



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

Appeal Numbers: OA/04534/2014
OA/04535/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 13 April 2015

**Decision & Reasons
Promulgated
On 30 April 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**AYESHA SADAF
MUBASHER AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellants: Mr Ghani, Ismail & Ghani Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Ayesha Sadaf and Mubasher Ahmed, are both over the age of 18 years and are citizens of Pakistan. The appellants appealed against a decision of the respondent, dated 4 March 2014, to refuse to grant them entry

clearance to the United Kingdom for the purposes of family reunion as the children of a refugee. The sponsor is the father of both appellants. He is Muzafar Ahmed and he has been granted refugee status in the United Kingdom on the basis of his Ahmadi faith. Granting permission in the Upper Tribunal, Judge Reeds, noted that,

The grounds raise an issue of law as to how, in the circumstances of these appellants outside the UK seeking entry clearance, [they] can rely in part upon persecutory treatment in the country of origin where the findings of fact should have been made in that respect and if so how this would affect any balance on proportionality.

It is common ground between the parties that the appellants cannot satisfy the Immigration Rules for entry clearance because they are both aged over 18 years. The grounds of appeal to the First-tier Tribunal refer to incidents in which the appellants were allegedly harassed on account of their Ahmadi faith in Pakistan.

2. The judge, following *Gulshan (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC)*, did not consider that there were particularly compassionate or compelling circumstances to require her to carry out an analysis under Article 8 ECHR having dismissed the appeal under the Immigration Rules. She acknowledged that the appellants “have each other to rely on for encouragement and assistance whilst they forge their careers and make their own way in life” [27]. She also accepted that there had been “disruption and change in the fortunes of the family unit”. She believed, however, that family life would continue albeit at a distance between the appellants and their parents now living in the United Kingdom. She also accepted that “life for the appellants in Pakistan is difficult and challenging”.
3. The question is whether those observations were adequate, in all the circumstances, to enable the judge to make a sound decision as to the appeal on Article 8 ECHR grounds. I consider that they were sufficient. The judge was not being asked to determine this appeal on Refugee Convention or Article 3 ECHR grounds; the notice of appeal makes it clear that the appeal was brought under Article 8 ECHR. The grounds of appeal make assertions regarding an alleged incident in which the appellants were “subject to an attempted kidnapping.” These and other assertions in the grounds of appeal are nothing more than that; there was no actual evidence from the appellants themselves before the First-tier Tribunal regarding those alleged incidents and I consider that there was no obligation upon the judge to make findings as to the truth of the assertions. I find that the judge has adequately considered the physical circumstances of the appellants in Pakistan; the judge’s reference to those circumstances being “difficult and challenging” is clearly a reference to the difficulties of being an Ahmadi in a country where adherence of that faith may be viewed by the majority with suspicion and hostility. I find the judge has done all that was required of her in the Article 8 proportionality assessment and that there was no basis in the evidence before her upon

which the she could have found that the incidents described in the grounds of appeal actually took place. Having properly balanced the various factors in her analysis, I find that it was open to the judge to conclude that the circumstances of these young adults were compelling or compassionate circumstances such that leave to enter should be granted to them outside the Immigration Rules.

4. Before me, Mr Ghani, for the appellants, submitted the judge should also have made findings on all the elements of paragraph 352D of the Immigration Rules or that she should have accepted that all the requirements of that paragraph (other than as to the age of the applicants) have been accepted by the Entry Clearance Officer. I disagree. Given the ages of the appellants, there was no need for the Entry Clearance Officer to do more than to reject the applications under the Immigration Rules on the basis that the applicants were too old. I do not accept that the notices of refusal of entry clearance expressly or implicitly acknowledge that the appellants satisfied the other requirements of the Immigration Rules or that the judge arguably erred in law by failing to engage with paragraph 352D other than to observe that the appellants were too old to qualify.
5. I consider the judge has supported her analysis of Article 8 ECHR with adequate reasoning and that she has reached a decision which was plainly available to her on the evidence. Her conclusion that there were no special ties between the appellants and their parents in the United Kingdom which would set this case apart from others in which adult children and their parents find themselves living in different countries.

NOTICE OF DECISION

These appeals are dismissed.

No anonymity direction is made.

Signed

Date 28 April 2015

Upper Tribunal Judge Clive Lane