



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

Appeal Number: VA/02307/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> February 2015**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MRS SHAHINA ANWER  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - ABU DHABI**

Respondent

**Representation:**

For the Appellant: No representation  
For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. This an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Lal issued on 27<sup>th</sup> November 2014 allowing, apparently under the Immigration Rules and Article 8 ECHR, the appeal of the

Appellant against the decision of the Respondent made on 7<sup>th</sup> April 2014 to refuse entry clearance to visit her brother in the UK. The Respondent in this case is the Entry Clearance Officer Abu Dhabi.

2. Judge Lal acknowledged that the Appellant was only entitled to a limited right of appeal under the Human Rights Act and/or the Race Relations Act due to changes made in the law with effect from 25<sup>th</sup> June 2013. He then however went on to consider the appeal in terms of paragraph 41 of the Immigration Rules.
3. The Entry Clearance Officer (ECO) had refused the application because he was not satisfied that the Appellant was supported by her husband as claimed. She had not demonstrated the source of funds in her husband's bank account. He was not satisfied that she intended to leave the UK at the end of her visit. Judge Lal, having considered the evidence before him found that the Appellant had shown that she intended to leave the UK at the end of her visit and that indeed all the requirements of paragraph 41 were met. He allowed the appeal under the Immigration Rules.
4. He then went on to consider Article 8, taking into account that the Appellant had acted as a mother figure to the Sponsor. He referred to 'the unique set of circumstances' in the case and allowed the appeal under Article 8.
5. It is submitted in the grounds seeking permission that Judge Lal erred in failing to give adequate reasons for finding that there was a family life between the Appellant and the Sponsor sufficient to engage Article 8. He failed to have regard to **Kugathas v SSHD [2003] EWCA Civ 31** and **MS (Article 8 - family life - dependency - proportionality) Uganda [2004] UKIAT 00064** in which it was said that in circumstances where family life is put forward as existing between an adult child and his parents there need to be further elements of dependency involving more than emotional family ties. It was submitted that the judge failed to explain what the "unique particular facts" apparently relied on by him are in this case.

## **Findings**

6. I find that Judge Lal erred in law firstly in allowing the appeal under paragraph 41 of the Immigration Rules and secondly in allowing it under Article 8 ECHR. I do accept that when considering Article 8 in an appeal against the refusal of a visit visa the ability of the Appellant to meet the requirements of paragraph 41 may be a valid consideration but Judge Lal actually considered the evidence and the documentation before him and effectively overturned the decision of the Entry Clearance Officer. He had no jurisdiction to do that.
7. With regard to Article 8 I agree with what is submitted by the Secretary of State in the grounds. The Judge did not give adequate reasons for finding that the circumstances of the case were unique. He did not give reasons

for finding that there was family life between the Appellant and her brother such that Article 8 was engaged.

8. I therefore set aside the determination of the First-tier Tribunal.
9. The Sponsor appeared before me. I explained to him as simply as I could that his sister had only had a limited right of appeal. He said that the Judge had gone over the papers that he had and had decided that the appeal should succeed under the Rules. I explained to him that the Judge had no jurisdiction to do that. It does seem however that the issue before the ECO was the intention of the Appellant to return to her husband. The Presenting Officer and I both explained to the Appellant what would be necessary to make a successful application. He did say that his sister had sponsored members of the family and they had all returned to Pakistan and indeed although many of his family members now live in the UK one part of the family had returned to Pakistan because they wanted their children brought up there. He has another relative in Pakistan, a sister I believe, who has a five year visit visa. He pointed out that his sister has never left Pakistan before. She is quite nervous of coming here. She was like a mother to him because their parents died a long time ago. He is anxious for her to see the life he has in the UK. He said he and his family visit Pakistan every three years or so but he has a special relationship with his sister and wants her to see his family life here.
10. Having considered the evidence before me I find that the Appellant has not established that she enjoys a family life with the Sponsor sufficient to engage Article 8 and that the appeal under Article 8 falls to be dismissed.

### **Notice of Decision**

There is no appeal before me under the Immigration Rules. The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed: N A Baird  
Deputy Judge of the Upper Tribunal

Date: 9<sup>th</sup> March 2015