



IAC-FH-AR-V1

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

Appeal Number: VA/00364/2014

THE IMMIGRATION ACTS

Heard at Field House

On 16 March 2015

**Determination
Promulgated**

On 1 May 2015

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

SHAZIA TARIQ

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr M Shilliday, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Pakistan born 20 September 1977, appeals with permission the decision of First-tier Tribunal Judge Beg who, for reasons given in her determination dated 17 November 2014, dismissed the appeal against the decision refusing the appellant entry clearance to visit the United Kingdom with her British citizen daughter to see her British citizen husband (the sponsor) for a period of two weeks.
2. The respondent's decision dated 10 December 2013 refused the application under the Rules on the basis that he was not satisfied that the

appellant only intended a short visit or that she would leave the United Kingdom at the end of that period of visit. In addition the respondent contended the decision under Article 8 was justified as it did not impact on the ability of the appellant to conduct a family life as she had done so until then, and furthermore there did not appear to be any insurmountable obstacles preventing the sponsor from visiting her in Pakistan as he has done before now.

3. The judge heard evidence from the sponsor. He was presently staying at his adult daughter's house as he was unwell and had been there for the previous two and a half months. His wife, the appellant, would be able to reside with him at his address at 22 Upper Tooting Road. The sponsor needed someone to look after her. He had reached agreement with his wife at the time of their marriage that she would stay with their mother as she was unwell and only when the appellant's two brothers married would she apply for a settlement visa. He had last visited his wife in Pakistan in 2012 when his daughter was born. Altogether the sponsor has nine children, seven of whom are in the United Kingdom. He has previously been divorced on two occasions. He explained that his wife works as a supervisor for a packaging company in Lahore. He could not visit his wife as he is unable to sit on an aircraft and had been depressed. He suffers panic attacks.
4. The judge noted the requirements under the Immigration Rules for visitors and in particular evidence from the sponsor's GP being a letter dated 26 August 2014 on which it was noted "due to his various illnesses he is unable to tolerate flying to Pakistan". The judge found the letter did not make it clear whether the sponsor had been medically advised against travelling by air. She concluded on the evidence that there was a clear indication the sponsor would like his wife to be in the United Kingdom so that she could look after him. Having regard to his limited income (he is in receipt of benefits) it would be difficult for him to support a settlement application.
5. The judge found the appellant was not a credible witness. There was no evidence that the sponsor's older sister would be unable to look after *her* mother even if she does not live with her, and furthermore the appellant's two adult brothers could easily look after their mother, noting that the appellant works full-time as a supervisor. Their daughter was cared for by her maternal grandmother and her maternal uncles when the appellant is at work. There was no medical report in respect of the appellant's mother. The judge found in addition that the appellant was to some degree dependent upon funds sent to her from the United Kingdom and found it unlikely on the balance of probabilities she would need to do so were she earning in excess of 25,000 Pakistan rupees per month as claimed.
6. Specifically as to Article 8 the judge found that the parties had lived together for a limited period in Pakistan after they married in 2011 and that they have a child born 2012. Family life had been conducted through visits and by correspondence. At the age of 2 the child's best interests

would be focused on the appellant who was the constant in her life. Whilst it was in any child's best interests to be with both parents, she had never been looked after by her father. According to the appellant's witness statement she had stated that she is planning to come to the United Kingdom with her daughter for her daughter's education when she is old enough to go to school. The judge found there was evidence that the appellant would like to settle in the United Kingdom with her daughter and to live with her husband. She concluded that any interference with the family and private life would not be disproportionate in all the circumstances.

7. The challenge to this decision argues that the judge's analysis of proportionality was limited to one paragraph. No reference had been made to which public interest had been balanced against the appellant's family life. No consideration had been given to the fact that the family unit was permanently severed by the decision not to grant entry clearance and that the sponsor was unable to travel to Pakistan due to health problems. Crucially, no consideration had been given to the fact that the sponsor and his daughter are British nationals. The refusal to grant entry clearance to the appellant prevented the daughter from entering the country of nationality as she is too young to travel alone. This had ramifications under EU law with reference to the decision in *MA and SM (Zambrano): EU children outside EU* Iran [2013] UKUT 380.
8. On this basis it is argued that there had been a misapplication of Article 8.
9. The second ground argues misapplication of the best interests of the child principle. It is argued that the child's best interests is to be with both parents. Contact through modern means of communication was not sufficient for an active parent. It was difficult to contemplate a scenario where a s.55 duty is material to an immigration decision and indicates a certain outcome that Article 8 does not.
10. Permission to appeal was granted but it was arguably incumbent upon the judge to determine whether the sponsor's medical problems prevented him from travelling to Pakistan. If they could not meet in that country "prejudice could be substantial". It was arguable that the judge had gone too far to infer from the medical evidence that the sponsor could travel to Pakistan. The judge had failed to make sufficiently clear findings on salient issues.
11. The appellant did not appear at the hearing before me. Notice had been given in according the Rules and I therefore proceeded in the absence of an explanation for this absence. After submissions from Mr Shillingday I reserved my decision.
12. In the course of those submissions he drew my attention to the decision of the Upper Tribunal in *Mostafa (Article 8 and entry clearance)* [2015] UKUT 00112 (IAC) although reminding me also that application for

permission to appeal this decision to the Court of Appeal had been made by the Secretary of State.

13. Be that as it may, I am nevertheless satisfied that as matters stand this decision is authority for the approach I should take in determine whether the judge erred. As observed by the Tribunal at [16]:

“Undoubtedly the paradigm Article 8 entry clearance case concerns applicants seeking to join close family members for the purposes of settlement. However, it cannot be excluded that where one party to a marriage is entitled to be in the United Kingdom a qualified obligation to facilitate spousal unification for the limited purpose of a short visit and sojourn may arise and does arise here. ... The refusal decision had a material impact on their right to enjoy family life. He did not want to settle but to visit her, and subject to permissible qualifications he should be entitled to do that. Whilst it would almost certainly be proportionate to refuse him entry clearance if he did not comply with the Rules, his and his wife’s desire to be together in her home area albeit for the purposes of visit is very human and understandable.”

14. The similarity to the case before me lies in the fact that the appellant was seeking entry clearance as a visitor. The Entry Clearance Officer gave reasons under the Rules for doubting the appellant's intentions with reference to the quality of evidence provided regarding the appellant's financial circumstances. The judge found there was a clear indication that the sponsor would like his wife to be in the United Kingdom so that she could look after him. She also found the appellant was not a credible witness although it has to be remembered that she has not given evidence.
15. My focus must be, however, on the grounds of challenge. The first was that the judge had failed to make clear findings as to whether or not the requirements of the Rules were met. As observed by the Tribunal in *Mostafa*, a claimant’s ability to satisfy the Immigration Rules was not the question to be determined, but was capable of being a weighty though not determinative factor when deciding whether the refusal was proportionate to the legitimate aim of enforcing immigration control. Although the judge did not reach a specific finding on this aspect, it is possible to infer from her findings that in substance she did not accept that the Immigration Rules could be met.
16. The same ground challenges the treatment by the judge of the public interest. In my view the determination suffers from a lack of a structured approach. It is clear that Article 8 is engaged by virtue of the family life between the parties affected. Furthermore, the decision refusing the visit application did result in sufficiently serious interference to engage Article 8. There can be no doubt that the decision was lawful in the sense that the respondent applied the Immigration Rules in accordance with the Immigration Acts and furthermore it is unarguable that the respondent is entitled to rely on immigration control as an expression of the aims

available to justify that interference. In essence the case therefore turned on the proportionality of the decision.

17. The judge's analysis on proportionality is not clearly expressed. However it cannot be disputed that she had doubts about the truthfulness of the parties, particularly as to their intentions. That being so, it is difficult to see how the interference with the planned visit could be said to be disproportionate if it was not accepted that the visit would be for the period and purpose stated. Accordingly I do not find any error by the judge to be material.
18. The next challenge under the first ground is that the decision permanent severs the family unit. It needs to be borne in mind that the application was simply for a two week visit. It remains open to the appellant to apply on a more permanent basis. The grounds refer to the sponsor being unable to travel to Pakistan due to health problems. The judge specifically dealt with this and I am satisfied she did not arguably err in her analysis of the limited medical evidence. Dr Ahmad writes in support of the visit visa application which she contends would have a beneficial effect on the sponsor's physical and mental health. It is difficult to see how, if in the light of the chronic conditions he has, a two week visit could have such a palliative effect. He stated that because of the sponsor's "various illnesses he is unable to tolerate flying to Pakistan". However those illnesses are described as depression, panic attacks, diabetes, high cholesterol and high blood pressure. The letter is not particularly clear. If it is the depression and panic attacks which rules out the possibility of flying to Pakistan, there is no explanation how the sponsor was able to travel there in 2012. Accordingly I am satisfied the judge did not err in her analysis of this aspect.
19. The final limb to the first ground refers to the consequences under EU law of the appellant's daughter being an EU citizen. The evidence before the judge and the Entry Clearance Officer did not indicate that it was the intention of the parties that the daughter should be accompanied by her mother to the United Kingdom in order to settle here. It is difficult to see how this aspect has any relevance. I am satisfied it did not result in error.
20. The second ground relates to the best interests of that child. As Mr Shilliday pointed out, Section 55 does not apply to children outside the United Kingdom although he accepted that the spirit of the United Kingdom's obligations under the Children's Convention should be applied in the Article 8 analysis. The evidence before the judge was of a decision by the appellant and her husband that she should remain in Pakistan with their child and raise her there until she was ready for schooling in the United Kingdom. It is not possible to see how the refusal of a two week visit visa interfered in any significant way with that ambition. It is clear to me that the second limb to this ground, which one might very well expect in a settlement application, is entirely misconceived.

21. My conclusion, therefore, is that the judge might have expressed matters more clearly in her determination but nevertheless I am not persuaded that such errors as she made resulted in a need for the decision to be set aside and remade. Sufficient reasons were given for the conclusion that interference with the appellant's family life would not be disproportionate.
22. Since writing this decision the sponsor has written to the Upper Tribunal that his wife had forced him to divorce her which he attributes to his inability to visit her. He refers to the negative impact of this on his health but also explains that he does not wish to pursue the case. Even if I were persuaded that the decision should be remade and the appeal were allowed this development indicates a material change in circumstances that would be likely to result in entry clearance being refused. But in the light of my findings above this aspect is academic.

NOTICE OF DECISION

The appeal is dismissed.

Signed

Date 27 April 2015

A handwritten signature in blue ink, appearing to read "Dawson", with a horizontal line extending to the right.

Upper Tribunal Judge Dawson