



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

Appeal Numbers: VA/03164/2014  
VA/03168/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 July 2015**

**Decision & Reasons  
Promulgated  
On 14 July 2015**

**Before  
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR  
DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**MR HIMAT SINGH  
MR BALDEV SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**VISA OFFICER, NEW DELHI**

Respondent

**Representation:**

For the Appellant: Mr M Murphy, Counsel, instructed by M K Gill Solicitors  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. These are appeals by the Appellants against the decision of First-tier Tribunal Judge Vaudin d'Imecourt (Judge Vaudin d'Imecourt), promulgated on 17 March 2015, in which he concluded that there was no right of appeal to the First-tier Tribunal.

2. The Appellants had sought to challenge the Respondent's decisions, both dated 22 May 2014, by which applications for entry clearance as visitors were refused under Paragraph 41 of the Immigration Rules.
3. The applications were made on 9 May 2014 and were based on the following relevant circumstances. The first Appellant is the son of the second. They sought entry clearance to visit the sponsor, Mrs Dasho Kaur, a British citizen, aunt of the first Appellant and sister-in-law of the second Appellant.
4. The Respondent's refusal notices stated that any right of appeal was limited to human rights grounds only. The Appellants duly lodged a notice of appeal, the grounds of which included reliance on Article 8.

### **The decision of Judge Vaudin d'Imecourt**

5. The appeals came before Judge Vaudin d'Imecourt on 12 March 2015. He concluded that by virtue of section 90 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and the Immigration Appeals (Family Visitor) Regulations 2012, neither Appellant had a right of appeal. This was because their relationships with to the sponsor did not fall within the scope of the 2012 Regulations. He declared that he had no jurisdiction.

### **The grounds of appeal and grant of permission**

6. The grounds of appeal against Judge Vaudin d'Imecourt's decision essentially stated that as Article 8 had been raised in the original grounds of appeal to the Tribunal, there was a limited right of appeal by virtue of section 88A of the 2002 Act.
7. Permission to appeal was granted by First-tier Tribunal Judge Astle on 1 June 2015.

### **The hearing before us**

8. We heard brief and candid submissions from Mr Murphy. He provided us with a skeleton argument prepared by another Counsel, a print out from the 'Freemovement' website, and the recent decision of the Court of

Appeal in Singh [2015] EWCA Civ 630. Mr Nath provided us with a copy of Adjei (visit visas – Article 8) [2015] UKUT 261 (IAC).

### **Decision on error of law**

9. It is clear that Judge Vaudin d’Imecourt erred in law by concluding that neither Appellant had a right of appeal. Mr Nath quite properly accepted this to be the case.
  
10. The applications for entry clearance were made after 25 June 2013, this being the date on which section 52 of the Crime and Courts Act 2013 came into force. This brought in section 88A of the 2002 Act. Section 88A preserves a limited right of appeal in visit cases, and one of the grounds available to an applicant is that relating to human rights, whether or not the applicant is a designated family member of the sponsor. In the present appeals, Article 8 was expressly raised in the grounds of appeal.
  
11. In light of the above, both Appellant’s had a right of appeal and Judge Vaudin d’Imecourt was wrong to have concluded otherwise.

### **Materiality**

12. The error is material because whatever the ultimate strength of the Article 8 claims, the Appellants deserved, as a matter of fairness, to have their right of appeal given effect and then to receive a substantive decision on the merits. We therefore set aside the decision of Judge Vaudin d’Imecourt.

### **Re-making the decisions**

13. Having informed the parties of our decision as to the error of law, we indicated that it would be appropriate to move on immediately to re-make the decisions in both appeals. There was no disagreement to this proposed course of action.
  
14. Mr Murphy submitted that there was in fact private and family life as between the Appellants and the sponsor. In respect of private life he relied on a broad interpretation of the term, and referred us to paragraphs 14, 24, and 25 of Singh. In respect of family life, it was possible for family life to exist in visit cases. The sponsor was the sister-in-law of the second Appellant.

15. Mr Nath accepted that none of the factual background to the appeals was in dispute. However, the Article 8 claims must fail, as there is no private and/or family life. He relied on Adjei.

### **Our findings, reasons and conclusions**

16. In assessing the Appellants' Article 8 claims, we follow the well-known methodology set out in Razgar [2004] UKHL 27.
17. In summary, we find that there was, as at the date of the Respondent's decisions, no family life between the Appellants and the sponsor for the purposes of Article 8. In addition, we find that the Appellants have failed to show that their private life rights were engaged.
18. In respect of private life, the situations in which an appellant seeking to visit the United Kingdom will have established such a life here will be rare indeed. Mr Murphy's reliance on Singh is, with respect, misconceived as this decision was made in the very different context of appellants who already resided in the United Kingdom (see paragraph 3). There, the appellants had in fact established private lives by virtue of their ties in this country. In addition, the 'exceptional' nature of Article 8 and its applicability to entry cases concerning family life has been clearly stated by the IAT in Sun Myung Moon (Human rights, entry clearance, proportionality) USA [2005] UKIAT 00112 (see paragraphs 68 and 73).
19. On the facts of the present appeals, there is no conceivable basis for finding that either Appellant had a private life for the purposes of Article 8. They had each travelled the United Kingdom on one previous occasion, the first Appellant in 2010, and the second in 2005. Factually, that is it.
20. The Article 8 claims based on private life must fail at the first stage under the Razgar approach.
21. Turning to family life, we accept that family life is capable of existing in visit cases: for example, a husband and wife who are living in different countries for good reason and seek to have contact by way of short trips; or minor children visiting a parent settled in this country. As observed in Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC), the class of appellants who might succeed in a visit appeal based on family life is likely to be a

narrow one (see paragraph 24). Even for family life to exist at all, something materially in excess of the normal emotional ties between family members must be shown (see Kugathas [2003] EWCA Civ 31, which remains good law).

22. In the present appeals, both Appellants have lived entirely independent lives from that of the sponsor. Although we accept the Appellants and sponsor are related, mere relationship is not enough to engage Article 8(1). The evidence is simply that the Appellants wanted to visit the sponsor in order to celebrate her sixtieth birthday. Although we can appreciate that was an important milestone, this alone simply cannot create family life for the purposes of Article 8(1). There is no evidence in this case of any interdependency that would engage Article 8(1).
23. The claims based on family life must also fail at the first step of the Razgar process.
24. As a result of the limited scope of the Appellants' appeal, we cannot and do not consider any issues arising from the Respondent's decisions under Paragraph 41 of the Immigration Rules.

### **Anonymity**

25. There has been no application for a direction, and none is appropriate.

### **Decisions in these appeals**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**We set aside the decision of the First-tier Tribunal.**

**We re-make the decision by dismissing both appeals on human rights grounds**

Signed

Date: 13 July 2015

H B Norton-Taylor

Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT**  
**FEE AWARD**

We have dismissed the appeals and therefore there can be no fee awards.

Signed

Date: 13 July 2015

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal