



IAC-BH-PMP-V1

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

Appeal Numbers: VA/38227/2012  
VA/38228/2012

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 24<sup>th</sup> September 2014**

**Decision & Reasons Promulgated  
On 31<sup>st</sup> October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**TOHEED ZAFRAN**

First Appellant

**IRAJ NOOR**

Second Appellant

**(ANONYMITY DIRECTION NOT MADE)**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: The sponsor Azeem Hanif

For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion I shall continue to refer to the parties as they were before the First-tier Tribunal.

### **Error on a point of law**

2. On 13<sup>th</sup> February 2014 Designated Judge of the First-tier Tribunal French gave permission to the appellants to appeal against the determination of Designated Judge of the First-tier Tribunal Coates who allowed the appeals (along with those of the appellants' parents) against the decisions of the respondent to refuse entry clearance as visitors in accordance with the provisions of paragraph 46A of the Immigration Rules. The decision to allow the appeals by the appellants' parents stands.
3. In granting permission Designated Judge French identified the single point at issue namely that, as the applications were made on 3<sup>rd</sup> September 2012 after the Immigration Appeals (Family Visitor) Regulations 2012 came into effect, the appellants did not enjoy a right of appeal save on race relations or human rights grounds.
4. At the hearing the sponsor was unrepresented but I explained the nature of the proceedings and the issue in the grounds of application. After I had done so the sponsor agreed that the judge had made an error by failing to deal with the appeal by the two minor appellants on the limited grounds. I therefore announced that I was satisfied that the determination showed an error on a point of law for that reason and also having noted that the grounds of appeal for each appellant acknowledged the limited rights of appeal and claimed a breach of Article 8 human rights.

### **Re-making the determination**

5. I proceeded to re-make the decision hearing brief evidence from the sponsor who continued to rely upon his original statement of 22<sup>nd</sup> August 2013. In this he explains that the appellants are the dependent children of their parents and the purpose of the visit was to reciprocate the hospitality that the appellants' parents had shown when the sponsor visited Pakistan in 2012. It is also stated that the parties have had regular contact over the telephone and there have been frequent visits to Pakistan over the last ten years. The grounds of appeal state that the failure to grant a visa for the appellants is a "clear violation of human rights" although no further detail of that assertion is provided. At the hearing the sponsor said it was important for him to have family visit him and the parents would not leave their children behind on the visit.
6. The sponsor was not cross-examined on his evidence.
7. Ms Johnstone submitted that there was no evidence of family life between the parties. Article 8 did not give the right to holiday visits. The existing relationship could be maintained by the modern methods of communication which are already used. Further, only a short visit was proposed.
8. The sponsor said that the visit was to be at least a month and was a lifetime opportunity for the appellants. Not only was it a holiday but the maintenance of the family life between all the parties. They were to be shown this country. Further, the parents could not come without their children.

## **Decision and Reasons**

9. In human rights appeals it is for the appellant to show that his or her human rights will be infringed. If that is shown then it is for the respondent to prove that the refusal decision is proportionate.
10. This is not an appeal which is covered by any human rights provisions in the Immigration Rules so I move to consideration of human rights issues outside the Rules. In doing so I apply the five stage approach recommended in *Razgar* [2004] UKHL 27.
11. Although the sponsor has claimed that there is a family life between him and the appellants who are his nephew and niece, I am not satisfied that there are strong enough ties between those parties to establish a family life for the purpose of Article 8. In *Kugathas* [2003] EWCA Civ 31 the Court of Appeal adopted a fact-based approach to the existence of family life with attention on whether there were additional ties of dependency beyond the normal emotional ties between adults. I am not satisfied that any such dependency has been shown in this case. The proposed visit was simply for the purpose of wider family members visiting each other.
12. The fact that the appellants' parents, whose appeal has been allowed, cannot visit without their children is not a factor which affects my conclusion. The parents are at liberty to make arrangements for the care of their children if they wish but even if they choose not to visit they can continue to exercise the family connections with a visit of the uncle to Pakistan and other modern methods of communication as they have done in the past.
13. Thus, the first stage in the *Razgar* test is not passed. But even if I am wrong in that conclusion and were to proceed to consider whether or not the respondent's decision was proportionate I would have to conclude that it is because, for reasons already given, the nature of the relationship between the parties is not such that family life is affected to such an extent that the decision causes a serious breach of Article 8 rights. The family life between the parties can continue the same way as it has in the past by visits and communication.

## **NOTICE OF DECISION**

The decision of the First-tier Tribunal contained an error on a point of law such that it should be re-made. I re-make the decision by dismissing the appeals.

## **Anonymity**

Although the appeal relates to minor children, they are not present in the United Kingdom and, further, no anonymity direction was requested. I do not consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt

**30<sup>th</sup> October 2014**

**TO THE RESPONDENT**  
**FEE AWARD**

As I have dismissed this appeal there can be no fees award.

Signed

Date

Deputy Upper Tribunal Judge Garratt

**30<sup>th</sup> October 2014**