



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: VA/01984/2013

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport**

**On 9 September 2014**

**Determination**

**Promulgated**

**On 17 September 2014**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**ENTRY CLEARANCE OFFICER - BEIRUT**

**and**

**JOUKI KROUCHAN**

Appellant

Respondent

**Representation:**

For the Appellant: Mr I Richards, Home Office Presenting Officer

For the Respondent: Ms L Dickinson of Fursdon Knapper Solicitors

**DETERMINATION AND REASONS**

1. The Entry Clearance Officer appeals against a decision of the First-tier Tribunal (Judge Carroll), allowing the Ms Krouchan's appeal against a refusal to grant her entry clearance as a visitor under para 41 of the Immigration Rules (HC 395 as amended).
2. For convenience, I will hereafter refer to the parties as they appeared before the First-tier Tribunal.

**Introduction**

3. The appellant is a national of Syria. She and her grandmother applied for entry clearance to visit the appellant's aunt who is the daughter of the appellant's grandmother. On 29 November 2012, the ECO refused the appellant and her grandmother entry clearance to visit the appellant's aunt in the UK.
4. Both the appellant and her grandmother appealed against those decisions to the First-tier Tribunal. The appeal was determined without a hearing. In a determination promulgated on 25 April 2014, Judge Carroll allowed both the appellant's appeal and that of her grandmother under the Immigration Rules, namely para 41 of HC 395.
5. The ECO accepted Judge Carroll's decision in relation to the appellant's grandmother. However, the ECO sought permission to appeal against Judge Carroll's decision to allow the appellant's appeal under the Immigration Rules on the basis that she only had a right of appeal on human rights or race relations grounds. The judge had erred in law in allowing the appellant's appeal under the Immigration Rules and, in fact, there was no valid appeal before the First-tier Tribunal.
6. On 12 June 2014, the First-tier Tribunal (Judge V A Osborne) granted the ECO permission to appeal. Thus the appeal came before me.

### **The Submissions**

7. On behalf of the ECO, Mr Richards submitted that the appellant was seeking to visit her aunt which was not a relationship specified in the Immigration Appeals (Family Visitor) Regulations 2012 (SI 2012/1532) (the "Family Visitor" Regulations). Consequently the appellant only had a limited right of appeal on human rights or race relations grounds by virtue of s.88A(1) and (3) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"). Mr Richards submitted that it was clear from the notice of appeal that the appellant had not relied upon human rights and therefore the judge had erred in law in allowing her appeal under the Immigration Rules and he invited me to substitute a decision that there was no valid appeal before the First-tier Tribunal.
8. On behalf of the appellant, Ms Dickinson relied upon her skeleton argument. She relied upon a sentence in a letter dated 5 January 2013 written by the appellant's aunt and attached to the first appellant's notice of appeal as raising the appellant's human rights. That states:

"I also want to mention that I cannot go back to Syria to see my mother and spend time with her. That's why I want her to come and visit me for one month."
9. Ms Dickinson also sought permission to amend the appellant's grounds of appeal in accordance with rule 14 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230) in order explicitly to state that the appellant relied upon Art 8 of the ECHR.

## **Discussion**

10. The relevant statutory provision is s.88A of the 2002 Act which, so far as relevant, provides as follows:

“(1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of –

(a) visiting a person or a class or description prescribed by Regulations for the purposes of this subsection, ...”

....

(3) Subsection (1) –

(a) does not prevent the bringing of an appeal on either or both of the grounds referred to in Section 84(1)(b) and (c), ....”

11. Consequently, a general right of appeal against a refusal of entry clearance only arises if the purpose of the application is to visit a person described in Regulations. Those Regulations are the Family Visitor Regulations. Where the required “family relationship” does not exist, then an appeal may only be brought on human rights or race relations grounds.

12. The Family Visitor Regulations 2012 provides in reg 2, so far as relevant, as follows:

“(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.”

13. The relationship between the appellant and the sponsor (her aunt) is not a relationship specified in reg 2(2). Therefore, by virtue of s.88A(1) and (3), the appellant could only bring an appeal on human rights grounds. The Judge clearly erred in law in allowing the appeal under the Immigration Rules.

14. Was there a valid appeal before the First-tier Tribunal brought on human rights grounds?

15. In her notice of appeal (form IAFT-2) the appellant set out her grounds of appeal as follows:

“I am writing to you to explain why I am disagree (sic) with the decision of the Home Office for entering the UK. I applied for visitor visa to visit my aunt Rim Albernani and to help my grandmother Souad Obid as she is disabled so if she gets a visa I could help her on the way to the UK. The Home Office refused me because of two reasons: firstly as it said I am not tied to Syria but if I go to the UK I have to come back to Syria as my mother is in Syria and I am studying computer engineering in fourth level, so sure one year left for me to complete my study so I have to be back in Syria. Secondly, their refusal letter mentioned the problem in Syria but it has been 2 years since the situation is bad in Syria and if I am running from my country I could go for a long time to Lebanon or Jordan but I didn't. So I just want to visit my Aunt.”

16. Ms Dickinson did not place any reliance upon the notice of appeal to support her submission that the appellant was “bringing” her appeal on human rights grounds, namely Art 8. These grounds clearly refer to issues relevant to the Immigration Rules and the ECO's reasons for refusing her application. Whilst I accept an individual does not have to explicitly refer to Art 8 in order to be said to be relying upon Art 8 in their grounds, there must be reliance upon the substance of Art 8. In particular, unrepresented appellants are less likely to adopt the form and rubric of human rights language. However, simply to argue the merits of the ECO's decision under para 41 of the Immigration Rules is most unlikely, in itself, to raise human rights grounds. In this appeal, the appellant's grounds of appeal do precisely that and I see no basis for concluding that she relied upon Art 8 in her notice of appeal.

17. Likewise, the passage in the sponsor's letter relied upon by Ms Dickinson does not, in my judgment, constitute a reliance upon Art 8 of the ECHR. Merely to assert that an individual wishes to spend time with their family member in the UK does not seem to me to assert reliance upon Art 8. In any event, the relevant passage is concerned not with the appellant and sponsor but rather with the sponsor and her mother (the appellant's grandmother).

18. One final point. Section 88A(3) of the 2002 Act allows for the “bringing of an appeal” on human rights grounds where the Family Visitor Regulations 2012 do not apply. The reliance upon human rights (or race relations) grounds must, in my judgment, be at the point in time in which the notice of appeal is lodged with the First-tier Tribunal. An invalid appeal (one not brought on human rights grounds) cannot be retrospectively made valid by the subsequent reliance upon human rights after the notice of appeal has been filed. The appeal must be valid at the outset. Consequently, even if rule 14 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 applied to this appeal, any amendment of the appellant's grounds of appeal to the First-tier Tribunal so as to explicitly rely upon Art 8 of the ECHR could not make valid what was at the outset an invalid appeal. Of

course, the 2005 Rules apply only to the First-tier Tribunal's proceedings and do not apply in an appeal in the Upper Tribunal in any event.

### **Decision**

19. For these reasons, I am satisfied that the appellant did not rely upon Art 8 in her notice of appeal or accompanying documents. Therefore, by virtue of s.88A(1) and (3), there was no valid appeal before the First-tier Tribunal.
20. Consequently, I set aside the decision of the First-tier Tribunal to allow the appellant's appeal under the Immigration Rules and I substitute a decision that there was no valid appeal before the First-tier Tribunal.

### **Post-script**

21. The appeal of the appellant's grandmother was allowed by Judge Carroll and that decision is not challenged by the ECO. In allowing her appeal, Judge Carroll rejected the basis upon which the ECO had refused entry clearance to the appellant's grandmother under para 41. That, in effect, concluded in the appellant's favour the matters relied upon by the ECO in relation to appellant. The appellant's grandmother is entitled to the grant of entry clearance as a result of the First-tier Tribunal's decision. Given the implications that has for the decision in relation to the appellant, it would be desirable for the ECO to reconsider the appellant's application in the light of those circumstances.

Signed

A Grubb  
Judge of the Upper Tribunal