



IAC-HX-DML-V1

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

Appeal Number: VA/01922/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21 October 2015

Decision & Reasons Promulgated
On 13 January 2016

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

ENTRY CLEARANCE OFFICER, NAIROBI

Appellant

and

**MR MINA ADIL RAGHIB AMIN
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Tufan

For the Respondent: Mr Ward

DECISION AND REASONS

1. Mr Amin is a citizen of Sudan born in 1986. He appeals against a decision of the Entry Clearance Officer, Nairobi made on 5 March 2014 to refuse his application for entry clearance to visit his parents for two months. His parents were granted visit visas in March 2011. They were granted leave to remain as refugees in March 2013.
2. The reason for the proposed visit was that Mr Amin's father was due to undergo eye surgery.

3. The ECO refused the application for the following reasons. He noted that in support of his application Mr Amin had submitted a letter (11 April 2013) from his father's GP which states that his father is anxious and depressed because he has concerns about his three children who are living in Sudan and *"one of his sons has been persecuted as a Christian and Mr Khalil fears for his son's life"*.
4. Second, that although Mr Amin claimed to be employed as a purchase manager for a factory and had submitted a letter from his employer, he had not submitted any payslips or personal bank statements to show that his circumstances are as stated.
5. Third, Mr Amin had stated that his father would pay for his travel and stay in the UK. However, the only deposits in his account were public funds insufficient to sponsor the trip. Mr Amin had not shown he had the ability to finance his trip.
6. For these reasons the ECO refused the application under paragraphs 41(i), (ii), (vi) and (vii) of the Immigration Rules.
7. Mr Amin appealed. His appeal rights were limited to human rights.
8. Following a hearing at Taylor House on 20 February 2015 Judge of the First-tier levins allowed the appeal under Article 8.
9. His findings are at paragraph 22 ff of his decision. Having heard evidence from Mr Amin's parents he found them both credible. He accepted that what the father said to the GP had been a *"misunderstanding"* and that what he had meant was that he, not his son, had been persecuted as a Christian in Sudan.
10. He found, however, that the *"Sponsor is genuinely distressed and anxious for his children. He is not in good health, he is living in a foreign country (which has looked after him well) and perfectly understandably very much wants to see his youngest child. Neither he nor his wife are in any physical state to travel to the Sudan and the Sponsor himself has refugee status."* [22]
11. The judge concluded that a genuine visit was intended and that Mr Amin intended to leave. Thus paragraph 41(i) and (ii) were satisfied.
12. The judge went on to find for reasons he gave in [24] and [25] that the requirements of paragraph 41(vi) and (vii) were met.
13. The fact that he satisfied the paragraph was *"relevant to Article 8"* [26] to which he turned next.
14. His analysis began at [29] where he stated *"... I must first ask whether the proposed ... refusal of an application would amount to an interference by a public authority with the exercise of the applicant's right to respect for his private and/or family life ... human beings are social animals and require human relationships to flourish The Appellant can speak to his parents across the continents on the telephone but that is no substitute for face to face contact between parents and children. I am satisfied that to refuse this application does amount to an interference with the exercise of the Applicant's right to respect for his private*

*and family life (and, by virtue of the case of **Beoku-Betts**, it also amounts to an interference with the Sponsor's right to respect for family life with his son). Such interference would in my judgment have consequences of sufficient gravity as potentially to engage the operation of Article 8."*

15. The judge went on to consider that there would be no cost to the public purse if he stayed with his parents for a month or two. Also that he gave "*weight to the factors set out in Section 117B*". [30]
16. He concluded that having met the requirements of the Rules there was no public interest in refusing a visa [31], and allowed the appeal under Article 8.
17. The ECO sought permission to appeal which was granted by a judge on 6 May 2015.
18. At the error of law hearing before me Mr Tufan's point was that the judge failed to identify the basis for his, apparent, finding at [29] that there was family life between Mr Amin who is an adult son, and his parents. Article 8 was simply not engaged. There was no family life. As such the **Razgar** assessment was flawed. His invited me to remake the decision dismissing it.
19. Mr Ward accepted that the judge had failed adequately to give reasons for his finding that there was family life.
20. I agreed. Such was a material error. I set aside the decision to be remade. It was not suggested that the factual findings should not stand.
21. In submissions Mr Tufan had nothing to add to his earlier point. Mr Ward submitted that the legal position was not as confined as Mr Tufan suggested. It all depended on the facts. In this case it was an intended visit by an adult son to his gravely ill father who could not travel to Sudan or to a third country. It was not a holiday on a whim. It would likely be the last time his father sees him. The facts amounted to a relationship beyond normal emotional ties.
22. In **Kugathas v SSHD [2003] EWCA Civ 31** the Court of Appeal said in order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a parent and an adult son would not without more, be enough.
23. In **Etti-Adegbola v SSHD [2009] EWCA Civ 1319** the Court of Appeal concentrated on the last part of that test and confirmed that the Tribunal had applied the right test in finding that a family's behaviour was "*no way exceptional or beyond the norm*".
24. Both parties referred me to **Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)** at [24]. Mr Ward noted: "*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*".

25. Mr Tufan directed me to later in the paragraph: *"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 partners or a parent and a minor child ..."*.
26. It is relevant to note that in **Mostafa** it was accepted that there was family life, namely, husband and wife.
27. In **Adjei (visit visas - Article 8 [2015] UKUT 0261 (IAC)** it was held that the first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights are available is whether Article 8 is engaged at all. If it is not the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the Rules and should not do so.
28. In the circumstances of this case I thus need first to consider whether there is family life. It all depends on the facts. Mr Amin is a young man of 28 years of age. It seems he is in good health. He is independent. He has a fiancée and is in employment. He also has his siblings close by. There is no suggestion of dependency of his parents on Mr Amin. He has long established his own life.
29. He has not seen his parents since they came to the UK in March 2012 as visitors. It seems they subsequently claimed and were granted refugee status. The indication from the evidence is that they have settled and are coping well. Although reliant on benefits they have saved money and they are financially independent of their children.
30. The indication from several medical letters is that the father has a number of serious medical conditions. Also, that he suffers from depression and anxiety. He is receiving treatment for both his physical and mental health problems.
31. I see no reason to doubt that the father, particularly as he is unwell, would like to see his own son again face to face and that it would not be possible for him to travel to Sudan or a third country to do so.
32. I see no reason to doubt that Mr Amin is concerned for his father particularly in light of his poor health.
33. In **Kugathas** at [19] it states *"... neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together in my judgement enough to constitute family life. Most of us have close relatives of 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"*.
34. On the facts of this case I do not see that there exist ties strong enough to constitute family life within the meaning of the Article.
35. Mr Amin's appeal fails at the first hurdle.

Notice of Decision

The decision of the First-tier Tribunal showed material error of law. It is set aside and remade as follows:

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Conway