



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

**Appeal number: VA/01045/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On November 6, 2015**

**Decision and Reasons  
Promulgated  
On November 11, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**MR AZIZ MOUSTAKIM  
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

Appellant

Mr Kotas (Home Office Presenting Officer)

Respondent

Mr Clarke, Sponsor's son

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a national of Morocco and he applied for a family visit visa to visit his mother and sister who both resided in the United Kingdom. The respondent refused his application on October 1, 2014 because she was

not satisfied the appellant would return to Canada where now lived based on a lack of financial documents.

3. The appellant appealed this refusal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 20, 2015 and his appeal was heard by Judge of the First-tier Tribunal O'Malley on August 3, 2015 and in a decision promulgated on August 21, 2015 she allowed his appeal under Article 8 ECHR.
4. The respondent applied for permission to appeal on September 2, 2015 submitting the Tribunal had erred by allowing the appeal without making a finding on whether the rules were met and failing to give reasons for finding there was family life.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on September 29, 2015 on the basis that it was arguable the Tribunal had erred for the reasons set out in the grounds of permission.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

### **SUBMISSIONS**

7. Mr Kotas submitted that the Tribunal had failed to make a finding regarding the appellant's source of income and personal circumstances and by failing to do so the Tribunal had materially erred because this was a matter the Tribunal would have to have regard to when considering Article 8. The Tribunal had also failed to explain why family life was engaged between mother and adult child. Whilst the appellant's mother may be ill and unable to travel the Tribunal had failed to explain why there was such a level of dependency that Article 8 was engaged. This amounted to a material error.
8. Mr Clark had been assisting his mother and wife throughout this process. He had submitted lengthy submissions but in summary he argued that as a Canadian resident appellant had clearly demonstrated his circumstances on his application form and on appeal had provided additional evidence that predated the date of decision that demonstrated that he was working as claimed. The respondent had refused the application on the basis he would not return but evidence submitted showed that he had every incentive to return because he would lose multiple rights by overstaying in the United Kingdom. While he accepted the appellant had not submitted the financial documents that had been requested there was sufficient evidence before the Tribunal for it to make a positive finding. As regards Article 8 he submitted that ample evidence was given to the Tribunal but he accepted the Tribunal's decision did not set out the evidence or reflect what took place. He argued that there was family life and the Tribunal had accepted that argument. He urged me to find no material error

### **DISCUSSION AND FINDINGS**

9. Permission to appeal had been granted to the respondent on the basis it was arguable that the Tribunal had erred by finding family life existed. I have considered the Tribunal's decision and note that the Tribunal had before it documents relating to the appellant's employment and at paragraph [42] of its decision was satisfied that the appellant had addressed the issues raised in the refusal letter. I am therefore satisfied there was no error in respect of the first ground of appeal.
10. As regards the second ground of appeal I accept that having indicated the appeal should be considered under Article 8 the Tribunal went immediately to a balancing act rather than assessing whether there was family life for the purposes of Article 8.
11. Although there was some consideration of the personal circumstances in paragraph [41] the Tribunal failed to explain why there was family life between mother and adult child. Case law such as Kugathas v SSHD [2003] EWCA Civ 31 made it clear that blood ties were insufficient to constitute family life because most of us have close relations of whom we are extremely fond and whom we visit but on their own they would not amount to family life. There was no evidence in the decision that this issue was addressed and accordingly I find an error in law.
12. I explained to Mr Clarke that I would proceed to deal with the appeal afresh.
13. He had submitted various statements and documents that addressed the concerns raised in the respondent's refusal letter and the Tribunal's decision. He confirmed that the appellant had looked after his mother for fifteen years and he and his Canadian wife had lived in Morocco until his wife had to return to Canada whereupon he accompanied her. Arrangements were then made for the appellant's mother to go and live in the United Kingdom with her daughter but the appellant continued to financially support. Until about twelve months ago she had no income and now only received attendance allowance.
14. The appellant's daughter was in receipt of disability living allowance and her husband, Mr Clarke, was her carer.
15. Mr Clarke's argument was that the level of dependency went above that expected of a mother and son and satisfied the Kugathas test.
16. I raised with Mr Kotas whether he wished to cross-examine Mr Clarke about anything contained in his documents and he indicated that he did not. He very fairly accepted that if all this information had been contained in the original decision then an appeal may not have been made but I suspect that was mere speculation.
17. I enquired from Mr Clarke how long the appellant wished to visit and he stated the appellant wish to visit for two weeks as this was all the time he could afford away from his own business. His purpose in visiting was to see his mother and sister.

18. Having considered all of the available submissions and evidence I was satisfied that Article 8 was engaged and that the appellant had demonstrated, through his representative, that family life existed over and above the normal emotional ties.
19. In reaching that finding I took into account the fact the sponsor had been supported by the appellant directly for over 15 years before she came to the United Kingdom and that since she had been in the United Kingdom there was evidence that he had continued that support financially by sending funds and emotionally/physically by speaking to her on a daily basis. There was evidence that the appellant's mother was ill and was unable to travel to visit him in Canada and there was evidence that the appellant's sister was also unable to travel easily. I also had regard to the fact that the appellant will be entitled to Canadian citizenship next year and this will enable him to travel to and from the United Kingdom at will.
20. I took into account the circumstances set out above and concluded refusing entry would be disproportionate.
21. The appellant seeks a two-week visa and in those circumstances I would recommend that a limited Visa be issued to enable this trip to take place. A period of no more than two months should be allowed.
22. I indicated to the parties in court that grants under Article 8 on visit visa applications are few and far between because of the various hurdles that have to be overcome. However, in light of the available evidence I was satisfied this was one of the exceptional cases that merited a grant under Article 8.
23. Accordingly, whilst I find there has been a material error I set aside the original decision I make it clear having reconsidered all of the available evidence that this is a case where the appellant should be granted a visa to enable him to visit the United Kingdom under Article 8 ECHR.

### **DECISION**

24. There was a material error. I set aside the original decision and remake the decision and allow the appeal under Article 8 ECHR.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award as the appeal has been dismissed.

Signed:

Dated:

A handwritten signature in black ink that reads "SPALIS". The letters are written in a cursive, slightly slanted style. There are some small loops and flourishes, particularly under the 'S' and 'I'.

Deputy Upper Tribunal Judge Alis