



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

Appeal Number: VA/18270/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court, Birmingham

Determination

On 25th November 2014

Promulgated

On 8th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

**IRFAN MOHAMMAD IRFAN
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: No legal representation

DETERMINATION AND REASONS

Introduction and Background

1. The Entry Clearance Officer (ECO) appeals against a determination of Judge of the First-tier Tribunal Quigley promulgated on 30th June 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the claimant.
3. The claimant is a male citizen of Pakistan born 23rd March 1975 who applied for entry clearance to the United Kingdom as a family visitor. He wished to visit his cousin Raja Babar Nawaz to whom I shall refer as the Sponsor, for a period of six weeks.
4. The application was refused on 3rd September 2013 the ECO refusing entry clearance with reference to paragraph 320(7A), and paragraph 41(i) and (ii) of the Immigration Rules. The ECO contended that the claimant had

submitted a false document, and did not accept that he was genuinely seeking entry as a visitor or that he intended to leave the United Kingdom.

5. The claimant appealed to the First-tier Tribunal. The decision was reviewed by an Entry Clearance Manager and it was accepted the claimant had not submitted a false document. Therefore the ECO no longer relied upon paragraph 320(7A) but maintained the refusal under paragraph 41(i) and (ii). The claimant had referred to human rights in his Grounds of Appeal and the Entry Clearance Manager did not accept refusal of entry clearance breached Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
6. The appeal was decided by Judge Quigley on the papers without an oral hearing on 16th June 2014. The judge noted that the claimant had only a limited right of appeal against refusal of entry clearance, and that the only right of appeal available to the claimant was the contention that the ECO's decision was unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the claimant's Convention rights.
7. The judge however went on to allow the appeal under the Immigration Rules, and although he did not consider human rights in the determination, indicated that the appeal was also allowed on human rights grounds as the ECO's decision was not in accordance with the law.
8. The ECO applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had erred in allowing the appeal under the Immigration Rules, and had not at any point in the determination identified what, if any, human rights issue was engaged in the appeal. Therefore it was contended that the judge had materially erred in law.
9. Permission to appeal was granted by Judge of the First-tier Tribunal De Haney who found the grounds arguable.
10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law.

The Upper Tribunal Hearing

Error of Law

11. The Sponsor attended the hearing on behalf of the claimant although he had not been appointed as a representative. The Sponsor spoke with the assistance of an interpreter in Urdu and I was satisfied that there was no difficulty in communication.
12. The Sponsor confirmed that he had seen the First-tier Tribunal determination, and the grounds seeking permission to appeal, and the grant of permission. He indicated that he understood that the initial purpose of this hearing was to establish whether or not the First-tier Tribunal had erred in law. I explained to him that I would hear

submissions from Mr Mills on behalf of the ECO, and then afford him the opportunity of making any representations that he thought appropriate.

13. Mr Mills relied upon the grounds contained within the application for permission to appeal pointing out that although the judge recognised that there was a limited right of appeal, the judge had not considered human rights but had considered the appeal under the Immigration Rules when he did not have the jurisdiction to do so.
14. The Sponsor indicated that he understood the submissions made by Mr Mills, which I nevertheless explained to him. The Sponsor indicated that he did not wish to say anything in response, as to whether or not the First-tier Tribunal had erred in law.
15. I decided that the First-tier Tribunal determination must be set aside because of a material error of law.
16. There was a limited right of appeal open to the claimant, because his application for entry clearance had been made after 25th June 2013 when section 52 of the Crime and Courts Act 2013 came into force, which restricted appeal rights to grounds relating to racial discrimination or breach of human rights, when appealing decisions to refuse entry clearance as a visitor.
17. The claimant had raised human rights in his Grounds of Appeal, but the judge considered and allowed the appeal under the Immigration Rules and therefore exceeded his jurisdiction. The error was material because the judge did not consider the issue of human rights.
18. I therefore set aside the decision of the First-tier Tribunal with no findings preserved.

Re-making the Decision

19. Both the Sponsor and Mr Mills indicated that they were ready to proceed so that the decision could be re-made. I decided that it was appropriate to proceed and re-make the decision rather than remit to the First-tier Tribunal, having considered Practice Statement 7.2 of the Senior President's Practice Statement.
20. Mr Mills indicated that he had nothing further to add to the submissions that he had made in relation to error of law, and contended that the appeal must be dismissed.
21. The Sponsor stated that the claimant was a genuine visitor who simply wished to come to the United Kingdom to meet his relatives. The Sponsor stated that there was no doubt about the claimant's intentions and he said that there was no reason why the appeal should be restricted to human rights. The Sponsor indicated that the claimant had produced all documents and given an accurate account of his circumstances and therefore the appeal should be allowed. The Sponsor confirmed that he visited the claimant in Pakistan.

22. I reserved my decision.

My Conclusions and Reasons

23. Although the claimant has mentioned human rights in paragraph 15(xviii) of his appeal he has simply referred to section 6 of the Human Rights Act 1998, and has not adequately explained which of his human rights he claims have been breached by refusal of entry clearance. In my view the claimant must be relying upon Article 8 of the 1950 Convention which I set out below;

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

24. As this is an appeal against refusal of entry clearance, I must consider the circumstances appertaining at the date of refusal, that being 3rd September 2013. In considering Article 8 I have followed the five stage approach advocated by the House of Lords in Razgar [2004] UKHL 27 which indicates that the following questions should be considered;

- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- (3) If so, is such interference in accordance with the law?
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

25. Although the Razgar guidelines relate to a removal case, I am satisfied that they can apply to an entry clearance application. The burden of proof is on the appellant to show that he has established a family or private life and that refusal of entry clearance would be an interference with his right to respect for that private or family life.

26. I do not find that the claimant has established any form of private life in the United Kingdom. His private life is in Pakistan. I do not find that the claimant has established a family life with the Sponsor or any of his other relatives in the United Kingdom. I have taken into account all of the documentation submitted on behalf of the claimant.

27. In relation to family life with the Sponsor, the claimant and Sponsor do not live together. They are both adults and they live with their own family members who are resident in Pakistan and the United Kingdom

respectively. The Court of Appeal decided in Kugathas [2003] EWCA Civ 31 at paragraph 25 that family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties. In this case, the claimant and Sponsor are not related as parents or siblings, they are cousins. They are not dependent upon each other and they have not established family life that would engage Article 8. In making this finding I take into account paragraph 28 of AG (Eritrea) [2007] EWCA Civ 801 in which it was stated;

It follows, in our judgment, that while an interference with private or family life must be real if it is to engage Art.8(1), the threshold of engagement (the 'minimum level') is not a specially high one.

28. As I have found that the claimant has not established a family or private life that would engage Article 8, there is no need for me to consider the third, fourth and fifth questions set out in Razgar.
29. The claimant also mentioned discrimination in the grounds of appeal in paragraph 15(xix) stating that the ECO's decision was discriminatory. The claimant did not go on to give any satisfactory reasons as to why it was contended that the decision was discriminatory or in what way it was discriminatory.
30. Having considered all the evidence submitted by the claimant, I find no evidence of discrimination in the decision. The ECO applied the Immigration Rules and concluded that paragraph 41 was not satisfied and gave reasons for that finding. Parliament has decided that there should be no full right of appeal against a decision such as this, and while I understand that the claimant feels unhappy at not having his case considered by an independent Tribunal, I am afraid this Tribunal only has jurisdiction to consider whether there has been a breach of human rights or racial discrimination, and my conclusion on both those grounds, is that there has not and therefore the appeal of the ECO against the decision of the First-tier Tribunal succeeds, and the appeal of the claimant must be dismissed.

Decision

The determination of the First-tier Tribunal contained an error of law and was set aside.

I substitute a fresh decision.

The claimant's appeal is dismissed.

Anonymity

The First-tier Tribunal made no anonymity direction. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 1st December 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The claimant's appeal is dismissed. There is no fee award.

Signed

Date 1st December 2014

Deputy Upper Tribunal Judge M A Hall