



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/00154/2015
HU/00156/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke on Trent
On 19 July 2016

Decision Promulgated
On 19 July 2016

Before

Deputy Upper Tribunal Judge Pickup
Between

Entry Clearance Officer - Islamabad
[No anonymity direction made]

and

Muhammad Sharif
Zameer Begum

Appellant

Claimants

Representation:

For the appellant: Mrs UR Sood, instructed by Trent Chambers
For the appellant: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Entry Clearance Officer's appeal against the decision of First-tier Tribunal Judge Pacey promulgated 4.5.16, allowing on human rights grounds the claimants' linked appeals against the decision of the Entry Clearance Officer, dated 20.4.15, to

refuse entry clearance to the United Kingdom as family visitors. The Judge heard the appeal on 11.4.16.

2. First-tier Tribunal Judge O'Garro granted permission to appeal on 16.6.16.
3. Thus the matter came before me on 19.7.16 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out briefly below, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Pacey to be set aside.
5. The grounds assert that the First-tier Tribunal Judge erred in consideration of article 8 ECHR, first by failing to make a reasoned finding as to why there was family life between the claimants on the one hand and on the other the sponsors and the seriously-ill grandchild, in respect of whom they wished to visit and offer emotional support and some respite to the sponsoring parents of that child, and that the refusal decision constituted a sufficiently serious interference with that family life so as to engage article 8 ECHR.
6. Second, it is contended that the judge's Razgar proportionality assessment was inadequate.
7. In granting permission to appeal, Judge O'Garro considered that at §18 of the decision the judge concluded that there is family between the claimants and the sponsors, who are all adults, "but he has not given clear reasons for making that finding."
8. Further, "Based on his finding that there is family life, the judge appears not to have undertaken a proper assessment as to whether it is proportionate to refuse the (claimant's) application under article 8."
9. In Adjei (visit visas – article 8) [2015] UKUT 0261 (IAC), the Upper Tribunal held that in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 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 Entry Clearance Officer 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.
10. As the judge pointed out at §16 of the decision, the whole point of family visits is that the existence of family ties will normally furnish the reason for the visit. Whilst these grandparent claimants had never met the unfortunately ill young grandson, they are the paternal grandparents and thus parents of the child's father, who have an understandable interest in the welfare of the family as a whole, including their own son, one of the sponsors, and their grandchild. I accept the point made by Mr Bates

that the decision merely maintained the status quo, but family life includes the ability to develop and maintain family relationships, including by occasional visits, as well as other means of communication.

11. The judge was satisfied that the purpose of the visit was not merely to act as respite carers for the three-year-old child and considered the Kugathas test as to whether there is a real committed or effective support or relationship between the family members, and that normal emotional ties between adult family members would not, without more, be sufficient. The judge took into account that the child was too unwell to travel to visit his grandparents, there being no challenge to the seriousness of his condition. It is established law that family life can exist even without continuous or any cohabitation and that there can exist ties beyond mere biological kinship that can attract the protection of article 8 ECHR.
12. Considering the decision as a whole, I find that the judge was entitled to find sufficient family life under article 8 ECHR so that the refusal of a visit could amount to sufficiently serious interference with that right to respect for family life as to engage the protection of article 8. In the circumstances, the decision does provide adequate reasoning for the conclusion of the judge that article 8 family life is engaged.
13. In relation to the ground asserting that the First-tier Tribunal Judge failed in the proportionality assessment, as the judge pointed out, at this stage the burden is on the Secretary of State or Entry Clearance Officer to demonstrate that refusal is proportionate. At §19 the judge noted the legitimate aim and public interest in maintaining immigration control, against which the rights of the claimants and other family members are to be balanced in the proportionality assessment. At §21 the judge set out factors that were relevant to the proportionality assessment. These included that the child could not make the visit to his grandparents; the emotional support that such a visit might offer to the sponsors and the child; and section 55 and the best interests of the child. I take account of Mr Bates submission that the judge did not consider in the proportionality assessment that a further application might be made, taking care to address the reasons for refusal. However, unless it is absolutely clear that a further application would succeed, there is no material error on that narrow point.
14. Considering the decision as a whole, the judge has clearly addressed proportionality and given cogent reasoning for the conclusions reached. It was open to the judge to reach the conclusion that on the facts of this case the decision to refuse entry was disproportionate. I cannot agree that the decision is perverse or irrational, or one which no properly directed judge could reach.
15. In the circumstances, I find no material error of law.

Conclusions:

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each claimant remains allowed on human rights grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated 19 July 2016

Deputy Upper Tribunal Judge Pickup

Consequential Directions

17. Forthwith on receipt of this decision the respondent shall issue entry clearance, provided the respondent is satisfied there are no circumstances arising after the date of this decision/the decision under appeal which make it necessary to refuse to do so.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal was allowed at the First-tier Tribunal.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

19 July 2016