



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

Appeal Numbers: VA/01746/2014  
VA/01747/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 May 2015**

**Decision &  
Promulgated**

**On 23 June 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

**And**

**Claimants**

**MS KAMRUN NESA  
MASTER JAHED AHMED  
(ANONYMITY DIRECTION NOT MADE)**

**Representation:**

For the Appellant: Mr N Bramble (Senior Home Office Presenting Officer)  
For the Respondent: Mr B Amunwa (Counsel instructed by Schneider Goldstein  
Immigration Law)

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department (for the Entry Clearance Officer) against a decision made by the First-tier Tribunal (Judge Finch) (FTT) allowing the appeal of the Claimants against a refusal of

their applications for entry clearance for a family visit, on human rights grounds under section 84 (1) (b) & (c) 2002 Act.

2. For the sake of convenience the parties will be referred to in this decision and reasons as “the Entry Clearance officer (ECO) “ who is the appellant in this matter and to the “Claimants.”

3. The Claimants are related as grandmother and grandson, and are citizens of Bangladesh.

4. The background to this matter is that the Claimants have made 2 applications/appeals as family visitors. The first appeal was determined on the papers; there was no appearance by the Claimants and no evidence produced. The decision was promulgated on 16<sup>th</sup> April 2012 by FTT (Judge O’Garro) (“The first Tribunal”) and the appeal dismissed under the paragraph 320(7A) Immigration rules. At that time there was a full right of appeal. Their current (second) applications were refused relying on the previous determination in which the Tribunal found that false documents were used as shown in a document verification report (DVR) dated 17.10.2011 with reference to the Immigration Rules at paragraph 320(7B). The DVR established that a bank statement in the name of Faro Ahmed and numbered 1008, purportedly issued by Janata bank, was false. The account showed no transactions for the period from 20.7.2011 – 2.10.2011 as compared with the bank statement relied on which showed high balances for transactions on the said dates [14 &15]. Following the refusal the Claimants submitted further financial evidence which was considered in a second DVR dated 24.1.2012. On 25.1.2012 the ECM reviewed the decision and found the new material to be genuine, but concluded that a fresh application needed to be made. However, the ECO maintained the original refusal grounds that the Claimants used false documents under paragraph 320(7A). The Claimants submitted the current application which was refused under Paragraph 320(7B).

5. At the hearing before FTT the Claimants argued in their grounds of appeal that in the ECM review dated 25.1.2012, it was accepted that no deception occurred. Neither that review nor the two DVRs were in evidence before the FTT. The FTT relied on a letter dated 29<sup>th</sup> November 2011 from the Janata Bank explaining that checks made of the bank statements with the banks own records established that the figures in the statements produced were accurate and true. The original bank letter was produced at the hearing and no challenge was raised by the representative for the ECO. In addition documents (bank paying in slips and cheque books) were produced by the sponsor which the FTT relied on [10]. The FTT took as its starting point the findings made in the first determination. It considered that the first Tribunal did not have either the Janata bank letter nor heard oral evidence that was available to the FTT. The FTT concluded that the evidence now produced showed that the first Tribunal wrongly concluded that deception was used [12].

6. The FTT went on to consider Article 8 and found that family life was established, recognising that it could exist between adult relatives [13]. The

FTT found evidence to show that it was a large and close knit family. At [14] the FTT found interference with family life taking into account factors such as the first Claimant's age, the untimely death of her husband which prevented him from seeing his grandchildren in the UK, medical evidence establishing that the Claimant's brother was ill and unable to travel, and that the second Claimant, who had been brought up by the first Claimant, had never met his cousins. The FTT placed weight on the prohibitive cost in the event of the UK family travelling to Bangladesh, given the number and ages of the grandchildren. Having concluded that the previous decision was unlawful following the misapplication of paragraph 320(7B), the FTT concluded that there was a breach of Article 8(1) and this was not justified under Article 8(2).

### **Grounds of application**

7. The ECO applied for permission to appeal on the grounds, firstly that the FTT erred in law by making a material misdirection of law in concluding that family life as between adults relatives was established under Article 8 (**MS (Article 8 - family life - dependency - proportionality) Uganda [2004] UKAIT 00064**). The second ground was that the proportionality assessment was inadequately reasoned and relied on immaterial matters. It was further argued that the FTT was wrong to conclude that there had been no deception without the evidence of the ECM review dated 25<sup>th</sup> January 2012, which accepted that the solvency letter dated 15.11.2011 was verified by the bank. The review maintained that the solvency letter dated 2.20.2011 and bank statements dated 3.4.2011 - 2.10.2011 contained discrepancies. The review maintained the refusal element under paragraph 320(7A).

### **Permission to appeal**

8. Permission was granted by Designated FtT Judge Zucker on 15<sup>th</sup> April 2015 who found that it was arguable that although the FTT did not have the ECM Review( in breach of standard directions), it may have been misled by the Appellant's submission that no deception occurred. The proportionality assessment was arguably flawed in the circumstances.

### **Error of law hearing**

9. Mr Bramble relied on the grounds of appeal and produced the two DVR dated 17.10.2011 and 24.1.2012 together with the ECM review dated 25.1.2012. Mr Amanwa provided the Claimants bundle for the hearing which included the Janata bank letter dated 25<sup>th</sup> November 2011.

### **Submissions**

10. Mr Bramble submitted that the Upper Tribunal should consider firstly, the FTT's approach to Article 8(1) and only if it was concluded that there was no error in finding family life, to go on to the second ground with reference to paragraph 320(7B) Immigration Rules HC 395 (as amended). Mr Bramble

submitted that the question addressed by the FTT at [13] failed to consider the basis for which it concluded that family life was established under Article 8(1). The FTT found a close knit family but there were no other facts and reasons relied on in support. In particular there was no consideration of emotional ties beyond the normal level in the context of adult relationships. The Secretary of State's position was reinforced by that adopted by Senior Immigration Judge Perkins in **Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) [24]**.

11. As to the second ground under paragraph 320(7B), Mr Bramble referred to the two document verification reports and the Entry Clearance Manager's (ECM) review. He submitted that the FTT had clearly not seen the ECM review. That review stated that certain documents were considered to be genuine but that concerns as to the reliability of the documents originally produced with the first application remained. The FTT proceeded on the basis that there had been an acceptance that the Entry Clearance Manager made a positive response regarding the financial documents in favour of the Claimants, including those submitted with the first application. In finding that the first Tribunal wrongly found that forged documents were used, the FTT's proportionality assessment was flawed.

12. Mr Amunwa had not previously seen the DVRs, nor was he aware that the Secretary of State's case was articulated in terms that the first set of documents were forged and that there had been a second set of documents produced which were accepted as genuine in the review. He submitted that in adopting this position the Secretary of State appeared to be attempting to re-litigate matters in circumstances where the Entry Clearance Officer had already had two opportunities to make a decision.

13. He submitted that the FTT found a close knit family and took account of oral evidence and the skeleton argument. The wider circumstances of the family and the fact that the grandfather died whilst waiting for a visit visa to the UK, were relevant issues and compassionate factors which took the case into the exceptional category (**Etti-Adegbola V SSHD [2009] EWCA civ 1319**).

14. For visit visa appeals each case was fact sensitive (**Singh v ECO New Delhi [2004] EWCA CIV 1075 [20 to 21]** and **Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)**). As regards the proportionality assessment the arguments under paragraph 320 and Article 8 stand and fall together. The ten year ban was a serious interference with family life.

### **Discussion and decision**

15. The appeal before the FTT was limited to grounds under Section 84(1)(c) Nationality, Immigration and Asylum Act 2002, namely human rights. Accordingly the approach of the FTT ought to have been to focus firstly on whether Article 8 was engaged and thereafter to follow the **Razgar** approach. And in the proportionality assessment to consider the issue under paragraph

320(7B) by reference to the first determination as a starting point. Although post dating this matter **Adjei (Visit visas - Article 8) [2015] UKUT 0261 IAC** endorses such an approach. The head note states:

*"The first question to be addressed in an appeal against refusal to grant entry clearance as visitor where only human rights grounds are available is whether Article 8 of the ECHR is engaged at all. If it is not, which will not infrequently be the case, the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the Rules and should not do so. If Article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the Rule because that may inform the proportionality balancing exercise that must follow. **Mostafa (Article 8 in entry clearance)** is not authority for any contrary proposition.*

*As in **Mostafa** at [24] the Tribunal stated it is the very essence of Article 8 that it lays down fundamental values that have to be considered in all relevant cases. It would therefore be extremely foolish to attempt to be prescriptive, given the intensely factual and contextual sensitivity of every case. Thus we refrain from suggesting that, in this type of case, any particular kind of relationship would always attract the protection of Article 8(1) or that other kinds of relationship would never come within its scope. We are however prepared to say that it will only be in very unusual circumstances that a person other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partner or a parent and minor child and even then it will not necessarily be extended to cases where, for example the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together."*

16. In concluding that Article 8 was engaged the FTT [13] found that the first Claimant had three children and seven grandchildren living in the UK and that it was a close knit family despite the distance between them. Significance was placed on a visit made by UK relatives in circumstances of serious family illness and on the fact that the first Claimant had effectively brought up second Claimant, whose mother had died and he had not had the opportunity to meet his cousins. At [14] the FTT also took into account that the first Claimant's husband died without having been able to visit his children and grandchildren in the UK. The FTT placed weight on medical evidence that the first Claimant's brother was not fit to travel to Bangladesh. The FTT further took into account age, number of grandchildren, income and the cost of the UK family visit to Bangladesh would be prohibitive.

17. In analysing family life I find that the FTT failed to specifically consider either the issue or the evidence in relation to family ties as between adult

siblings. There was no identification of evidence of dependency over and above the normal emotional ties. The FTT cited **Ghising, AA v UK** and **Etti-Adegbola** cases relevant to visit visa applications and appeals where it was recognised that family life may continue between a parent and an adult child and that each case was fact sensitive. However, the reasoning behind the FTT's decision focused on general factors such as age, number of grandchildren, income and cost rather than any close analysis of the family ties and nature of the relationships between each appellant and their UK relations. In short there was no specific consideration or analysis of what constitutes the family life including previous visits and methods of communication.

18. The existence of an extended close knit family is by no means exceptional. The fact that the grandfather died pending the outcome of a visit visa application whilst amounting to a compassionate circumstance, is not an event which on the evidence before the FTT took this out of the realms of normal family life. I am satisfied that in considering Article 8(1) the FTT failed to address the relevant issues and/or with sufficient detail so as to conclude that family life exists as between adults beyond the range of normal emotional ties. I find that the FTT materially erred in law in its assessment under Article 8(1).

19. I briefly consider the 320(7B) issue notwithstanding that this issue does not now come into play given my conclusion in respect of the FTT decision under Article 8(1). I am satisfied that the starting point for the FTT (following **Devaseelan**) was the findings and decision of the first Tribunal (Judge O'Garro) which dismissed the appeal under paragraph 320(7A). I have considered both DVRs and I find no evidence that the findings and decision made by the first Tribunal were wrong. I am satisfied that the FTT erred by placing reliance on an assertion in the Claimant's grounds of appeal that the ECM accepted that no deception occurred. The DVRs were not before the FTT and reliance was placed on a letter dated 29 November 2011 from the manager of the bank confirming that figures were accurate and true. I am satisfied that the FTT in relying on the assertion in the grounds and the bank letter failed to fully grasp the concerns raised as to the financial evidence relied on by the Claimants. Furthermore, without reference to the relevant DVRs and the review the FTT misunderstood the position that the financial evidence produced for the second application and accepted as genuine, was in fact different from that produced in support of the first application. I further find that had the relevant documentary evidence been considered at the FTT hearing, the outcome would have been different. It may well be that subsequent to the refusal, the Claimants did indeed provide reliable and genuine documentation that was accepted by the ECM at the review stage, however the FTT was misled into reaching a finding that the evidence before the first Tribunal (Judge O'Garro) was not false. I conclude that the FTT erred in reaching the conclusion that the decision to refuse the applications under paragraph 320(7B) was not lawful. Consequently the assessment of proportionality under Article 8(2) is flawed.

### **Re making the decision**

20. Having found that the FTT materially erred in law I set aside that decision. I now remake that decision. I am satisfied that there was no evidence on which to conclude that Article 8 family life is established. There is no evidence to show that the relationship between the first Claimant and her adult relatives discloses any aspect of dependency or is any different from what might normally be expected between such relatives. There is no evidence of any particularly strong relationship between the Claimant and her extended family. Other than financial constraints there is no evidence to show why those relationships cannot be maintained in the way that relatives who have chosen to live in different countries manage to do so. Otherwise there is no good reason why the UK based relatives cannot visit the claimants in Bangladesh if they wish to do so albeit that the cost for the entire family would be prohibitive for all of them to travel at the same time. The evidence suggests that there have been visits made by the UK relatives to Bangladesh on past occasions and that family life is maintained. To fall within the scope of Article 8 the evidence must disclose that there is a sufficiently strong tie as between adult relatives. Further the evidence in respect of the second Claimant, who is a minor, shows that he has established his own family life in Bangladesh with his grandmother and uncle separate from the relatives in the United Kingdom. (**Advic v UK 20 EHRR CD125** and **Kugathas v IAT [2013] EWCA Civ 31**).

### **Summary of Decision**

21. The First-tier Tribunal made an error of law and the decision to allow the appeal is set aside.

22. I substitute a fresh decision to dismiss the appeal on human rights grounds.

No anonymity direction is made.

Signed

Date 19.6.2015

GA Black  
Deputy Upper Tribunal Judge G A Black

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 19.6.2015

GA Black  
Deputy Upper Tribunal Judge G A Black