



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/07596/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15 July 2014

Determination Promulgated
On 22 September 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE ENTRY CLEARANCE OFFICER - RIYADH

Appellant

and

MR MUHAMMAD SHAHID ANEES MALIK
(No Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Ms J Isherwood a Senior Home Office Presenting Officer
For the Respondent: Mr A Wattoo a solicitor from Sky Solicitors Ltd

DETERMINATION AND REASONS

1. The appellant is the Entry Clearance Officer in Riyadh ("the entry clearance officer") the Respondent is a citizen of Pakistan who was born on 1 January 1984 ("the applicant"). The entry clearance officer has been given permission to appeal the determination of First-Tier Tribunal Judge Woodhouse ("the FTTJ") who allowed the claimant's appeal against the respondent's decision of 9 February 2013 to refuse his application for entry clearance to come to the UK as a visitor in order to get married under the provisions of paragraph 56D of the Immigration Rules.

2. The entry clearance officer refused the application on the basis that the claimant had failed to produce any evidence to confirm the arrangements for the wedding or that he was in the claimed relationship with his sponsor. The entry clearance officer was not satisfied that the claimant had demonstrated that he was travelling to the UK for the period or purpose claimed. It was said that the claimant's rights of appeal were limited to the grounds referred to in section 84 (1) (c) of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act").
3. The claimant appealed and the application was reviewed by the Entry Clearance Manager who upheld the decision. The claimant appealed and the FTTJ heard the appeal on 25 October 2013. The claimant was represented but the entry clearance officer was not. The FTTJ heard evidence from the claimant's sponsor, Ms Rozena Ali ("the sponsor").
4. The FTTJ found the sponsor to be a credible witness. She was a British citizen by birth and in full-time employment as a Legal Executive. She accepted that the sponsor and the claimant were engaged to be married and in a genuine and continuing relationship. They were in regular contact. The claimant and the sponsor were aware that a Nikah was insufficient evidence of marriage on its own to enable the claimant to make an application for settlement as a spouse. They had had considerable difficulty in establishing the precise requirements for the notification of registration in order to get married in a registry office in this country. Initially, they had been misinformed. Eventually, it was established that the claimant would have to be in this country and have at least seven days residency before they could give the required notice in order to get married. They could not get married in Saudi Arabia because the sponsor could not go there without being accompanied by a suitable male relative which she was unable to do.
5. The FTTJ found that no issues had been raised about the claimant's income or employment. She was satisfied that the claimant intended to come here in order to marry the sponsor and then returned to Saudi Arabia in order to make a settlement application. The claimant had shown that he met the requirements of paragraph 56D (i), (ii) and (iii) of the Immigration Rules.
6. The FTTJ also found that to refuse the claimant entry clearance would be a disproportionate interference with his right to respect for his Article 8 private life rights.
7. The FTTJ allowed the appeal both under the Immigration Rules and on Article 8 human rights grounds.
8. The entry clearance officer applied for and was granted permission to appeal. The grounds argue that the FTTJ erred in law firstly, by failing to give any clear indication as to the date at which the evidence was assessed. This should have been the date of decision on 9 February 2013. Furthermore, it was not

clear what documentary evidence the FTT relied on when stating that this was sufficient to show that the requirements of the Immigration Rules were met. Secondly, the FTTJ made a “material misdirection” by allowing the appeal under the Immigration Rules. Finally, the Article 8 findings were inadequate. The FTTJ should have considered whether the claimant and the sponsor could have continued their relationship through modern means of communication until such time as the appellant was able to satisfy the requirements of the Immigration Rules in order to obtain entry clearance as a spouse/fiancée.

9. The appeal came before me 1 May 2014. I issued a Decision and Directions dated 2 May 2014 which is set out in the Appendix to this determination. I found that the FTTJ erred in law by considering and allowing the appeal under paragraphs 56D and E of the Immigration Rules. She had no jurisdiction to do so. The claimant’s only right of appeal against the decision was on the grounds of racial discrimination by a public authority or on human rights grounds under the provisions of section 84 of the 2002 Act. As there was no suggestion of racial discrimination the only grounds of appeal open to the claimant were human rights grounds and, in the circumstances of this case, Article 8 grounds.
10. I set aside the decision of the FTTJ, adjourning it to be re-made at a later date and giving Directions as to what should be done in the meantime.
11. The sponsor attended the adjourned hearing before me. I have a skeleton argument from Mr Wattoo, a composite bundle lodged on behalf of the claimant which I am told contains all the material on which the claimant relies, a copy of the Immigration Appeals (Family Visitor) Regulations 2012 and the Determination of the Upper Tribunal in Fetle (Partners: two-year requirements) [2014] UKUT 00267 (IAC). Ms Isherwood submitted AS (Somalia) & Anor v Secretary of State for the Home Department [2009] UKHL 32 (17 June 2009) and Shahzad (Art 8: legitimate aim) Pakistan [2014] UKUT 85 (IAC) (26 February 2014).
12. At the hearing before me on 1 May 2014 Mr Wattoo conceded that the claimant could not bring himself within any of the relationship categories set out in the Immigration Appeals (Family Visitor) Regulations 2002 (“the 2002 Regulations”), that section 88 of the 2002 applied and that as a result the claimant had no right of appeal against the entry clearance officer’s decision except on the grounds of racial discrimination by a public authority or on human rights grounds under the provisions of section 84 of the 2002 act. As there was no suggestion of racial discrimination the only grounds of appeal open to him were human rights grounds and, in the circumstances of this case, Article 8 grounds. Mr Wattoo indicated that in the light of the determination in Fetle the claimant now wished to withdraw the concession and argue that the claimant did after all have a full right of appeal against the decision to refuse him entry clearance as a visitor under the Immigration Rules. He accepted that Fetle was not a case relating to visitors rights of appeal but argued that it helped the claimant by analogy. He now wished to argue that

the FTTJ had not erred in law and that the decision should be upheld. In the alternative the appeal should be allowed on Article 8 human rights grounds.

13. Ms Isherwood objected to the application and said that she had been taken by surprise, regarding this as an issue which had already been resolved.
14. The representatives agreed that I should hear evidence from the sponsor, submissions from both of them and then determine all issues including Mr Wattoo's application.
15. I heard brief oral evidence from the sponsor. Initially, Ms Isherwood indicated that she would not wish to cross examine. However, after I had asked the sponsor some questions for the purpose of clarification Ms Isherwood did ask some questions in cross examination. There was no re-examination. The sponsor's evidence is set out in my record of proceedings.
16. In her submissions Ms Isherwood relied on the entry clearance officer's decision and the Entry Clearance Manager's review. The latest witness statement from the sponsor added nothing to the evidence which was before the FTTJ. The claimant had applied for a rule 56D visitor's visa in order to get married. Question 97 in the application form asked; "what would you do after the marriage/civil partnership ceremony?" to which the claimant replied; "I will not bring my wife back to Madinah. She has a good job I would like to extend visa or on my return to Madinah I would like to apply for settlement visa if I can apply from UK then I will try if not I will apply on returning. Supporting letter given." She argued that this called into question the claimant's intention to leave the UK at the end of the visit. There were documents in the claimant's bundle which indicated that he was looking for a job in this country.
17. Ms Isherwood submitted that the claimant and the sponsor should at least have considered the possibility of getting married in Pakistan. In reply to my question as to the entry clearance officer's position as to whether there was a genuine and subsisting relationship Ms Isherwood said that much of the evidence put forward by the claimant in the bundle was untranslated. There was little evidence prior to 2012. Her submission was that they had not established a genuine and subsisting relationship. However, she accepted that she had not challenged this in her cross examination.
18. Ms Isherwood argued that the Article 8 grounds should be assessed in the light of the evidence at the date of the decision. She relied on AS Somalia. In reply to my question as to whether I should adopt the findings of fact made by the FTTJ, Ms Isherwood submitted that the claimant and the sponsor had got it wrong about the effect of the Nikah. It was not clear why they had not applied for a fiancée visa. It could well be because they knew that they could not meet the accommodation and maintenance requirements for entry as a fiancée. Ms Isherwood could not point me to anything in the determination of the FTTJ which supported the submission that the evidence been considered

at an incorrect date. In relation to the Art_8 grounds she accepted that I needed to look at Gulshan principles (Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)). She submitted that the claimant could not succeed on Article 8 grounds under the Immigration Rules. The evidence did not establish compelling circumstances not sufficiently recognised under the Immigration Rules.

19. In relation to the question of appeal rights, Ms Isherwood submitted that the combination of Fetle and the 2002 Regulations did not give the claimant a full right of appeal. Fetle was a refugee case under entirely different provisions. I was asked to find that the claimant did not have a full right of appeal, to remake the decision and dismiss the claimant's appeal.
20. Mr Wattoo submitted that the claimant and the sponsor had been in a relationship since September 2009. That is when their relationship started. They got engaged on 16 July 2012. He accepted that this was not two years before the date of decision on 9 February 2013. However, his submission was that they had been in a genuine and subsisting relationship for at least two years before the date of decision. This was akin to marriage or a civil partnership. There was no need for cohabitation at any time during the relevant period. The crucial factor was the strength of the relationship. The parties had been in regular contact and some of the evidence of this was in English. He asked me to adopt the findings of credibility and fact made by the FTTJ. Ms Isherwood had not cross examined the sponsor or challenged her credibility.
21. In relation to the Article 8 grounds Mr Wattoo relied on the provisions outside the Immigration Rules and accepted that I needed to apply Gulshan principles. He submitted that there were compelling circumstances not sufficiently recognised under the Rules. The claimant made the type of application he did because he was doing what the entry clearance officer suggested. He should not be penalised for this. There was clear evidence that they could not get married in Saudi Arabia. It was understandable and reasonable that the claimant would want her family to be present at the ceremony. Realistically the only place where this could happen was in the UK.
22. Mr Wattoo submitted that, read carefully, the documentary evidence did not indicate that the claimant had been trying to find a job in the UK. He had made his intentions clear at all times; he would leave the UK after the visit. There was evidence of this in the form of the letter from his employer and the return air ticket. The sponsor had visited the claimant in Saudi Arabia on three occasions; July 2009, March 2010 and July 2012 when they got engaged. There was strong evidence supporting the contention that the relationship was genuine and subsisting not least the perseverance with which they had pursued the appeal process. The sponsor's father was unwell and it was difficult for him to travel.

23. Mr Wattoo asked me to find that the claimant had a full right of appeal, to conclude that the FTTJ had not after all erred in law and to preserve her decision allowing the appeal under the Immigration Rules. In the alternative I was asked to allow the appeal on Article 8 human rights grounds outside the Immigration Rules.

24. I reserved my determination.

25. The Immigration Appeals (Family Visitor) Regulations 2012 provide;

“The Secretary of State, in exercise of the powers conferred by sections 88A(1)(a), 2(a) and (c) and 112(1) and (3) of the Nationality, Immigration and Asylum Act 2002(1), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Immigration Appeals (Family Visitor) Regulations 2012 and shall come into force on 9th July 2012.

Class or description of person to be visited

2. (1) A person (“P”) is of a class or description prescribed for the purposes of section 88A(1)(a) of the Nationality, Immigration and Asylum Act 2002 (entry clearance), if –

(a) the applicant for entry clearance (“A”) is a member of the family of P; and

(b) P’s circumstances match those specified in regulation 3.

(2) For the purposes of paragraph (1), A is a member of the family of P if A is the –

(a) spouse, civil partner, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother or sister;

(b) father-in-law, mother-in-law, brother-in-law or sister-in-law;

(c) son-in-law or daughter-in-law; or

(d) stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister;

of P.

(3) For the purposes of paragraph (1), A is also a member of the family of P if A is the partner of P.

(4) In this regulation, A is the partner of P if –

(a) A and P have been in a relationship that is akin to a marriage or civil partnership for at least the two years before the day on which A’s application for entry clearance was made; and

(b) such relationship is genuine and subsisting.

(5) In this regulation –

- (a) "father-in-law of P" includes the father of P's civil partner;
- (b) "mother-in-law of P" includes the mother of P's civil partner;
- (c) "brother-in-law of P" includes the brother of P's civil partner;
- (d) "sister-in-law of P" includes the sister of P's civil partner;
- (e) "son-in-law of P" includes the son of P's civil partner;
- (f) "daughter-in-law of P" includes the daughter of P's civil partner;
- (g) "stepfather of P" includes the person who is the civil partner of A's father (but is not A's parent);
- (h) "stepmother of P" includes the person who is the civil partner of A's mother (but is not A's parent);
- (i) "stepson of P" includes the person who is the son of A's civil partner (but is not A's son);
- (j) "stepdaughter of P" includes the person who is the daughter of A's civil partner (but is not A's daughter);
- (k) "stepbrother of P" includes the person who is the son of the civil parent of A's parent (but is not the son of either of A's parents); and
- (l) "stepsister of P" includes the person who is the daughter of the civil partner of A's parent (but is not the daughter of either of A's parents).

Circumstances of the person to be visited

3. The circumstances of P mentioned in regulation 2(1) (b) are that P-
- (a) is settled in the United Kingdom as defined in paragraph 6(2) of the immigration rules;
 - (b) has been granted asylum in the United Kingdom under paragraph 334(3) of the immigration rules; or
 - (c) has been granted humanitarian protection in the United Kingdom under paragraph 339C(4) of the immigration rules.

Transitional provision

4. These Regulations apply only to an application for entry clearance made on or after the day on which they come into force."

26. Mr Wattoo submits that the claimant is a member of the sponsor's family because they have been in a relationship that is akin to a marriage or civil partnership for at least the two years before the day on which his application for entry clearance was made (9 February 2013).

27. The summary of the decision in *Fetle*, prepared by the author of that determination states; *"In contrast to the requirement of para GEN 1.2(iv) of Appendix FM, a requirement (such as in paragraph 352AA of the Immigration Rules) that "parties have been living together in a relationship akin to either a marriage or a civil partnership which has subsisted for two years or more"; does not require two years cohabitation, but two years*

subsistence of the relationship. Whether the relationship still subsists, as required by the tense of that requirement and as may be separately required, is a different issue.

28. There is an important difference between the provision in Appendix FM addressed in Fetle and that in the 2012 Regulations which I must assess. The former includes the words; “living together” whilst the latter does not. They have not been living together but this matters not because it is not a requirement of this part of the 2012 Regulations. It is clear that they wish to get married and they consider themselves engaged to be married. It is equally clear that they are not yet married. I find that they are not in a relationship which is akin to a marriage or civil partnership. As I read Fetle some degree of cohabitation, which need not have subsisted for as long as two years, is required for a relationship to be akin to a marriage or civil partnership. Understandably in view of their backgrounds the claimant and the sponsor do not claim to have cohabited notwithstanding Mr Wattoo’s valiant effort to suggest that they might have done so by virtue of the fact that they spent at least one night under the same roof in the same hotel in Saudi Arabia but in different rooms. Furthermore, I find that they have not been in a relationship showing a sufficient degree of commitment and permanence for at least the two years before the day on which the application for entry clearance was made. They met in September 2009 and their relationship grew as they got to know each other better, mostly at a distance, until they got engaged on 16 July 2012. I find that the duration of the relationship was between 16 July 2012 and the date of the application which is less than two years. The date of the application is not clear but it was either on 9 February 2013 or shortly before that.
29. I conclude that that the claimant cannot bring himself within any of the relationship categories set out in the 2002 Regulations, that section 88 of the 2002 Act applies and that as a result the claimant has no right of appeal against the entry clearance officer’s decision except on the grounds of racial discrimination by a public authority or on human rights grounds under the provisions of section 84 of the 2002 Act. As there was no suggestion of racial discrimination the only grounds of appeal open to him are human rights grounds and, in the circumstances of this case, Article 8 grounds. In this regard I see no reason to amend this conclusion in my earlier Decision and Directions or the conclusion that the FTTJ erred in law in this regard.
30. The claimant can only succeed on Article 8 human rights grounds. It is not suggested and I find that he cannot bring himself within the Article 8 requirements in the Immigration Rules.
31. In the circumstances I apply the principles set out in Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC). The summary of the provisions of Gulshan, prepared by the author of that determination Cranston J states;

“On the current state of the authorities:

(a) the maintenance requirements of E-LTRP.3.1-3.2 stand, although Blake J in R (on the application of MM) v Secretary of State for the Home Department [2013] EWHC 1900 (Admin) said that they could constitute an unjustified and disproportionate interference with the ability of spouses to live together; he suggested that an appropriate figure may be around £13,400, and highlighted the position of young people and low wage earners caught by the higher figure in the rules;

(b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them: R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin);

(c) the term “insurmountable obstacles” in provisions such as Section EX.1 are not obstacles which are impossible to surmount: MF (Article 8 – new rules) Nigeria [2012] UKUT 393 (IAC); Izuazu (Article 8 – new rules) [2013] UKUT 45 (IAC); they concern the practical possibilities of relocation. In the absence of such insurmountable obstacles, it is necessary to show other non-standard and particular features demonstrating that removal will be unjustifiably harsh: Nagre.

The Secretary of State addressed the Article 8 family aspects of the respondent’s position through the Rules, in particular EX1, and the private life aspects through paragraph 276ADE. The judge should have done likewise, also paying attention to the Guidance. Thus the judge should have considered the Secretary of State’s conclusion under EX.1 that there were no insurmountable obstacles preventing the continuation of the family life outside the UK. Only if there were arguably good grounds for granting leave to remain outside the rules was it necessary for him for Article 8 purposes to go on to consider whether there were compelling circumstances not sufficiently recognised under the Rules.”

32. I find that there are arguably good grounds for granting leave to enter outside the Immigration Rules. The Rules provide a route for entry as a visitor in order to marry under paragraphs 56D but do not give a right of appeal against a refusal except, in the circumstances of this case, on Article 8 human rights grounds.
33. I must consider whether there are sufficiently compelling circumstances not sufficiently recognised under the Immigration Rules.

34. The FTTJ found the sponsor to be a credible witness. Ms Isherwood did not challenge her credibility in cross examination. I have reached the same conclusion as the FTTJ. I find the sponsor to be credible witness. I find that at the dates of the application and decision she and the claimant were engaged to be married and had a genuine and settled intention to get married, which has not changed since. The strength of the relationship has been tested but has survived the prolonged application and appeals process. I accept that the appellant and the sponsor made the type of application they did because this was suggested to them by the entry clearance officer.
35. The answers given by the claimant to Ms Isherwood in cross examination did nothing to support her contention that the claimant and the appellant should get married in Pakistan or at least have explored the possibility of doing so. The claimant, whilst a citizen of Pakistan, with some family living there, has been living and working in Saudi Arabia for more than seven years where he has a good job. The sponsor is British and British born. She said that the last generation of her family to live in Pakistan were her great great-grandparents. She speaks Urdu and Punjabi but her first languages are equally English and Urdu. She had a good job here as a Legal Executive.
36. Having concluded that at the dates of the application and decision it was the intention of the claimant and the sponsor to get married and to get married in the UK I find that it should not be held against them that they received inaccurate advice. The sponsor never thought that a Nikah on its own would suffice. They had considerable difficulty in finding out exactly what was required, were originally misinformed and only later enquiries established the precise requirements for residence and notice in order to get married in a registry office in this country.
37. The claimant and the sponsor had always believed that it would be very difficult or impossible for them to get married in Saudi Arabia. They thought that this was the case because she could not enter Saudi Arabia without an acceptably close male relative and no such relative was available through a combination of circumstances including cost and ill-health. It was also thought that the type of Saudi Arabian visa which she had been able to obtain in order to visit on three previous occasions (an Umrah visa) might not enable her to get married there. Subsequent enquiries have shown and I find that she would not be able to obtain a visa which would enable her to marry in Saudi Arabia.
38. I find that the claimant and the sponsor met in September 2009. Whilst some of the documentary evidence is post application and some is not in English I accept the sponsor's evidence that they have been in regular contact ever since, usually every day. They got engaged to be married in July 2012.
39. I find that the emails referred to by Ms Isherwood do not indicate that either the claimant or the sponsor had been looking for a job for him in the UK. Her oral evidence was that after the marriage they would live in her house and then decide what to do. She thought that she might be able to get a job in

Saudi Arabia and live with him there. Another possibility was that he would be able to get a job in the UK and they would be able to live together here. However I accept her unequivocal answer that he would go back to Saudi Arabia before his visa expired and that this had always been their intention. The sponsor's current hope that she might be able to get a job in Saudi Arabia does not tally with the claimant's answer to question 97 where he said that he would not take her to Madinah but I find that this is of little importance compared with their consistent statements that if nothing else could be achieved before his visitor visa expired he would go back to Saudi Arabia and make a marriage application from there.

40. I find that the claimant has established that he wishes to come to this country in order to marry the sponsor, that if he has to go back to Saudi Arabia to make a marriage settlement application he will do so and that he will not overstay his visitor visa. I find that the claimant and the sponsor cannot get married in Saudi Arabia. It is not reasonable to expect them to get married in Pakistan. It has not been suggested that there is anywhere else where it would be reasonable for them to attempt to get married. I find that if the claimant is granted a visitor visa they can and will get married in this country.
41. I find that all but the last of the Razgar tests are answered in the affirmative leaving the question of the proportionality of the proposed interference. Maintenance of effective immigration control, whilst not in itself a legitimate aim, is an aspect of prevention of disorder or crime or an aspect of the economic well-being of the country. I find that maintenance of effective immigration control does not weigh heavily in favour of the entry clearance officer where the claimant has at all times observe the Immigration Rules and done his best to bring himself within their provisions. Clearly the Immigration Rules anticipate that individuals should be able to come to this country as visitors in order to get married. The claimant is only prevented from further efforts to do so because of the lack of a full right of appeal. I find that there are compelling circumstances not sufficiently recognised under the Immigration Rules which would amount to a disproportionate interference with the claimant's right to respect for his and the sponsor's Article 8 family life.
42. Having set aside the decision of the FTTJ I remake the decision. Under the Immigration Rules there is no right of appeal as a visitor. However, I allow the claimant's appeal on Article 8 human rights grounds.

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Signed
Upper Tribunal Judge Moulden

Date 22 July 2014

APPENDIX

DECISION AND DIRECTIONS

1. The appellant is the Entry Clearance Officer in Riyadh (“the Entry Clearance Officer”). The respondent is a citizen of Pakistan who was born 1 January 1984 (“the claimant”). The Entry Clearance Officer has been given permission to appeal the determination of First-Tier Tribunal Judge Woodhouse (“the FTTJ”) who allowed the claimant’s appeal against the Entry Clearance Officer decision of 9 February 2013 to refuse him entry clearance to the UK as a visitor. The claimant wanted to come here to marry his fiancée, the sponsor. The refusal was made under the provisions of paragraph 56D of the Immigration Rules which set out the requirements for leave to enter as a visitor for marriage or to enter into a civil partnership.
2. The Entry Clearance Officer refused the application on the basis that the claimant had failed to produce any evidence to confirm arrangements for the wedding or civil partnership or evidence that he was in a relationship with the sponsor. The ceremony which they said they wish to go through would not be recognised as a valid UK marriage. The claimant had not established that he would be travelling to the UK for the period or purpose claimed.
3. The claimant appealed and the FTTJ heard his appeal on 25 October 13. The claimant was represented but the Entry Clearance Officer was not. The FTTJ heard evidence from the sponsor. In paragraph 6 the FTTJ records the claimant’s representative’s acknowledgement that the claimant only had a limited right of appeal on human rights grounds.
4. Having heard evidence from the sponsor the FTTJ found her to be a credible witness and that the claimant had shown that he met the requirements of paragraphs 56D and E of the Immigration Rules. She allowed the appeal under the Immigration Rules and on Article 8 human rights grounds.
5. The Entry Clearance Officer applied for and was granted permission to appeal, submitting that the FTTJ erred in law by failing to indicate the date at which the evidence was considered, taking into account post decision evidence and making inadequate findings in relation to the Article 8 grounds. Permission to appeal was granted and the judge who granted permission to appeal pointed out that the Entry Clearance Officer’s decision attracted only a limited right of appeal on human rights or race discrimination grounds.
6. At the hearing before me both representatives accepted that the claimant could not bring himself within any of the relationship categories set out in the Immigration Appeals (Family Visitor) Regulations 2002 and that as a result S88 of the Nationality, Immigration and Asylum Act 2002 applied. The claimant had no right of appeal against the decision except on the grounds of racial discrimination by a public authority or on human rights grounds under the provisions of S84 of

the 2002 Act. As there was no suggestion of racial discrimination the only grounds of appeal open to him were human rights grounds and, in the circumstances of this case, Article 8 grounds.

7. Both representatives agreed and I find that the FTTJ erred in law by considering and allowing the appeal under paragraphs 56D and E of the Immigration Rules. She had no jurisdiction to deal with this appeal on these grounds. She did have jurisdiction to consider the appeal on Article 8 human rights grounds but I find that her treatment of these grounds was brief and superficial and the outcome was largely as a result of her having allowed the appeal under the Immigration Rules. I find that this was an error of law.

8. Having found that the FTTJ erred in law I set aside her decision. I indicated to the representatives that I was inclined to re-determine the appeal without an adjournment. The claimant's representatives had not submitted any further evidence in advance of the hearing. I heard submissions from both representatives in connection with the course of action to be taken. The Entry Clearance Officer has criticised the findings of fact made by the FTTJ, arguing that it was not clear whether these were made at the correct date. If that is correct then there is no clear factual matrix on which I could re-determine the appeal. On instructions Mr Wattoo said that the sponsor wished to give further evidence which, it would be submitted, indicated that it was impossible or at best impractical for the claimant and the sponsor to marry in Saudi Arabia. Whilst I am conscious that the claimant's representatives should have submitted any further evidence in advance of the hearing I conclude that fairness dictates that the Article 8 grounds be re-heard in the Upper Tribunal with all issues at large and that the claimant be permitted to submit further admissible evidence.

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Signed
Upper Tribunal Judge Moulden