Applications were made for them to join her here as 'Adult Dependent Relatives', which were refused on the 26<sup>th</sup> May 2018. The Appellant and her husband appealed to the First-tier Tribunal which dismissed the appeal having had regard to the requirements set out in Appendix FM. It was not at that stage satisfied that either the Appellant or her husband required long term care, or that Ms Alkayyam was in a position to maintain and accommodate them in the UK. Article 8 was not found to be engaged. In a decision dated the 4<sup>th</sup> September 2019 the Upper Tribunal upheld that decision.
8. This led to the applications which are the subject of the present appeal. On the 12<sup>th</sup> August 2021 the Appellant and her husband made applications for entry clearance to the United Kingdom to be reunited with their daughter here. These applications make reference to the refugee family reunion provisions but squarely recognise that the applicants were neither the spouse nor children of their Sponsor: the applications make clear that they are made on the basis of Article 8 'outside of the rules'. The applications were refused on the 11<sup>th</sup> March 2022 and the Appellant and her husband appealed to the First-tier Tribunal.

9. The matter came before First-tier Tribunal Judge Buchanan on the 13<sup>th</sup> March 2023. Judge Buchanan was satisfied, having had regard to the voluminous evidence supplied on behalf of the Appellant and her husband, that they were financially reliant on their Sponsor Ms Alkayyam, who had sent them in excess of £4000 in the preceding year. The Tribunal further accepted that there was a demonstrable emotional dependence between parents and daughter, with them speaking for between one and two hours every day, as well as exchanging messages via whatsapp. The Tribunal found, at its paragraph 26.1, that there is here a family life which engages Article 8. It appeared to proceed on the agreed basis that the decision to refuse entry clearance amounted to a lack of respect for, or interference with, that family life. Turning to consider the ultimate question of proportionality, the Tribunal directed itself as follows:

“As the appellants in the instant appeals are each presently living in Syria, they are not within the UK's jurisdiction; and they themselves are not secured any article 8 right to respect for their personal private and family life by authorities in the UK. [KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 00413 (IAC)]. As determined in that case, 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....

....Accordingly, the issue of whether the cases disclose unjustifiably harsh consequences relates only to the consequences on the sponsor as the appellants are not persons "whose article 8 rights . . . would be affected by a decision to refuse the application(s)."

10. Having had regard to that self-direction the Tribunal identified what it understood to be the issues before it:

In my judgement, because of the limited jurisdictional/ territorial extent of ECHR, it is the sponsor's understandable fears and anxiety and concerns about her parents and the consequences upon the UK sponsor of continued refusal of entry clearance which lie at the heart of the appeal. The real question in this case, as it arises on appeal, is whether the respondent is able to establish that the decisions are proportionate interference with the sponsor's private and family life.

11. The decision goes on to consider how the decisions to refuse her parents entry clearance impacted upon the Sponsor Ms Alkayyam. It had regard to her choice to move to the UK as a student, and to the acceptability, as far as she was concerned, of the arrangement that her parents live with her brother Ghaith in Saudi Arabia. Having had regard to the family's attempts to relocate the parents it found that the priority, "quite understandably" was that they get out of Syria. It accepted her evidence that she feels guilt and shame at not having her parents with her, and although it also accepted that members of the Syrian community have blamed her for her 'failure to look after her parents', this was not a factor which the Tribunal was prepared to attach much weight to, given its own assessment that such criticism would be unfair. Ultimately the Tribunal concluded that the decision does not impinge on the Sponsor's life in a disproportionate

manner. She has her life and work in Edinburgh, and this can carry on unaffected. The appeal was thereby dismissed.

### **The Appeal to the Upper Tribunal**

12. The Appellant's husband Mr Ahmad Alkayyam died in Damascus on the 23<sup>rd</sup> March 2023, only ten days after the decision of the First-tier Tribunal. The appeal to the Upper Tribunal is therefore pursued by the Appellant alone.
13. The grounds take issue with the decision in various respects, but I only need address one, and that relates to the Tribunal's direction that it was, as a matter of law, confined to only consider how the decision of the ECO impacted on the Sponsor.
14. On the 4<sup>th</sup> July 2024 the Upper Tribunal reported the decision of Upper Tribunal Judge Rintoul in Al-Hassan & Ors (Article 8 – entry clearance – KF (Syria)) [2024] UKUT 00234 (IAC). The headnote reads:
  1. *The jurisdiction of the Human Rights Convention is primarily territorial, but as observed in SSHD v Abbas [2017] EWCA Civ 1393, family life is unitary in nature with the consequence that the interference with the family life of one is an interference with the rights of all those within the ambit of the family whose rights are engaged.*
  2. *Properly interpreted, KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 is not authority for the proposition that it is only a UK based sponsor whose rights are engaged. While the rights of the person or persons in the United Kingdom may well be a starting point, and there must be an intensive fact-sensitive exercise to decide whether there would be disproportionate interference, it is not correct law to focus exclusively on the sponsor's rights; to do so risks a failure properly to focus on the family unit as a whole and the rights of all of those concerned, contrary to SSHD v Abbas*
15. In directions dated the 29<sup>th</sup> August 2024 I drew the parties' attention to that decision. By his response dated the 3<sup>rd</sup> September 2024 Mr Diwnycz on behalf of the Respondent accepted that in light of the decision in Al-Hassan it must be agreed that the First-tier Tribunal here erred in law when it restricted its consideration to the position of the Sponsor Ms Alkayyam. What the Tribunal should have done, in accordance with the decision in Abbas, was to focus on the family unit as a whole, and the rights of all concerned. I accordingly set the decision of Judge Buchanan aside. In so doing I preserve certain of his findings of fact, which are unchallenged by either party and are unaffected by the error. Those findings are that there is a family life here, given that the Appellant is financially dependent upon her daughter, that prior to the Sponsor's departure from Syria they always lived together, and that there is a continuing emotional dependency, with the two speaking between 1 and 2 hours per day by video/telephone call.

### **The Decision Re-Made**

16. At the hearing before me Mr Diwnycz indicated that in view of the change in circumstance, in particular the death of Mr Alkayyam, he would be prepared to instigate a review of the decision to refuse entry clearance. Ms Alkayyam, who appeared on her mother's behalf, declined that offer, and indicated that she would like to proceed. She updated the Tribunal, by way of oral evidence, as to her mother's current circumstances. Both parties made brief submissions and I reserved my decision.
17. The First-tier Tribunal found as fact that there is a family life here and that is an assessment with which I agree. There is clearly an exceptionally strong emotional dependency between mother and daughter, who maintain daily and lengthy telephone contact. Ms Alkayyam lived with her mother in the family home from her birth in 1973 until she left Syria in 2015. She continues to provide financially for her mother.
18. I find that the decision to refuse entry clearance amounts to a lack of respect for, or interference with, the Appellant's family life with her daughter.
19. The question is whether, in all the circumstances the decision to refuse entry clearance is proportionate.
20. I begin with the relevant public interest considerations set out in s117B Nationality Immigration and Asylum Act 2002.
21. The maintenance of effective immigration control is in the public interest. Immigration control is administered by the operation of the Immigration Rules, and where a claimant is unable to meet the requirements therein, that is a matter that must weigh against them in the balancing exercise. I note that the Appellant has been found in the past not to have met the requirements of the Adult Dependent Relative rules. Although whether she would do today has not been explored before me, this is a case that has been put squarely on the basis of Article 8 'outside of the rules'.
22. It is in the public interest that persons who seek leave to remain in the UK are able to speak English because people who can speak English are better able to integrate and are therefore less of a burden to taxpayers. Ms Alkayyam acknowledges that her mother is unable to speak English. This is therefore a matter that weighs against her in the balancing exercise.
23. It is in the public interest that persons who seek leave to remain in the UK are financially independent. I am satisfied that the Appellant is, and will be, financially independent in that she will not directly have any recourse to public funds should she gain entry to the UK. She is entirely dependent on Ms Alkayyam, who is presently earning £38,500 per annum in her employment as an architect with an engineering firm in Edinburgh<sup>1</sup>. It is not in issue that Ms Alkayyam is able to accommodate her mother<sup>2</sup>. This is therefore a neutral factor in the balancing exercise.
24. Against those matters weighing in the public interest in refusing leave to remain, are the following matters.

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<sup>1</sup> Royal Bank of Scotland statements showing monthly salary, plus payslips, are provided.

<sup>2</sup> This is confirmed in a letter from Edinburgh City Council dated 9.1.19 and the Sponsor remains living at the same address.

25. The Appellant is now aged 80 years old. She is living in the family home in a suburb of Damascus. I set out here the unchallenged evidence of Ms Alkayyam about the situation there (this passage, as all that follow, was written when her father was still alive):

12. My parents are alone and living in conditions of humanitarian need, there is lawlessness in Damascus<sup>3</sup> with no recourse to legitimate security of civilians. As I have stated before my family home is situated in a highly populated regime area, which was previously on the front line of the war, as a result my parents' home was subject to attack and we have provided images of some the damage sustained to our home and area during the fighting<sup>4</sup>...

13. With their home in a damaged state my parents are vulnerable and at risk of threat from intruders. Inflation has caused people to prey on individuals who live alone or have no support, and several incidents happened where vulnerable people were killed in their homes for theft of money or belongings (news articles provided) As I mentioned in my asylum interview (at question 56) we historically had problems with our neighbours who are supporters of the regime. This neighbour threatened my father with killing his son. This man shortly joined the regime militias after the beginning of the war and has since become a powerful militia leader because of his activities against the opposition. He is still living there and poses a continuous risk on my parents...."

26. Ms Alkayyam further expresses concern about her mother's increased vulnerability since the death of her father. She is worried about her being lonely, about her failing health and her increasing frailty. These normal concerns are exacerbated by the fact that her mother is a woman living alone in a city plagued by crime, food shortages and insecurity.

27. The Appellant is not entirely alone in Damascus. Her son Rabee lives on the other side of the city with his wife and three children in a single bedroom apartment. Rabee has provided two witness statements in the appeal, and has provided a photograph of the single room he shares with his family. This shows a double bed pushed up against single bunkbeds for the older children. Ms Alkayyam explains that Rabee has lived apart from his parents since he married in 1997. Since their return to Syria he has tried to cross the city once a week to see his parents, although this is a dangerous journey. As a single man traveling alone he gets stopped and questioned at every checkpoint, interrogated as to the purpose of his journey and detained for hours whilst checks are made: I note that Rabee himself reports that he is stopped an average of 10 times each journey. The constant stops have deterred him from doing the journey as often as he would like as he cannot afford being detained every time he tries to travel across town. It means his wife and daughters are left alone at night, leaving them in the current situation vulnerable by themselves. Rabee's wife has long term care

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<sup>3</sup> The Sponsor has provided a series of newspaper articles detailing the breakdown of law and order in government held Damascus.

<sup>4</sup> Photographs are attached showing what appear to be bullet holes in the windows of the Appellant's home. A photo of a building identified as being nearby their flat is also depicted, showing damage from what is said to be a missile strike.

needs having been in a road traffic accident with lasting injuries<sup>5</sup>. He works out of town in the opposite direction from his mother's house. With work and 3 children to look after, Rabee's time and energy is stretched and he is suffering from exhaustion. He has also been diagnosed with Crohn's disease<sup>6</sup>. Ms Alkayyam reports that his symptoms have affected her brother a lot emotionally and physically. He is only just able to sustain the level of support he currently offers to his mother and is not in a position to offer any more. I accept this evidence, and that it is simply not possible for the Appellant to move to live with Rabee given the constraints of his accommodation. If she could, I have no doubt she would have done so following the death of her husband.

28. I now turn to the position of the Sponsor. As Judge Buchanan notes, she has achieved a lot since she arrived in Scotland 8 years ago. She has qualified as an architect and is now employed full time with an engineering firm. She has a private life of her own. She has however remained unmarried, and I accept her evidence that she does not feel able to "live a normal life" until she knows that her mother is safe: "It is killing me that [she is] struggling with [her] basic life needs while I'm enjoying the safety, security, and physical wellbeing. I keep thinking about what is going to happen to [her] and how I will feel about it". In her statement of October 2022 Ms Alkayyam further explains:

"In the context of Western countries, it is ordinary for a single female to live on her own away from her parents, but for Muslim and Arab families, single women of any age remain settled in their parents' home to where they belong until they are separated by marriage or by death. If the situation in Syria was different, I would have returned to continue living with them. Because they are getting older and more vulnerable my fears are increasing and my life is becoming more difficult. I'm socially burdened by the guilt, and I'm suffering the accusations of the Syrian community where everyone asks me about my parents and blaming me for not reuniting with them"

29. Looking at the history of this appeal and its predecessors, and the evidence that has been collated in support of the Appellant's case, I do not think that Ms Alkayyam could possibly have done more. I have no hesitation in accepting that she is passionately committed to being reunited with, and caring for, her mother.
30. In evaluating this evidence I remind myself of the applicable principles, as summarised by Judge Rintoul in Al-Hassan, in particular those drawn from the European Court decision in MA v Denmark [2021] ECHR 628. Article 8 cannot be considered to impose on a State a general obligation to respect a family's choice about where they want to live. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest and is subject to a fair balance that has to be struck between the competing interests involved. Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors of immigration control. The Court has generally been prepared to find that there

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<sup>5</sup> A medical report is provided.

<sup>6</sup> Two letters from treating physicians are provided.

was a positive obligation on the part of the member State to grant family reunification when several factors are cumulatively present, and for the purposes of this appeal, they include the following. The Sponsor Ms Alkayyam is settled in this country. Her family life with her mother is a relationship which pre-existed her departure from Syria and her settlement in the UK. There are insurmountable obstacles in this family life existing in Syria, since Ms Alkayyam cannot be expected to return there.

31. The question ultimately is whether the decision to refuse entry clearance is disproportionate, and having had regard to all of the evidence before me I am left in no doubt that it is. Although there is always going to be a significant weight attached to the public interest in maintaining effective immigration control, and maintaining that control in the case of those who are unable to speak English, I am satisfied that in this case it is outweighed by the unjustifiably harsh consequences for the Appellant and Sponsor, who will in all likelihood never see each other again if this decision is maintained. Their separation is having a devastating emotional impact on the Sponsor, and I have no reason to doubt that the same must be true for the Appellant, who has lived through war, hardship and the loss of her husband. I accept on the evidence before me that the Appellant and the Sponsor are exceptionally close, and that but for the war in Syria they would still be living together today. The extraordinary lengths that they have gone to in order to maintain that relationship is striking – the bundles contain page upon page of messages between the two, both affectionate and practical, which are sent in addition to the lengthy telephone calls that have taken place every single day for the past nine years. Whilst the Appellant no doubt receives some support from her son living on the other side of the city, for the reasons I have set out above, his ability to contribute more meaningfully to his mother’s care is extremely limited. I am also mindful that as she grows older there is the real possibility that she will require assistance with personal care that only a daughter would wish to give. For all of those reasons, and having again had regard to the public interest, I allow the appeal.

### **Decisions**

32. The decision of the First-tier Tribunal is set aside.
33. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.
34. There is no order for anonymity.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
5<sup>th</sup> September 2024