Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/12552/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23 September 2014 (extempore judgment)	**On 2 October 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AISHA ABELHALIM HASSAN ABELHALIM ELBAKRY

Respondent

Representation:

For the Appellant: Mr T Whitwell, Senior Home Office Presenting Officer
For the Respondent: Mr T Chodha, counsel

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State who has been given permission to appeal the decision of the First-tier Tribunal who allowed an appeal on human rights grounds and under the Immigration Rules against a decision

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by an Entry Clearance Officer. The Entry Clearance Officer refused Miss Elbakry entry clearance as a visitor on 17 June 2013.

2. The core of the refusal was that Miss Elbakry had stated that she was single and unemployed, had no income, had provided evidence that she had graduated from the university in July 2012 and aside from her graduation certificate the Entry Clearance Officer had seen no evidence of her personal and financial circumstances in Egypt. He was not satisfied that she had demonstrated any ties that would merit her return to Egypt and this gave him cause to doubt her intentions. Given that, he was not satisfied that her intentions were as she had stated or that she intended to leave the UK on the completion of her proposed three week visit.

3. The judge allowed the appeal both under the Rules and under Article 8 of the European Convention on Human Rights. There is no appeal right under the Rules for visit visa entry clearance refusals. The judge erred in law in his finding under the Rules.

4. The judge said in paragraph 27 of the decision "I am persuaded that the appellant merits the benefit of the Immigration Rules HC 395 as amended as well as the provisions of the ECHR."

5. The judge has made no findings in his determination on the core elements upon which the entry clearance was refused. He sets out the evidence of Dr Dabash who was clearly, both from that evidence and from the documents that he submitted, an honourable person and whose word could be taken as legitimate and truthful.

6. Unfortunately that is not enough in an appeal of this nature. As I have said, there is no appeal under the Rules. The claimant appealed on human rights grounds. The judge considered Article 8 and purported to consider it in terms for the five step test set out in the case of Razgar. In paragraph 21 of the decision the judge he says: "Applying the Razgar test, one cannot escape the conclusion that the[claimant] is in a familial relationship."

7. That is not sufficient. The fact that the claimant is related by blood to her uncle and that her uncle is providing full financial support for this visit and that he has also on the basis of the evidence before the First-tier Tribunal Judge provided her with money as and when she requires it, does not result in a familial dependency such as is required to enable Article 8 to be engaged. There was simply inadequate evidence before the Entry Clearance Officer or the First-tier Tribunal to say that there was a Kugathas type dependency between Dr Dabash and his niece.

8. Much as it appears that this young woman should be able to visit her family here in the UK, there is no expectation of that. There is no right to do that. She has to meet the requirements of the Rules or there has to be a breach of her human rights to prevent that. Article 8 is not engaged on

the basis of the evidence that was before the Entry Clearance Officer. The determination of the First-tier Tribunal allowing the appeal under the provisions of Article 8 is an error of law. He has simply misinterpreted what is meant, quite possibly because of a general sympathy with this young woman.

9. Unfortunately, although urged by Mr Chodha to be bold, I cannot ignore the law and the law as it stands at the moment is that Article 8 is only engaged if there is a Kugathas type dependency between an adult and her sponsor. That simply does not exist on the evidence before the Entry Clearance Officer or the First-tier Tribunal. I am therefore satisfied that there is an error of law in the determination of Judge Majid who allowed the appeal. I set aside the determination to be remade.

10. There was some discussing before me as to whether this should be remitted to the First-tier Tribunal for it to be made again but Mr Chodha very properly agreed that in terms of the appeal if it did go back in front of the First-tier Tribunal, the Tribunal would have to look at the evidence as it was before ECO, albeit as amplified by evidence that appertained to that decision.

11. The evidence is that there is no Kugathas type dependency and as such Article 8 is not engaged to the extent that the decision is unreasonable or a breach of Article 8. Accordingly I dismiss the appeal.

12. This does not of course mean that the Ms Elbakry cannot apply again. Each application is dealt with by an Entry Clearance Officer on the basis of the information provided and, given the positive findings in relation to Dr Dabash in the First-tier Tribunal which are not challenged by the Secretary of State, then there is every prospect that an application by Ms Elbakry for entry clearance in the future will be considered independently by the Entry Clearance Officer on the basis of the information available at that time when a new application is put in.

Signed Date 1st October 2014

Upper Tribunal Judge Coker