



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/02537/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21st July 2015

Decision and Reasons Promulgated
On 29th July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

The Entry Clearance Officer - Chennai India

Appellant

and

MRS PARAMESWARY VIGNESWARAMOORTHY
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: No attendance
For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent is a citizen of India. Having considered all the circumstances I do not make an anonymity direction.
2. The appellant in the present proceedings is the ECO Chennai India.
3. This is an appeal by the ECO against the decision of First-tier Tribunal Judge Shamash promulgated on 18 February 2015, whereby the judge allowed the respondent's appeal against the decision of the ECO dated 24th April 2014. The

decision by the ECO was to refuse the respondent entry clearance to the United Kingdom as a visitor. The respondent wished to come to the United Kingdom to see her son and daughter, who are now settled and living in the United Kingdom. The judge allowed the appeal on the basis of Article 8 Family Life.

4. There was no attendance on behalf of the respondent. I checked the file. Notice of hearing had been sent out to the respondent, to the legal representative and to the sponsor on 23 June 2015. Notice of hearing had therefore been sent in accordance with the Procedure Rules. I considered whether or not it was appropriate to proceed with the hearing in the absence of a representative of the respondent. I was satisfied that proper notice of the hearing had been given and that therefore that it was appropriate to proceed with the hearing. I was satisfied that I could decide the appeal on the basis of the papers lodged.
5. The respondent's application had been made on 4 April 2014. The decision by the ECO had been made on 24 April 2014. Given the date of the application and of the decision the appellant's rights of appeal are limited to the grounds under the Race Relations Act 1976 and the Human Act 1998. There is no right of appeal under the Immigration Rules [See section 52 of the Crime and Courts Act 2013 and section 88 A of the Nationality, Asylum and Immigration Act 2002, wherein the rights of appeal for family visitors under the Immigration Rules were abolished]. If the appeal does not engage grounds under the statutes identified, there is no jurisdiction in the First-tier Tribunal.
6. The grounds of appeal to the First-tier Tribunal do not raise issues under the Race Relations Act. The grounds of appeal do however raise issues under Article 8 of the Human Rights Act. In allowing the appeal Judge Shamash considered that the human right to family life of the respondent and her sponsors under article 8 of the ECHR would be breached.
7. The grounds of appeal to the Upper Tribunal raise two issues. The first is that in applying the case law of Razgar 2003 UKHL 27 the judge has wrongly found that family life as protected by Article 8 is engaged on the facts. The second issue relates to the judge's approach to Section 117 A and B of the 2002 Act.
8. Firstly in accordance with the case of Razgar the burden was on the respondent to prove that family life was engaged on the facts as presented. In order to do that it had to be proved in respect of a parent and adult children that there are elements of dependency going beyond normal emotional times. In respect of such dependency the appellant seeks to rely upon the cases MS (Article 8 -- Family Life -- Dependency -- Proportionality) Uganda [2004] UKIAT 00064 and Kugathas v SSHD [2003] EWCA Civ 31.
9. Paragraph 8 of MS states:-

It is accepted that in circumstances where family life is put forward as existing between an adult child and his parents... there needs to be elements of dependency involving more than emotional family ties. This was reaffirmed in Salad [2002]

UKIAT 06698 relying on the earlier case of *Advic v the UK*, Strasbourg case decided in September 1995.

10. Paragraph 25 of Kugathas states:-

Because there is no presumption of family life, in my judgement family life is not established between an adult and his surviving parent or other siblings unless something more exists than the normal emotional ties.

11. In respect of visit visas paragraph 20 of Kugathas states:-

...neither blood ties nor the concern or affection that ordinarily go with them are, by themselves or together in my judgement, enough to constitute family life. Most of us have close relations with whom we are extremely fond and whom we visit or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8.

12. The case of *Adjie* (visit visas -- Article 8) [2015] UKUT 261 has given further guidance on the issue of article 8 in respect of applications for visit visas. A number of points arise out in the decision. The first is that to approach the case by seeking to establish whether or not an applicant met the requirements of the immigration rules in considering article 8 was legally a flawed approach to the issues. The case identified that the first question to be addressed in an appeal was whether or not human rights specifically article 8 family life was engaged at all. Where the judge has started by considering the requirements of the rules in such a flawed approach the findings of fact may carry little weight.
13. As identified in paragraphs 15 and 17 of *Adjie* whether there is the degree of dependency necessary to engage Article 8 requires the assessment of the evidence. Here much as in paragraph 17 of *Adjie* the sponsors have their own family units and there was no element of dependency.
14. The fact that the appellant is a widow and is seeking to see two of her children in the UK and their families, does not alter the fact that they have their own family units and the appellant is not a part of that family unit for the purposes of Article 8 as there is no dependency. The judge did not consider the issue of dependency. As he did not consider such the assessment of article 8 is legally flawed.
15. The Notice of Hearing indicated that the case could be re-decided on the basis of the evidence presented.
16. I have considered the evidence presented and find that there is no family life as protected by Article 8 of the ECHR. There is no dependency. Whilst the appellant visits her family members in the UK, there is no financial or emotional dependency. The adult offsprings in the UK have their own family units separate from the appellant. In the circumstances I do not find that Article 8 family life is engaged on the facts as presented.

17. There is no private life right to visit people in the UK nor any other right under the ECHR engaged on the facts as presented.
18. For the reasons given I find that there is an error of law in the original decision. I set that decision aside. I have determined to re-make the decision. None of the rights under the ECHR are engaged on the facts as presented. Therefore there is no jurisdiction in the First-tier Tribunal and no valid appeal before the Tribunal.
19. There is a material error of law in the original decision. I set that decision aside and substitute a decision dismissing the appeal for the reasons set out.

Signed

Date

Deputy Upper Tribunal Judge McClure