



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: VA/06872/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

Decision & Reasons

Promulgated

On 5 April 2016

On 12 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

HEBA ABULELA

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented

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. The Appellant, a national of Egypt was born on 23 April 1991. The Appellant appealed against the decision of the Secretary of State dated 13

October 2014 to refuse to grant an application for entry clearance as a family visitor to see her sister for 6 months. First-tier Tribunal Judge Shamash allowed the appeal under Article 8 and the Respondent now appeals with permission to this Tribunal.

3. The Appellant did not attend the appeal nor was he represented at the appeal by the Sponsor. I am satisfied that due notice of the appeal was served upon the Appellant and Sponsor at the address that was given. 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.
4. At the hearing before me Mr Harrison relied on the grounds of appeal arguing that the Judge had erred in failing to adequately address why in this case family life existed between adult siblings.

Error of Law

5. The grounds of appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in his assessment of whether family life existed in this case which involved two adult siblings.
6. I am satisfied that while the Judge corrected directed herself as to the appropriate test to be applied under Article 8 in Razgar [2004] UKHL 27 at paragraph 16. However I am satisfied that given that in Kugathas v SSHD (2003) INLR 170 the Court of Appeal said that, in order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son would not, without more, be enough and that more recently in a visit visa appeal case of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) at paragraph 24 the court said:

"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. “

7. The failure of the First-tier Tribunal to address and determine why the relationship between these adult siblings constituted family life 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. I therefore set the decision aside.

Remaking the Decision

8. I have considered the evidence before me in order to determine whether Article 8, the only ground of appeal in this refusal of entry clearance as a visitor, is engaged given that the 24 year old Appellant seeks to visit the Sponsor her sister Iman Abulela who is 33 years old.
9. I note that the Appellant lives in Egypt and there is no evidence before me of when they last lived together as a family. I note that the Appellant has previously visited the Sponsor in the UK in the past as one would expect from adult siblings. There is no evidence of any emotional or financial dependency and the purpose of the visit was expressed to be *‘sightseeing in North Wales Spend time with my sister and nephew help my sister with childcare for my nephew.’* I am not satisfied that the relationship described in the documents before me goes beyond the normal emotional ties of adult siblings who live entirely independent lives in different countries.
10. I therefore find that given that my answer to the first question posed in Razgar is ‘No’ that Article 8 is not engaged in this case and therefore the appeal must fail.

Decision

11. **There was an error on a point of law in the decision of the First-tier Tribunal with regard to Article 8 such that the decision is set aside**
12. **I remake the appeal.**
13. **I dismiss the appeal on human rights grounds**

Signed

Date 9.5.2016

Deputy Upper Tribunal Judge Birrell