



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

Appeal Number: VA/18274/2013

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 23rd September 2015

Promulgated

On 25th September 2015

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ENTRY CLEARANCE OFFICER - ACCRA

Appellant

and

**MISS RITA OPOKU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Ms S Sharma, Counsel

DECISION AND REASONS

Background

1. This is the Entry Clearance Officer's appeal against a decision by Judge of the First-tier Tribunal Davey, who, on 12th December 2014, allowed the appeal of Ms Rita Opoku, a national of Ghana, against a decision by the Entry Clearance Officer dated 19th August 2013 to refuse her application to enter the United Kingdom as a family visitor.
2. The appellant, who at the date of decision was 34 year old, sought permission to enter the country to attend the wedding of her guardians'

son (her guardians are Grace and Charles Basoah). Her application was made on 26 July 2013. The guardians had been supporting the appellant since she was 6 years old. Although resident in the United Kingdom they had visited Ghana frequently and had provided the Appellant with a substantial amount of financial support.

3. The Entry Clearance Officer was not however satisfied that the funds the Appellant claimed were available to her were in fact so available. The Entry Clearance Officer was not therefore satisfied that the appellant genuinely intended to enter the UK only as a visitor, or that she would leave the United Kingdom at the end of her stay.

The decision of the First-tier Tribunal

4. The First-tier Tribunal heard evidence from the sponsor guardian, and considered a number of documents provided in support of the application. In a careful and considered decision the First-tier Tribunal engaged with all the concerns identified by the Entry Clearance Officer and was satisfied that the appellant was genuinely employed in Ghana as the owner of a hairdressing salon. The First-tier Tribunal was satisfied as to the source of funds that had been put into her bank account. Having holistic regard to this evidence the First-tier Tribunal was satisfied that the appellant only intend to enter the UK as a visitor and that she would leave the United Kingdom at the end of her proposed visit. Having so found the judge allowed the appeal under the immigration rules. No consideration was given by the Judge to Article 8.

Grounds of appeal to the Upper Tribunal

5. The Entry Clearance Officer sought permission to appeal the decision of the First-tier on the basis that, having allowed the appeal under the immigration rules, the judge materially erred in law. The Grounds noted that Section 52 of the Crime and Courts Act 2013 commenced on 25th June 2013. This amended Section 88A of the Nationality, Immigration and Asylum Act 2002 which, in effect, removed a right of appeal for a family visitor other than on human rights and race relations grounds. As the judge failed to make any findings in relation to the human rights ground, the only one reasonably available to him, his decision was not sustainable.

Identification of a material error of law

6. At the outset of the hearing I indicated my concern to Ms Sharma, who very ably represented the appellant, that the Entry Clearance Officer's Grounds accurately represented the law at the date of the application and that the Judge should only have considered the appeal on the basis that the decision breached the Human Rights Act 1998 or that the decision was racially discriminatory.
7. While accepted that the Grounds did reflect the law as it was at the date of both the entry clearance application and the respondent's decision, Ms

Sharma valiantly sought to persuade me that there was material before the Judge relating to the appellant's relationship with her guardians and that he did, albeit implicitly, consider the article 8 aspect of the appeal. Having carefully considered Ms Sharma's submissions, and having had regard to the evidence that was before the First-tier Tribunal and the decision itself I was left without any doubt that the judge materially erred in law by approaching the appeal exclusively on the basis of the Immigration Rules. The Judge simply did not consider the relationship between the appellant and her guardians and he made no findings relating to Article 8.

Re-making of decision

8. I indicated to both representatives that I had no concerns with the First-tier Tribunal's assessment of the Entry Clearance Officer's decision under the Immigration Rules. This had not been challenged by the Entry Clearance Officer in the permission grounds. The First-tier Tribunal gave full and sustainable reasons for its conclusion that the appellant did intend to enter the UK only as a visitor and that she fully intended to return to Ghana at the end of her stay. The issue I have to decide is whether the refusal, in light of the First-tier Tribunal's factual findings and the fact that the immigration rules were regarded as having been met (a factor relevant to my Article 8 assessment; see **Adjei (visit visas - Article 8) [2015] UKUT 00261 (IAC)**), breached Article 8. In so doing I have to first decide whether Article 8 is even engaged, applying the well-known **Razgar** test.
9. The appellant at the date of the decision was a single 34 years old. She ran a successful hairdressing business and she had run it for the previous five to six years. Her guardians, who have lived in the UK since 1967, visited Ghana frequently and provided the appellant with a significant amount of financial support. The fact remains however that, for her entire life, and certainly since the age of six when her mother passed away, the appellant's guardians have always lived in the United Kingdom. The relationship between the appellant and her guardians has been conducted remotely, that is, at a considerable distance. The guardians only see the appellant two to three times a year.
10. It was submitted by Ms Sharma that the purpose of the visit (to attend the marriage of the guardians' son) was a very good reason and one that demonstrated the strength of the relationship between the appellant and her guardians. In so doing she relied on the decision in **Abbasi and another (visits - bereavement - Article 8) [2015] UKUT 00463 (IAC)** which found that Article 8 was engaged in respect of an entry clearance application by two brothers who wished to attend their late grandfather's funeral. It is worth noting that the President, in that case, indicated that cases of this kind would be fact sensitive (paragraph 17).
11. I fully accept that the appellant has a good relationship with her guardians. They have been providing her with support and guidance since she was a young child. I am not however satisfied, having regard to

the particular facts of this case, that the relationship is sufficiently strong such as to engage Article 8.

12. I rely on the authority recently promulgated in the Court of Appeal of **Singh & Anor v Secretary of State for the Home Department [2015] EWCA Civ 630**. at paragraph 24 the Court of Appeal stated,

The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8.

13. I am not satisfied that there is anything more in the relationship between the appellant and her guardians over and above the normal relationship one would have between adults children and their parents. The appellant is an adult, living independently at some considerable distance from her guardians. She has her own successful business, albeit one that was established with money provided by her guardians. It is difficult to ascertain in what context the sponsors continue to be 'guardians' given her age and independence. In *Kaur* (visit appeals; Article 8) [2015] UKUT 00487 (IAC) the Upper Tribunal held: *unless an appellant can show that there are individual interests at stake covered by Article 8 "of a particularly pressing nature" so as to give rise to a "strong claim that compelling circumstances may exist to justify the grant of LTE [Leave to Enter] outside the rules": (see SS (Congo) [2015] EWCA Civ 387 at [40] and [56]) he or she is exceedingly unlikely to succeed. That proposition must also hold good in visitor appeals.* Given my factual findings I am not satisfied there are individual interests at stake covered by Article 8.

14. In these circumstances I find that the First-tier has erred in law and I dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law. I remake the decision dismissing the appeal

No anonymity direction is made.



24 September 2015

Signed

Date

Upper Tribunal Judge Blum

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.



Signed

24 September 2015
Date

Upper Tribunal Judge Blum