



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: VA/00418/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12th June 2015**

**Decision & Reasons Promulgated
On 19th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MISS SHOUQ AL SHAMMARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: No representation

DECISION AND REASONS

- 1.** The Appellant is a citizen of Iraq (living in Jordan) who applied for entry clearance to the United Kingdom as a family visitor. Her application was refused but her appeal to First-tier Tribunal Judge Blandy was successful and he allowed her appeal in a decision promulgated on 9th January 2015.
- 2.** The grounds of application make the point that it is established law that family life, within the meaning of Article 8, will not normally exist between adult siblings, parents and adult children. Reference is made to well-known case law. It is said that the Appellant is an Iraqi refugee living in

Jordan and has been visited by her family there and the refusal of entry clearance did not interfere with the established pattern of the family life or visits, extended stays and telephone contact. When the judge said that he considered the visit of a child to visit their family in this country on a temporary basis was a fundamental human right, there was no basis in law for the judge's finding. He did not have due regard to the case law regarding family life. As such it was said the judge had erred in law and the decision should be set aside. Permission to appeal was granted and thus the matter came before me on the above date.

3. Before me Mr Tufan relied on the grounds and also referred me to **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)**, **Adjei (visit visas - Article 8) [2015] UKUT 0261** and finally **SS (Congo) v SSHD [2015] EWCA Civ 387**. In particular I was referred to paragraph 24 of **Mostafa** in that it would only be "in very unusual circumstances" that a person other than a close relative would be able to show a refusal of entry clearance came within the scope of Article 8(1). In practical terms this was likely to be limited to cases where the relationship was that of husband and wife or other close life partners or a parent and minor child. The judge had found that the Appellant would not attempt to come here to live permanently. That finding was irrational given the immigration history of the Appellant.
4. I was asked to set the decision aside and re-make it dismissing the appeal.
5. For the Appellant Mr Abdullah, the Sponsor was in attendance and he said he wanted his daughter to be a part of his life.
6. I reserved my decision.

Conclusions

7. As was said in **Adjei** if Article 8 is engaged the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the Rule because that may inform the proportionality balancing exercise that must follow.
8. It seems to me relevant to note here the judge found that Article 8 was engaged (there is no challenge to that) and went on to say in paragraph 21 that he accepted she met the maintenance and accommodation requirements of paragraph 41 of the Immigration Rules. He was satisfied that her father could provide adequate maintenance and accommodation for her and he also accepted that she intended only a visit and had the necessary intention to leave the United Kingdom at the end of it. Having heard the evidence that was a finding that the judge was entitled to make and there is no challenge to it in the grounds of application.
9. In paragraph 16 the judge did point out the strength of the family relationships at the date of the Respondent's decision. He noted that at the time of the Respondent's decision the Appellant was wholly dependent

upon her family living, as she then was, in a foreign country as a refugee. He found that her situation constituted the type of special dependency envisaged by **Kugathas v SSHD [2003] EWCA Civ 31** and found that at the time of the decision there was a “strong bond of family life between the Appellant and her family in this country”. He said it was not difficult to imagine that it represented something of a psychological lifeline to her. The judge went on to consider whether the interference was necessary and proportionate to the legitimate public end sought to be achieved and bore in mind the provisions of Section 117B of the 2002 Act. He accepted that her father would be able to maintain her during her visit and accepted that she would not be a burden on taxpayers. He recognised, entirely properly, that it would only be in very rare cases identified on an individual basis where a decision to allow an appeal on human rights grounds would be appropriate when the Appellant did not meet the requirements of the Rules.

- 10.** In paragraph 22 the judge went on to say that he found for the reasons he had given that to allow the Appellant to visit her family in this country would not in fact be contrary to the objective of maintaining an effective system of immigration control.
- 11.** For the reasons he gave the judge was effectively saying that he regarded the factual circumstances in this case as exceptional. There is nothing said in **Mostafa** or **Adjei** which bars a judge from allowing an appeal on human rights grounds in relation to someone trying to see a member of the family – rather, as said in **Mostafa** this would only arise in very unusual circumstances. However that is the very position we have in this appeal. The judge gave clear and cogent reasons why he was allowing the appeal explaining why the facts of this case set it apart from the usual case of a daughter wishing to visit her family in the UK.
- 12.** In these circumstances there is no error of law and the decision must stand.

Notice of Decision

- 13.** The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- 14.** I do not set aside the decision.
- 15.** No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald