



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

**Appeal Number:
VA/12258/2013**

THE IMMIGRATION ACTS

**Heard at Field House
Determination
promulgated
On 1 July and 9 September 2014 On 10 September
2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Entry Clearance Officer,
Beirut**

Appellant

and

Rim Walid Azzi

(Anonymity direction not made)

Respondent

Representation

For the Appellant: 1/7/14 - Mr G Jack;
9/9/14 - Mr S Whitwell.

For the Respondent: No appearance on either day.

DETERMINATION AND REASONS

1. I initially heard this appeal on 1 July 2014 when I found that there was an error of law and gave consequent directions. The text of my written Determination prepared on the same date and promulgated on 7 July 2014 is set out below as an Appendix for ease of reference. The case was re-listed before me pursuant to my earlier decision and Directions.

2. I continue herein to refer to the ECO as the Respondent, and Ms Azzi as the Appellant.

No appearance

3. There was again today no appearance by or on behalf of the Appellant. I am satisfied that due notice of the hearing was given. No explanation for non-attendance on behalf of the Appellant has been received by the Tribunal. Indeed the Appellant has not engaged with the proceedings in the Upper Tribunal at all, and in particular has not made any response to the Directions given in July. For essentially the same reasons as given previously I am satisfied that it is appropriate to proceed with the appeal in the Appellant's absence.

Consideration

4. In my error of law determination I concluded that the First-tier Tribunal Judge had been in error in limiting the scope of the appeal to human rights grounds, based on the date of the Appellant's application being 20 June 2013 (i.e. prior to the changes that came into effect on 25 June 2013). However, my attention has now been drawn to the case of **Kaur (Entry Clearance - date of application) [2013] UKUT 00381 (IAC)** in which it was clarified that the effective date of an application for entry clearance is the date on which payment of the relevant fee is made. In this particular case the Appellant whilst making her application online on 20 June 2013 did not in fact make payment of the fee until 25 June 2013. It follows that the First-tier Tribunal Judge was not in error in identifying that the scope of the appeal was limited to human rights grounds. This is a jurisdictional issue, and accordingly effect must be given to it notwithstanding the earlier promulgation of my decision identifying error of law in this regard.

5. It follows that the outstanding issue before me is in respect of Article 8 of the ECHR. Necessarily the 'error of law' decision in respect of the deficiency of the First-tier Tribunal Judge's findings and reasoning stands.

6. Neither party has complied with the 'Consequent Directions'. In the circumstances this means there is no material before me that might justify the substance of the First-tier Tribunal Judge's conclusion in respect of Article 8. It follows that I find the deficiency of the Judge's reasoning to be a material error: looking at all of the available material it is not possible to discern on what basis the Judge reached his

conclusion, or otherwise to conclude it was an obvious conclusion open to the Judge.

7. The decision of the First-tier Tribunal requires to be set aside and remade accordingly.

8. I proceed to remake the decision without a further hearing: both parties have had ample opportunity to file any relevant evidence in support of their respective cases.

9. The Appellant has not provided any representations or evidential material upon which it would be possible to undertake an evaluation of the quality of any family life that might be shared between her and her husband's UK based family members. Nor is anything provided to suggest that the Appellant's son (whether in the company of his father or otherwise) would be unable to visit his relatives in the UK in the event that his mother was denied entry clearance, in such a way as would amount to an interference with his or anybody else's human rights grave enough to engage Article 8.

10. In the circumstances the appeal is dismissed on human rights grounds.

Decision

11. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

12. I remake the decision in the appeal. The appeal is dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis 9 September 2014

(Appendix attached)

APPENDIX

Text of 'error of law' Determination herein promulgated on 7 July 2014

DETERMINATION: ERROR OF LAW

CONSEQUENT DIRECTIONS

1. *This is an appeal against the decision of First-tier Tribunal Judge Trevaskis promulgated on 14 April 2014, allowing Ms Azzi's appeal against the Entry Clearance Officer's decision dated 9 July 2013 to refuse entry clearance as a visitor.*

2. *Although the ECO is the appellant before me, and Ms Azzi is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the ECO as the Respondent, and Ms Azzi as the Appellant.*

Background

3. *The Appellant is a national of the Lebanon born on 4 January 1971. She applied for entry clearance to make a six-day holiday visit to the UK between 10 - 15 July 2013, travelling with her husband Mr Mark Dickinson (to whom she was married on 3 April 2004), and their son Alexander (date of birth 13 April 2010), who are both British citizens.*

4. *The application was refused for reasons set out in a Notice of Immigration Decision dated 9 July 2013.*

5. *The Appellant appealed to the IAC.*

6. *The Appellant's appeal was allowed by the First-tier Tribunal for reasons set out in the determination promulgated on 14 April 2014 on human rights grounds.*

7. The Respondent applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Bartlett on 21 May 2014.

No appearance

8. There was no appearance by or on behalf of the Appellant. The Appellant herself has been denied entry to the UK; however her husband is a British citizen and may enter freely; further her husband has family members present in the UK; moreover it is always open to the Appellant to instruct a representative. I am satisfied that due notice of the hearing was given. No explanation for non-attendance on behalf of the Appellant has been received by the Tribunal. In this context I note that the Appellant elected to have her appeal before the First-tier Tribunal considered without a hearing: it seems likely that she similarly preferred to have the appeal dealt with in the Upper Tribunal in her absence. In any event I am satisfied that the Appellant has been afforded an opportunity to be represented at the hearing, and has also been afforded an opportunity to forward to the Tribunal any representations or documents that she might wish to rely upon in the appeal. In all the circumstances I am satisfied that it is appropriate to proceed with the appeal in the Appellant's absence.

Error of Law

9. I find that the Judge erred in law in the following respects:

(i) He cited the wrong regulations at paragraph 3 in respect of family members, the relevant regulations being the 2012 Regulations, not the 2003 Regulations. (This is unlikely to have been a material error.)

(ii) Although the Judge identified, at paragraph 5, that for a family visit visa application made on or after 25 June 2013 a right of appeal would be limited to grounds of racial discrimination or breach of human rights, he failed to identify that the Appellant's application was made on-line on 20 June 2013. Accordingly the Judge should have given consideration to the appeal within the scope of the Immigration Rules before proceeding to an analysis under Article 8.

(iii) The Judge's reasoning in respect of Article 8 was devoid of adequate findings and thereby reasoning. There were no findings in respect of the quality of family life supposedly shared between the Appellant and her husband's UK based family members. The Judge did not explain why the Appellant's son would be otherwise

unable to visit his relatives in the UK in the event that his mother was denied entry clearance for a 6-day holiday.

Future Conduct of the Appeal

10. *The materials before the Upper Tribunal appear to be incomplete. In particular:*

(i) The Entry Clearance Manager Review of 14 November 2013 indicates the documents that were submitted with the application. Of these documents, the letter of sponsorship is missing from the materials on file.

(ii) The ECM Review also indicates that all of the documents specified on the Notice of Appeal were submitted with the appeal. These documents include bank statements for six months, which are not on file.

11. *I consider it inappropriate to determine the materiality of the errors of the First-tier Tribunal Judge, and further and in any event, inappropriate to proceed to remake the decision in the appeal, in the absence of the materials identified above.*

12. *In the circumstances I adjourn the appeal reserved to myself with the Directions as set out below.*

Decision

13. *The decision of the First-tier Tribunal Judge contained an error of law.*

14. *The decision as to whether or not to set aside the decision of the First-tier Tribunal, and if so the remaking of the decision is reserved to be determined at a further hearing pursuant to the following Direction.*

Consequent Directions

1. The appeal is adjourned part-heard, reserved to me, to be listed for hearing at Field House on the first available date in September 2014.

2. The Respondent is to file and serve within 21 days of the sending of this Determination a bundle comprising all such

documents as were submitted with the Appellant's application and all such documents as were submitted with her Notice of Appeal. If any such documents as are listed in the ECM review are not available to the Respondent, the Respondent is to file and serve a statement to this effect within the same timeframe.

3. The Appellant should not assume that the Respondent will provide the documents / information identified above. Accordingly, the Appellant is also to file and serve within 21 days of the sending of this Determination a bundle comprising all such documents as were submitted with the Appellant's application and all such documents as were submitted with her Notice of Appeal.

4. The Appellant is reminded that it is open to her to attend the hearing by way of a representative. If she does not intend to instruct anybody to appear at the next hearing on her behalf, she should communicate as much to the Tribunal when replying to the Directions at paragraph 3 above.