IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/18928/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 29th September 2014	**On 7th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

ENTRY CLEARANCE OFFICER – ABU DHABI

Appellant

and

MISS MOONA FIRDOUS

Respondent

Representation:

For the Appellant: Ms K Pal, Home Office Presenting Officer
For the Respondent: Ms L Mair, instructed by Pro Legis Solicitors

DECISION AND REASONS

1. An application for permission to appeal was made by the Entry Clearance Officer but nonetheless for the purposes of this decision I shall refer to the parties as they were described before the First Tier Tribunal that is Ms Firdous as the appellant.

2. The appellant is a citizen of Pakistan born on 30th October 1985 and she applied for entry clearance to visit her brother Khalid Hameed in the United Kingdom.

3. Her appeal was refused by the Entry Clearance Officer on 1st October 2013. The appellant had been employed as a teacher since 2011 with a monthly income of £40.90 and was also supported by her brother in the UK. The appellant wished to visit the UK at a cost to herself personally of £300 to see her brother, his wife and their two young children.

4. The Entry Clearance Officer refused the appeal on the basis that it was not considered she was a genuine visitor or that she would return at the close of her visit.

5. The appellant appealed on the basis of the restricted grounds of appeal and human rights on the grounds further to Section 84(1)(c) of the Nationality, Immigration and Asylum Act to the effect that she has a family life with her brother. Judge Robson heard the appeal on 4th July 2014 and allowed the appeal finding at paragraph 42 that:

> *"The first issue is whether or not the appellant does have family life in the United Kingdom. It is argued on behalf of the respondent that the family life that the appellant enjoys is with her mother and indeed reference has been made to the mother and the appellant's interdependency. However I find there is some degree of family life being conducted between the appellant and her brother which from the circumstances set out below cannot be conducted in Pakistan."*

6. The respondent made an application for permission to appeal as the judge gave no further reasoning at paragraph 42 as to a finding of a family life. Permission to appeal was granted by First Tier Tribunal Judge Levin on the basis that the judge's finding that there was family life constituted a material error of law as it was inconsistent with the judgment in the Court of Appeal in **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31**and failed to give adequate reasons.

7. In the skeleton argument placed before me Ms Mair submitted that the line of authorities which included **Kugathas** and **S v UK (1984) 40 DR 196** were distinguishable because they referred to the family life between adults for the purposes of immigration settlement and in this case the visit was for the purpose of family visit. She argued that the extended right to family life was recognised in for example the case of **SB (Pakistan) [2009] EWCA Civ 834 2010 INLR** where at paragraph 41 Aikens LJ stated "the basic proposition that a person's family or extended family is the group on which many people most heavily depend socially, emotionally and often financially".

8. In addition Ms Mair referred to **Singh v ECO New Delhi [2004] EWCA Civ 1075** where Mr Justice Munby at paragraph 58 stated:

> *"Thirdly there is the relationship between siblings. And fourthly there are relationships within the wider family: for example the relationships between grandparent and grandchild, between nephew and uncle, between cousins. Each of these relationships can in principle give rise to family life within the meaning of Article 8."*

9. I find that the key in the above is the word "in principle give rise to family life". There is no doubt that it cannot be said that family life cannot be created between two adult siblings but the sliding scale which Ms Mair indicated that I should accept, suggests that where a visit is contemplated a refusal because it is a short visit it more likely to be disproportionate. However the fact is that family life must still be established.

10. Mr Justice Munby at paragraph 72 of **Singh v ECO** stated "the Strasbourg Court has never sought to identify any minimum requirements that must be shown if family life is to be held to exist. That is because there are none". This however does not seek to establish a family life protected right under Article 8 where there is none and each case must be established on the circumstances.

11. Even though the respondent has recognised that there are family visits or a satisfactory family life alternative to residing together in the same country, that presupposes that there is a family life and that is the question that is being considered in this case before the question of interference or proportionality is considered.

12. In **Singh v ECO** it was also stated that:

"The considerations that bear upon the question of whether there is a family life as between two childless cohabiting adults (perhaps of the same sex) are not the same as those that bear upon the question of whether there is family life as between say an uncle and his nephew."

13. The argument put forward was that the brother and sponsor last saw his sister in 2011 and that he could not travel to Pakistan to see his sister with the family because one of his children was autistic and the other had emotional and behavioural difficulties. The fact is that the appellant has had very little physical contact with her brother over the years, albeit they kept in contact by modern methods, and in her own witness statement stated that she lives with her mother in Pakistan. Part of her case was that she would return to Pakistan because she did not wish to leave her mother.

14. **Kugathas** accepted that the family life does not need to be centred within the UK but the genuineness of the family bond must be considered. This is not the case where the sister and the brother have been living together for years. They have not. There is a biological connection but only a distant practical relationship between them. Despite the fact that the brother in the UK gives the sister some financial benefit I do not accept that this can, in these circumstances, establish a family life. The appellant in her application form stated that she was fully reliant financially on her brother but at the same time gave details that she had full time work as a teacher and earned RS7,000 per month. In her witness statement she confirmed that she was line for promotion. Although she was diagnosed with diabetes she is treated in Pakistan.

15. The sponsor chose to leave Pakistan in 2002 and his sister was left behind and since that time the sister has lived with her mother. Both the appellant and the sponsor have effectively developed their own family lives in independent units. There was

no indication that the children even though they have autism and emotional behavioural difficulties have established a close bond with the appellant, rather that what was being denied was the opportunity to develop a bond, and in these circumstances I cannot see that the best interests of the children would be effected thereby introducing a family life between the appellant, her brother and the children.

16. Indeed in the witness statement of the sponsor he states "being the youngest of the family she is very close to my mother and at the outset she was reluctant to come for a visit as this would mean leaving our mother". This does not suggest a family life with the sponsor. I can accept that taking family of six to see the appellant would be expensive and travelling with an autistic child would be difficult but having found that there is no family life which is protected by Article 8, I am not persuaded that the question of interference comes into play. Even if it did there are modern means of communication through which the appellant and her brother can communicate. I note that the notice of appeal was sent out in August and at the date of the decision the sponsor was in Pakistan. It is therefore possible for him to maintain his links with the appellant.

17. It is suggested that modern means of communication are unsuitable given the communication difficulties of the children but I find that there is no family life between the appellant and her nephews with whom she has had very limited contact and certainly no economic or emotional dependence. There is I accept a biological link between them but this does not create family life in and of itself. I considered the psychological report on Shujah, one of the nephews, and have considered the children's best interests. First, I do not find the children will be affected because they are young, have not lived with the appellant and their interests lie with the mother and family with whom they live. Secondly, no report was produced with regard Wahab who was stated to have autism, and thus no confirmation that he could not communicate with his aunt with the assistance of his parents. Further, Shujah attends mainstream primary school and thus his communication difficulties, particularly on reading the report produced, are not such that he would be unable to communicate via skype or telephone. Thirdly the skeleton argument presented the case that the children could not travel. The psychological report from The City of Bradford Children's Services dated December 2013, referred to concerns over Shujah's development and, it stated, owing to 'extended leave in Pakistan his attendance was poor'.

18. For the above reasons I do not find that family life has been established, that any interference by the refusal has consequences of such gravity and further I find that the refusal is not disproportionate as it is clear that the family connection is being continued by sporadic family visits from the sponsor's family

19. At the hearing before me I invited further evidence on the basis that an error of law was found and was asked by Ms Mair to preserve the findings of Judge Robson. I find that the judge has materially erred in law in finding that family life existed when he had not had regard to the relevant law and further gave inadequate reasons for finding that the respondent's decision was of sufficient gravity to potentially engage

Article 8. I find there was an error in the decision and I preserve the first two sentences of paragraph 47 of the determination of Judge Robson only with reference to the sponsor's oral evidence. For the reasons given above I dismiss the appeal on the basis that the appellant has not established any protected right to family life with which the respondent can interfere, that any interference if there was family life is proportionate. I therefore set aside the decision of Judge Robson. I remake the decision and refuse the appeal.

Order

The appellant's appeal is dismissed on Article 8 grounds.

Signed Date 5th November 2014

Deputy Upper Tribunal Judge Rimington