IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/05966/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 April 2015	**On 1 May 2015**
Dictated 21 April 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

ENTRY CLEARANCE OFFICER, LEBANON

Appellant

and

OSAMA AMHAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: Mr A Moran, Immigration Caseworker, of Alex Moran Immigration and Asylum

DECISION AND REASONS

1. Although the appellant before the Upper Tribunal is the Entry Clearance Officer, I will refer to the parties as they were at the First-Tier.

2. The appellant, a Syrian citizen, applied for entry clearance to join his wife and their six children in the UK. His wife and children are all British citizens, but the family had been living in Syria, the appellant's wife (who

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had a Syrian father and a British mother) having returned to live in Syria when she was 16. The family lived in Damascus for nearly twenty years, and the appellant worked as a steward on the Syrian State Airline.

3. The appellant's wife and children came to the UK in July 2013, because of the dangers resulting from the civil war. The appellant's entry clearance application was refused on 22 April 2014, but his appeal was allowed by First-tier Tribunal Judge D Ross, in a decision promulgated on 30 November 2014. The appeal was allowed on Article 8 grounds, outside the Immigration Rules, it having been conceded that the appellant's wife could not meet the income requirements within Appendix FM.

4. Permission to appeal was granted by First-tier Tribunal Judge Brunnen, on 5 January 2015. The grounds of appeal (six grounds) had been concerned with whether the judge had correctly considered the rights of the appellant rather than the other family members; whether he had adequately considered the Immigration Rules as his starting point; whether he had erred in making findings about the risk to returnees in Syria; whether he had erred in his treatment of the fact that the appellant's family were not refugees; whether he had erred in his approach to the fact that the appellant's wife and children were reliant on benefits; and whether he had erred in referring to the children's interests as "the primary consideration" rather than "a primary consideration".

Error of Law

5. I indicated to the parties, at the start, that my initial view, on reading the papers in advance of the hearing, was that the grounds appeared unlikely to succeed in establishing a material error of law.

6. Ms Everett made submissions which can be summarised as follows. She did not rely on the fourth ground, which appeared to her to be nonsensical. This was because it was clearly impossible for British citizens to apply for asylum in the UK. She did, however, rely on the other grounds. It would have been better for the judge to have said more about the situation in Syria. Read in isolation, the judge's decision did not spell out what the risks were in that country, even if this was a matter of common knowledge.

7. Mr Moran, for the appellant, pointed to the fact that the appellant's bundle before the First-tier Judge did contain the Foreign Office travel advice for Syria, which was emphatic in its advice to British citizens that they should not travel to any part of Syria, for their own safety.

8. As I indicated at the hearing, I have decided that the judge did not err in law, and that there is no basis for interfering with his decision.

9. It is certainly the case that decisions to allow appeals on Article 8 outside the Rules, particularly in entry clearance appeals, can be described as unusual, and controversial. It is also the case, however, that the door has

not been closed, in legal terms, to the possibility that entry clearance appeals should be allowed in this way in certain circumstances. It is also well-established that there will only be a basis to interfere with a decision where an error of law has been established. It also appears to me that, on the very unusual facts in this appeal, many judges would have taken the same approach as this one did. Whether other judges would or would not have taken this approach is, of course, not the issue to be addressed: all that counts is whether a material error of law is established.

10. The most common errors in appeals that have been allowed on Article 8 grounds outside the Rules, that appear in the Upper Tribunal, are a failure to appreciate and apply the current law on the relationship between the Immigration Rules and Article 8 outside the Rules; and a failure to refer to and consider the public interest considerations in the new Part 5A of the 2002 Act (as amended by the 2014 Act). Neither point applies in this case. The judge clearly and correctly identified, at the start of paragraph 8, that the starting point was Appendix FM, and that it was significant that the appellant's wife did not meet the earnings requirement. The judge then correctly set out the current legal framework in paragraphs 8 and 9, and directed himself that it would only be in a rare or exceptional case, where the consequences of the refusal would be unduly harsh, that an appellant could succeed outside the Immigration Rules on Article 8 grounds. In addition, at paragraph 9, the judge refers explicitly to the public interest factors in the 2002 Act, and goes on later in the decision to engage with them directly.

11. It cannot be said, therefore, that there was any error of law in the overall legal framework applied; in a failure to start with the Immigration Rules; in a failure to give weight to the ability to meet the requirements of the Rules; or in a failure to give weight to the public interest considerations in the 2002 Act.

12. Turning to the specific challenges the first ground appears to me to be misguided. This ground attempts to draw a fine distinction between the Article 8 rights of the appellant on the one hand, and those of his wife and children on the other. This appears to me to be an artificial distinction. The point at issue was precisely whether the appellant and the rest of his family could be reunited. This was the question, but the judge was entitled to regard the central point as whether the entry clearance refusal amounted to a disproportionate interference with the appellant's right to respect for family life.

13. The second ground has clearly not been made out. As I have said the judge did take the Immigration Rules as his starting point, and did have proper regard to them. The third ground was concerned with findings on risk without considering the general position of returnees to Syria. This appears to me to be a weak point. The most that Ms Everett could say was that the judge could have spelt out in greater detail the situation in Syria, but this is not a point that appears to me to have much force to it. I

also accept the point made by Mr Moran that evidence was available before the judge in the form of the Foreign Office travel advice.

14. The fourth ground was not relied on. The fifth ground, in relation to the appellant's wife and children claiming benefits, appears to me to be a matter of weight. It is well-established that issues of weight will not amount to errors of law. The judge gave some weight to the point, in negative terms, but also gave some weight to the expectation that the appellant, if allowed to join his family in the UK, would seek to work in order to support them.

15. The sixth ground appears to me to seek to place far too much emphasis on a single word. The paragraph of the decision (paragraph 10) has to be read as a whole. The judge referred to the fact that the best interests of the children could be outweighed by other considerations, and also referred to paragraph 29 of ZH, and the issue of whether it would be reasonable to expect the children to live in another country. In short the judge correctly addressed himself to relevant authority, and summarised the impact of that authority correctly. The attempted criticism rests on an attempt to take one word in isolation from the rest of the paragraph, and this does not appear to me to be a proper approach.

16. For all of these reasons it appears to me that there is no proper basis to find that the judge erred in law in a manner material to the outcome. The grounds amount to a disagreement with that outcome, and a series of complaints about matters of weight, but such points do not amount to material legal errors. As a result there is no basis for the decision to be set aside.

17. I was informed at the hearing that the work of the Entry Clearance Officers in Beirut has been transferred to Jordan, but the judge did not make a direction, and I was not invited to do so.

18. There was a cross-appeal in relation to costs, on which permission to appeal was refused. Neither side made any reference to anonymity, or to the fee award. A whole fee award was made by the judge, and this also remains in force.

Notice of Decision

19. The Entry Clearance Officer's appeal to the Upper Tribunal is dismissed.

20. No error of law having been established, the judge's decision allowing the appeal on Article 8 grounds stands.

21. No anonymity direction made.

Signed Date **21 April 2015**

Deputy Upper Tribunal Judge Gibb