



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

Appeal Numbers: VA/00002/2014  
VA/00001/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4 February 2015**

**Determination**

**Promulgated**

**On 17 February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

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

Appellant

**and**

**MRS AMBER MUHAMMAD ISMAIL (FIRST RESPONDENT)**

**MISS AYESHA ISMAIL (SECOND RESPONDENT)**

**(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondents: None

**DECISION AND REASONS**

1. The respondents in this case are Mrs Amber Ismail Muhammad whose date of birth is 30 December 1965 and her daughter, Miss Ayesha Ismail, whose date of birth is 10 June 1991. They are both citizens of Pakistan. I shall refer to the respondents as the appellants as they were before the First-tier Tribunal.
2. The sponsor in this case is Muhammad Ismail. He is the son of the first appellant and the sister of the second. The appellants made an

application for entry clearance as visitors on 24 November 2013 and their applications were refused by the ECO in Abu Dhabi in decisions of 3 December 2013. The applications were refused under paragraph 41 of the Immigration Rules.

3. The appellants appealed and their appeal was allowed under the Immigration Rules by Judge of the First-tier Tribunal Keane in a decision that was promulgated on 18 November 2014 following a hearing at Taylor House on 7 November 2014. The Judge heard evidence from the sponsor. The Judge accepted the evidence of the sponsor and found that the appellants met all limbs of paragraph 41 of the Rules.
4. The Secretary of State made an application for permission to appeal and this was granted Judge of the First-tier Tribunal Saffer in a decision of 2 January 2015. Thus the matter came before me.

### **The Grounds of Appeal**

5. The grounds of appeal argue that as a result of Section 52 of the Crime and Courts Act 2013 the ground of appeal available to the appellants was restricted to the Human Rights Act 1998 and Section 29 of the Equality Act 2010. The Judge did not make findings in relation to either and allowed the appeal under the Rules which was not open to him.

### **Error of Law**

6. The Judge erred because he did not have jurisdiction to determine the appeal under the Rules. He did have jurisdiction to determine the appeal under Article 8. This was raised in the grounds and the appeal should have been determined under Article 8.
7. I set aside the decision to allow the appeal under the Immigration Rules pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2002. I went on to re-make the appeal under Article 8 of the 1950 Convention on Human Rights. There was no reason to go behind the findings of the First-tier Tribunal.

### **Conclusions**

8. I gave the sponsor Mr Ismail the opportunity to give evidence in relation to Article 8 and I have taken into consideration his evidence along with the Rule 24 response which he prepared and submitted of 14 January 2015.
9. Mr Ismail's evidence is that his mother and sister intended to visit him and his family here in the UK. The sponsor and his wife have two children. They are all British citizens. Their eldest son's date of birth is 3 September 2010 and their second child was born on 12 July 2011. The appellants have a history of visiting the UK. They both visited at the birth of both of the sponsor's children and the sponsor attended a wedding in Pakistan in

2013. The sponsor has not lived with his mother or sister since he came to the UK in October 2003. It is difficult for him and his family to visit Pakistan as a result of his work commitments.

10. The appellants have a good immigration history. The sponsor's mother has visited the UK on six occasions and his sister on two. The sponsor's wife has had two miscarriages in August 2013 and June 2014. The appellant is not able to care for her during pregnancy because of his work commitments. According to the sponsor his wife's miscarriages are as a result of family members not being able to come to the UK in order to care for her.
11. I must consider the evidence at the date of the decision. I appreciate the sponsor and his family's difficulty in relation to his wife's history of miscarriages and that he hopes that his mother and sister can enter the UK in order to care for her to prevent the possibility of a future miscarriage. In oral evidence before me the sponsor confirmed that his wife was not pregnant at the date of the decision. Sadly it appears from his evidence that she suffered a miscarriage in June 2014.
12. Before I consider Lord Bingham's step by step approach in **Razgar, R (on the application of) v SSHD [2004] UKHL 27** it is necessary to establish whether there is a private or family life with which the decision would interfere. The mere existence of a family relationship or a private life is not sufficient for the applicability of Article 8(2). Much more is needed. I refer to paragraph 20 of Lord Bingham's judgment in that case of **Huang v SSHD [2007] UKHL**. In this case it is clear that the family relationship is not sufficient for the applicability of Article 8(2). The sponsor has not lived with his mother and sister since October 2003 and there is no evidence that the sponsor's wife and children have ever lived with the appellants. Their relationship to date has consisted of frequent visits. Should I be wrong about that the decision is proportionate to the legitimate end sought to be achieved. I must take into account Section 117B of the 2002 Act and the maintenance of effective control is in the public interest. I have considered the sponsor's evidence in relation to the requirement of care during his wife's pregnancy, however at the date of the decision confirmed to me in oral evidence she was not pregnant at the date of the decision.
13. I dismiss the appeal under Article 8 of the 1950 Convention on Human Rights.

### **Notice of Decision**

The appeal is dismissed under Article 8.  
No anonymity direction is made.

Signed Joanna McWilliam  
2015

Date 17 February

Deputy Upper Tribunal Judge McWilliam