



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/00397/2015

THE IMMIGRATION ACTS

Heard at Field House
On 4th May 2017

Decision & Reasons Promulgated
On 16th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

REHMET REHMET
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr R Rai of Counsel
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Maciel of the First-tier Tribunal (the FtT) promulgated on 6th September 2016.
2. The Appellant is a female citizen of Pakistan, born 1st January 1947. She is now 70 years of age.
3. On 15th November 2014 the Appellant applied for a visa to enable her to visit relatives in the United Kingdom. In her application form she indicated that she

wished to visit for approximately two months. She stated that she is married and lives with her husband Fazal Hussain. The couple have adult children, but no dependent children. The Appellant described herself as being supported by her husband and other family members and friends. She explained that she wished to visit the United Kingdom to visit her uncle who is in ill-health, and that she also intended to visit her daughters, sons, brothers, uncles and aunts and their family members, who reside in the United Kingdom. She explained that it would be more convenient for her to visit family members in the United Kingdom, rather than family members have to travel to visit her in Pakistan.

4. The Appellant submitted with her application an affidavit from Mubashar Hassan, her son-in-law who confirmed that he and his wife, the Appellant's daughter live with the Appellant, and he is responsible for working the family farm and selling the produce. The Appellant also submitted an affidavit from her husband, in which he confirms owning agricultural land, and confirms that his son-in-law cultivates the crops. The Appellant submitted a statutory declaration from her brother Nisar Ahmed, in which he confirmed that he would pay for her trip to the United Kingdom and maintain and accommodate her during her stay in this country.
5. The application was refused on 27th November 2014. The Respondent referred to paragraph 41(i) and (ii) of the Immigration Rules, not being satisfied that the Appellant was genuinely seeking entry as a visitor for a limited period, nor that she intended to leave the United Kingdom. The Respondent noted that the Appellant's husband's bank statement showed only interest payments, whereas the bank statement submitted by the Appellant showed funds equivalent to £1,182, deposited just prior to the visa application. There was no evidence as to the provenance of those funds. The Respondent was not satisfied that the funds would be genuinely available to the Appellant, or that the balance in her bank statement was an accurate reflection of her usual financial position.
6. The Respondent did not accept that the Appellant had demonstrated that she was in receipt of an income in Pakistan, and noted that funds were sent from the United Kingdom. The Respondent was not satisfied that the Appellant had ties to Pakistan.
7. The Appellant appealed to the FtT. It was contended that funds in the Appellant's bank account had been supplied by her family in the United Kingdom. Her husband had supported her financially and the family own land. The Appellant would return to Pakistan as her husband and family members reside there. The Appellant has family both in the United Kingdom and Pakistan. It was contended that the requirements of paragraph 41 were satisfied, and the refusal breached Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
8. The FtT heard the appeal on 10th August 2016. Evidence was given by one of the Appellant's daughters Khurshid Rehman, and one of her sons Tohid Hussain. The FtT found that the Appellant is partially dependent financially upon relatives in the United Kingdom although she and her husband have their own home, and receive an income from their land. The FtT found that the Appellant made a genuine application for leave to enter as a visitor and genuinely intended to remain for a

period of up to six months, and thereafter return to Pakistan to rejoin her husband and other close relatives.

9. However the FtT found that this was not the issue in the appeal, and that the Appellant only had a right of appeal on human rights grounds. The FtT found that the Appellant had not established family life with her relatives in the United Kingdom, nor had she established a private life in this country. Therefore Article 8 was not engaged, and the appeal was dismissed.
10. The Appellant applied for permission to appeal to the Upper Tribunal. In summary the Appellant contended that the FtT had erred in law by failing to give any reasons for concluding that family life did not exist between the Appellant and her children in the United Kingdom. If the FtT had properly directed itself, it would have found that family life did exist which engaged Article 8. While it was accepted that something more than normal emotional ties must exist in order to engage family life between an adult parent and adult child, the FtT found that the Appellant was partly financially dependent upon her children in the United Kingdom.
11. It was also contended that even if the Appellant did not have a family life with her children in the United Kingdom, Article 8 was engaged on the basis of her private life, as she had a large number of relatives in the United Kingdom, including grandchildren, and wanted to visit them.
12. Permission to appeal was initially refused by Judge Grant-Hutchison of the FtT, but subsequently granted by Mr Justice Mitting sitting in the Upper Tribunal, who found it arguable on the facts found by the FtT, that the Appellant did enjoy family life with her UK based children, their spouses and her direct UK based descendants.
13. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT had not materially erred in law. It was open to the FtT to find on the evidence presented, that family life which would engage Article 8 did not exist. If the appeal could not succeed with reference to family life, it could not succeed with reference to private life.
14. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

Error of law

15. Mr Rai relied upon the grounds seeking permission to appeal, together with the grant of permission. I was asked to find that there was an absence of adequate reasons for the conclusion reached by the FtT that family life did not exist.

16. Mr Armstrong relied upon the rule 24 response and submitted that the FtT had not erred, and the evidence submitted by the Appellant did not disclose further elements of dependency.
17. Mr Rai responded by pointing out that the FtT had made a finding of partial financial dependency.
18. At the conclusion of oral submissions I reserved my decision which I now give.
19. I am persuaded that the FtT did not give adequate reasons for concluding that family life was not engaged between the Appellant and her relatives in the United Kingdom. I set out below the head note to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC);

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

20. Although the FtT referred to case law on the issue of family life between adults, the conclusion at paragraph 30 that there is no family life in existence for the purposes of Article 8, is not adequately reasoned, and I accept the Appellant's contention that it is not clear why this conclusion was reached.
21. When I announced that I was reserving my decision as to error of law I asked the representatives for their proposals, in the event that I found a material error of law. No Sponsor or witnesses had attended the error of law hearing. Both representatives indicated that it would be appropriate, if an error of law was found, for the Upper Tribunal to remake the decision without the necessity of a further hearing, taking into account the evidence that was before the FtT. Having reflected, I find this to be an appropriate course of action.

Remaking the Decision

22. I have taken into account the documents that were before the FtT. There is a Respondent's bundle containing 42 pages, Notice of Appeal, and an Appellant's bundle comprising 59 pages. I have taken into account all the evidence, including the witness statements.
23. The issue to be decided in this appeal is whether the Respondent's decision breaches Article 8 of the 1950 European Convention on Human Rights which I set out below;

Right to Respect for Private and Family Life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a

democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

24. The burden of proof is on the Appellant to show that Article 8 is engaged. The standard of proof is a balance of probability.
25. I have adopted the five stage approach advocated in Razgar [2004] UKHL 27, which indicates that the following questions should be considered;
 - (i) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
 - (ii) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
 - (iii) If so, is such interference in accordance with the law?
 - (iv) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
 - (v) If so, is such interference proportionate to the legitimate public end sought to be achieved?
26. The decision in Beoku-Betts [2008] UKHL 39 means that if Article 8 is engaged, I must consider the family lives of all members of the family, not only the Appellant.
27. Although Razgar relates to a removal case, I am satisfied that the principles are appropriate when considering an entry clearance appeal.
28. I have regard to the guidance given in AG (Eritrea) [2007] EWCA Civ 801 at paragraph 28, in which it is stated, in summary, that while an interference with private or family life must be real if it is to engage Article 8(1) the threshold of engagement is not a specially high one.
29. The Upper Tribunal in Adjei (visit visas – Article 8) [2015] UKUT 0261 (IAC) stated at paragraph 9 which I set out below in part,

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.
30. The Upper Tribunal in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) stated at paragraph 24 which I set out below in part;

Thus we refrain from suggesting that, in this type of case, any particular kind of relationship would always attract the protection of Article 8(1) or that other kinds of relationship would never come within its scope. 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 minor child and even then it will not necessarily be extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together.

31. In this appeal one of the main reasons for the proposed visit was to enable the Appellant to visit her elderly uncle who was in ill-health. Sadly he passed away before the FtT hearing took place. The Appellant indicated in her witness statement that she still wished to visit her family in Birmingham and London in the UK, and would like to attend the wedding of her niece on 30th July 2016. The Appellant confirmed that she has far more ties in Pakistan than in the UK, and that she only wished to undertake a short visit to have a holiday with her family members in the UK, which would include visiting her uncle's grave.
32. The Appellant has at least one adult sibling in the United Kingdom, that being Nisar Ahmed, and according to her daughter who gave evidence before the FtT, Khurshid Rehman, she has nine children, and two of those children live in Pakistan. There are seven children and 23 grandchildren in the United Kingdom and some great grandchildren. There are six grandchildren in Pakistan.
33. I have to decide whether the Appellant has established family life with her relatives in the UK, that would engage Article 8. Perhaps the appropriate starting point is paragraph 25 of Kugathas [2003] EWCA Civ 31 in which Lady Justice Arden stated that family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties. Such ties might exist if the Appellant was dependent on his family or vice versa. It is not essential that members of the family should be in the same country, although it will probably be exceptional if family life was found between family members living in different countries.
34. I then move to consider Ghising [2012] UKUT 00160 (IAC) and note that paragraphs 50-62 of this decision were specifically approved by the Court of Appeal in Gurung and Others [2013] EWCA Civ 8. In Ghising it was accepted that the judgment in Kugathas had been interpreted too restrictively in the past and ought to be read in the light of subsequent decisions of the domestic and Strasbourg Courts. Family life may continue between parent and child even after the child has attained his majority.
35. The Upper Tribunal found that the issue under Article 8(1) is highly fact sensitive. Rather than applying a blanket rule with regard to adult children, each case should be analysed on its own facts, to decide whether or not family life exists, within the meaning of Article 8(1).

36. At paragraph 61 of Ghising there was reference to AA v United Kingdom (application no 8000/08), in which it was found that a significant factor will be whether or not the adult child has founded a family of his own. If he is still single and living with his parents, he is likely to enjoy family life with them.

37. I have also considered Singh [2015] EWCA Civ 630 and I set out below paragraph 24;

24. I do not think that the judgments to which I have referred lead to any difficulty in determining the correct approach to Article 8 in cases involving adult children. In the case of adults, in the context of immigration control, there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in Kugathas did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8.

38. With reference to family life between grandparents and grandchildren, I have considered Dasgupta [2016] UKUT 28 (IAC) and set out below the second paragraph of the head note;

(ii) the question of whether there is family life in a child/grandchild context requires a finding of something over and above normal emotional ties and will invariably be intensely fact sensitive.

39. I now set out the facts as I find them in this appeal. The Appellant is now 70 years of age. She lives with her husband, one of her daughters and her son-in-law and their children. The family own their home and farmland. I accept the Appellant's description in her witness statement when she describes herself and her family as self-sufficient farmers. I accept what is said by Mubashar Hassan in his witness statement at page 20 of the Appellant's bundle, in which he describes cultivating and selling crops, and states;

"We make a good living farming in the village thus we have a lovely home and the quality of life for us is that of a higher scale than some others."

40. The Appellant has children and grandchildren living in the United Kingdom, and also has children and grandchildren living in Pakistan.

41. The Appellant has not lived in the same household as her family in the United Kingdom for a considerable period of time. Evidence has not been presented as to the exact length of time, but I find that it is substantial, bearing in mind that the family in the United Kingdom are either British citizens or settled in this country. Relatives who are living in the United Kingdom have, by choice, moved away from Pakistan to settle in the United Kingdom. Some of the younger family members have

been born in the United Kingdom, and I find that the Appellant has not met some of her grandchildren and great grandchildren.

42. The evidence indicates that the Appellant has not previously visited the United Kingdom. She indicated in her application form that she had not travelled to the United Kingdom in the last ten years, and had been refused a visa in 2011 and in 2014.
43. I find that little evidence has been given as to the frequency of contact that the Appellant has with family members in the United Kingdom and the type of contact. On the evidence presented, I can find no evidence of regular contact between the Appellant and family members in the United Kingdom.
44. Mrs Khurshid Rehman gave evidence to the FtT that she last visited Pakistan approximately eighteen months before the FtT hearing, because her father-in-law had passed away. Her children did not accompany her. I accept her evidence that her children did not want to visit Pakistan and did not want to take their children there. Mr Tohid Hussain gave evidence that he could not afford to take his family to Pakistan, and his children were too young to travel, and his family did not wish to travel to Pakistan.
45. I accept that money is sent to the Appellant by family members in the United Kingdom. In particular Mr Hussain sent money to the Appellant on 20th October 2014, 5th November 2014, and 14th November 2014, just before the application for entry clearance was made. However I accept that money was not just sent at the time of the entry clearance application, for example there is attached to Mrs Rehman's witness statement dated 8th April 2016, a schedule of money that she has sent to the Appellant between July 2013 and April 2016. This amounts to £3,671.
46. The family members in the United Kingdom have formed their own families. I find that they live independently of the Appellant, and she lives independently of them. It is not suggested that the Appellant is totally financially dependent upon her relatives in the United Kingdom. In fact, the evidence indicates that the Appellant and her family in Pakistan are self-sufficient, earning a living by farming, but presumably the money from the United Kingdom gives them the higher standard of living referred to by Mubashar Hassan in his witness statement.
47. I set out below paragraph 50 of Gurung and Others;
 50. We accept the submissions of Ms McGahey that the FtT did not make any error of law in reaching its conclusions. The critical issue was whether there was sufficient dependence, and in particular sufficient emotional dependence, by the Appellants on their parents to justify the conclusion that they enjoyed family life. That was a question of fact for the FtT to determine. In our view, the FtT was entitled to conclude that, although the usual emotional bonds between parents and their children were present, the requisite degree of emotional dependence was absent.
48. I do not find that the Appellant has proved that there is emotional dependence by her on her family in the United Kingdom or vice versa. The Appellant initially

wished to visit her uncle, and still wishes to visit notwithstanding his passing. The Appellant has described a relatively short visit in the way of a holiday, to enable her to spend time with family members in the United Kingdom. That, in my view, is entirely understandable, but I am not considering whether the Appellant has proved she is a genuine visitor or that she intends to leave the United Kingdom. I have to decide whether the Appellant has established family life that would engage Article 8, with her relatives in the United Kingdom. I find on the evidence presented that she has not discharged the burden of proof. There are clearly emotional bonds with the relatives in the United Kingdom, but the evidence does not indicate, notwithstanding that some money is sent to the Appellant, that anything more exists than the normal emotional ties. I therefore do not find Article 8 is engaged on a family life basis.

49. I do not find that Article 8 is engaged on a private life basis. The Appellant's private life is in Pakistan, not in the United Kingdom.
50. Because I find that Article 8 is not engaged, it is therefore not necessary or appropriate to go on and consider the remaining Razgar questions.

Notice of Decision

The decision of the FtT contained an error of law and was set aside.

I substitute a fresh decision. The appeal is dismissed.

Anonymity

The FtT made no anonymity direction. There has been no request for anonymity made to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date 9th May 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 9th May 2017

Deputy Upper Tribunal Judge M A Hall