UT Neutral Citation Number: [2024] UKUT 00234 (IAC)

Al Hassan & Ors (Article 8; entry clearance; *KF (Syria)*)

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Heard at Melville Street, Edinburgh

THE IMMIGRATION ACTS

Heard on 23 August 2023 and 30 April 2024
Promulgated on 4 July 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

LOJEIN ABDULRAZZAK AL HASSAN (1)
ALAA SULIMAN AL HALWANI (2)
LAILA FEHMI AL HELWANI (3)
OLA SULIMAN AL HALWANI (4)
MANHAL FEHMI AL HALWANI (5)
HALA AL BADWI (6)
ABDULMALIK ABULRAZZAK AL HASSAN (7)
HAMZA MANHAL AL HALAWANI (8)
SHAM MANHAL FEHMI AL HALAWANI (9)
OSAMA ABDULRAZZAK AL HASSAN (10)
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr U Aslam, Mukhtar & Co, solicitors
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer (23/08/2023)
Mr A Mullen, Senior Home Office Presenting Officer (30/04/24)

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 that 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*

DECISION AND REASONS

1. The appellants appealed with permission against the decision of First-tier Tribunal Judge Komorowski, dismissing their appeals against decisions made on 11 August 2021 to refuse their applications for Entry Clearance as the family members of Ms Faten Al-Helwani ("the sponsor"), a Syrian national recognised as a refugee in the United Kingdom. For the reasons set out below, that decision was set aside by the Upper Tribunal (a panel consisting of Upper Tribunal Judge Macleman and Upper Tribunal Judge Rintoul), and the decision was remade by Upper Tribunal Judge Rintoul sitting alone following a hearing on 30 April 2024.

2. The appellants are all members of one family who state that they had lived together as one household in Syria before the civil war began and that they then fled to Jordan at various times, becoming separated from the sponsor who fled for the United Kingdom in 2014.

3. The appellants are related to the sponsor as follows:

   Manhal Fehmi Alwani (appellant 5), the sponsor's brother.

   Hala Al Badwi (appellant 6) is his wife.

   They have two children: a daughter Sham Manhal Fehmi Al Halawani (appellant 9) (born 2016) and a son Hamza Manhal Al Halawani (appellant 8) (born 2019).

   Hala Al Badwi (appellant 6) has three children from her previous marriage (her husband is deceased). They are: two sons, Abdulmalil Abdulrazzak Al Hassan (appellant 7) (born 2008) and Osama Abdulrazzak Al Hassan (appellant 10) (born 2009); and a daughter, Lojein Abdulrazzak Al Hassan (appellant 1) (born 2011). Manhal is their stepfather.

   Laila Fehmi Al Helwani (appellant 3) is the widowed sister of the sponsor and Manhal. She has two children: a daughter, Ola Suliman Al Halwani (appellant 4) (born 2007) and a son, Alaa Suliman Al Halwani (appellant 2) (born 2008) (a boy) are her children.

4. The appellants' case is that they are entitled to Entry Clearance as a family life exists between the appellants and their sponsor, and that to refuse them would be a breach of their rights to respect for their family life as protected by article 8 of the Human Rights Convention.

5. The respondent concluded that the appellants could not meet the requirements of the immigration rules, or that refusing entry clearance was a breach of their rights under the Human Rights Convention.

Proceedings in the First-tier Tribunal

6. The judge heard evidence from the sponsor and her daughter; he also had before him five inventories of productions.

7. The judge found [8] that:

   (i) There were more than normal emotional ties between the sponsor and her brother, Manhal and between the sponsor and her sister, Laila;

   (ii) There were more than normal emotional ties between the sponsor's daughter, Bushra and her cousins, Ola and Alaa (Laila's children);

   (iii) It was doubtful [9] that a family life existed between Hala and any of her children with the sponsor, her husband or her children.

8. The judge nonetheless proceeded [9] on the basis that sufficiently close ties exist between each of the appellants and the sponsor, her husband and children such that their exclusion constitutes a significant interference in terms of article 8 of the Human Rights Convention. The judge concluded [10], however, this interference was not disproportionate, identifying [11] three issues relevant to proportionality:

   (i) the benefit there would be to the sponsor's and her husband's mental health if the family were admitted;

   (ii) the risk of refoulement to Jordan and the discrimination they face there; and,

   (iii) the separation of the family had been occasioned by the Syrian civil war.

9. The judge found that:

   (i) The appellants did not meet the requirements of the immigration rules [22];

   (ii) Having considered the medical evidence, it was not intuitively obvious [17], nor was there clinical opinion that admitting the "in-laws" would make a difference, in contrast with KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413;

(iii) The appellants are at a real risk of serious harm including a risk to their lives, given the serious risk of refoulement and serious discrimination in Syria [18] and that their best interests lay in being admitted; but,

(iv) This had only a limited and indirect bearing on the seriousness of the interference with the family life represented by refusal of entry clearance, "these matters having more of an effect on the qualify of the individual lives rather than the quality of their lives with each other as a family";

(v) The appellants' private lives fell outside the scope of article 8 (see KF (Syria)) and their plight had only a limited bearing on the private and family lives of the family in the United Kingdom [19];

(vi) The appellants' inability to speak English and their dependence on public funds were factors counting against them [21], by operation of section 117B of the Nationality, Immigration and Asylum Act 2002;

(vii) The appellants were note assisted by the respondent's policy on "Family Reunion: for refuges and those with humanitarian protection".

10. The judge therefore dismissed the appeal on the basis that the interference posed was not disproportionate.

Grounds of appeal & subsequent procedural developments

11. The appellants sought permission to appeal on the grounds that the judge had erred:

(i) In concluding that the appellants' situation had only a limited bearing on the seriousness of the interference in the family life; and, insofar as he relied on KF (Syria) to reach such a conclusion, it was contrary to what was held by the Court of Appeal in SSHD v Abbas [2017] EWCA Civ 1393, the Upper Tribunal having wrongly conflated jurisdiction under Article 1 of the Convention and the scope of family life once jurisdiction was engaged;

(ii) In concluding that the interests of overseas children are not relevant, contrary to the established case law;

(iii) In his approach to the relevant policy;

12. On 15 May 2023, Upper Tribunal Keith granted permission on a renewed application, observing that:

> While KF is a reported decision of this Tribunal and its reasons and conclusions should be accorded significant weight, it is at least arguable that the Judge erred in concluding that the minor children's interests "cannot be of any relevance to appeals heard in this forum" (paragraph 19) and in concluding that the respondent's policies could not be read as permitting consideration of the human rights of out-of-country appellants. While any arguable error may not ultimately be material, as to whether the Judge's decision is not safe and cannot stand, the grounds are of sufficient arguable merit to warrant consideration at a full hearing.

13. On 7 June 2023, the respondent served a response pursuant to rule 24, arguing that the judge had not misdirected himself, not had the Upper Tribunal erred in KF (Syria). It is also submitted that there is no merit in either of the other grounds; there is no challenge to the findings of fact by the judge.

14. On 27 June 2023 further directions were issued requiring the parties to provide skeleton arguments. The appellants complied; the respondent did not.

The hearing on 23 August 2023

15. We heard submissions from both representatives.

16. Mr Aslam relied on his skeleton argument, submitting that the Upper Tribunal had erred in *KF (Syria)* in its approach to how, once it had been established that family life with a person abroad exists, interference with that was to be assessed. It was incorrect to focus solely on the rights of those present in the United Kingdom, that being contrary to the established case law. The compelling circumstances of those outside the United Kingdom were relevant, given family life was to be construed as a whole.

17. Mr Basra submitted that KF (Syria) was correctly decided, and that SSHD v Abbas should be distinguished on its facts.

18. We reserved our decision.

The law

19. These are appeals brought from outside the United Kingdom in which it is argued that the refusal of entry clearance is in breach of article 8 of the Human Rights Convention.

20. It is established law that the jurisdiction of the Human Rights Convention is primarily territorial, but, as the Court of Appeal observed in SSHD v Abbas at [16]- [17]:

> 16. There is no dispute that the Strasbourg jurisprudence supports the proposition that a person outside the territory of an ECHR state may rely upon the family life aspect of article 8 (albeit in very limited circumstances) to secure entry into an ECHR state. The principle was established firmly in *Abdulaziz, Cabales and Balkandali v United Kingdom* (1985) 7 EHRR 471. The Strasbourg Court rejected the argument that article 8 was not engaged at all in immigration cases involving husbands who wished to join their wives in the United Kingdom. However, the ECHR held that article 8 did not give them a right to choose where to live together. In the cases before the court there were no obstacles to the couples establishing their family life in the husbands' countries of origin and not the United Kingdom. The claims failed. Similar cases have concerned parents who lived in an ECHR state but had left their children abroad. In *Gül v Switzerland* (1996) 22 EHRR 93 the Strasbourg Court concluded that family life could be enjoyed in the country of origin; in *Sen v Netherlands* (2001) 36 EHRR 81 the conclusion was to the contrary, with the result that family life would be enjoyed by the unit in the Netherlands.
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> 17. The underlying basis on which the family life aspect of article 8 falls within the jurisdiction of the ECHR in an immigration case, even though the person seeking entry is not in an ECHR state, was explained in *Khan v United Kingdom* (2014) 58 EHRR SE15. It concerned a Pakistani national whose leave to remain in the United Kingdom was

cancelled on national security grounds whilst he was in Pakistan. He argued that he was at risk of treatment contrary to article 3 ECHR if he remained in Pakistan and was not allowed to return to the United Kingdom:

> "There is support in the Court's case law for the proposition that the Contracting State's obligation under art.8 may, in certain circumstances, require family members to be reunified with their relatives living in the Contracting State. However, that positive obligation rests, in large part, on the fact that one of the family members/applicants is already in the Contracting State and being prevented from enjoying his or her family life with their relative because that relative has been denied entry to the Contracting State … The transposition of that limited art.8 obligation to art.3 would, in effect, create an unlimited obligation on Contracting States to allow entry to an individual who might be at real risk of ill-treatment contrary to art.3, regardless of where in the world that person might find himself. The same is true for similar risks of detention and trial contrary to arts 5 and 6 of Convention." (paragraph 27)

21. The Court of Appeal also held:

> 19. The passage from *Khan* set out above recognises the unitary nature of a family for article 8 purposes 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. That is a feature of family life recognised, for example, in *Beoku-Betts v Secretary of State for the Home Department* [2009] AC 115 which held that the rights of all family members, and not only the person immediately affected by a removal decision, must be considered in the article 8 balance. As Lord Brown of Eaton-under-Heywood observed:
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> > "Together these members enjoy a single family life and whether or not the removal would interfere disproportionately with it has to be looked at by reference to the family unit as a whole and the impact of the removal upon each member. If overall the removal would be disproportionate, all affected family members are to be regarded as victims." (paragraph [20]).
>
> Lady Hale put it this way:
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> > " … the central point about family life … is that the whole is greater than the sum of its individual parts. The right to respect for family life of one necessarily encompasses the right to respect for family life of others, normally a spouse or minor children, with whom the family life in enjoyed." (paragraph 4)

22. Although these observations are technically obiter, they are an accurate statement of the law endorsed by the Lord Chief Justice and the Senior President of Tribunals.

23. It is difficult to reconcile these statements of the law with what was said in KF (Syria) at [14]:

> 14. First, it is the sponsor's rights under Article 8 which are engaged. It is he, and only he, who is in the UK. By Article 1 of the ECHR the UK undertook 'to secure to everyone within [its] jurisdiction the rights and freedoms defined in section 1 of this Convention'. Those rights and freedoms include, of course, Article 8. There are certain exceptions where the Convention has an extra-territorial reach, but none of them is relevant in the present context. As Ms Meredith submitted, there are cases where Article 8 has been held to require the admission of someone who is outside the UK, but that is because their exclusion would be an impermissible interference with the private or family life of a

family member who is in the UK -see for instance *Secretary of State for the Home Department v Tahir Abbas* [2017] EWCA Civ 1393. We do not therefore agree with Ms Meredith that the Appellants themselves have Article 8 rights for present purposes since they are all in Jordan.

24. With due respect to the panel, while the rights of the person or persons in the United Kingdom may well be a starting point, and that there must be an intensive fact-sensitive exercise to decide whether there would be disproportionate interference, we do not accept that it is 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. It is also to be borne in mind that it is the appellant's rights which are in issue in these appeals, not the sponsors, given the terms of the ground of appeal, something the panel in KF (Syria) appears to have overlooked at [23].

25. We have not been taken to any other reported decisions which cite KF (Syria) and we observe that it was not referred to in SD (British citizen children - entry clearance) Sri Lanka [2020] UKUT 43.

26. In these appeals, the judge found that a family life existed between the appellants and the sponsor (and her family). On that basis, the Human Rights Convention applies, and on the facts of this case, article 8 was engaged, and the judge considered that the only issue was proportionality.

27. Where we consider that the judge made an error was at [19]. Having accepted [9] that a family life exists, and that the appellants are all at serious risk, he fails properly to consider it as a unit as he was required to do, and wrongly characterises that risk as being to their private lives. It is difficult to comprehend how such a serious risk, including of death which would extinguish family life, is not an interference with family life, and to the extent that the judge does so, his approach is irrational.

28. To the extent that the judge relied on KF (Syria) as authority for the proposition that the children's interests in this case are attenuated and attract little weight per se, he erred, in that he failed to treat them as part of the family unit and what is written at [20] is beside the point.

29. Was this error material? We consider that it is. Although the judge was correct to apply section 117B of the 2002 Act, and to bear in mind that the appellants do not meet the requirements of the Immigration Rules, do not speak English and would be reliant on public funds, the weighing of that significant public interest is flawed. That is because of the failure properly to assess the effect on the appellants as a whole in the light of the severity of the harm likely to occur to them, and it is not inevitable that the result would be the same.

30. For these reasons, we find that the decision of the First-tier Tribunal involved the making of an error of law as averred in grounds 1 and 2. In the circumstances, we are not satisfied that we need consider ground 3.

31. Having reached these conclusion, and issued our ruling we then directed that the decision must be remade in the Upper Tribunal on the basis that there is no challenge to the findings that (a) a family life exists between the appellants and the sponsor, her husband and children in the United Kingdom; and (b), that the appellants are at risk of refoulement to Syria and thus at risk of serious harm. On that basis, the remaking was confined to a consideration of whether the refusal of entry clearance was, in these circumstances, proportionate.

Remaking the Appeal

32. On 30 April 2023, Mr Aslam made submissions, relying primarily on his skeleton argument. He submitted that in this case the family life still exists between the appellants and the sponsor and, relying on MA v Denmark [2021] ECHR 628 at [145] that the existence of an Article 3 risk may in principle reduce the latitude enjoyed by States in striking a fair balance between the competing interests of family reunification and immigration control. He accepted that the test applicable in this case is high but that on the particular facts and given the preserved findings from the previous decision the balance fell in the appellants' favour in the particular circumstances of this case.

33. Mr Mullen submitted that the United Kingdom had complied in this case with is obligations by granting entry clearance to the sponsor's family. He submitted that the authorities cited by the appellant did not assist in the cases where, as here, they were addressing a non-nuclear family. He submitted further that the actual family life that now existed was somewhat attenuated, it now being ten years since the family lived together, which diminishes the extent to which a refusal to grant entry clearance is disproportionate.

34. Mr Mullen submitted also that there was an acceptance here that there was no financial dependency, which is relevant to the quality of family life engaged, drawing my attention to Dabo v Sweden [2024] ECHR 30 at [105].

35. He submitted further in this case there would be a significant recourse to public funds which was relevant to proportionality and that a higher bar applies where, as here, reliance is on a positive application on the part of a State to take action rather than a negative obligation not to do something.

36. In reply, Mr Aslam submitted in this case, unlike Dabo, findings had been made as to the family life.

The Law

37. Sections 117A and 117B of the 2002 Act apply to these appeals but there is no need to set them out in full.

38. Paragraph GEN 3.2 of the Immigration Rules requires that, where an application which has been considered under Appendix FM and does not meet those requirements, it must also be considered whether refusal of entry clearance would

result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family members whose rights are evident.

39. Guidance has also been issued by the respondent - Family reunion: for individuals with protection status in the UK Version 10.0 - to the effect that (page 23):

> Where a refugee family reunion application meets the validity and suitability requirements but does not meet the eligibility requirements of the rules, you must go on to consider whether there are exceptional circumstances which would render refusal of permission to stay or entry clearance a breach of Article 8 ECHR, because such refusal would result in unjustifiably harsh consequences for the applicant or their relevant family member. This is in line with Appendix FM GEN.3.2 – guidance on making this consideration can be found in the Family life (as a partner or parent) and exceptional circumstances guidance.

40. In remaking the decision, I bear in mind the principles set out in Agyarko v SSHD [2027] UKSC 11. I have taken into account also the case law of the European Court of Human Rights to which Mr Aslam drew my attention, but I remind myself that those decisions are not binding on me. Nevertheless, they are matters which I must take into account. I take note of the principles set out in MA v Denmark at 132 and 135.

> 132. Moreover, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory. 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 (ibid., § 107).
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> 135. On the other hand, the Court has generally been prepared to find that there was a positive obligation on the part of the member State to grant family reunification when several of the following circumstances, not all of which are relevant to the present case, were cumulatively present:
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> i. The person requesting family reunification had achieved a settled status in the host country or had strong ties with that country (see, *inter alia*, *Tuquabo-Tekle and Others v. Netherlands*, no. 60665/00, § 47, 1 December 2005 and *Butt v. Norway*, no. 47017/09, §§ 76 and 87, 4 December 2012).
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> ii. Family life was already created, when the requesting person achieved settled status in the host country (see, among others, *Berrehab v. the Netherlands*, cited above, § 29 and *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 44).
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> iii. Both the person requesting family reunification, and the family member concerned, were already staying in the host country (see, inter alia, *Berrehab v. the Netherlands*, cited above, § 29).
>
> iv. Children were involved, since their interests must be afforded significant weight (see, for example, Jeunesse, cited above, §§ 119-120; *Berrehab v. the Netherlands*,

cited above, § 29; *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 47; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 44, ECHR 2006-I; and *Nunez v. Norway*, no. 55597/09, § 84, 28 June 2011).

v. There were insurmountable or major obstacles in the way of the family living in the country of origin of the person requesting family reunification (see, inter alia, *Sen v. the Netherlands*, no. 31465/96, § 40, 21 December 2001; *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 48; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, cited above, § 41; and *Ghatet v. Switzerland*, no. 56971/10, § 49, 8 November 2016).

41. Equally I note what it written at [145]:

> 145. The situation of general violence in a country may be so intense as to conclude that any returnee would be at real risk of Article 3 ill-treatment solely on account of his or her presence there. The absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests. Accordingly, an increased influx of migrants cannot absolve a State of its obligation under that provision (see, for example, Khlaifia and Others v. Italy, cited above, § 114). In principle, this factor may also reduce the latitude enjoyed by States in striking a fair balance between the competing interests of family reunification and immigration control under Article 8, albeit that, during periods of mass influx of asylum-seekers and substantial resource constraints, recipient States should be entitled to consider that it falls within their margin of appreciation to prioritise the provision of Article 3 protection to a greater number of such persons over the Article 8 interest of family reunification of some

42. In addition, it is noted that in Dabo v Sweden the court did observe that States have a wide margin for appreciation in deciding that refugees should have to satisfy the maintenance requirement when subsequently seeking family reunification, albeit that the facts regarding the law applicable in Sweden are somewhat different. It is established law that as was set out in Agyarko at 57:

> 57. That approach is also appropriate when a court or tribunal is considering whether a refusal of leave to remain is compatible with article 8 in the context of precarious family life. Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and the Instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of immigration laws, only where there are "insurmountable obstacles" or "exceptional circumstances" as defined. It must also consider all factors relevant to the specific case in question, including, where relevant, the matters discussed in paras 51-52 above. The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control.

43. Mr Aslam submitted that the principles set out in the European Court of Human Rights are reflected, are as follows:

(i) any assessment of proportionality must have regard to the particular situation of refugees; the fact that family unity is an essential right of refugees; and the fact that it is a matter of international and European consensus that refugees should benefit from a family reunification procedure that is more favourable than that available to other foreigners;

(ii) where "[return to the country in which family members are living] would [expose the refugee to] a real risk of Article 3 ill-treatment… that factor may reduce the [weight to be attributed to the Secretary of State's general assessment of proportionality in the Immigration Rules]"; and,

(iii) "where… [the Secretary of State has *not*] applied the relevant human rights standards consistently with the Convention and its case-law, [or] adequately balanced the individual interests against the public interest [in the Immigration Rules, the Tribunal] would require [*less*] strong reasons to substitute its view for that of the [Secretary of State]".

44. Paragraph (i) of that proposition is not in effect different from that set out in the Home Office Guidance at page 23 as set out above at[39].

45. In essence, the Home Office's position is that although GEN.3.2. might not directly apply, the principles set out in that should be applied to a refugee family reunion application which falls outside Appendix FM GEN.3.2.

46. The guidance - Family life (as a partner or parent) and exceptional circumstances Version 20.0, - provides, at page 64, a list of factors to be taken into account, which include (i) "The likely impact on the applicant, their partner and/or child if the application is refused"; and, (ii) "The absence of governance or security in another country". That is in line with paragraph GEN.3.2(2) of Appendix FM, which refers to "unjustifiably harsh consequences for…another family member whose Article 8 rights it is evident from that information would be affected". I note that the guidance does not draw any distinction between applications for entry clearance and leave to remain.

47. Bearing those factors in mind, it is appropriate to answer the questions set out in R v Secretary of State for the Home Department ex parte Razgar [2004] UKHL 27.

48. On the sustained findings of fact in this case, a family life exists between the appellants and the sponsor. There is a clear interference with that and it is evident that the decision was made in accordance with the applicable Immigration Rules. The question then become one of proportionality.

49. In weighing the applicable factors, the starting point is that the appellants do not meet the requirements of the Immigration Rules. It follows from Section 117A of the 2002 Act the significant weight must be attached to that. Further, they do not speak English and even taking the most optimistic view there will be a considerable and significant reliance on public funds for an extended period given the ages of the minor appellants and the lack of evidence that the adult appellants would be able to find employment.

50. It is accepted [43] that the appellants are not financially dependent on the sponsor. That is a factor to be taken into account in assessing the nature of the family life that exists in this case. Other factors to be taken into account in assessing the family life with the length of the separation but equally it should be borne in mind that the separation in this case was not voluntarily. The sponsor fled Syria and she left Jordan in order to claim asylum, which was granted. She was selected for the UN Resettlement Programme and in her evidence, she was shocked that learning that family reunion was for her spouse and children only.

51. It is also of note that the appellants have never lived in the United Kingdom with the sponsor and that they have no ties with it other than the relationship with the sponsor and her family.

52. That said, that in itself is not a reason for saying that the family life is not strong.

53. In this case it must be borne in mind also that there are insurmountable and major obstacles in the way the family were living in Syria as was noted in KB (Failed asylum seekers and forced returnees) Syria CG [2012] UKUT 426.

54. The Home Office accepts in its CPIN at 2.4.2 that there are not strong grounds supported by cogent evidence to depart from those findings.

55. Given the preserved (and unchallenged) findings – the Secretary of State did not produce a Rule 24 decision – the appellants are at risk of refoulement to Syria and discrimination whilst in Jordan. I accept that a return to Syria or Jordan (with a consequent risk of being removed to Syria) for the sponsor carries with it real risk of detention or death and indeed the risks of the appellants' race are the effective rupture of family life or even its destruction. I accept the submission of Mr Aslam that the sponsor would not be able to lawfully remain in Jordan.

56. In addition, the sponsor has four children and it is simply not in their interests to relocate outside to Syria or Jordan given they have indefinite leave to remain here and have lived here for more than seven years.

57. The factors in favour of the appellants' case are the significant danger there is on the basis of the findings made, family life being disrupted by their removal from Jordan to Syria, whether they would be at risk of death or serious ill-treatment and detention. I accept that in respect of the first to fourth and seventh to ninth appellants that they are children, and it would be in their best interests to relocate to the United Kingdom but that is a relatively minor factor to be taken into account.

58. Whilst in the case of the other appellants the factors are not so strong, equally it is difficult in the circumstances of this case to separate out different family members as the family must be treated as a whole.

59. I have no doubt either, that the sponsor herself is in significant distress as a result of what is happening to her family members in Jordan, to her family.

60. I bear in mind that any case such as this will be fact-specific. It is not always the case that a family life will exist between a UK based sponsor and relatives abroad. Nor, even if that were the case, will the scenario exist whereby, as was found here, the risk is that family life will be disrupted if not extinguished.

61. I bear in mind also that the nature of this situation is dynamic. The risk of refoulement to Syria for the appellants was not so great when the sponsor left. And whilst the family life is therefore somewhat different, and is more attenuated, militating in favour of the Secretary of State, equally, the risk of the nature of the extreme damage done to the family life that does exist is a factor which militates in favour of the appellant.

62. Taking all of these factors into account, given the particular findings of fact as to the level to the risks to these appellants, I am satisfied in the particular facts of this case that refusal of entry clearance was disproportionate. Accordingly, for these reasons, I allow the appeal.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

(2) The decision is remade by allowing the appeal on human rights grounds.

Signed Date: 2 July 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal