



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/06256/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 22 January 2016

Decision Promulgated
On 25 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SONIA ARSHAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented in court

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

3. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Fowell promulgated on 20 July 2015 which allowed the Appellant's appeal against the decision of the Respondent to refuse her entry clearance as a general visitor under Article 8 ECHR.
4. The Sponsor did not attend the hearing nor was the Appellant represented at the appeal. Solicitors representing the Appellant wrote to the court and indicated that neither they nor the sponsor would be attending and they would be content for the matter to proceed in their absence on the basis of the papers already served. I am therefore satisfied that having been served notice of the hearing and not attended it is in the interests of justice to proceed with the hearing in the Appellant's absence as I am entitled to do by virtue of paragraph 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Background

5. The Appellant was born on 12 April 1994 and was a national of Pakistan.
6. On 21 August 2014 the Appellant applied for leave to enter the UK as a general visitor in order to visit her father who was in the UK as a Tier 1 Investor together with her mother and siblings as dependents.
7. On 3 September 2014 the Secretary of State refused the Appellant's application under paragraph 41 (i) and (ii). The refusal letter gave a number of reasons but in essence the refusal was on the basis that the Appellants family was living in the UK and the Appellant had been refused a visa to enter the UK as her fathers dependent and therefore she had no ties that would result in her returning to Pakistan; the financial information sent in respect of her father was over three months old; the information provided did not make clear who the Appellant was living with in Pakistan. The refusal letter stated that the Appellant had a right of appeal limited to those grounds referred to in section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002. The Appellant raised human rights in her appeal.

The Judge's Decision

8. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Fowell ("the Judge") allowed the appeal against the Respondent's decision. The Judge :
 - (a) Set out the law and stated that the right of appeal was limited and included human rights.
 - (b) There was a witness statement from the Appellants father who was unable to attend the hearing and he therefore attached relatively little weight to it. He stated that he was a wealthy person now living in the UK with his wife and 4 children the Appellant was his fifth child studying for a BA in Islamabad. His family wanted to see the Appellant.
 - (c) The Appellant made a statement confirming that she was wholly supported by her father who had business interests in Pakistan and she saw him from time to time. She had not seen her mother and siblings for a long time and that was the purpose of the visit.

- (d) A family friend Mr Hussain attended court and confirmed that the Appellant just wanted to visit for the summer. The Appellant lived in Pakistan with her uncle and had over £8000 in 3 accounts there.
 - (e) The Judge referred to the cases of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) and Adjei (visit visas-Article 8) [2015] UKUT 0261(IAC).
 - (f) The Judge set out the provisions of Article 8 and the guidance given in Razgar [2004] UKHL 27.
 - (g) The Judge found that the 'removal' (sic) would interfere with the Appellants family life; the consequences of the interference were sufficiently grave as to engage the operation of Article 8 given her relative youth and the long separation the family had endured; the interference was necessary in the public interest.
 - (h) In assessing the proportionality of the decision the Judge considered whether the Appellant had met the requirements of the Rules. He found that the Appellants evidence had not been challenged and was credible. And that she intended to visit for a limited period and would leave at the end of her trip.
 - (i) The Judge found no countervailing factors under section 117B of the Nationality Immigration and Asylum Act 2002.
9. Grounds of appeal were lodged arguing that the Judge had failed to consider whether family life existed at all in this case given that the relationship was one between an *adult* child and her parents where there was no presumption that it existed if the relationship did not go beyond normal emotional ties; the Respondent referred to the caselaw on this issue such as Kugathas v SSHD [2003] EWCA Civ 31.
10. On 18 November 2015 First-tier Tribunal Judge Davies gave permission to appeal.
11. At the hearing I heard submissions from Mr Harrison on behalf of the Respondent that he relied on the grounds of appeal.

The Law

12. The protection provided by Article 8 does not cover all family relationships. In the case of Mostafa (which dealt with an application for entry clearance as a visitor by a wife) at paragraph 24 the court said
- “Thus we refrain from suggesting that, in this type of case, any particular kind of relationship would always attract the protection of Article 8(1) or that other kinds of relationship would never come within its scope. 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.” (my bold)

13. These principles were found in the earlier case of Kugathas a case which concerned an adult's relationship with his mother and adult siblings, the Court of Appeal thought that the following passage in S v United Kingdom [1984] 40 DR 196 was still relevant:

“... generally, the protection of family life under Article 8 involves cohabiting dependants, such as parents and their dependent minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults ... would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.”
14. However, the Court of Appeal considered that the further element of dependency did not have to be economic. Accordingly, in the case of the “other relationships” referred to, it will be necessary to show that ties of support, either emotional or economic, are in existence and go beyond the ordinary and natural ties of affection that would accompany a relationship of that kind.

The Law

Finding on Material Error

15. Having heard those submissions, I reached the conclusion that the Tribunal made a material error of law.
16. While the Judge correctly set out the law and the questions he was bound to address where Article 8 was in issue he failed to address and give reasons for why he accepted that family life existed in this case given that this was an adult Appellant in Pakistan and her parents and siblings in the UK. No factual findings were made to demonstrate the basis on which the Judge asserted in paragraph 18.1 of the decision that family life existed.
17. The failure of the First-tier Tribunal to address and determine whether family life existed between the adult Appellant and her family in the UK constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
18. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety and I remake the decision.

Remaking the Decision.

19. This was an application for entry clearance as a general visitor by the Appellant who wished to visit her family who are currently living in the UK as the father is a Tier 1 Investor with his family as dependents.
20. I am satisfied that there is no presumption that a person has a family life, even with the members of a person's immediate family. The court has to scrutinise the relevant factors. In relation to the issue of family life I could have course have considered oral evidence from family members. Given the importance of the relationship to the facts in issue I am very troubled by the fact that neither the Appellants father who is the

sponsor or her mother attended court in the First-tier or before me to give evidence in support of her appeal.

21. The Appellant is 20 years old so in law is an adult. She is attending University and lives with another family member, an uncle in Islamabad. The Appellants parents have been living in the UK since 2013 and therefore by choice the family have lived apart since then. Whether they were living together prior to 2013 I am unable determine as there is no evidence relating to it on file. While there is of course no prohibition on the family seeing the Appellant in Pakistan she states in her witness statement that she only sees her father 'from time to time' but has not seen her mother and siblings since February 2013 when they came to the UK. There was no evidence of any other form of contact before me; no evidence of contact by letter, telephone or via the internet.
22. While the Appellants asserted in her visa application that she was dependent on her father no evidence of financial dependency, or indeed any other form of dependency, was provided. The evidence produced showed that the father had funds in the UK but there was no evidence that any was sent to the Appellant. There was evidence that the Appellant had funds in her own name, the equivalent of over £8000 and while it is possible the funds came from her father there was no documentary or oral evidence to establish that before me.
23. On the basis of the evidence before me that the Appellant is an adult student who has her own funds and has not demonstrated that she is financially supported by her family and has had very limited contact with her father and none with her mother and siblings for 3 years the Appellants has failed to meet the evidential burden of establishing that her relationship extends beyond the normal emotional ties of an adult child and her parents.

Decision

24. **I set aside the decision of the First-tier Tribunal as containing a material error of law. I substitute the following decision:**
25. **This appeal is also dismissed on human rights grounds (Article 8)**

Signed

Date 23.1.2016

Deputy Upper Tribunal Judge Birrell

Fee Award

There can be no fee award as I have dismissed the appeal.

Signed

Date 23.1.2016

Deputy Upper Tribunal Judge Birrell