



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

Appeal Numbers: VA/18640/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 16 April 2015**

**Determination Promulgated  
On 20 April 2015**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS JAVEDA AKHTAR**

Respondents

**Representation:**

For the Appellant: Mr Smart, Senior Home Office Presenting Officer

For the Respondents: Ms Hussain of counsel

**DETERMINATION AND REASONS**

The Appeal

1. This is an appeal by the Secretary of State against a determination promulgated on 30 June 2014 of First-tier Tribunal Judge Graham which allowed the Article 8 appeal of the respondent.
2. For the purposes of this determination, I refer to Mrs Akhtar as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

3. The appellant is the mother of the adult sponsor who lives in the UK with his wife and daughter. She applied for entry clearance to visit these relatives, having done so at least three times previously from 2010 onwards, staying for a period of 16 months in total.
4. It was common ground that, having been refused under the Immigration Rules, the only ground of appeal before the First-tier Tribunal was that of Article 8 ECHR. The appeal was allowed for the reasons set out at [8] to [12]. The key reason why the appeal was allowed under Article 8 is at [12]. The sponsor's wife and daughter cannot visit the appellant in Pakistan as they are recognised refugees in need of protection from return to that country.
5. The respondent's first challenge to the decision is that nowhere is the first "*Razgar*" question addressed so as to show how the appellant could be said to have a family life for the purposes of Article 8 with her adult son, daughter-in-law and granddaughter. No particular emotional ties or dependency were shown in the evidence to support a finding of family life. The son had lived in the UK since 2006, firstly as a student and then had established a family of his own. The appellant lived in Pakistan with her husband and other adult children.
6. Ms Hussain maintained for the appellant that she had been instructed that the appellant had a particularly close relationship with her granddaughter as she had been in the UK for a great deal of time since the child was born. She was unable to take me to any part of the determination showing that the First-tier Tribunal assessed whether the appellant's family life was engaged at all, however. She was also unable to maintain that evidence of a particularly close relationship with the granddaughter or a submission to that effect had been before the First-tier Tribunal.
7. Where that was so, it was my judgement that the First-tier Tribunal made a material error on a point of law in failing to make an assessment of how the family life of the appellant was engaged for the purposes of Article 8. It cannot be said that the material before the First-tier Tribunal allowed only for the conclusion that family life was engaged where it is also the case that no evidence of particular dependency or emotional ties was put to the First-tier Tribunal.
8. I found that the error of law was material and such that the decision had to be set aside. I proceeded to remake the appeal.
9. I noted the comments of the Presidential panel at [24] of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC), thus:

"We are, however, prepared to say that it will only be in very unusual circumstances that a person other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not necessarily be extended to cases where, for

example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together.”

10. This is not a case of “husband and wife or other close life partners or a parent and minor child” stated in Mostafa to be, in practice, the kind of relationships that could found an Article 8 family life claim in a visit visa application. As above, other than the appellant having spent 16 months in the UK since her granddaughter was born, it was not argued before me that there was anything that might demonstrate that family life for Article 8 purposes had been established. I did not find this period of time spent living with the UK relatives as a visitor to be a sufficient indication that the appellant has established family life with her granddaughter or other UK relatives; Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 and Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC) applied.
11. The Article 8 claim therefore fails at the first stage of the Article 8 assessment.

#### Decision

12. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
13. I re-make the appeal, refusing it under Article 8 ECHR.

Signed:   
Upper Tribunal Judge Pitt

Date: 16 April 2015