



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

Appeal Number: VA/19232/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2nd December 2014**

**Determination issued
on 9th December 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, PAKISTAN

Appellant

and

YASMIN BEGUM

Respondent

For the Appellant: Mr A Mullen, Senior Presenting Officer
For the Respondent: Mr M Iqbal, of Muzaffar Associates Limited

DETERMINATION AND REASONS

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.
2. The appellant is a citizen of Pakistan whose date of birth is recorded as 1st January 1956. She applied for clearance to enter the UK as a visitor. The ECO considered her application under paragraph 41 of the Immigration Rules but was not satisfied that she had established her personal and

financial circumstances nor “that you are genuinely seeking entry as a visitor or that you intend to leave the UK on completion of your visit”. The refusal notice dated 5th November 2013 states that the right of appeal is limited to the grounds contained in Section 84(1)(c) of the 2002 Act, namely that the decision is unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's Convention rights.

3. Notwithstanding that restriction, the appellant filed an appeal on grounds which in part insist on the case within paragraph 41 of the Rules that the appellant intends only a genuine family visit. At ground (d) the appellant says that the decision is unlawful:

Under section 6 of the Human Rights Act 1998 because the appellant has been denied right of access to a family member settled and residing in the UK. Although her son may visit Pakistan [her] daughter-in-law is a citizen of Poland who has reservations to visit Pakistan along with the granddaughter of the appellant due to security concerns. ... The appellant wishes access to her son, daughter-in-law and granddaughter living in Edinburgh for a short period ... The decision is incompatible with the appellant's Convention rights.

4. First-tier Tribunal Judge Kempton allowed the appellant's appeal by a determination promulgated on 8th May 2014, in which she set out paragraph 41 of the Immigration Rules and examined the family circumstances. She noted the sponsor's reluctance to travel to Pakistan with his wife (paragraph 15). The sponsor also said it may be difficult for them to arrange to meet in a third country where the appellant would not have a sponsor. Paragraph 18 of the determination is rather confused as to the significance of finding that Rule 41 might be satisfied in an appeal which does not turn on that question. The judge goes on:

19. ...There are minor deficiencies in the evidence of the appellant's savings and sources of income. However, she has significant family ties to Pakistan to ensure her return. The ... appellant's right to family life is not the only issue ... There is the right of a little girl to meet in her home territory her grandmother whom she has never met and I consider that to be a very important argument. Interference with that child's family life is disproportionate to any perceived risk that the appellant will not return. ...

20. ... It is appropriate that the appeal be allowed under Article 8 of the ECHR for the appellant to enjoy family life with her family and for her granddaughter to meet her and enjoy family life with her...

5. The ECO appeals to the Upper Tribunal on the grounds that the judge misdirected herself as to the relevance of paragraph 41 of the Rules; made no finding on the existence of family life between the sponsor and the appellant; overlooked the established principle (on the authority of *Kugathas* [2003] EWCA Civ 31) that family life for Article 8 purposes does not exist between a parents and adult child without more than the normal emotional ties; and used the Article 8 ground to determine the case on the basis of the Immigration Rules.
6. Mr Mullen said that the relationship between a grandparent and a granddaughter was within the ordinary understanding of a family

relationship, but did not constitute family life for the purposes of the protection of Article 8 unless there were some exceptional features in the case. The judge held at paragraph 19 that there was a right of a little girl to meet her grandmother on home territory. No such right could be deduced from Article 8. The judge was not entitled to go on to consider whether the interference was disproportionate, where no protected family life had been established. The determination should be set aside and reversed.

7. Mr Iqbal in response said that although the judge set out paragraph 41 of the Rules and considered its requirements, that was only to set out the background. The judge mentioned at paragraph 10 that it was agreed that the only issue was Article 8 and the right to family life. The judge went on to consider that issue properly at paragraphs 15, 16, 19, and 20 and gave reasons based on the evidence before her. The appellant had a right to see her daughter-in-law, a Polish citizen, and her granddaughter, who also has a Polish passport [as Mr Mullen pointed out, she is probably also entitled to a Pakistani passport]. The sponsor had genuine concerns about taking his wife as a foreigner to Pakistan. He has been unable to persuade her to travel there. The ECO raised doubts about the appellant's intention to return, but the judge correctly found that her age and family circumstances were such that she would do so. There had been the suggestion that they might carry on family life by meeting in a third country, but the judge dealt with that. The respondent had not identified any material error of law and the determination should stand.
8. I reserved my determination.
9. Family life for Article 8 purposes is mostly restricted to relationships between husband and wife (or the equivalent) or between parents and minor children. Extended family relationships, including those among adults and their adult children, spouses of adult children, and grandchildren, raise at the outset questions (partly of law, but mainly of fact) whether there exist, unusually, ties strong enough to constitute family life for purposes of Article 8 protection.
10. The judge did not explain in this case why she thought family life existed for Article 8 purposes. The absence of any explanation for that finding is an error of law.
11. The judge also went wrong in saying that Article 8 involves the right of a granddaughter to meet her grandmother on the granddaughter's home territory. There is no vouching for that proposition. Mr Iqbal did not say that any could be found. Again, it would require an unusual case.
12. The determination reads rather as if the appeal was allowed because the judge thought it likely that the appellant genuinely intends a visit and no more, but the human rights ground of appeal cannot be used to convert an appeal into one under the Rules.

13. The findings that family life exists for Article 8 purposes, and that grandparent and grandchild have the right to meet at the grandchild's home, are plainly crucial to the outcome, so the determination cannot stand.
14. It does appear an unsympathetic and unattractive outcome to stand in the way of a grandmother visiting her grandchild. However, there is no evidence to support a finding that family life is established for Article 8 purposes in this case. Even if there was, it would be difficult to hold that the refusal of entry clearance is a disproportionate interference with the exercise of that right. There are other places to meet, and no great difficulties about EU citizens visiting Pakistan.
15. The determination of the First-tier Tribunal is **set aside**. The appeal, as originally brought to the First-tier Tribunal, is **dismissed**.
16. No anonymity order has been requested or made.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

4 December 2014
Upper Tribunal Judge Macleman