



**The Upper Tribunal  
(Immigration and Asylum Chamber)  
VA/19525/2013**

**Appeal number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination**

**On December 5, 2014**

**Promulgated**

**On December 9, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**Mr Tayel Hossameldin Mostafa Abdelmoteleb  
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Walker (Home Office Presenting  
Officer)

For the Respondent: No attendance

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born February 15, 1988 is a citizen of Egypt. On September 23, 2013 he submitted an application for entry clearance as a family visitor. The respondent refused his

application under the Immigration Rules on November 4, 2013 and limited his right of appeal to the grounds set out in Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002.

3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 2, 2013. The respondent reviewed those grounds of appeal on February 26, 2014 but maintained the original decision. On September 8, 2014 Judge of the First Tier Tribunal Metzger (hereinafter referred to as the "FtTJ") heard his appeal. He allowed the appeal under the Immigration Rules in a determination promulgated on September 23, 2014.
4. The respondent lodged grounds of appeal on September 25, 2014 and on October 31, 2014 Judge of the First-tier Tribunal Ransley granted permission to appeal finding it arguable the FtTJ had erred because there was no right of appeal under the Immigration Rules because the original application was made after June 25, 2013 and Section 52 of the Crime and Courts Act 2013 restricted such rights of appeal to the grounds in section 84(1)(b) and (c) of the 2002 Act.
5. There was no Rule 24 response filed by the appellant and the matter came before me on the above date. Neither the sponsor nor her solicitor was in attendance. A notice of hearing had been sent to the solicitors, sponsor and appellant on November 12, 2014. In the absence of any explanation for their non-attendance I proceeded to hear the respondent's application.

#### **SUBMISSIONS ON ERROR OF LAW**

6. Mr Walker relied on the grounds of appeal and submitted the FtTJ had erred by allowing the appeal under the Immigration Rules. There was no power to consider the appeal under the Immigration Rules and for the reasons set out in the grounds he submitted there was a material error.

#### **MY FINDINGS ON ERROR IN LAW**

7. As the application was submitted on or after June 25, 2013 there is only a right of appeal under section 84(1)(c) of the 2002 Act as Section 52 of the Crime and Courts Act 2013 removed the right of appeal except on human rights or race relation grounds.
8. By allowing the appeal under the Rules the FtTJ materially erred. I therefore allow the respondent's appeal and set aside the original decision.
9. I then asked Mr Walker what I should do with this case as the FtTJ had made no findings on human rights grounds.

10. He submitted that I could either find there was no appeal before me or simply deal with the article 8 claim on its merits. If the latter course of action was taken he submitted the appellant could not meet the requirements of Appendix FM for entry clearance as a partner as he did not meet Section E-ECP 2.10 of Appendix FM and he also failed to satisfy paragraph 276ADE HC 395. The appellant had failed to demonstrate it would be disproportionate to refuse him entry as his only reason for wanting to come here was to see the country and meet his wife's family. He reminded me that the couple lived together in Egypt and had done so for sometime and they now had a child who would also be going to live with them in Egypt and already had a nursery place booked.

### **DECISION ON HUMAN RIGHTS CLAIM**

11. As this was an application that should only have been considered if human rights had been raised in the original grounds of appeal I firstly referred to those grounds. The reasons advanced were:
  - a. He wanted to come here to spend time with his wife who had returned to the United Kingdom to give birth.
  - b. The refusal meant the sponsor had to travel back to Egypt to ensure their family and private life were not hindered.
  - c. He met the Rules.
12. I accept the appellant tenuously raised human rights in the grounds but I am also satisfied, having considered the FtTJ's determination and notes of hearing, that the appellant did not advance any argument under ECHR legislation. He was represented by counsel at that hearing albeit counsel perhaps should have known there was no right of appeal (as of course should the respondent's counsel) under the Immigration Rules.
13. There was nothing before the FtTJ that demonstrated they could meet the Immigration Rules for article 8 purposes or article 8 ECHR. The statements and evidence was all about meeting the Immigration Rules.
14. In EG and NG (UT rule 17: withdrawal; rule 24: scope) Ethiopia [2013] UKUT 00143(IAC)
  - "45. Although section 11 of the 2007 Act extends the right of appeal (with permission and subject to excluded decisions) to an appeal "on any point of law" save for extraordinary cases, a party will not normally be given permission to appeal, and will not be expected to seek permission to appeal,

a point that would not make a material difference to the outcome. However that party might still have very good reasons to respond to an appeal by arguing that the First-tier Tribunal should have dismissed or allowed the appeal for reasons other than those given in the Determination or rather for grounds which were unsuccessful in the proceedings that are the subject of the appeal.


46. Suppose a man seeks entry clearance as a husband and suppose that the Entry Clearance Officer finds that he has not shown that he can be either accommodated or maintained in accordance with the rules. A First-tier Tribunal Judge may decide, arguably wrongly, that the husband can satisfy the accommodation requirements but not the maintenance requirements. In that event the judge would dismiss the appeal. The Entry Clearance Office would have no interest in appealing. He is content with the decision to dismiss the appeal. The husband however may want to challenge the decision. He might want to argue that the decision that he did not satisfy the maintenance requirements was wrong in law and he may be given permission to appeal. In that event the Entry Clearance Officer may well want to argue not only that the decision that the husband did not meet the maintenance requirements was right but that the decision that he did meet the accommodation requirements was wrong. In short, without wanting to appeal the decision, the Entry Clearance Officer may want to rely on a ground that failed before the First-tier Tribunal. Rule 24 permits the Entry Clearance Office to give notice of his intention to raise such a point in a reply. In short rule 24 does have a meaning that does not depend on Ms Dubinsky's premise and we reject the construction that she urged on us. Rule 24 does not create a right of appeal to a party who has not asked for permission to appeal. Rule 24 is not in any way to do with seeking permission to appeal and it is not an alternative to seeking permission where permission is needed. It is to do with giving notice about how the respondent intends to respond to the appeal that the appellant has permission to pursue. If a respondent wants to argue that the First-tier Tribunal should have reached a materially different conclusion then the respondent needs permission to appeal."

15. Having allowed the respondent's appeal in respect of the decision under the Immigration Rules I am faced with a determination that is silent on the article 8 claim and whilst there has been no cross appeal for permission I take the view

that as the FtJ should have dealt with the appeal only on human rights grounds I should address that issue.

16. I have considered the appeal outside of the Rules because firstly the appellant has no appeal under the Immigration Rules and secondly the law gives a right of appeal under the Human Rights Act 2008.
17. Following the principles in Razgar [2004] UKHL 00027 I accept there is family life between the appellant and sponsor as they are husband and wife. However, the decision to refuse the appeal under the Immigration Rules is not an interference with that right because the sponsor and appellant both live in Egypt. The appellant wanted to come and see her and her family and see the country but that can hardly be said to infringe his right to family life.
18. I therefore dismiss the appeal under ECHR legislation.

### **DECISION**

19. There was a material error of law I set aside the original decision and dismiss the appeal under the Immigration Rules.
20.  Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

As the respondent's application succeeded I reverse the fee award.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis