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A More Stringent Test To Determining Family Life Between Adults Under Article 8

In ***IA and others v Secretary of State for the Home Department [2025] EWCA Civ 1516***, the Court of Appeal confirmed the test for establishing family life between adults under Article 8:

1 Article 8 of the European Convention on Human Rights (ECHR) is part of UK law and protects the right to respect for private and family life. Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent minor children. Whether it extends to other relationships will depend on the circumstances of a particular case.

Relationships between adults, such as elderly parents and their adult children or siblings, would not necessarily acquire the protection of Article 8 without evidence of further elements of dependency involving more than the normal emotional ties.

2 The test of additional elements of dependency involving more than normal emotional ties is the correct test for determining whether there is the existence of family life between adults. Effective real or committed support is a relevant factor in determining this, not the actual test.

3 The real committed or effective support test is different and a lower test than the additional elements of dependency test. Dependency may be the other side of the support coin, but real effective support may be provided without any serious or meaningful dependency.

4 The question of whether there are the necessary additional elements of dependence involving more than normal emotional ties is a fact sensitive exercise that is decided on a case by case basis.

5 It is undesirable to lay down hard and fast rules as to how the additional elements of dependency test should be applied. It requires some dependence, and dependence is more than the existence of support, even if that support is qualified by real committed support. Exclusive dependence is not required.

Whilst one person being completely dependent on another might normally satisfy the additional elements of dependency test, it is not the only way that the test can be satisfied.

What are the relevant factors in establishing dependency?

There are no hard and fast rules. Ultimately, it is dependent on the facts of a particular case. However, the Court of Appeal highlighted the examples in *Kumari* as making clear the kind of physical and mental dependency that might qualify.

Kumari

In *Kumari*, the European Court of Human Rights (ECHR) considered some case examples of when dependency was or was not established:

- 1 The Court has made an exception for young adults who are still living with their parents and have not yet started a family of their own. In that particular situation, “dependency” is assumed.
- 2 In cases where adults had a physical or mental disability or illness of sufficient seriousness and were in need of constant care and support from other family members, the Court has accepted such dependency.
- 3 Conversely, in cases concerning the following medical conditions, the Court refused to accept that the state of health of the applicants or their relatives was serious enough, or even if sufficiently serious, was sufficient in itself to warrant a finding of the existence of dependency and thus of “family life” within the meaning of Article 8 of the Convention: diabetes, an undefined heart condition and chronic obstructive pulmonary disease, an ulcerative colitis requiring treatment, asthma, and paranoid schizophrenia, which while very serious, were not found by the Court to incapacitate the applicant to the extent that they were compelled to rely on their family’s care and support in their daily life.
- 4 Financial dependency also played a role in the Court’s analysis of “additional elements of dependency”.
- 5 Depending on the circumstances of the case, the Court has found that financial support could be provided from a distance. Financial dependency on

its own has never been considered sufficient to constitute additional ties of dependency, and accordingly family life between adult family members.

6 Other elements that played a role in the Court's analysis of 'additional elements of dependency' in a migration context include, for example, the fact that the person with whom ties were claimed was the only surviving relation, or the fact that substantial links with the country of origin continued to exist. The presence of family members who can provide care or other viable alternatives in the country of origin, or where the person requiring care and support lives, may also be such an element.

Implication of the judgement:

For a long time since the case of *Kuthasgas*, it was thought that the existence of real committed or effective support is the test for determining the existence of family life between adults. The Court of Appeal decision effectively means that the test is in fact more stringent. In all cases, dependency is the key to establishing family life between adults. This may make it harder for adults, such as elderly parents, to establish family life with their adult children in the UK and to rely on Article 8 as a fallback position. This is important for many, as it is incredibly difficult to fulfil the requirements and to succeed in an application under Appendix Adult Dependent Relatives of the Immigration Rules.

The following cases illustrate how the more stringent test of 'additional elements of dependence involving more than normal emotional ties' for establishing family life between adults could lead to harsh results.

***S&S v. United Kingdom* 10375/83 10 December 1984**

Facts:

In *S&S v. UK*, a widowed Indian mother had been granted permission to join her adult son in England.

A year later, they both returned to India for the son's marriage, where the mother remained for three years before applying again to rejoin her son in the UK.

The mother had originally been financially dependent on the son, but had sold the family home and become financially independent in India on her return.

She was denied re-entry on the grounds that she was not wholly or mainly dependent on the son.

Medical evidence demonstrated that the mother was suffering from mental health problems caused by the separation.

The European Commission nonetheless found that family life under Article 8 had not been established because the mother was not financially or otherwise materially dependent on the son.

***Savran v. Denmark* 57467/15, 7 December 2021**

In *Savran*, the applicant was 24. He was a paranoid schizophrenic adult, who claimed family life in Denmark with his mother and siblings, with whom he had lived before being hospitalised, although it was clear that from his early years he had not been “living full-time with his family”.

The European Court of Human Rights (ECHR) rejected his claim, applying the additional elements of dependence test.

The Court was not convinced that the applicant’s mental illness, albeit serious, could in itself be regarded as sufficient evidence of his dependence on his family members to bring the relationship between them within the sphere of family life under Article 8 of the Convention. In particular, it had not been demonstrated that the applicant’s health condition incapacitated him to the extent that he was compelled to rely on their care and support in his daily life. Moreover, it had not been shown that the applicant was dependent on any of his relatives financially. Further, there was no indication that there were any further elements of dependence between the applicant and his family members. In these circumstances, whilst the Court saw no reason to doubt that the applicant’s relationship with his mother and siblings involved normal ties of affection, it did not consider the nature of the relationship to constitute family life under Article 8.

A harsher test to come:

The Immigration and Asylum Bill 2026 was introduced in the House of Commons on 30.6.2026. If it becomes law, it will further restrict the definition of family life between adults. The key proposals are:

- a) A person's family life for the purpose of Article 8 is normally limited to their core cohabiting family, meaning their spouse, civil partner or partner, their children under the age of 18, or if the person is under the age of 18, their parents.
- b) An adult does not normally have a family life with another adult unless the circumstances are such that there is an additional element of dependency beyond normal emotional ties.
- c) The following factors, when taken independently, do not constitute an additional element of dependency between an adult 'A' and another adult 'B':
 - i) The fact that A is financially dependent on B
 - ii) The fact that A suffers from physical or mental illness or infirmity, **unless:**
 - The illness or infirmity means that A is incapacitated to such an extent that A is in need of constant care and support
 - B is or would be able to provide that care and support
 - A would not receive adequate care and support if A were not in the same country as B
 - iii) The fact that A relies on B for emotional support

- iv) The fact that A lives in a country affected by war, conflict or instability and as a result B is concerned about A's welfare.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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