



IAC-FH-NL-V1

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

Appeal Number: OA/00292/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 August 2015**

**Decision & Reasons Promulgated  
On 7 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**MISS ANTERPREET KAUR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Balroop, Counsel instructed by Malik Law Chambers  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**The History of the Appeal**

1. The Appellant, a citizen of India, applied at the age of 17 for entry clearance to the UK to join her mother. Her application was refused. Her ensuing appeal was heard by Judge Meah sitting at Taylor House on 4 December 2014. Both parties were represented, the Appellant by Counsel instructed by her former solicitors. In a determination of 7 December, promulgated on 15 December, 2014, her appeal was dismissed under the Immigration Rules and on Article 8 human rights grounds.

2. The Appellant sought permission to appeal. As subsequently supplemented by procedural directions, this was granted on 4 March 2015 by Judge Baker in the following terms:
  - “1. The appellant, an Indian national born on 29 November 1996, seeks permission to appeal the decision of Judge S Meah promulgated on 15 December 2014.
  2. The judge had dismissed her appeal against refusal of entry clearance as a child of her mother who was living in the United Kingdom with limited leave to remain until July 2017. That application had been refused on 22 November 2013 because the Entry Clearance Officer was not satisfied the sponsor had had sole responsibility for the appellant’s upbringing or that her exclusion from the UK was undesirable. The Entry Clearance Officer was also not satisfied that the appellant would be adequately maintained and accommodated in the United Kingdom without recourse to public funds.
  3. There is merit in the grounds which correctly note that the judge at paragraph 24 of the decision followed **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640**, dismissing the appellant’s Article 8 ground of appeal solely on the basis that the Immigration Rules were a ‘complete code’ and there was no need to separately consider Article 8.
  4. That is no longer law as it cannot stand following the Court of Appeal’s judgment in **MM (Lebanon) v SSHD [2014] EWCA Civ 985**. It is arguable that this was a material error even having regard to the statement at paragraph 25 by the judge that the same conclusion would have been reached had a detailed assessment of Article 8 been undertaken.
  5. This is having regard to the statement that there is limited family life at best between the appellant and the sponsor in the United Kingdom and the sponsor’s family in the United Kingdom and that this can easily be maintained through the usual modern means of communication. It is arguable that, as submitted in the grounds, for example the statement at paragraph 25 does not address the detail of close links between the appellant and her step-siblings noting in paragraph 16 that they had visited India for three weeks in 2013 and four weeks in 2014 and ‘are all very close to each other as a result’.
  6. The grounds have merit.”
3. On 20 March the Respondent wrote to the Tribunal stating that, without the determination nor the permission application, it was not possible to submit a Rule 24 response. Such a response was subsequently submitted within the Respondent’s skeleton argument sent to the Tribunal before the hearing.
4. The Sponsor, who is the Appellant’s mother, together with two other people, attended the error of law hearing. This took the form of submissions, which I have taken into account, together with the permission application, the Rule 24 response and the skeleton argument of the Respondent. I reserved my decision.

## Determination

5. At paragraphs 20 and 21 of the decision, the judge explained why the Appellant was unable to meet the Immigration Rules. At paragraph 22 he stated that the Appellant's representative had submitted that the Appellant had a freestanding Article 8 appeal. In paragraphs 23 and 24, the judge concluded that he did not. In paragraph 25 he wrote that, even if he were wrong, such an appeal would not succeed.
6. The permission application is a lengthy and erudite excursus through the developing Article 8 jurisprudence. Its essence is that, in citing at paragraph 24 **Gulshan [2013] UKUT 00640**, the judge had relied upon law already overtaken in **MM (Lebanon) v SSHD [2014] EWCA Civ 985**. However the judge did extract from this case at paragraph 23.
7. The issue is whether the judge was correct to deny the Appellant a freestanding right of appeal under Article 8. The permission application submits that he was not. The Respondent replies that he was, especially in the light of **SS (Congo) [2015] EWCA Civ 387**, especially at paragraph 40, and **SM (Somalia) [2015] EWCA Civ 223**, especially at paragraphs 5, 15 and 17.
8. The judge gave his reasons for concluding that the Appellant did not have a freestanding right of appeal on Article 8 human rights grounds. However, at paragraph 25, he considered this right of appeal on the basis that the Appellant did have it. He took into account the evidence summarised in the determination and the statutory provisions of Section 117 introduced into the 2002 Act by the 2014 Act, concluding that the decision was in that event proportionate and necessary in the interests of maintaining effective immigration control.
9. For the Appellant, Mr Balroop reviewed the factors which, he submitted, were cumulatively exceptional, arguing that the judge had not sufficiently taken them into account. However a holistic reading of the decision, which reviews all of these factors, does not substantiate that submission.
10. I conclude that the decision does not reflect an error of law, and is accordingly upheld.

## Notice of Decision

11. The original decision does not contain an error of law, and is upheld.
12. No anonymity direction is made.

Signed

Dated: 4 August 2015

Deputy Upper Tribunal Judge J M Lewis