



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/06598/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 8 October 2015

Decision and Reasons Promulgated
On 12 October 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

The ENTRY CLEARANCE OFFICER Abu Dhabi

Appellant

And

Ameen Hussein Obadi AL-Karihi
[No anonymity direction made]

Claimant

Representation:

For the claimant: Not represented

For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The claimant, Ameen Hussein Obadi Al-Karihi, date of birth 9.9.76, is a citizen of Yemen.
2. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Grimshaw promulgated 13.5.15, allowing on human rights grounds the claimant's appeal against the decision of the Entry Clearance Officer to refuse entry clearance to the United Kingdom as a family visitor pursuant to paragraph 41 of the Immigration Rules. The Judge heard the appeal on 28.4.15.

3. First-tier Tribunal Judge Ford granted permission to appeal on 23.7.15, pointing out that it is arguable that Judge Grimshaw may have erred in conflating the finding that there were exceptional and compelling circumstances in the case with a finding that article 8 ECHR was engaged in respect of family life.
4. Thus the matter came before me on 8.10.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out below I find that there was such error of law in the making of the decision of the First-tier Tribunal that the determination of Judge Grimshaw should be set aside and the decision remade by dismissing the appeal.
6. There was no attendance on behalf of the claimant. By a faxed letter received by the Tribunal on an enquiry as to why there was no attendance, the claimant asked for the matter to be decided on the papers, which is not possible, and made various submissions were made as to compelling circumstances, which I have considered and taken into account. In the circumstances, I decided to proceed to hear the submissions of Mr Harrison.
7. As Judge Grimshaw was aware and referenced in the decision, the claimant's rights of appeal are limited to the grounds set out in section 84(1)(c) of the 2002 Act, namely human rights or discrimination.
8. It is clear that at §17 of the decision Judge Grimshaw mistook a purported finding that there are "exceptional and compelling circumstances" with a finding that family life is engaged under article 8.
9. On the facts of this case, whilst the circumstances may be compelling, given the poor health and prognosis of the sponsor, preventing him from travelling to visit the claimant in Yemen, those do not establish that degree of family life between the claimant and the appellant protected by article 8 ECHR. Family life within the meaning of article 8 will not normally exist between a parent and adult children and will not do so unless something more than normal emotional ties exists. The judge's formulation at §14 that such relationships do not normally engage article 8 "unless the relationship is something out of the ordinary or there is an unusual aspect to the relationship," is not one known to the law. As the Court of Appeal held in Kugathas v SSHD [2003] EWCA Civ 31, neither blood ties nor the concern and affection that ordinarily go with them are not enough by themselves to constitute family life. "Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8." There has to exist a degree of dependency which the evidence does not demonstrate is present on the facts of this case. The sponsor has medical circumstances which prevent him from travelling and the circumstances may be compassionate, but that does not create family life. The sponsor lives in the UK and the appellant has a family of wife and 7 children in Yemen. It is difficult to

understand how there can be that degree family life between them intended to be protected by article 8.

10. In the circumstances, the decision of the First-tier Tribunal is manifestly flawed and cannot stand. There is no family life and thus article 8 ECHR cannot assist the claimant. The appeal against the decision of the Entry Clearance Officer cannot succeed and should have been dismissed. This does not, of course, prevent the claimant from making a further application on compassionate grounds, taking care to address those concerns raised in the refusal decision.

Conclusions:

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated