



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

Appeal Number: HU/23326/2016

THE IMMIGRATION ACTS

Heard at Field House

On 3 July 2017

**Decision & Reasons
Promulgated**

On 17 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**RAMALAT [J]
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent/Claimant: Mr S Karim, Counsel instructed by Shanthi & Co Solicitors

DECISION AND REASONS

1. The Specialist Appeals Team appeals on behalf of an Entry Clearance Officer from the decision of the First-tier Tribunal (Judge Beg sitting at Taylor House on 3 April 2017) allowing the claimant's appeal against the decision of the Entry Clearance Officer to refuse to grant her a family visit

visa on compassionate grounds. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for Granting Permission to Appeal

2. On 10 May 2017 First-tier Tribunal Judge Saffer granted the Entry Clearance Officer permission to appeal for the following reasons: *"I am satisfied that it is arguable that the Judge materially erred regarding whether Article 8 was met on gravity and proportionality grounds."*

The Appellant's Material History

3. The appellant is a national of Angola. She has two children, [FB], and [SB]. [FB] was born on [] 2002 and [SB] was born on [] 2005. At the date of decision, the children were living with their mother in a US Embassy compound in Liberia. The reason for this was that the claimant was employed by US Aid as a Malaria Advisor providing technical oversight to the implementation of a US Government Malaria project in Liberia. The claimant began this employment on 22 April 2015.
4. The claimant's parents were both born in Nigeria, but at the date of application they were both settled in the UK, and the claimant's mother had become a British citizen.
5. On 9 February 2016 the claimant applied for a family visit visa. In her application form, she said that her 83-year-old father suffered from dementia and hypertension. He had been admitted to hospital in late December 2015 and had been discharged in January 2016. She acknowledged that she had been refused a visit visa on 30 November 2013, as she had made a false statement in her application form. She apologised for violating the UK Immigration Rules by leaving her daughters to stay an additional six months beyond their authorised stay. She had done this at the request of her father who was so fond of them, and asked them to remain with him. She could not say 'no' to him, as he was crying. She asked the Entry Clearance Officer for compassion to allow her to see her father again before he died. He was old and frail and he might die at any time. She promised never to violate any immigration rule again.
6. On 17 February 2016 an Entry Clearance Officer (post reference SHEFO/253348) gave his reasons for refusing the claimant's application. The previous application for UK entry clearance was refused on 11 November 2013 because she had made false statements in her application. He noticed that she now stated that she wished for her application to be granted on compassionate grounds. But it had been decided that her application did not fall for a grant of entry clearance on compassionate grounds. Any future applications would also be automatically refused under paragraph V3.7B until 11 November 2023 in line with paragraph V.3(10)(A-F).

7. The claimant's representative settled lengthy grounds of appeal. She and her children had been banned from entering the UK for 10 years. The claimant would not have any problems with that, if she did not had a sick and aged father in the UK. She was afraid that her father might depart at any moment and she wished to see him and take care of him before his final departure. She had a fantastic job with all expenses paid for by the US Government, including the children's school fees, housing, transport, etc. She was taking care of her children and so she unable to leave them in Liberia on their own for a long period. She had no plans to leave her highly sought-after job. All she wanted to do was to see her father one more time.
8. On 28 January 2017 the Entry Clearance Manager gave his reasons for upholding the refusal decision. The claimant had practised deception on a previous application and it was therefore appropriate to refuse her entry clearance under paragraph V3 of Appendix V of the Immigration Rules. The decision to refuse her entry to visit the sponsor would not prevent them being able to continue to see each other, or to reside with each other in a third country. He was satisfied that the decision was correct in law, and that it was proportionate to the maintenance of effective Immigration control.

The Hearing Before, and the Decision of, the First-tier Tribunal

9. The claimant's appeal came before Judge Beg sitting in the First-tier Tribunal at Taylor House on 3 April 2017. Mr Solomon of Counsel appeared on behalf of the claimant, and the respondent was represented by a Home Office Presenting Officer. The Judge received oral evidence from the claimant's mother. On 21 December 2016 her husband had died, and he had been buried in Romford.
10. The Presenting Officer said that he was aware of the Upper Tribunal's decision in **Abbasi (Visits - bereavement - Article 8) [2015] UKUT 00463**. But he distinguished the case of **Abbasi** because deception had been employed by the claimant. Accordingly, there were no compelling grounds to apply discretion in the present case.
11. On behalf of the claimant, Mr Solomon submitted that the claimant's past deception was outweighed by her desire, and need, to grieve at her father's graveside.
12. In her subsequent decision, the Judge found at paragraph [15] that the claimant had committed deception in the Entry Clearance application she made in 2013, but nonetheless there were exceptional and compelling circumstances to justify granting her entry clearance now. She found that the claimant's inability to see her father before he died had had a profound, emotional effect upon her. She also took into account the evidence given by her mother. She said it was her husband's last wish to see his daughter and granddaughter before he passed away. The claimant had been deprived of "*her right*" to pay her final respects to her father.

The claimant's mother also stated that her own health condition had worsened since her husband's death. The claimant's mother said that there was no guarantee that she would still be alive by the time the mandatory ban was over, and she said that she would like to see her daughter in the United Kingdom.

13. At paragraph [16], the Judge held that the Court in **Abbasi** recognised the importance of visiting a grave by close family members as an intrinsic feature of a civilised society. She found that the claimant wished to visit the UK for a short period of time in order to visit her father's grave and to provide some comfort to her mother through a period of mourning. Mr Solomon, on behalf of the claimant, had said that she would be coming to the UK alone, leaving her daughters behind in Liberia, and therefore she had a strong incentive to return. There was no challenge to the claimant's ability to meet the maintenance and accommodation requirements of a visit visa application under the Rules. The engagement of Article 8 was established. Any interference in the claimant's Article 8 rights would be disproportionate. The Judge found that there were wholly exceptional and compassionate circumstances in the case which outweighed the public interest.

The Error of Law Hearing

14. At the hearing before me to determine whether an error of law was made out, Mr Duffy said that he had nothing to add to the points raised in the permission application. He had not brought along a copy of **SS (Malaysia) [2004] UKIAT 0091**.
15. On behalf of the claimant, Mr Karim submitted that the error of law challenge was no more than an expression of disagreement with the findings that were reasonably open to the Judge. The only issue raised in the permission application was whether the Judge had erred in law in finding that Article 8 was engaged. Although the Judge granting permission had indicated that there was an arguable error in the Judge's assessment of proportionality, this was not an argument advanced in the permission application.

Discussion

16. Ground 1 is that the Judge erred in finding that a refusal of entry clearance to a visitor was an interference with Article 8, in a case where there was no finding of family life.
17. Ground 2 is that the Judge erred in her analysis of private life. The Tribunal in **Abbasi** referred to a number of cases in which Article 8 was engaged in burial cases, but those concerned the family/private life of "*those already in the contracting state*". Furthermore, in **SS (Malaysia) [2004] UKIAT 0091**, the Tribunal said that private, as distinct from family, life was not a basis on which a right of entry could be based under the Human Rights Convention, as it could not be construed as providing

for all those whose private lives are restricted in some way in a signatory or non-signatory country.

18. I accept that the Judge made no finding that the claimant enjoys family life with her mother in the UK. On the contrary, on a conventional analysis, applying the **Kugathas** criteria, the claimant does not enjoy family life with her mother. But as the Judge directed herself at paragraph [9] of her decision, in **Abbasi** the Upper Tribunal held that the refusal of a visa to foreign nationals seeking to enter the UK for a finite period for the purpose of mourning with family members the recent death of a close relative, and visiting the grave of a deceased, is capable of constituting a disproportionate interference with the rights of the persons concerned under Article 8 ECHR. It is not true, as alleged in the permission application, that the burial cases discussed in **Abbasi** all concern the family/private life of “*those already in the contracting state*”. The cases discussed concern the private lives of those not in the contracting state, but who wish to enter the contracting state in order to mourn with family members who are already in the contracting state.
19. The implication of the citation of the case of **SS (Malaysia)** is that **Abbasi** was wrongly decided. But Mr Duffy did not seek to persuade me that this was the case. Indeed, he suggested that **Abbasi** carried greater weight than **SS (Malaysia)**, as it was a more recent decision of the Tribunal.
20. At the hearing before Judge Beg, the Presenting Officer only sought to distinguish **Abbasi** on proportionality grounds. Unlike the cases discussed in **Abbasi**, the Entry Clearance Officer was *prima face* justified in refusing the entry clearance application on suitability grounds. As I explored Mr Karim with oral argument, it is arguable that Judge Beg has downplayed this distinct feature of the case when conducting her balancing exercise in paragraphs [15] and [16] of her decision. The claimant’s past immigration offending was two-fold: firstly, she caused her children to remain in the UK for some six months after their visas had expired; secondly, she then sought to cover this up by lying in her application for a visit visa in 2013 about when the children had left the UK.
21. However, although a cogent justification for excluding the claimant on suitability grounds is not at the forefront of the Judge’s balancing exercise, it is not the Entry Clearance Officer’s case that the Judge has wholly failed to take this important consideration into account. Moreover, on a fair reading of the decision as a whole, I am not persuaded that the Judge did not have in mind the claimant’s past deception and immigration offending when deciding that, nonetheless, there were wholly exceptional and compassionate circumstances in her case which outweighed the public interest.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 14 July 2017