



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/03073/2015

THE IMMIGRATION ACTS

Heard at Field House
On 3 November 2017

Decision & Reasons Promulgated
On 8 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MR. MUHAMMAD GHUFRAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss Z Ahmad, Home Office Presenting Officer
For the Respondent: Mr Subhan Shafiq (Sponsor)

DECISION AND REASONS

1. The appellant before me, is the Entry Clearance Officer. However, for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to Mr. Ghufuran as the appellant and the Entry Clearance Officer as the respondent.
2. The appellant is a Pakistani national who appealed to the First-tier Tribunal ("FtT") against a decision of the respondent dated 26th November 2014 refusing his

application for entry clearance to the United Kingdom as a visitor and with reference to paragraph 41 of the immigration rules. The respondent was not satisfied that the appellant is genuinely seeking entry to the UK as a visitor for the period and purpose stated, or that he intends to leave the UK at the end of his visit.

3. In the grounds of appeal filed on behalf of the appellant, the appellant maintained that the matters raised by the respondent displayed a misunderstanding of the appellant's employment as a Cricket Coach, and the circumstances in which the appellant lives with his extended family, including his parents, brothers and sisters.
4. At paragraphs [4] to [14] of his decision, the FtT Judge set out a summary of the reasons given by the respondent for refusing the application. At paragraph [19] of his decision, the Judge refers to the requirements set out paragraphs 41 of the Immigration Rules. At paragraphs [24] to [33], the Judge records the evidence that he received from the appellant's sponsor, Mr Shafiq. Mr Shafiq was able to provide the Judge with further detail about appellant's previous visits to the United Kingdom. He also gave evidence about what he knew of the appellant, his work, and his living arrangements in Pakistan from his own visits to the appellant in Pakistan.
5. The Judge's findings and decision are to be found at paragraphs [37] to [44] of the decision. The Judge found Mr Shafiq to be an honest and credible witness and was satisfied that the appellant was employed as claimed, and that he lived with his own and extended family in Pakistan. The Judge accepted that in the appellant's absence, his family was cared for by other family members. The Judge found that the appellant had adequate funds and would be adequately maintained and accommodated in the UK during the course of his visit. The Judge also found that the appellant's circumstances in Pakistan are such that he was likely to return home as he enjoyed family, friends, and a home there.
6. The Judge concluded that the appellant's application came within the Immigration Rules and the decision of the respondent, upheld by the Entry Clearance Manager, was a decision that was not in accordance with the Immigration Rules and the law.

7. The respondent appeals on the ground that the appellant's right of appeal is limited by s84(1)(b) and (c) of the Nationality, Immigration & Asylum Act 2002 (to the ground that the decision is unlawful under s6 of the Human Rights Act (c.42) as being incompatible with the appellants Convention Rights. The respondent claims that the Judge therefore erred in allowing the appeal on the basis that the appellant met the requirements of the Immigration Rules.
8. Permission to appeal was granted on 31st August 2017 by First-tier Tribunal Judge Boyes. The matter comes before me to determine whether the decision of the FfT contains a material error of law, and if so, to remake the decision.
9. The appellant's sponsor, Mr Shafiq attended the hearing before me. He was provided with a copy of the respondent's Grounds of Appeal. At the outset of the hearing, I explained to him that I would first consider whether the decision of the FfT Judge is infected by an error of law, and if so, I would consider whether I should remake the decision, or remit the matter back to the FfT for hearing afresh.
10. Miss Ahmad relied upon the grounds of appeal and submitted that in light of the statutory framework for appeals, the Judge of the FfT could not lawfully allow the appeal on the grounds that the appellant satisfies the requirements of the Immigration Rules. She relied upon the decisions of the Court of Appeal in **SSHD - v- Tahir Abbas [2017] EWCA Civ 1393** and **ECO -v- Kopoi [2017] EWCA Civ 1511** to support her submission that an Article 8 claim could not succeed. She submits that the appellant seeks Entry Clearance to visit a family friend, and that on any view of the facts, the appellant cannot establish that refusal of entry clearance would be a breach of the Article 8 right to a family and private life.
11. Mr Shafiq reminded me that the appellant has an impeccable immigration history. He has travelled to the UK on several occasions previously, and has always returned to his family in Pakistan. He submits that the Judge of the FfT accepted that the appellant is employed as he has always claimed, that he has a family in Pakistan, and he is a genuine visitor.

12. Having heard from the parties, I informed the parties that I would allow the appeal and set aside the decision of the FfT for reasons that I would set out in a written decision. I would re-make the decision dismissing the appeal. I explained to Mr Shafiq that in my judgment, the decision of the FfT contains a material error of law in that it is simply not open to a Judge to allow an appeal on the grounds that the Judge is satisfied that the requirements of the Immigration Rules are met.

DISCUSSION

13. The appellant's application for entry clearance was made on 10th November 2014. It was considered by the respondent and refused on 26th November 2014. The application was considered under paragraph 41 of the Immigration Rules (HC 395). The respondent was not satisfied, on the balance of probabilities, that the appellant was genuinely seeking entry as a visitor for a limited period not exceeding 6 months, or that he intended to leave the UK at the end of his visit. Accordingly, the respondent was not satisfied that the appellant met all of the requirements of paragraph. 41.
14. in relation to applications for entry clearance made after 25th June 2013, it is no longer possible in "family visitor" cases for a person to appeal on the grounds that the applicant is able to meet the requirements of the Immigration Rules. The right of appeal to the FfT is now limited.
15. Section 84(1) of the Nationality, Immigration & Asylum Act 2002 ("the 2002 Act") provides that an appeal under section 82(1) against an immigration decision, must be made on one or more of the grounds which are then set out. For present purposes, the only relevant ground is under para. (c): that the decision is unlawful under section 6 of the HRA.
16. Section 6(1) of the HRA makes it unlawful for a public authority to act in a way which is incompatible with a person's Convention rights, as set out in Sch. 1. Article 8, which is to be found in Sch.1, provides:

“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall 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”

17. The statutory framework does not allow for an appeal on the grounds that the requirements of the Immigration Rules are met. The Judge of the FfT proceeds upon the basis that the requirements of paragraph 41 of the rules are met, and fails to consider at all, whether the decision of the respondent is unlawful under section 6 of the HRA. The decision of the FfT Judge discloses a material error of law, and must therefore be set aside.
18. In re-making the decision, I remind myself that the applicant applied for entry clearance to visit a family friend, Mr Shafiq, in the UK for a period of 6 weeks. The Judge of the FfT records the evidence of Mr Shafiq that the appellant always stayed with him during his visits, apart from the times when the appellant visits relatives. The appellant’s immediate family including his wife and children remain in Pakistan.
19. In considering whether the decision of the respondent is unlawful under section 6 of the Human Rights Act, that is, whether the refusal of entry clearance is in breach of Article 8, I must first consider whether it has been established that there is family life (or private life) between the appellant and his sponsor.
20. I accept the submission made by Miss Ahmad that on any view of the facts, the appellant cannot establish that refusal of entry clearance would be a breach of the Article 8 right to a family and private life. The Court of Appeal has authoritatively held that the ambit of “family life” does not embrace a situation such as the present. In **ECO -v- Kopoi [2017] EWCA Civ 1511**, Sales LJ, with whom the other members of the Court agreed said at paras. [17]-[19]:

“17. The leading domestic authority on the ambit of ‘family life’ for the purposes of Article 8 is the well-known decision of this court in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31; [2003] INLR 31. The court found that a single man of 38 years old who had lived in the UK since 1999 did not enjoy ‘family life’ with his mother, brother and sister, who were living in Germany as refugees. At para. [14] Sedley LJ accepted as a proper approach the guidance given by the European Commission for Human Rights in its decision in *S v United Kingdom* (1984) 40 DR 196, at 198:

‘Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33-year-old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.’

He held that there is not an absolute requirement of dependency in an economic sense for ‘family life’ to exist, but that it is necessary for there to be real, committed or effective support between family members in order to show that ‘family life’ exists ([17]); ‘neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together’, sufficient ([19]); and the natural tie between a parent and an infant is probably a special case in which there is no need to show that there is a demonstrable measure of support ([18]).

18. The judgments of Arden LJ and Simon Brown LJ were to similar effect. Arden LJ also relied on *S v United Kingdom* as good authority and held that there is no presumption that a person has a family life, even with members of his immediate family ([24]) and 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 as ties of dependency ([25]).

19. *Kugathas* remains good law: see e.g. *R (Britcits) v Secretary of State for the Home Department* [2017] EWCA Civ 368, [61] and [74] (Sir Terence Etherton MR), [82] (Davis LJ) and [86] (Sales LJ). As Sir Terence Etherton MR pithily summarised the position at

[74], in order for family life within the meaning of Article 8(1) to be found to exist, 'There must be something more than normal emotional ties'."

20. Later, at para. [30], Sales LJ said:

"In my view, the shortness of the proposed visit in the present case is a yet further indication that the refusal of leave to enter did not involve any want of respect for anyone's family life for the purposes of Article 8. A three-week visit would not involve a significant contribution to 'family life' in the sense in which that term is used in Article 8. Of course, it would often be nice for family members to meet up and visit in this way. But a short visit of this kind will not establish a relationship between any of the individuals concerned of support going beyond normal emotional ties, even if there were a positive obligation under Article 8 (which there is not) to allow a person to enter the UK to try to develop a 'family life' which does not currently exist."

21. In my judgement, the appellant has not established on the facts here that he has established a family or private life with his sponsor and it is clear from the authorities that relationships between adults would not *necessarily* acquire the protection of Article 8 of the Convention, without evidence of further elements of dependency, involving more than the normal emotional ties. Here, not only are the appellant and his sponsor not related, but understandably, there is no evidence of any dependency at all. In my judgement, there is, as a matter of law, no family life or private life for the purposes of Article 8 in the present case.

22. The decision of the respondent is not therefore unlawful under section 6 of the Human Rights Act, and the appellant's appeal must be dismissed.

23. I have no hesitation in finding that there is an error of law in the determination of the FfT. The determination of the FfT is set aside, and the appellant's appeal against the refusal of his application for entry clearance is dismissed.

Notice of Decision

24. The appeal is allowed and the decision of FfT Judge Blake is set aside.

25. I re-make the decision and the appellant's appeal against the refusal of his application for entry clearance, is dismissed

26. No anonymity direction is made.

Signed

Date

6th November 2017

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

Whilst the appeal before me has been allowed, the appeal has been dismissed. In the circumstances, I make no fee award.

Signed

Date

6th November 2017

Deputy Upper Tribunal Judge Mandalia