



The Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: VA/00072/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 December 2015**

**Decisions & Reasons Promulgated
On 5 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

ENTRY CLEARANCE OFFICER

and

**MR KHURRAN QADEER CHAUDRY
(NO ANONYMITY DIRECTION MADE)**

Appellant

Respondent

Representation:

Appellant

Mr Avery (Home Office Presenting Officer)

Respondent

Mr Burlas (Sponsor's husband)

DECISION 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, citizen of Pakistan applied to visit his sister and her family. On November 17, 2014 the respondent refused the application and any appeal was limited the Equality Act 2010 and article 8 ECHR issues. The

appellant appealed this decision on December 9, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Designated Judge of the First-tier Tribunal Manuell on June 30, 2015 and he allowed the appellant's appeal under article 8 ECHR on the basis there was both family and private life between the appellant and his sister's children and that a refusal, in circumstances where he was satisfied the Rules were met, would be disproportionate.
4. The respondent sought permission to appeal that decision on July 8, 2015 on the grounds the Tribunal had erred in finding family life existed. She also submitted the proportionality assessment was inadequate. Designated Judge of the first-tier Tribunal McCarthy refused permission to appeal on September 9, 2015 finding the grounds overlooked the findings in paragraph [12] of the decision wherein Designated Judge of the First-tier Tribunal Manuell had identified private and family life rights which engaged article 8 ECHR. Designated Judge of the First-tier Tribunal Manuell was entitled then to have regard to the fact he was satisfied the rules had been met when assessing the impact for the purposes of proportionality. Permission to appeal was renewed to the Upper Tribunal on September 16, 2015 and on October 2, 2015 Upper Tribunal Judge Perkins found it was reasonably arguable that the relationship argued was not one that the United Kingdom was obliged to promote under article 8 ECHR as a relationship between adult siblings had to have an element of dependency and none had been shown.
5. His permission at paragraphs [3] erroneously then refused permission but I am satisfied this was a typographical error that regrettably was not spotted by either Upper Tribunal Judge Perkins, the administration or the parties.
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.

ERROR IN LAW

7. Mr Avery relied on the grounds of appeal and submitted there had been an error in law. He argued that the before finding article 8 was engaged the Tribunal had to find that there was family life as set out in the cases of Kugathas v SSHD [2003] EWCA Civ 31 and Ghising & Ors [2013] UKUT 00567 (IAC) and no evidence of any dependency had been demonstrated. The fact the Tribunal found the Rules were met and they were family did not mean article 8 was engaged.
8. Mr Burlas reminded me that the appellant's family had all previously been allowed to visit the United Kingdom and this appellant was no different. He wished to see his family in the United Kingdom, as against Pakistan, and spend time with them. He argued the relationship the appellant has with his sister and her family shows a level of dependency. The refusal created

a stigma because all he wanted to do was to come and visit his family and then return to Pakistan where he lives happily with his wife and runs a successful business.

DISCUSSION AND FINDING

9. As Designated Judge of the First-tier Tribunal Manuell correctly identified this appeal could only be brought on limited grounds. The fact he was satisfied the appellant did satisfy the Immigration Rules did not mean the application must succeed under article 8 ECHR.
10. Case law such as Kugathas v SSHD [2003] EWCA Civ 31 makes 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. In paragraph [12] of his decision Designated Judge of the First-tier Tribunal Manuell referred to the family and private life that persons lawfully in the United Kingdom enjoyed with relatives abroad. He took the view that this included nephews and nieces and refusing entry would interfere with their family life.
11. Mr Avery submitted that this consideration did not go far enough and the fact the Rules may be met was insufficient. In Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) the Tribunal found that in the case of appeals brought against refusal of entry clearance under Article 8 ECHR, the claimant's ability to satisfy the Immigration Rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control. That case involved an application by a spouse and the Tribunal found that refusing the spouse entry was an interference with their private and family lives and the interference was of sufficient gravity potentially to engage the operation of Article 8.
12. The Tribunal in Mostafa made it clear that one of the factors to consider in such cases was the impact of refusal on the relationships that have to be promoted. Refusal of entry clearance will not always interfere disproportionately with such a relationship. The Tribunal concluded by saying-

"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. In the limited class of cases where Article 8 (1) ECHR is engaged the refusal of entry clearance must be in accordance with the law and proportionate. If a person's circumstances do satisfy the Immigration Rules and they have not acted in a way that undermines

the system of immigration control, a refusal of entry clearance is liable to infringe Article 8.”


13. The facts of the case before me differ from the facts of Mostafa. Whilst the Tribunal in this case referred to the rights of families to see each other and enjoy a family life I agree with Mr Avery although the Tribunal considered the principle of article 8 it did not apply the principles as they affect non dependant adults or relatives who are not close. Although nephews and nieces previously had rights of appeal under the Immigration Rules they lost those rights some time ago. The fact the appellant wanted to spend time with this family did not mean this amounted family life. They enjoyed a traditional family life that all relatives living in a different country enjoy but to engage article 8 I am satisfied the appellant has to go further and in those circumstances I find the Tribunal erred in allowing this appeal under article 8 ECHR.
14. In the circumstances I set aside the decision allowing the appeal under article 8 ECHR.

DECISION

15. There was a material error and I set aside the earlier decision. I remake the decision and dismiss the appeal under article 8 ECHR.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I set aside the earlier fee award and make no fee award because I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis