



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11712/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7 December 2017

Decision & reasons Promulgated
On 19 January 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

ENTRY CLEARANCE OFFICER - DHAKA

and

MRS RAZNA BEGUM
(No anonymity order made)

Appellant

Respondent

Representation:

For the Appellant: Mr Nath
For the Respondent: Ms Sher

DECISION AND REASONS

1. Mrs Begum is a citizen of Bangladesh born in 1963. She appeals against a decision of the ECO, Dhaka, made on 8 April 2016 refusing her application for entry clearance as a visitor under paragraph V4.2 of Appendix V of the Immigration Rules.

2. In her application she states she wishes to visit her son and daughter-in-law in the UK who had recently given birth to triplets. She intends to stay for eight weeks.
3. The application was refused because the ECO considered that Mrs Begum had not provided satisfactory evidence of her financial circumstances. She is retired and widowed. She claims to derive a total monthly income of £190 from savings and investments as well as from properties and rents. In support of her application she had provided a land title deed, letter of enclosure, an agreement for ejected tenant and a land development tax receipt. Such documents, in the ECO's view, did not provide evidence of her income as claimed.
4. Bank statements from Southeast Bank Ltd were noted. Two accounts were in her and her UK son's name, a third in her and another son's name. However, the ECO noted these items were all over three months old.
5. The ECO also noted that she had previously been refused a visa in the same category as she had not provided satisfactory evidence of her finances. The ECO added that she had failed to provide any new evidence to show that the doubts about her intentions are not justified.
6. The ECO concluded that Mrs Begum had not provided satisfactory evidence of her circumstances in Bangladesh to show she is genuinely seeking entry for a purpose that is permitted by the visitor route, that she will leave the UK at the end of the visit and that she has sufficient funds for the cost of the trip.
7. She appealed.

First tier hearing

8. Following a hearing at Taylor House on 5 July 2017, Judge of the First-Tier Majid allowed the appeal.
9. His reasoning appears to be at paragraphs [12] to [15] of the decision. At [12] he states her witness statement gives him a *'knockout reason to allow the appeal. It is clear that she has approached the ECO on two previous occasions to come to the UK to have the company of her grandchildren. The daughter-in-law told me that she has had triplets and this was definitely an exciting event.'*
10. At [13] he records his pleasure that the mother of the triplets had attended the hearing and that she had asked that the case be given priority because her triplets needed her attention.
11. At [14] he notes that the ECO *'has spent a great deal of time'* on the *'personal resources'* of Mrs Begum. While he acknowledged that there is *'more danger of violation of the immigration control by the poverty of a person'*, there was however *'not a fibre of other independent evidence to show that the appellant should be saddled with the inference of bad*

faith'. He added that the ECO 'should have taken notice of the local tradition that an affluent relative living in the West can help a relative of meagre means to visit the advanced part of the world; the host also giving himself the benefit of the appellant coming here rather than taking leave from his busy life to go to a developing country and being sure of his legal obligation and not having any concern that the family visitor would be a burden on public funds.'

12. At [15] he makes a comment that a return air ticket is most usually purchased by a visitor as a one way ticket is very expensive: *'The ticket having been purchased the appellant's visit to this country becomes a minor issue.'*
13. The ECO sought permission to appeal which was granted on 4 September 2017.

Error of law hearing

14. At the error of law hearing before me Ms Sher agreed with Mr Nath that the decision could not stand. It suffices to say that the judge made no adequate analysis of any of the material issues and the evidence relevant to them that was placed before him. He has failed to give adequate reasons for his decision to allow the appeal. I agreed.
15. By consent the decision was set aside to be remade.
16. I heard brief submissions. Mr Nath said that the case failed at the first hurdle. There was no evidence of sufficiently strong ties to amount to family life. In any event it was still unclear whether the income, particularly rental, was shown in the bank statements.
17. In her submissions, Ms Sher, invited to address the issue of family life, said the position is at it is. The facts cannot be enhanced. It was important that the grandchildren get to know their grandmother. There is no practical alternative to her coming here to do so. The family could not afford to go to Bangladesh. The purpose to the trip is not whimsical. It would only be a short visit. Ms Sher said that the concerns about her finances had been addressed. Perusal of the documents showed that her claimed income is consistent with the evidence. As for the risk of her not returning she has property, family and friends and her own well established life there.

Consideration

18. In considering this matter the correct approach is set out in *Adjei (visit visas - Article 8)* [2015] UKUT 0261 in which it was held (at [9]) that 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 is engaged at all. If there is no family life and/or insufficient interference in any such family life to engage Article 8, that is the end of the matter. The appeal fails. If however there is a family life and Article 8 is engaged, then the next question to consider is whether

the decision was lawful, taken in pursuit of a legitimate aim and necessary and proportionate in a democratic society. In the context of proportionality, it will need to be decided whether the Immigration Rules were in fact met (as part of the proportionality exercise under Article 8 and not as a separate ground of appeal under the Rules themselves, to which there is no entitlement) because, in the normal course, it is hardly likely to be proportionate to refuse an application for entry to a person who is entitled to entry under the respondent's own Immigration Rules and equally if the Rules are not met then section 117B(1) of the Nationality, Immigration and Asylum Act 2002 will weigh heavily against the appellant. In this respect, if in fact the Immigration Rules are not met then of course there would need to be compelling circumstances outside of the Rules before the appeal could succeed on the basis of proportionality under Article 8.

19. In considering the first question of whether there is family life Mrs Begum is the mother of the sponsor. She wishes to visit him, his wife and their recently born triplets, her grandchildren.
20. Ms Sher made brief reference to Marckx v Belgium [1979] 2 EHRR 330 submitting that it was authority for the proposition that relationships between grandparents and grandchildren are potentially within the scope of 'family life'. In that regard I note the decision of the ECHR in GHB V United Kingdom (Application number 42455/98) which states at page 5:

'The Court recalls that the expression "family life" in Article 8 (1) is broad enough to include the ties between grandparents and grandchildren (see Marckx v Belgium)...'

21. However, it does not necessarily follow that the existence of a grandparental relationship automatically results in Article 8 being engaged. In GHB the applicant was one of two grandparents whose grandchild had been adopted when aged 12 following some three years in foster care brought about by her mother's unstable mental health. The grandchild had lived with the grandparents temporarily, for three months, when aged 10 and during the following year there had been regular contact. This was sufficient for the court to conclude that there was family life between grandparents and grandchild under Article 8.
22. That decision lends emphasis to the proposition that the question of whether there exists family life will inevitably be a fact sensitive one.
23. Again, in immigration cases '*there is no presumption that a person has a family life, even with the members of a person's immediate family.* [Kugathas v SSHD [2003] INLR 170 (at [24] per Arden LJ)]. As the court also indicated normal emotional ties between mother and adult son do not without more, constitute family life under Article 8. At [19] per Sedley LJ, the court said: '*neither blood ties nor the concern and affection that ordinarily go with them are, by themselves together, in my judgment, enough to constitute family life.*'

24. More recently, the former President (McCloskey J) gave guidance. In *Mostafa (Article 8 in Entry Clearance)* [2015] UKUT112 it was said (at [24]): *'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...'*
25. As indicated, it is a fact sensitive issue to be determined on a case by case basis. In respect of the relationship with her son and his wife, there is no evidence as to the amount and frequency of contact between Mrs Begum and them (or indeed before they came to the UK). There is no evidence of anything beyond what I assume to be the normal bonds of affection between Mrs Begum and her son and his wife. Further, the son's statement specifically indicates that she does not depend on her son for any financial support. On the evidence before me that relationship does not disclose sufficiently strong ties such as to fall within the scope of Article 8.
26. In respect of the grandchildren, who it appears were born in 2016, it is understandable that Mrs Begum would wish to see them. I see no reason to doubt that it would be difficult not least in practical and financial terms for the children to be taken to Bangladesh for a visit. On the evidence before me it is unclear what, if any, contact she has with them. In my view it would be wrong to take a lack of contact as a factor against her not least because she has sought such contact only to be refused more than once by the ECO. However, the fact remains there is again nothing before me that shows anything above normal emotional ties, the normal interest a grandmother would have in her grandchildren who at such a young age gain no meaningful benefit from their grandmother. She is a grandmother who does not make decisions for them, who is not involved in any way in their care. Again, the factual basis in my judgment in the particular circumstances of this case does not show family life for the purpose of Article 8 between Mrs Begum and the grandchildren.
27. As *Adjei* indicated, family life not being engaged, that is the end of the matter. The appeal fails.

Notice of Decision

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

The appeal is dismissed on human rights grounds.

No anonymity order made.

Signed

Date: 19 January 2018

Upper Tribunal Judge Conway