



**(IMMIGRATION AND ASYLUM CHAMBER)
VA/13962/2013**

**UPPER TRIBUNAL
APPEAL NUMBER:**

THE IMMIGRATION ACTS

Heard at: Field House

**On: 16 October 2014
Prepared: 27 October 2014**

**Determination
Promulgated
On: 28 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: DHAKA

and

**MARJAN CHOWDHURY
NO ANONYMITY DIRECTION MADE**

Appellant

Respondent

Representation

**For the Appellant: Mr S Kandolo, Senior Home Office Presenting
Officer**

For the Respondent: Mr W Bhebhe, Legal Representative

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the entry clearance officer and the respondent as "the claimant."
2. The claimant is the child of Mrs Farida Chowhury. Both are Bangladeshi nationals. They appealed against the decision of the entry clearance

officer dated 9th June 2013 refusing their application for an entry clearance to the UK as visitors for a three week period, in order to meet his uncle, aunt and cousins.

3. His mother's appeal was allowed by the First-tier Tribunal Judge in a determination promulgated on 7th August 2014. The claimant's appeal was also allowed. The Judge recognised that his appeal was restricted to Article 8 issues, and found that it had been properly raised. He found that it was "really important that this young child is able to see his uncle and aunt and indeed his young cousins and that can clearly only happen at the present time if this visit is permitted to take place." [29]
4. He furthermore stated at paragraph 30 that he has always understood that young children will always be able to accompany an adult in these kinds of family circumstances without even making an application themselves. He stated at paragraph 31 that "if indeed the child appellant only has a valid Article 8 appeal, I cover that in my decision but trust that the respondent will take a sensible view in any event as the appeal of the adult appellant has been allowed."
5. He accordingly allowed the claimant's appeal.
6. On 27th August 2014, First-tier Tribunal Judge French granted the entry clearance officer permission to appeal against the determination. He found it arguable that the Judge did not explain on what basis Article 8 was engaged for this child proposing to visit an uncle, aunt and cousins. He also said that the Judge misdirected himself regarding his understanding that young children would always be allowed to accompany an adult in family circumstances. Having stated that it is really important that this young child is able to see his uncle and aunt and cousins, it was unclear on what reasoning he found Article 8 potentially of relevance.
7. Mr Kandola relied on the entry clearance officer's grounds. It is clear that the claimant only had a limited right of appeal (that is not disputed). The Article 8 claim had not been raised in the grounds of appeal, or in the skeleton argument before the First-tier Tribunal.
8. He submitted that in any event, the basis for the positive finding under Article 8 had not been made out.
9. On behalf of the claimant, Mr Bhebhe submitted that the child should have been allowed to see his aunts and relatives. The child had the right to remain with his mother on family life grounds.
10. Mr Kandola submitted however that there is no suggestion that the child would not be able to remain with his mother. Any separation would not

be a consequence of the decision. The child can still remain with his mother. However, the issue is whether he has a viable 'family law case' with regard to the relatives abroad. He submitted that that had not been shown. Nor was it proved that there was a breach of his right to respect for private life.

Assessment

11. The parties agreed that there is no right of appeal in this case for a family visitor applying to visit an uncle, aunt or cousin. The Judge's assertion that young children should always be allowed to accompany an adult in these kinds of family circumstances without even making an application himself is not correct. Furthermore, the child has a father in Bangladesh with whom he could remain during the course of his mother's visit to the UK.
12. I find that there has been insufficient reasoning by the Judge as to why in these circumstances Article 8 had been engaged. The factors to which he referred were not relevant to that issue and were insufficient in themselves to engage Article 8.
13. In the circumstances, I find that the decision of the First-tier Judge involved the making of an error on a point of law. I accordingly set it aside and re-make the decision.
14. In making the decision, I note that there was not even a suggestion either in the grounds of appeal or in the skeleton argument before the First-tier Tribunal that the claimant wished to pursue an appeal based on human rights, to which his right of appeal was restricted.
15. Accordingly, there were no relevant facts presented to the Tribunal warranting the exercise of jurisdiction on the limited basis available.
16. I accordingly find that the decision of the entry clearance officer was in accordance with the law and the Immigration Appeals (Family Visitor) Regulations 2012.

Decision

Having set aside the decision of the First-tier Tribunal, I re-make it dismissing the claimant's appeal.

No anonymity order made.

Signed

Date: 27 October 2014

C R Mailer
Deputy Upper Tribunal Judge