



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/04304/2014

THE IMMIGRATION ACTS

Heard at Field House
On 14th December 2015

Decision & Reasons Promulgated
On 21st January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MS OLAMIDE SULE ONOSIPIE

Appellant

and

ENTRY CLEARANCE OFFICER, LAGOS

Respondent

Representation:

For the Appellant: Ms C Record, Counsel; Direct Public Access

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. For ease of comprehension, the parties are referred to by their appellate status and positions before the First-tier Tribunal.
2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Lester allowing the Appellant's appeal against the Secretary of State's refusal to grant entry clearance as a close family visitor under paragraph 41, with specific reference to grounds set out within section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002, namely that the decision is unlawful against section 6 of the Human Rights Act 1998.

3. The First-tier Tribunal promulgated its decision allowing the Appellant's appeal against the Respondent's decision on 3 July 2015.
4. The Respondent appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Colyer on all grounds. The grounds upon which permission to appeal was granted may be summarised as follows:
 - (i) It is arguable that the judge erred in not finding elements of dependency involving more than normal emotional ties, and
 - (ii) It is arguable that the judge erred in making a reasoned finding that family life exists.
5. It is of note that the Respondent chose not to be represented at the hearing before the First-tier Tribunal, but was represented at the hearing before me. It is also of note that the Respondent did not seek to challenge that family life was engaged in the Refusal of Entry Clearance that gave rise to the appeal before the First-tier Tribunal.

No Error of Law

6. I do not find that there was an error of law in the decision such that it should be set aside. My reasons for so finding follow shortly.
7. As noted above, the Respondent never sought to take issue with the engagement of family life in her refusal. Neither could she have raised this point on appeal as a new basis of refusal as she chose not to be represented at the hearing. In that context, it would be understandable that a judge in assessing Article 8 might not dwell on the relatively low threshold of engagement between an adult child and parent, where the latter proposes to visit the former. It is important for parties to recall that the context in which such appeals will arise will only be between close relatives and whilst a fact sensitive approach is sensible, where no issue is taken with family life existing between the parties - in what will be a long-distance format given they will not reside in the same country - it is difficult to see how the judge possibly erred in her consideration.
8. The suggestion that more than normal emotional ties is required to engage family life is a reference to the now antiquated decision of *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31, which has been overtaken by the Upper Tribunal's approach in *Ghising (family life - adults - Gurkha policy) Nepal* [2012] UKUT 160 (IAC) (upheld itself by the Court of Appeal in *Gurung & Ors, R (on the application of) v Secretary of State for the Home Department* [2013] EWCA Civ 8), which requires a fact sensitive approach anyhow. For my part, the fact of close relationship and the intention to visit one's close relatives with the cooperation of the sponsoring relative is sufficient to engage Article 8 in such scenarios where the parties do not live together or in the same country. The mutually supported application in of itself is also indicative that family life is engaged, albeit in what will be a limited form. In my view, the Courts in referring to more than normal emotional ties, in the distant past and in recent decisions, seemingly owing to force of habit rather than ratio, do not necessarily apply to scenarios such as the present when considering family life between visitors and their close relatives. The relatives will be

close ones by virtue of statute and consequently, the restriction of grounds of appeal to Article 8 alone can only mean that the reduction of family visitors to a close family category are implicitly linked.

9. Notwithstanding the above, I also remind myself that the Court of Appeal confirmed in *Secretary of State for the Home Department v HK (Turkey)* [2010] EWCA Civ 583 at [16] that “Normal emotional ties will exist between an adult child and his parent or other members of his family regardless of proximity and where they live”. This comment was made in direct response to the Respondent’s reliance upon the ratio in *Kugathas* that for family life to be engaged “more” than normal ties was required.
10. Notwithstanding the above, the refusal of entry clearance itself confirms that the sponsoring parent will pay for the cost of the visit, that the Appellant has family in the UK. Consequently, the financial cost of the trip shows a limited form of dependency by the visitor upon the sponsor anyhow to further strengthen the spirit underlying the family visit.
11. Ms Record also highlighted that the judge was provided with evidence of financial dependency in the form of the Appellant’s sponsoring mother supporting the Appellant throughout her education, including her studies at Ajayi Crowther University (see §4 of the determination), and in the Appellant’s witness statement she confirmed that her mother sent money for her financial support, and that money transfer receipts went back as far as 2010. I am told that the receipts were before the entry clearance officer and also before the First-tier Tribunal. I was further told that the Appellant had demonstrated emotional dependency upon her mother in her witness statement where she confirmed that she had not seen her mother since 2004 and that wanted to see her again (see §4 again).
12. Ms Record also submitted that should family life not be shared between the Appellant and her mother, their nexus could also be viewed as a form of extended private life thereby engaging Article 8 ECHR. I accept that submission as a viable alternate form of engagement of the convention, which also serves to demonstrate the immateriality of the Respondent’s appeal. However, the two forms of Article 8 life are so closely linked, it seems unwise to attempt to distinguish between them in such scenarios.
13. Consequently, given my findings above, the grounds do not reveal an error of law such that the decision should be set aside.

Decision

14. The appeal to the Upper Tribunal is dismissed.
15. The decision of the First-tier Tribunal is affirmed.

Signed

Date

Deputy Upper Tribunal Judge Saini