Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/15744/2013
VA/15753/2013
VA/15755/2013
VA/15759/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27 August 2014	**On 29 September 2014**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

ENTRY CLEARANCE OFFICER – ABU DHABI

Appellant

and

NADIA SHAHBAZ AHMED
AHMED ALI
ABDULLAH SHAHBAZ
MAHAD SHAHBAZ DHABI

Respondents

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondents: Mr A Otchie, instructed by Malik Law Chambers

DETERMINATION AND REASONS

1. I will refer to the four respondents as the appellants as they were the appellants before the First-tier Judge, and I will refer to the Entry Clearance Officer as the respondent.

2. The appellants appealed to a judge of the First-tier Tribunal against the decision of the respondent of 7 July 2013 refusing to grant them entry clearance as family visitors to have a holiday with their sponsor, Mr Tariq Mehmood, the first appellant's first cousin. The appeal could not succeed under the Immigration Rules because since 9 July 2012 the Immigration Appeal (Family Visitor) Regulations no longer provided for a right of appeal for a family visit to a cousin. The appellants therefore had only a limited right of appeal to the First-tier Tribunal which was restricted to Human Rights and Equality Act 2010 issues. They did not raise any Equality Act issues.

3. The judge found Mr Mehmood, who gave evidence before him, to be an impressive witness. He said that he and the first appellant were unusually close because their respective families had lived jointly in Pakistan before he migrated to the United Kingdom some 26 years previously. He said that the first appellant was like a baby sister to him and he had ample accommodation available and was happy to provide hospitality. He was offering the trip of out of a sense of family obligation. He visited the appellants in Pakistan annually and wanted them to visit the United Kingdom in return. There was no question that they would overstay as the three children were at school and the first appellant had to return to her husband.

4. The judge found that paragraphs 41 and 46A of the Immigration Rules were satisfied. He remarked at paragraph 13 of the determination that none of the appellants was in the United Kingdom and so they could not invoke Article 8 in their own right and even if that were too restrictive an approach, plainly there was no private life component to their appeals in that they had never done more than visit the United Kingdom in the past.

5. He went on to consider whether there was family life between the appellants and the sponsor, noting that the threshold for interference was low and that family life could take many forms. He was satisfied that the sponsor and the first appellant had a special bond which arose because of their family links. He was fortified in that conclusion by the fact that some of the appellants had previously visited the United Kingdom and that the sponsor saw the appellants as being part of his family circle and saw bringing them to the United Kingdom for a visit as a family obligation. He considered that preventing the sponsor's cousin and her sons from making another visit to the United Kingdom represented an interference with the sponsor's family life and that alternatively it was an interference with his private life if his non-nuclear family circle was to be classified as mere friendship. He went on to consider relevant authorities which led him to an assessment of the proportionality of the decision. He found that there was no likely breach of immigration control and that the appellants were not seeking to settle in the United Kingdom, would have no access to the NHS nor would they have any right to public funds and their visit would be of short duration and would be privately sponsored. He considered however that the sponsor would suffer an unwarranted restriction upon or

interference with his private and family life if the appellants were not allowed to visit him and that it was not enough that he was able to visit them in Pakistan. The fact that they could simply lodge fresh entry clearance applications meeting the Immigration Rules was, he thought, in effect redundant in light of his finding that they had satisfied the requirements of the Rules and that this would be a disproportionate and hence unlawful requirement. The appeals were therefore allowed under Article 8.

6. In her grounds of appeal the respondent argued that it had not been explained properly or at all what the family links were that led to Article 8 being engaged, referring to the decision in AAO [2011] EWCA Civ 840. It was argued that no reason had been given to support the judge's finding that there was family life engaged between cousins who had lived in different countries for 26 years. (The grounds state that it was the case that the sponsor had been found "neither to have the time nor inclination to travel", but that was a mistake since the reference at paragraph 6 of the determination in that regard is to the first appellant's husband rather than the sponsor). It was argued that the refusal on the basis of an interference with the sponsor's private life suffered from the same defects as the findings on family life. The grounds were on to argue that, the judge having failed to establish that either the family or private life were engaged in these appeals for the purposes of Article 8, it followed that proportionality was not a matter for consideration. Reference was made to the decision of the Supreme Court in Patel & Others [2013] UKSC 72 which warns against the use of Article 8 as a "general dispensing power". The point was made that such guidance was pertinent to the instant appeal where the circumstances of the appellant and the sponsor were fundamentally normal and could continue in their respective countries of residence.

7. In her submissions Ms Isherwood relied on the grounds of appeal. It had not been shown why Article 8 was engaged. The decisions in AAO and Patel were of particular relevance. The judge's findings were unclear and the appeal should be dismissed.

8. Mr Otchie argued that the determination was clear and well-reasoned. The judge had found that they could meet the Rules and considered the case law and found there was a special bond between the sponsor and the appellants. He saw them as part of his family circle. The conclusions were based on the facts. The determination was properly reasoned. It was clear from AAO that decisions of this nature were very fact specific. The judge was fortified by the fact of previous visits. There needed to be more than emotional ties, but it was a low threshold. They were not going to take advantage of NHS treatment or public funds. It was a question of weighing the factors. There was no need for compelling circumstances. The fact that visits could be made was found not to be proportionate to the decision.

9. By way of reply Ms Isherwood argued that it had not been shown that Article 8 was engaged with regard either to family or private life.

10. If I were to find an error of law Mr Otchie argued that there would be a need for a further hearing in light of the judge's findings. Ms Isherwood argued that the matter could be determined without the need for a further hearing.

11. I reserved my determination.

12. I am conscious of the need not to interfere with a decision of a First-tier Judge unless there is shown to be an error of law in the judge's determination. Matters of disagreement cannot of course amount to the identification of errors of law. That having been said, I consider with regard to the finding of family life that that was a finding that was not open to the judge, even bearing in mind the findings he made about the special bond as he described it which arose because of the family links between the appellant and the sponsor. He had said that they were unusually close because their respective families had lived jointly in Pakistan, but subsequently Mr Mehmood migrated to the United Kingdom some 26 years ago. However it is clear, for example from paragraph 35 of AAO, that family life will not normally exist between parents and adult children within the meaning of Article 8 in the absence of further elements of dependency going beyond normal emotional ties, and that must be equally applicable, *mutatis mutandis*, to relationship between two adult cousins, who have not lived in the same country for 26 years, albeit there have been regular visits. No doubt family life can take many forms, but the protection conferred by Article 8 cannot rationally, in my judgment, be said to extend to the relationship between two adult first cousins who have only seen each other infrequently over the last 26 years. Accordingly I find that the judge materially erred in law in finding that there was family life between the sponsor and the appellants.

13. Nor do I consider that the finding is saved by the alternative finding that there is private life that would be disproportionately interfered with by the refusal of entry clearance. The decision in this regard is minimally reasoned. Here although the context is somewhat different, the point at paragraph 57 in Patel concerning the need to remember that Article 8 is not a general dispensing power is required to be borne in mind. In light of my conclusions it cannot rationally be found that the sponsor and the appellants enjoy family life together, nor in my view can it be said to be the case that there is an interference with the private life of the sponsor which requires protection under the Convention. Accordingly I conclude that the judge erred with regard to the findings as to both family and private life.

14. I can see no benefit to a further hearing in light of the above findings. The arguments were made before the judge and accepted and I consider that he erred in law in concluding as he did. If there is an interference with the

sponsor's private life in the refusal of entry clearance to the appellants, that interference is clearly proportionate. He can continue to visit the appellants in Pakistan and keep in touch between visits. The judge's decision is reversed. The appeal is dismissed on all grounds.

Signed Date

Upper Tribunal Judge Allen