



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05195/2016

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 10<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 27<sup>th</sup> September 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BILAL MUHAMMAD YAQUB

Claimant

**Representation:**

For the Appellant: Mr Govan, Senior Presenting Officer  
For the Claimant: Ms Alam, Sponsor

**DECISION AND REASONS**

INTRODUCTION

1. The Secretary of State appeals against the decision of Designated Judge of the First-tier Tribunal J G Macdonald who allowed the appeal by Mr Yaqub (the claimant) on human rights grounds against the decision by the Entry Clearance Officer refusing his application made in his country of nationality (Pakistan) to visit his wife (the sponsor) and their children who live in the United Kingdom and who are British nationals.
2. The Entry Clearance Officer was not satisfied that the claimant was seeking a genuine visit or that he intended to leave the United Kingdom at its end with reference to paragraph V4.2 (a) and (c). This was because the claimant had submitted no supporting evidence as to who would take care of his mother during the prolonged visit (six months) and no explanation of how he would conduct his business affairs for

that extended period. In addition, the claimant did not submit any documentation to show how his mother would be provided for during his absence. The Entry Clearance Officer also refused with reference to Article 8 on the basis that interference with the claimant's family life was proportionate.

3. The FtT decision records that the claimant had married Ms Alam on 28 November 2016 and they had two children born 2017 and 2009. They had lived together in Pakistan but she had returned to the United Kingdom in 2015 when they had last seen each other. Ms Alam was unaware who would look after the claimant's business whilst absent although had thought it might be a brother or relative. Their intentions were to live together at some point but they were waiting for their daughter to get older. The judge expressed these conclusions at [7] to [10]:

"7. As acknowledged by the Entry Clearance Officer (ECO) he was satisfied that the sponsor was in a position to pay for the maintenance and accommodation expenses whilst the appellant was in the United Kingdom. He also noted that the appellant had previously travelled here and had provided full details to satisfy the ECO at that time that he had met the requirements of the Immigration Rules as a visitor. As it transpired the appellant's mother lives with extended family members in their home in Islamabad and it is a small step to conclude that other family members can properly look after his mother whilst he is away.

8. A more worrying feature is that neither the appellant nor the sponsor has been fit to respond to the refusal of the ECO relating to the explanation of who will conduct his business and affairs while he is away. The sponsor, who was clearly a truthful witness, said she did not know who would look after the business and speculated it might be a brother or a relative. The ECO was not satisfied that the visit was therefore a genuine one or that he intended to leave the United Kingdom at the end of the visit.

9. In fact there seems to me to be compelling reasons why the appellant would return to Pakistan even though who would look after his business affairs is uncertain. I have regard to the fact that he has his extended family there as well as his business commitments. I believe the sponsor when she said that, at some point, she and the appellant will live together but that is to be a later date. I therefore have no doubt that the appellant will return to Pakistan as he has done previously after his short visit.

10. The key issue in this case seems to me to relate to a letter written by the sponsor saying that their children are missing their dad intensely and the sponsor believes that her children are being affected by the absence of their father. It is clearly in the best interests of the children that they have actual contact with their father. I therefore consider, on a balance of probabilities, that there is a strong claim that allowing this appeal on human rights grounds in terms of Article 8 ECHR as in the carrying out of the balancing exercise it would be disproportionate to do otherwise."

4. The first ground of challenge is that no human rights claim had been made in this case and that the Tribunal had materially erred in law in hearing the appeal and had no jurisdiction to do so. The second ground is that the Secretary of State did not accept that there was scope for Article 8 engagement in "such bare visit applications". In addition, there was inadequate reasoning as to the obstacles and why the claimant's

wife and children could not visit him in Pakistan, and there was an absent of medical evidence concerning their daughter's allergy which prevented her from doing so. The First-tier Tribunal had failed to identify compelling circumstances such as to justify consideration whether there would be a breach of Article 8.

5. In granting permission, DJFtT Woodcraft considered that the grounds appeared to argue that the reasoning of the FtT was inadequate and added the point that the decision appeared to conflict with *SSHD v Onuorah* [2017] EWCA Civ 1757.

## THE HEARING

6. The claimant's wife came to the hearing. I explained to her the issues in the case, during which Mr Govan confirmed an earlier indication that he did not intend to pursue the jurisdiction ground. I gave him and Ms Alam a copy of the detailed skeleton argument that the claimant and his lawyers in Pakistan had provided by email. Ms Alam confirmed she understood the issue regarding the application of the Human Rights Convention despite its technicality and in order to obtain some background and ensure her involvement in the proceedings, I provided her with a bundle of core papers. I asked her some questions. Her replies revealed additional matters not covered in the FtT decision including aspects that differed from the decision record. Ms Alam had been born and raised in Glasgow. She had married the claimant when he was in Scotland as a student and working in 2006. He had returned to Pakistan in 2008 when their eldest child was 7 months old. Their second child, a boy, was born in 2009. She has last seen the claimant in 2015 having lived in Pakistan on and off since 2008 before her return to the UK. The main reason not to stay in Pakistan had been because her daughter had suffered unexplained but serious allergies there which evaporated on return to Scotland. Her daughter had been unable as a result to do her best in Pakistan at school which was intense.
7. Following submissions from Mr Govan, Ms Alam added evidence regarding how she approached her responsibility as a mother for her children and that she was supporting them. She referred to her independence and ability to manage without the need for anyone else. She works as a cashier in a convenience store. She said that "in truth" her husband is not providing financial support at the moment however she described him as a good dad. The lifestyle in Pakistan was "really good" but her daughter could not stay there. She was not aware in response to questions from Mr Govan whether his business was successful or not as she did not discuss such matters with him. Were she to need funding to visit Pakistan, she explained that her husband would sort it out. She concluded her evidence with a concern of the impact on the children were her husband to visit and leave abruptly. She was concerned how the children would manage and emphasised that her husband was very good with the children.
8. In his submissions, Mr Govan maintained the ground that there was no scope for Article 8 engagement in visit applications and that there was an inadequacy of reasoning concerning the obstacles to the appellant having visits by his wife and children to Pakistan. There was no mention of medical evidence concerning the appellant's daughter's allergy preventing her from such and it remained unclear why it was not financially feasible for the appellant's wife to visit him. In summary he

contended that whilst acknowledging that family life existed, the United Kingdom's obligations were not engaged in respect of the Entry Clearance Officer's decision. He reminded me that there was no evidence before the judge of the medical condition relating to the appellant's daughter.

9. The skeleton argument from the claimant had been prepared with the assistance of a lawyer in Pakistan according to Ms Alam. It is argued that the claimant enjoys a right of appeal which was addressed by First-tier Tribunal Judge Doyle in his decision to allow an in-time appeal. At this juncture I observe that the decision by First-tier Tribunal Judge Doyle dated 31 May 2016 is silent on the point other than observing that the grounds raised issues which should be ventilated before an immigration judge. Continuing with the submissions, it is argued that the circumstances of the current case were dissimilar to those in *Onuorah* where the Court of Appeal decided there was no private or family life under Article 8 and so the current case could be clearly distinguished. Judge MacDonald had found the sponsor to be a truthful and credible witness and had considered the appellant's previous immigration history and financial viability.

## DISCUSSION

10. I reach the following conclusions. In the reasons for allowing the appeal the Tribunal considered only the fifth of the five *Razgar* stages. There is no dispute that there is family life between the appellant and his United Kingdom family but had the judge asked the first of the two questions, the result might well have been different:
  - “(1) 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?
  - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?”
11. This case is not concerned with removal but with refusal of a request for a visit. There is inconsistency over the length of the intended visit. It was stated in the application to be for six months (in response to question 19) or “about two weeks” as indicated in additional information provided with the application.
12. Visits between family members were considered by the Court of Appeal in *Onuorah* and although the facts were different, in my judgment the principles are the same. As observed by Singh LJ at [35]:
 

“... Secondly, the shortness of the proposed visit is, if anything, an indication that the refusal of leave to enter did not involve any want of respect for the Respondent's family life for the purposes of Article 8: see *Kopoi* at paragraph 30 (Sales LJ) which I have quoted above.”

That quotation is at [32]:

“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 they were a positive obligation under Article 8 (which there is not) to allow a person to enter the United Kingdom to try to develop “family life” which does not currently exist.””

13. I am conscious that the observations by the Court of Appeal are *obiter* but they are persuasive. I am satisfied that the First-tier Tribunal erred in its decision. There was a failure to address the inconsistency in the evidence over the planned length of stay. The tribunal expressed concern at the paucity of evidence in [8] which I have quoted above. That being so, it is not easy to understand how the Tribunal reached its conclusion that there were compelling reasons why the claimant would return whilst acknowledging the uncertainty of the evidence on the core issue of who would look after the claimant’s business affairs. I therefore set aside the Tribunal’s decision because of the absence of clear reasoning.
14. As to remaking the decision, a difficulty with this case is that the claimant has been inconsistent by a wide margin as to the length of his planned stay. My inference from his wife’s evidence is that she understood it would be a short visit and that is the basis on which I consider this case. I find that she was an honest witness. With the visit being only for two weeks, it is difficult to see how its very brevity could have consequences of such gravity as potentially to engage the operation of Article 8. The family have chosen to live separately. The wish of the claimant to visit is entirely understandable but having regard to the basis on which they have decided to conduct their family life I do not consider that a refusal of that opportunity engages the operation of the Convention taking into account the sponsor’s reservations over the impact of such a short visit on how it would impact on the separate lives the sponsor and children are leading in the United Kingdom. On that basis the claimant is unable to succeed on human rights grounds. The ground available under section 84 of the Nationality, Immigration and Asylum Act 2007 is that the decision is unlawful under section 6 of the Human Rights Act 1998. Since the Convention is not engaged there can be no unlawfulness.
15. It is open to the claimant to reapply. He will be aware from this decision of the need for clarity as to the precise length of stay and how his commitments in Pakistan will be managed in order for the entry clearance officer to be satisfied as to his intentions to return.
16. I set aside the decision of the Tribunal and dismiss the appeal on Human Rights grounds.

Signed

Date 26 September 2018

*UTJ Dawson*

Upper Tribunal Judge Dawson