



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

Appeal Number: VA/06576/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2016**

**Decision and
Promulgated
On 1 April 2016**

Reasons

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MRS YASMEEN VIRK ALI RAZA

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the appellant: no appearance by the sponsor

For the respondent: Mrs C Johnstone, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department and the respondent is Mrs Ali. However, for the sake of convenience I shall continue to refer to her as the appellant and the Secretary of State for the respondent which are the designations they had before the First-tier Tribunal.
2. The appellant, a national of Pakistan born on 1 January 1981, appealed to the Upper Tribunal against the decision of Immigration Judge PJM Hollingworth allowing her appeal against the decision of the

respondent refusing to grant her entry clearance to visit her brother under paragraph 41 of the Immigration Rules.

3. First-tier Tribunal Judge Grimmett granted the respondent permission to appeal to the Upper Tribunal, stating that there is a lack of reasoning for why the Judge allowed the appeal on the basis of family life between two adults purely based on financial support and how it could amount to something over and above the usual emotional ties expected between adult relatives.
4. The First-tier Tribunal Judge allowed the appellant's appeal and made the following findings which I summarise. Following the case of **Razgar the SS HD UKHL [2004] INLR 349**, family life has been established between the appellant and her sponsor for the reasons set forward by Counsel. The only question is one of proportionality.
5. The Judge found that the death of the sponsor's wife has, led to the dependency emotionally of the sponsor upon the appellant as is graphically set out in the appellant's witness statement. The Judge said "I do not find that a relatively short visit to Pakistan paid by the sponsor with the children even on the footing that such would be organised provides a satisfactory alternative to or obviates the need for the visit by the appellant since I find that it is perfectly apparent that a relatively long period of time is required to provide the children of the sponsor and the sponsor himself with an adequate opportunity to come to terms with their grief and to move on with their lives thereafter".
6. The Judge found that normal emotional ties have been exceeded in this case between the appellant and the sponsor given the degree of real committed an effective support characterising the relationship between the appellant and the sponsor against the background of the death of the sponsor's wife. "I accept that the appellant does not intend to remain in the United Kingdom. I accept that the appellant will proceed to Saudi Arabia on the bases which he has given and that has been explained by her husband". The Judge added that applying s55 that the best interests of three children of the sponsor who are British citizens can only be served in the current circumstances by the presence of the appellant that this country. It would be unjustifiably harsh if the appellant were refused entry clearance.
7. The Judge found that the Article 8 rights of both the appellant and the sponsor will be breached and the sponsor's children's rights will also be breached. There is corroborated documentary evidence provided by the appellant.

The grounds of appeal

8. The respondent in her grounds of appeal states that the Judge has not considered the case of **Kugathas v SSHD [2003] EW CA Civ 31**, appropriately. The respondent noted that the sponsor stated that the

appellant will return to Pakistan whereas the Judge finds that the appellant intends to go to Saudi Arabia. The judges erred in law.

The hearing

9. At the hearing the appellant sponsor did not attend. I satisfied myself that the appellant and her sponsor had been served with the hearing notice and in the absence of any explanation for the nonappearance, I proceeded to determine the appeal after hearing short submissions by the respondent. Mrs Johnstone said that the appellant has never met the sponsor's children.

Error of law decision

10. I have no hesitation in finding that the Judge has materially erred in law in allowing the appellant's appeal pursuant to Article 8 of the European Convention on Human Rights by finding that the appellant and the sponsor have a family life which will be interfered with. The Judge has not given adequate reasons for why refusal for the appellant's temporary visit to the United Kingdom would breach the rights of the appellant, her sponsor and the sponsor's children. I therefore set aside the decision and remake it.
11. The appellant wants to come to the United Kingdom to look after her brother's children due to the death of his wife. Therefore, it was abundantly clear that the purpose of her visit was to stay in the United Kingdom to look after the children and that suggests that she would not leave the country after the conclusion of her visit. The appellant does not therefore meet the requirements of paragraph 41 (iii) and (vi) of the Immigration Rules.
12. The appellant and her brother have lived apart in different continents and I find that there is no family life which has been established between them in terms of Article 8 of the European Convention on Human Rights. I therefore find that there is no family life between the appellant and her sponsor which requires consideration or protection.
13. The appellant does not satisfy the requirements of paragraph 41 of the Immigration Rules and there is no breach of Article 8 for any member of this family.

Decision

14. The appeal is dismissed.

2016

Dated this 29th day of March

Signed

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Mrs S Chana
A Deputy Judge of the Upper Tribunal