



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
VA/17836/2013

Appeal Numbers:

VA/17835/2013

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Determination  
Promulgated**

**On: 25<sup>th</sup> July 2014**

**On: 30<sup>th</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Natia Gelashvili  
Moris Gelashvili**

Appellants

**and**

**Entry Clearance Officer, Istanbul**

Respondents

For the Appellant: -

For the Respondents: Mr Duffy, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellants are both nationals of Georgia. They are sister and brother. They have permission to appeal against the decision of the First-tier Tribunal (Judge Higgins) who on the 17<sup>th</sup> April 2014 dismissed their linked appeals against decisions to refuse to grant them entry clearance as visitors. Those decisions had been served in Istanbul on the 21<sup>st</sup> August 2013.

2. The Appellants wished to come to the UK in order to see their father, Mr Boris Gelashvili. They did not however have a full right of appeal to the First-tier Tribunal pursuant to the Immigration Appeals (Family Visitor) Regulations 2012 because their father is not settled in the UK. He has a right of residence in the UK as the family member (spouse) of an EEA national exercising her free movement rights. As such they do not get a full right of appeal. They are however entitled to appeal to the First-tier Tribunal on human rights grounds, and this is what they did.
3. The reason for refusal was that the Appellants had not demonstrated that they were genuine visitors who intended to leave the UK at the end of the period stated by them. The ECO did not consider that they had submitted sufficient evidence of their social and economic ties to Georgia. They had said that they were supported by their mother and that they were studying but the ECO found there to be no evidence in respect of their mother's finances and was not satisfied that the Appellants' studies were "sufficiently established at this time". The ECO appeared to be concerned that in fact the Appellants only source of income was remittances from their father.
4. On appeal the First-tier Tribunal properly directed itself in respect of the limited right of appeal. The determination notes that the only possible basis to challenge this decision was on Article 8 grounds, in respect of the Appellants' family life with their father. The Judge was satisfied that the Appellants maintain a close relationship with him, though frequent telephone and Skype contact; he also notes their father's financial support for them. The Judge was further satisfied that the decision interfered with their family life and found the Article engaged. Having found that the decision was lawful in that it was taken in pursuit of the legitimate aim of the economic well-being of the country the determination addresses proportionality as follows:

"13. The judgement I have to make is whether the prejudice to the family life enjoyed by the Appellants was sufficiently serious to amount to a breach of Article 8 bearing in mind all the considerations in favour of enforcing immigration control strictly. The interests of the wider community have to be weighed against the prejudice to the Appellants' rights that exclusion was likely to have caused.

14. The requirements in paragraph 41 of the Rules that an applicant for entry clearance demonstrate that he is a genuine visitor and it is his intention to leave the UK are legitimate and proportionate restrictions on the freedom of foreign nationals to visit this country. *I am*

*satisfied that refusal of entry clearance on the basis that those requirements were not met was proportionate to the legitimate public end sought to be achieved. I therefore dismiss the appeals on the only ground it was open to the Appellants to bring them” [my emphasis].*

5. The grounds of appeal are drafted by the First Appellant. She complains that the First-tier Tribunal erred in law in failing to give any consideration at all to the “substantive documentary evidence provided together with the grounds of appeal” which included evidence concerning the Appellants’ mother’s business and funds, and evidence that the First Appellant not only enrolled at Tbilisi State Medical University to study medicine, but that she has been awarded the prestigious Presidential Scholarship to do so. The Appellants reiterate a point made in the grounds of appeal to the First-tier Tribunal, that they believe that they were discriminated against as citizens of Georgia.
6. The Respondent did not supply a Rule 24 response but in his submissions Mr Duffy agreed that if the failure to consider the evidence was material to the consideration of proportionality then this would be an error of law. He however submitted that the consequences of the decision for the Appellants could not be of such gravity for it to be disproportionate. Their father can visit them at home if he wishes.

### **Error of Law**

7. There is no evidence to suggest that either the Respondent or the First-tier Tribunal discriminated against the Appellants because they are Georgian. Although the First-tier Tribunal failed to engage with this ground of appeal this error is not material since the ground could not be made out.
8. The grounds in respect of the overall Article 8 assessment have more merit. Both Respondent’s and Appellants’ bundle contained evidence relating to the Appellants’ social and economic ties to Georgia. Without looking at any of that evidence it is difficult to see how the First-tier Tribunal could conclude, as it does at paragraph 14 of the determination, that the Appellants did not qualify for entry under paragraph 41 (and in the case of the Second Appellant paragraph 46A). Although they had no direct appeal under the Rules the issue of whether they in fact met the requirements for entry as visitors was plainly pertinent to the Article 8 balancing exercise, as the ratio of the determination demonstrates: the appeal was dismissed because

the Appellants did not meet the requirements of the Rules. That finding has simply been adopted from the refusal notice. The determination does not consider at all whether the ECO was right. If the Appellants could demonstrate that they were genuine visitors who intended to return to Georgia after three weeks, the Respondent could hardly demonstrate that their exclusion was somehow necessary to the public interest. The decision is set aside and I remit the matter to the First-tier Tribunal for remaking.

9. There was no appearance at the hearing before me: from the file it is not clear whether the Appellants' father was informed about the hearing. The Appellants may wish to consider whether they wish to now have an oral hearing. It may assist the next Judge who deals with this matter to hear from their father. If the Appellants do wish to have an oral hearing they need to pay an additional fee, and should contact the Tribunal administration in order to do so. Otherwise the appeal will be listed for paper disposal in the First-tier Tribunal not before 6 weeks from the date that this determination is promulgated.
10. In granting permission to appeal to the Upper Tribunal Judge Landes observed that the Appellants appear to qualify for entry clearance as family members under Regulation 7 of the Immigration (EEA) Regulations 2006. The evidence before me indicates that both their stepmother and father are working in the UK. If that remains the position then Judge Landes is correct. The Appellants may wish to consider making an application under the Regulations to avoid any further delay.

## **Decisions**

11. The decision of the First-tier Tribunal contains an error of law and it is set aside.
12. Having regard to the extent of judicial fact finding required I direct that the matter is to be re-made in the First-tier Tribunal.
13. I make no direction as to anonymity. None was in place before the First-tier Tribunal and I was not asked to make one in the Upper Tribunal.

Deputy Upper Tribunal Judge Bruce  
25<sup>th</sup> July 2014