



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

Appeal Number: VA/13328/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 19th September 2014

Promulgated

On 26th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE ENTRY CLEARANCE OFFICER - NEW DEHLI

Appellant

and

**MRS SANTOSH KUMARI GUPTA
(ANONYMITY NOT DIRECTED)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: Mr T S Choda, Counsel.

DETERMINATION AND REASONS

1. The respondent to this appeal is a female citizen of India who was born on the 16th July 1948. The Entry Clearance Office [ECO] appeals against the decision of the First-tier Tribunal (Judge Cohen) to allow her appeal against the decision to refuse her application for entry clearance as a family visitor.
2. The ECO refused the application under paragraph 41 of the Immigration Rules. This was because he concluded that the appellant had failed to prove that she met the requirement under that Rule that she intended to return to India within the period that she had stated in her application (2 months)

and, in any event, within a period of 6 months of her arrival in the United Kingdom.

3. The First-tier Tribunal found as a fact that the appellant *did* intend to return to India in accordance with her stated intentions, and allowed the appeal on the ground that the ECO's refusal of entry clearance was not in accordance with immigration rules.
4. Mr Choda acknowledged that the Tribunal did not in fact have jurisdiction to allow the appeal on that ground, but argued that it ought instead to be allowed on the basis that the decision was incompatible with the appellant's right to respect for family life under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. He emphasised that the appellant had a strong emotional attachment to her cousin in the United Kingdom, Ms Parveen Lata Doll. Ms Doll was in fact more like a daughter to her. Moreover, the appellant had a specific reason for wishing to come to the United Kingdom; namely, to attend a religious ceremony (known as 'Mundan') in celebration of the recent birth of Ms Doll's son.
5. Mr Whitwell reminded me that Article 8 does not provide the Tribunal with a general power to dispense with the requirements of the Immigration Rules, and submitted that there would need to be particularly compelling circumstances to engage its potential operation in a case of refusal to grant entry clearance for the purpose of visiting a family member in the United Kingdom. No such circumstances had been shown to exist in the instant appeal.
6. I prefer the arguments of Mr Whitwell. Although Article 8 may readily be engaged in a case where it is proposed to remove a person from the United Kingdom, I am not satisfied that it is engaged simply because a person has been refused entry clearance for the purpose of visiting a family member in the UK. A state is entitled to control immigration, and Article 8 cannot therefore be taken as imposing a general obligation to permit entry to its territory for the purpose of making a family visit. The decision did not prevent the appellant and Ms Doll from visiting one another, whether in the United Kingdom or in India. It merely prevented them from meeting in the United Kingdom on this particular occasion. There was nothing in the decision that prevented the appellant from making a fresh application and submitting further evidence to support her claim that she meets the requirements of the Immigration Rules. In the circumstances, it is unnecessary for me to consider whether the decision was proportionate in furtherance of a legitimate aim. However, had I been called upon to do so, I would have found that the decision was lawful and proportionate in furtherance of the legitimate aim of protecting the economic well being of the country through the consistent application of immigration controls.

Decision

7. The decision of the First-tier Tribunal to allow the appeal against refusal of entry clearance is set aside, and is substituted by a decision to dismiss that appeal.

Anonymity not directed.

Signed

Date

Deputy Judge of the Upper Tribunal