



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

Appeal Number: VA/02979/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 August 2015**

**Decision & Reasons Promulgated
On 20 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**SERGIO JR AGAPITO ALA AN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - THE PHILIPPINES

Respondent

Representation

For the Appellant: Mr O. Lot, Counsel instructed by A2 Solicitors

For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I see no need for, and do not make, an order restricting reporting of this case.

Background

2. This is an appeal by the appellant against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the respondent refusing to grant him entry clearance for a family visit.

3. The appellant is a national of the Philippines born on 23 October 1954. He applied for entry clearance in order to visit his daughter, son-in-law and grandchildren who live in the United Kingdom. His son-in-law is an Italian national. It was not clear from the papers before me whether the appellant's wife also lives in the UK. Mr Lot clarified that she, along with another of the appellant's daughters, lives in the Philippines.
4. The application for a family visit was refused by the respondent in a decision dated 9 May 2014 on the basis that not all the requirements of Paragraph 41 of the Immigration Rules were satisfied.
5. Shortly before making the application for a family visit, the appellant had applied unsuccessfully for admission to the UK as a family member of an EEA national. In making this earlier application the appellant had informed the respondent that he only wished to visit the UK. The respondent was not satisfied that the appellant was wholly or mainly dependent on the EEA national. The refusal decision, dated 8 January 2014, was not appealed.

First-tier Tribunal Decision

6. The appeal against the decision dated 9 May 2014 was heard by First-tier Tribunal Judge Prior ("the judge") on 20 April 2015. The judge made clear that the appeal could only be brought on the ground that the refusal of entry infringed the appellant's human rights under Article 8 of the ECHR. Having set out the relevant matters to consider under Article 8, the judge dismissed the appeal on human rights grounds on the basis that he was not satisfied refusal of a visit visa application was a disproportionate interference with the family life of the appellant or his family members.
7. The Grounds of Appeal make two submissions. The first is that the judge failed to carry out a proper assessment under Article 8. The recent Upper Tribunal decision in *Mostafa* [2015]UKUT 00112 is cited and it is argued that the judge failed to make a proper finding as to whether the Rules were in fact satisfied by the appellant in order that this could be given due weight in the proportionality assessment under Article 8. The second ground is that the judge ignored the appellant's argument that refusing him entry would breach his rights as an EEA family member and impinge on his son-in-law's right to free movement. First-tier Tribunal Judge Chohan gave permission to appeal on all grounds.

Submissions

8. Mr Lot, on behalf of the appellant, submitted that because the appellant was proposing to visit an EEA national the judge should have considered whether refusing the appellant entry would violate the EEA national's right to free movement and the exercise of his Treaty Rights. Mr Lot acknowledged that he was unable to provide any authority or point to any rule or statute that supported his argument but nonetheless maintained it was an important matter to which the court should have regard.

9. With regard to Article 8 of the ECHR, Mr Lot argued that the judge had not followed *Mostafa* as it was not discernible from the decision whether he had determined whether Paragraph 41 of the Rules had been satisfied. He argued that Article 8 is engaged because the appellant is dependent on his daughter who sends him money regularly. Mr Lott referred to an unreported decision which purportedly showed that a relationship such as that between the appellant and his daughter would engage Article 8 although he was unable to provide a copy and acknowledged that it could not in any event be relied upon.
10. Mr Melvin argued that the EEA argument had no basis. This was an appeal of a decision to refuse a family visit visa, not a decision to refuse entry as a family member of an EEA national. His view on Article 8 was that it was simply not engaged and he referred to the Upper Tribunal decision in *Adjei* [2015] UKUT 261 (IAC) which had clarified how *Mostafa* should be interpreted.

Consideration

11. The appellant's contention that special consideration should be given, or a different test applied, to a visitor visa application where the applicant proposes to visit an EEA national is without merit. Mr Lot was unable to provide any authority, or refer to any legislation, rule, guidance or other material, in support of this argument. It may be that confusion has arisen because the appellant made an application (which was refused) to enter the UK as a family member of his son-in-law shortly before the application for entry clearance as a family visitor. However, the appellant did not appeal the decision refusing him entry as a family member and only appealed the decision refusing him entry as a visitor under Paragraph 41 of the Immigration Rules. Accordingly, there was not a material error in the judge's failure to consider the appellant's misconceived EEA arguments.
12. I now turn to the question of whether refusing the appellant entry to the UK would be contrary to Article 8 of the ECHR.
13. Both parties accepted that the judge was correct to recognise that there is no right to appeal against refusal of entry clearance in a family visitor case except on grounds alleging the decision shows unlawful discrimination or is unlawful under Section 6 of the Human Rights Act.
14. The first question to be addressed is whether Article 8 of the ECHR is engaged at all. As stated by the Tribunal in *Adjei* at paragraph [9]

“The first question to be addressed in an appeal against refusal to grant entry clearance as a 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 will need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule

because that will inform the proportionality balancing exercise that must follow.”

15. A similar point is made in *Mostafa* at paragraph [23] where the Tribunal stated that the underlying merits of an appeal “*will only become relevant if the interference is such as to engage Article 8(1) ECHR*”.
16. The appellant lives in the Philippines with his wife and daughter and wishes to visit his other daughter, and her family, who live in the UK. He receives a regular remittance from his daughter in the UK although it is far from clear he is dependent on her. Indeed, his application for entry clearance as a family member of an EEA national was refused (in a decision that was not appealed), inter alia, on the basis that he did not satisfy the requirement of being dependent on his daughter and her EEA national husband in the UK. The appellant’s circumstances, therefore, are very different to those in *Mostafa*, where Article 8 was found to be engaged, which concerned a husband wishing to visit his wife, and have more in common with *Adjei*, in which the Tribunal found Article 8 was not engaged where a daughter sought to visit her father and step family.
17. The judge found that the appellant’s family were able to visit him and that visits had taken place in January 2015 as well as in 2012 and that refusing the appellant entry would not be a disproportionate interference with his (or his family’s) family life. This was a finding that was clearly open to the judge for the reasons he gave. Indeed, based on the evidence before the judge about the relationship between the appellant and the appellant’s adult daughter, it was open to the judge to find that Article 8 was not engaged at all. Accordingly, the appellant has failed to identify any material error of law on the part of the First-tier Tribunal and therefore the appeal is dismissed. The decision of the First-tier Tribunal shall stand.

Notice of Decision

18. The appellant’s appeal is dismissed.
19. The decision of the First-tier Tribunal did not contain a material error of law and its decision dismissing the appellant’s appeal shall stand.
20. No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Sheridan

Dated