



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

Appeal Number: HU/02019/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 October 2017**

**Decision & Reasons Promulgated
On 26 October 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

METITA GREZDA

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr K Alim Counsel instructed by Thoree & Co Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant” against the decision of the Secretary of State by the Entry Clearance Officer in Warsaw refusing her application for leave to enter the United Kingdom as a visitor.
2. The appeal was allowed on human rights grounds and the decision was challenged by the Secretary of State on two grounds. The first ground contended that the claimant did not have a right of appeal and the second ground contended that the First-tier Tribunal had misdirected itself and should not have concluded that the relationship between the claimant and her family

in the United Kingdom engaged the protection of Article 8(1) of the European Convention on Human Rights.

3. The first ground can be addressed quickly. Mr Wilding said that he did not wish to rely on it. He was right to make that decision. He had not settled the grounds and although the argument may have proved interesting I find it extraordinary that the Secretary of State would argue that the claimant cannot take advantage of a statutory ground.
4. There is an obvious deficiency on the face of the Decision of the First-tier Tribunal. There has been little or no attempt to justify the finding that the claimant could rely on Article 8. The First-tier Tribunal made an unequivocal finding that “there is a family life between the [claimant] and his sponsor family in the UK” but gave little explanation for this. The partial explanation offered is, I find, quite wrong. The judge said at paragraph 23:

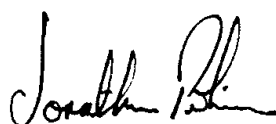
“the sponsor family are not able to travel to Albania and this is a weighty factor in this appeal”.
5. Indeed the members of the sponsor’s family are not able to travel to Albania because they are either far too young or are refugees from Albania. However I find Mr Wilding was unarguably right when he submitted that although it was conceivable that the impracticability of the United Kingdom-based relatives travelling to Albania could feature as a weighty point in a balancing exercise, it was an irrelevant consideration to the first task which was to establish if the claimants came within the protection of Article 8 at all.
6. Mr Alim had produced appropriately a short and clear skeleton argument for which I am grateful. This makes the point that the judge was aware that he was dealing with a human rights appeal. He had not fallen into the trap of dealing with the case under the Rules and he was mindful of the best interests of the children who, the judge found, should be allowed to see their grandparents.
7. These things are right as far as they go but they do not address the question of real importance which is whether the judge was entitled to find that the relationship between the appellant and her grandchildren was one the United Kingdom was required to promote. The judge clearly erred because there was no attempt to justify this part of the decision and, as was explained by Upper Tribunal Judge Southern in **Adjei (visit visas - Article 8) [2015] UKUT 261 (IAC)** quoting with approval a decision of this Tribunal in **Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)**, Article 8(1) will only be engaged in visitor appeals in a “very narrow range of claimants”, typically people who are married to each other or are otherwise close life partners or parents and minor children who wish to spend some time together.
8. All of this has been approved in rather emphatic terms by the Court of Appeal in **SSH D v Tahir Abbas [2017] EWCA Civ 1393**. There the Court of Appeal draws a strong distinction between the “family life” end of the private and family life spectrum and the “private life” end. In paragraph 25 of his judgment Burnett L J emphasised that people who rely on private life will not normally be able to show that a decision made while they are outside the United Kingdom comes within the scope of Article 8(1).

9. Here the First-tier Tribunal Judge decided there was family life but it went no more than a desire for grandparents to be with grandchildren and possibly their own adult children. No effort was made to explain why this relationship came within the scope of the Article. In the absence of some very unusual circumstance it does not. The relevant relationship has to be of considerable importance and one that there is a clear duty on the state to promote. Relationships between children and grandparents can be very beneficial to all those involved. So can relationships between cousins and uncles or aunts with their nieces and nephews or even just good friends. To some extent the restriction is arbitrary but the received jurisprudence does not support extending the protection of Article 8(1) to relationships other than those indicated above. The relationships relied upon here are outside that scope.
10. I have no hesitation in saying the judge erred in law because this decision was not explained and I set it aside.
11. Further, although Mr Alim did all that could have been expected of him I can see no basis on the papers before me of finding that the relationship here is one that attracts the protection of the Article. Indeed it is the essence of the complaint that the relationship has not been developed. The children and grandparents had never met. This is not a case, as happens sometimes, where a genetic grandparent is the caring parent in every meaningful sense.
12. It follows that I must, and do, allow the Secretary of State's appeal and substitute a decision dismissing the Claimant's appeal against the Secretary of State's decision.

Notice of Decision

13. The Secretary of State's appeal is allowed and I substitute a decision dismissing the claimant's appeal against the decision of the Secretary of State.

Signed



Jonathan Perkins, Upper Tribunal Judge _____ Dated: 25 October 2017