



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

Appeal Number: VA/13777/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

On 9 September 2014

Determination

Promulgated

On 19 September 2014

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

SAAD RUBEEN AHMAD SONOURY

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. The Entry Clearance Officer appeals against a decision of the First-tier Tribunal (Judge Maciel) allowing Saad Sonoury's appeal against a refusal to grant him entry clearance as a visitor under para 41 of the Immigration Rules (HC 395 as amended).
2. For convenience, I will refer hereafter to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant, together with his mother and grandmother, applied for entry clearance to visit the UK and, in particular, to visit the appellant's aunt and her family in the UK. On 7 July 2013, the appellant and his mother and grandmother were refused entry clearance. They appealed to the First-tier Tribunal. Following a hearing, on 30 April 2014 Judge Maciel allowed each of the appellants' appeals under the Immigration Rules.
4. The Entry Clearance Officer accepted Judge Maciel's decision in relation to the appellant's mother and grandmother. However, in relation to the appellant the ECO sought permission to appeal on the basis that in seeking to visit his aunt, the appellant was not seeking to visit a member of his family falling within the Immigration Appeals (Family Visitor) Regulations 2012 (SI 2012/1532) (the "Family Visitor" Regulations) and consequently he only had a limited right of appeal on human rights grounds by virtue of s.88A(1) and (3) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"). The Judge had, therefore, erred in law in allowing the appellant's appeal under the Immigration Rules and, as the appellant had not relied upon his human rights in particular Art 8 of the ECHR in his notice of appeal, there was no valid appeal before Judge Maciel in relation to the appellant.
5. On 3 June 2014, the First-tier Tribunal (Judge Parkes) granted the ECO permission to appeal on that ground. Thus, the appeal came before me.

The ECO's Submissions

6. At the hearing, the appellant was not represented and the sponsor did not appear. Mr Richards informed me that the ECO had issued the appellant, together with his mother and grandmother, entry clearance and they were, as he understood it, already in the UK. Nevertheless, Mr Richards invited me to determine the appeal; allowing the ECO's appeal and substituting a decision that there was no valid appeal before the First-tier Tribunal in relation to the appellant.
7. Notice of the hearing was sent to the appellant and his representatives. Having considered all the circumstances, I concluded that I should in the exercise of my discretion proceed to hear the appeal in the absence of the appellant's legal representatives and the sponsor in the interests of justice (see rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698)).

Discussion

8. Section 88A of the 2002 Act provides, so far as relevant, as follows:

“(1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of -

- (a) visiting a person or a class or description prescribed by Regulations for the purposes of this section, ...”

....

- (3) Subsection (1) -

- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in Section 84(1)(b) and (c),”

9. The effect of s.88A(1) is to limit the right of appeal under the Immigration Rules where an individual is refused entry clearance unless the application for entry clearance was sought for the purpose of visiting a person defined by reference to Regulations. Section 88A(3)(a) allows “the bringing of an appeal” notwithstanding s.88A(1) if the individual relies on human rights or race relations grounds (see s.84(1)(b) and (c) of the 2002 Act).

10. The relevant Regulations are the Family Visitor Regulations which set out the required relationships between an applicant for entry clearance and the “family member” in the UK. So far as relevant, reg 2 provides as follows:

“(1) A person (“P”) is of a class or description prescribed for the purposes of section 88A(1)(a) of the Nationality, Immigration and Asylum Act 2002 (entry clearance), if—

- (a) the applicant for entry clearance (“A”) is a member of the family of P; and
- (b) P’s circumstances match those specified in regulation 3.

(2) For the purposes of paragraph (1), A is a member of the family of P if A is the—

- (a) spouse, civil partner, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother or sister;
- (b) father-in-law, mother-in-law, brother-in-law or sister-in-law;
- (c) son-in-law or daughter-in-law; or
- (d) stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister;

of P.”

11. In this case, the appellant was not visiting a member of his family as defined in Reg 2(2). That list of family relationships does not include “aunt”.

12. Consequently, by virtue of s.88A(1) and (3), the appellant could only bring an appeal on human rights grounds. Thus, the Judge erred in law in allowing the appeal under the Immigration Rules.

13. The question is, therefore, whether the appellant in his notice of appeal and accompanying documents relied upon his human rights, in particular Art 8 of the ECHR so that he had a valid appeal on that ground.

14. Section 88A(3)(a) allows “the bringing of an appeal” on human rights grounds when an individual does not fall within the Family Visitor

Regulations. The validity of the appeal must be determined at the point at which the appeal is filed with the First-tier Tribunal. The appeal is either validly brought at that point in time or it is not. The reliance upon human rights grounds must, therefore, be at the point that the notice of appeal is filed, usually in the relevant section of the IAF2 form. It may well suffice, however, that human rights are relied upon in documents that accompany the form. The important point is that reliance upon human rights subsequent to the lodging of the notice of appeal will not satisfy s.88A(3) (a).

15. Further, I accept that it may not be necessary for an individual explicitly to refer to Art 8 of the ECHR. Nevertheless, it must be clear that the substance of an individual's human rights is relied upon when the notice of appeal is filed with the First-tier Tribunal. Particularly where an appellant is not legally represented, care must be taken to determine the substance, rather than merely looking to the form, of the grounds of appeal.
16. The form IAF2 at section D, "Grounds of your appeal" sets out the grounds on which the appellant relied as follows:
 - "1. The application for entry clearance was made with the Appellant's father (Mohammed Ahmad Sonoury), who was applying for entry clearance at the same time. The Appellant's father is proposing to pay for the visit. The Appellant's father's application was refused, and the Appellant's application was refused on the basis that no other reason had been put forward for the Appellant to travel without his father. The Appellant's father is appealing his decision on the basis that:
 - A. The Respondent failed to give any or adequate regard to the documentary evidence of the Appellant's father's business activities and earnings in Pakistan. The Respondent refers only to a blank letter headed 'Saad Traders' that was submitted with the application. The Respondent has failed to acknowledge the other documentation submitted with the application, including the tax returns, period of ownership of agricultural land with evaluation certificates, challan receipts, tax payments and expenses forms.
 - B. The Respondent failed to give any or adequate regard to the documentary evidence of the Appellant's father's savings. The Respondent states that the Appellant's father has not demonstrated that he has savings, but failed to take into consideration a letter from the Assistant Director of the National Savings Centre of 23 April 2013, with accompanying statement, confirming that the Appellant's father held Rs.2,000,500 (two million and five hundred rupees) as at 23 April 2013.
 - C. The Respondent failed to give any or adequate regard to the documentary evidence of the Appellant's father's assets. The Respondent states that the Appellant's son has not demonstrated that he has any assets in Pakistan. The Respondent has failed to acknowledge the sale deeds for the plots of land, the register of owners of land, challan forms confirming payments and evaluation certificates from architects confirming value of properties owned by Appellant's father.

- D. The Respondent failed to give any or adequate regard to the documentary evidence of the Appellant's father's dependents. The Respondent states that the Appellant's father stated that he has no dependents in Pakistan. The Respondent failed to consider the information provided in the letter of UKICS confirming that he has a mother and son [the Appellant] (who are applying with him to visit the UK), as well as a wife and two other children who will remain in Pakistan. The Respondent failed to consider the marriage and birth certificates submitted with the application.
2. The Respondent failed to give any or adequate consideration to the reasons in support of the Appellant's intention to return to Pakistan at the end of the visit and in particular that his family (including mother and two siblings) will remain in Pakistan, and that he attends school in Pakistan.
 3. The Respondent failed to give any or adequate consideration to the letter from the Immigration Counselling Service and documents provided by the Sponsor as to the financial support and accommodation that will be available to the Appellant throughout his stay."
17. Those grounds do not make any reference to Art 8 and, in substance, are directed towards the issues raised by the Entry Clearance Officer under para 41 of the Immigration Rules. Likewise, the covering letter from the appellant's legal representatives, Wolferstans, Solicitors dated 7 August 2013 makes no reference to Art 8 of the ECHR.
18. The appellant's grounds of appeal relied exclusively upon matters relevant to the Immigration Rules and placed no reliance upon his human rights, in particular Art 8 of the ECHR. Therefore, s.88A(3) of the 2002 Act did not apply and, as a result, there was no valid appeal before the First-tier Tribunal.

Decision

19. Thus, the First-tier Tribunal erred in law in allowing the appellant's appeal under the Immigration Rules. I set that decision aside.
20. I substitute a decision that there was no valid appeal before the First-tier Tribunal.

Signed

A Grubb
Judge of the Upper Tribunal