



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/02229/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 30<sup>th</sup> January 2017

Decision & Reasons Promulgated  
On 10<sup>th</sup> May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MISS HUMA LIAQUAT  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr. L Tarlow, Home Office Presenting Officer  
For the Respondent: Ms. L Turnbull, Counsel,

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Blake promulgated on 28<sup>th</sup> July 2016.

2. The appellant before me, is the Entry Clearance Officer (“ECO”) and the respondent to this appeal, is Ms Huma Liaquat. However, for ease of reference, in the course of this decision I shall adopt the parties’ status as it was before the First-tier Tribunal. I shall in this decision, refer to Ms. Liaquat as the appellant and the ECO as the respondent.
  
3. The appellant was born on 24<sup>th</sup> April 1986 and is a national of Pakistan. She applied for entry clearance as a family visitor to visit her mother, brother and sister in the UK. In reaching a decision, the Entry Clearance Officer (“ECO”) noted that the appellant is single, with no dependants, and that she had provided no evidence of any family in Pakistan. Although the appellant had provided evidence of employment in Pakistan, the ECO was not satisfied that this alone would act as an incentive for her to leave the UK. The ECO considered the fact that as her mother, brother and sister are all resident in the UK, the appellant’s ties to the UK far outweigh her ties to Pakistan. Overall, the ECO was not satisfied that the appellant has sufficiently strong ties to Pakistan, to credibly demonstrate she will leave the UK after her proposed visit. The ECO was not satisfied that the appellant is seeking entry to the UK as a genuine visitor for a limited period with the intention of leaving the UK at the end of the visit as required by paragraph 41 (i) and (ii) of the Immigration Rules. It was that decision dated 4<sup>th</sup> March 2015, that was maintained following a review by the Entry Clearance Manager, that gave rise to the appeal before the First-tier Tribunal (“FtT”).

#### The decision of First-tier Tribunal Judge Blake

4. The background to the appellant’s application and the decision of the respondent is set out at paragraph [3] to [17] of the decision of the FtT. The Judge set out the requirements of the Immigration Rules at paragraph [18] of his decision. At paragraphs [19] to [35] of his decision, the Judge records his conduct of the appeal and the evidence that he received from the appellant’s sponsor, Mr Adbdul Liaquat. The Judge’s findings and conclusions are set out at paragraphs [38] to [47] of his decision.

5. The Judge found that the appellant's sponsor was a wholly honest and credible witness. The Judge accepted the account provided of how and when the appellant's family had travelled to the UK, and was satisfied that the appellant is a qualified doctor, employed in a hospital. The Judge accepted that she was in receipt of a good salary and that she lived with a maternal uncle. The Judge accepted that the appellant did have strong ties to, and good employment in Pakistan, such as to indicate that she was very likely to return at the end of any visit. At paragraph [43] of his decision, the Judge states:

*"I had no doubt that the Appellant would return if granted leave. I was satisfied that the Appellant's case came within the relevant Immigration Rules. I found that the ECO's decision and that of the ECM were contrary to Article 8 ECHR."*

6. At paragraph [44] of his decision, the Judge refers to the decision of the President of the Tribunal in **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)**. At paragraphs [46] and [47] of his decision, the Judge states:

*"[I was satisfied on the basis of the evidence that the Appellant was genuinely seeking entry clearance as a visitor to visit her family. I found that the application was compliant with the Rules.*

*In the circumstances, I found that the decisions of the ECO and ECM were not proportionate to the legitimate aim of fair and firm immigration control."*

### The appeal before me

7. The respondent submits that the appellant has a right of appeal to the Tribunal but the ground of appeal is restricted to the ground that the decision is unlawful under section 6 of the Human Rights Act 1998. The respondent submits that the Judge erred in his consideration of the Article 8 claim. The respondent submits that there is no presumption of family life between an adult and their surviving parents or siblings. The Judge does not consider whether there is a family life between the appellant and her family in the UK, all of whom are adults. The respondent submits that there is no finding that there are any additional ties between the

appellant and her family, beyond the normal emotional ties and that on the evidence, there is no family life for the purposes of Article 8. The respondent submits that even if family life were found to exist, the respondent's decision does not interfere with the status quo. There are no reasons given as to why the appellant's family in the UK may not visit the appellant in Pakistan, or maintain contact through modern methods of communication. Furthermore, the respondent submits the proportionality assessment is inadequate; it does not explain why the refusal of entry clearance which only allows the parties to be together temporarily, and for a short period, is a disproportionate interference with Article 8 rights. The respondent submits that in allowing the appeal on human rights grounds, the Judge has erred in law, such that the decision should be set aside.

8. Permission to appeal was granted by FtT Judge Andrew on 28<sup>th</sup> November 2016. The matter comes before me to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.
9. Before me, Mr Tarlow adopted the respondent's grounds of appeal. He submits that the appellant is an adult and that it is now well established that where family life is put forward as existing between an adult and his or her parents and siblings, there needs to be further elements of dependency involving more than the usual emotional family ties. He relies upon the decisions of the Tribunal in **MS (Article 8 - Family Life - Dependency - Proportionality) Uganda [2004] UKIAT 00064** and the Court of Appeal in **Kugathas -v- SSHD [2003] EWCA Civ 31** to support the proposition that neither blood ties, nor the concern and affection that ordinarily go with them, are, by themselves or together, enough to constitute family life. Mr Tarlow submits that the judge failed to make any or any adequate findings as to material matters. He submits that the judge failed to properly address and explain in his decision whether Article 8 is engaged at all.
10. A written response was submitted on behalf of the appellant under the Tribunal Procedure (Upper Tribunal) Rules 2008, and handed up to me by Ms Turnbull. The appellant opposes the appellants' appeal and in summary the appellant contends

that the Judge directed himself appropriately, and made a decision that was properly open to him.

11. Ms Turnbull submits that the FfT Judge has given appropriate reasons in his decision for allowing the appeal as he was satisfied that the appellant met all the requirements for the grant of entry clearance as a family visitor, and that the decision of respondent is contrary to Article 8.

### **Discussion**

12. The FfT Judge states at paragraph [46] of his decision that he was satisfied on the basis of the evidence, that the appellant was genuinely seeking entry clearance as a visitor to visit her family. He found that the application was compliant with the Rules and in the circumstances, he found that the decisions of the ECO and the Entry Clearance Manager were not proportionate to the legitimate aim of fair and firm immigration control. He therefore allowed the appeal.
13. In Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC), the Upper Tribunal held that the claimant's ability to satisfy the immigration rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control. Only in very unusual circumstances, likely to be limited to relationships of husband and wife, other close life partners, or parent and minor child, will a person other than a close relative, be able to engage Article 8(1) in an entry clearance case. The Judge of the FfT referred to that decision.
14. The task of the Judge was to determine whether the decision of the respondent was unlawful under s6 of the Human Rights Act 1998. That is, whether the decision was incompatible with the appellant's Article 8 rights. As set out in the decision of the Upper Tribunal in Adeji (visit visas - Article 8) [2015] UKUT 261 (IAC), the first question to be addressed in an appeal against a refusal to grant entry clearance

as a visitor where only human rights grounds are available, is whether Article 8 of the ECHR is engaged at all. If it is not, the Tribunal has no jurisdiction to embark upon an assessment of the decision under the rules and should not do so. If Article 8 is engaged, the Tribunal may need to look at the extent to which an appellant is said to have failed to meet the requirements of the rules, because that may inform the proportionality balancing exercise that must follow.

15. The Judge makes no reference in his decision to the leading authority on Article 8 claims; **R -v- SSHD ex parte Razgar [2004] UKHL 27**, and he does not adequately address the five stages. It is uncontroversial that the Tribunal must first determine whether Article 8 of the ECHR is engaged at all. If it is not, the Tribunal has no jurisdiction to embark upon an assessment of the remaining issues identified in **Razgar**. If Article 8 is engaged, the Tribunal should have gone on to consider the remaining four stages identified in **Razgar**.
16. In my judgement, it is clear from any reading of paragraphs [43] to [47] of his decision that the Judge fails to consider, let alone set out the evidential basis upon which there might be a finding that there exists a family life between the appellant and her sponsor and family in the UK. The authorities make it clear that family life is likely in this context to be limited to relationships of husband and wife, and other close life partners, and that only in very unusual circumstances, will a person other than a close relative be able to engage Article 8(1) in an entry clearance case.
17. Furthermore, even if family life were to exist, in my judgement, the Judge did not consider whether any interference will have consequences of such gravity as potentially to engage the operation of Article 8. In his decision, the Judge did not consider whether the family life could be respected in some other way, such as the appellant's family travelling to Pakistan, the family meeting elsewhere, or continuing to maintain any family life they have, in the way currently enjoyed.
18. In my judgement, the Judge did not properly consider the question of whether there existed a family life between the appellant and her sponsor and family in the

UK. As the Judge did not address his mind to the question of whether family life exists, unsurprisingly, the Judge failed to address what it is in the evidence, that establishes anything more than the emotional concern and affection that ordinarily exists between an adult and their parents and siblings. As the Court of Appeal noted in Kugathas, most people have close relations of whom we are extremely fond, and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone, that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8.

19. There can be no presumption of a family life; it all depends on the facts and I am satisfied that there is an error of law in the decision of the FtT Judge. It therefore falls to me to remake the Decision.
20. I have carefully considered the appellant's desire to visit the UK for a 26-day period to see her mother, brother and sister, but that does not equate to a right to do so. The appellant's sponsor attended the hearing before the FtT but there is no evidence of the strengths of the relationships and any dependency. In fact, to the contrary, the evidence was that the appellant was due to be married at the end of the year and she would be embarking upon her own life with her husband. There is no evidence before me, or any explanation as to why the relationship that the appellant maintains with her mother, brother and sister cannot continue to be maintained by their visiting Pakistan, such as to enable me to find that Article 8 is engaged, and that the refusal of entry clearance will have consequences of such gravity as potentially to engage the operation of Article 8.
21. On the evidence before the Judge, therefore, I am quite unable to find that Article 8 is engaged in this case. That disposes of the appeal before me which therefore stands dismissed.

## DECISION

22. The decision of First-tier Tribunal Judge Blake is set aside.

