



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: VA/01033/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 26 March 2015**

**Determination Promulgated  
On 22 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**ENTRY CLEARANCE OFFICER ABU DHABI**

Appellant

**and**

**MUHAMMAD JAMIL**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: The sponsor, Mrs Parveen Ashfaq, and her husband Mr Ahmed Ashfaq.

**DETERMINATION AND REASONS**

1. Whilst this is an appeal by the Entry Clearance Officer (ECO), for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.
2. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the ECO of 16 January 2014 to refuse his application for entry clearance to visit the UK for four weeks. First-tier Tribunal Judge Drabu allowed the appeal on human rights grounds.
3. The appellant's right of appeal in this case is limited to the grounds that the decision is unlawful on race discrimination grounds or under

section 6 of the Human Rights Act 1998. There is no allegation of race discrimination in the appellant's grounds of appeal to the First-tier Tribunal or elsewhere. The issue for the First-tier Tribunal Judge was therefore whether the decision to refuse entry clearance breaches the appellant's right to private life or family life with his relatives in the UK.

4. According to the application, the grounds of appeal to the First-tier Tribunal and what the sponsor told me the appellant has a wife and children and a clothing business in Pakistan which he runs along with his two brothers. He applied for entry clearance to visit his sister, the sponsor, and her family in the UK. In his application form he said that the main purpose of his visit was to see his nephew, the sponsor's son, who was at that time suffering from cancer and was therefore unable to travel to Pakistan to visit his family there.
5. The ECO refused the application not being satisfied that the appellant met the requirements of paragraph 41 (i) and (ii) of the Immigration Rules because he was not satisfied that the evidence provided was sufficient to show that the appellant's business and income is as claimed and that the appellant had given an accurate account of his circumstances in Pakistan. The ECO also relied on a discrepancy between the application form and the sponsorship declaration to conclude that the appellant had not given an accurate account of the circumstances surrounding the visit. The ECO therefore was not satisfied that the appellant is genuinely seeking entry as a visitor or that he intends to leave the UK at the end of his visit.
6. The Judge dealt with the appeal in four short paragraphs. He said that the reasons given by the ECO 'are somewhat banal', he concluded at paragraph 3 that, having seen the sponsors and read the statements;

"... the refusal of this compelling application is a disproportionate interference in the family life of the sponsor, her husband and the appellant. I find that there exists a family life between them and I am satisfied that the appellant and the sponsors are decent law abiding and credible people. They have sponsored relatives in the past and all have kept to the terms upon which they had been admitted. I am satisfied that no more than a short family visit is intended and that the appellant is leaving behind his wife and children. The appellant fulfils all requirements relevant to family visit."
7. The ECO's grounds of appeal to the Upper Tribunal contend that the First-tier Tribunal Judge made a material misdirection of law in that he failed to give reasons for his decision that family life exists between the appellant and the sponsor given that they are all adults. It is contended that the proportionality assessment is 'woefully inadequate' as it does not explain why the refusal of a temporary visa is a disproportionate interference with Article 8 rights. It is further contended that the Judge made no assessment of section 117B of the Nationality, Immigration and Asylum Act 2002.

#### Error of law

8. I am satisfied that the First-tier Tribunal Judge erred in his approach to this appeal. The only ground of appeal which he could consider was Article 8 of the ECHR. An assessment under Article 8 involves consideration of the 5 stages set out by Lord Bingham in the case of R v SSHD ex parte Razgar [2004] UKHL 27. Lord Bingham set out the following five questions to be addressed where removal is resisted in reliance on Article 8 as follows, these questions equally apply in the case of a decision to refuse entry clearance;

(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

9. The first question requires a finding as to whether family life exists between the parties. In this case the First-tier Tribunal Judge found that family life exists between the appellant, the sponsor and her husband. However he gave no reason for that finding. This is important because all of the parties here are adults. Even if the appellant's nephew had been considered by the First-tier Tribunal Judge he too is an adult, he was 19 at the date of the decision. In the case of Kugathas [2003] EWCA Civ 31 the Court of Appeal said that there is no presumption of family life between adult family members and that "*relationships between adults...would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties*" [14]. The Judge undertook no examination of the circumstances of the appellant and the sponsors and gave no reason for concluding that they have a family life capable of being protected by Article 8. This is a material error.

10. The First-tier Tribunal Judge said that the decision is a disproportionate interference with the family life between the appellant, the sponsor and her husband. However, again, he gave no reason for so finding. There is no examination of the relevant factors and no weighing of the family life against the public interest in the maintenance of immigration control. Whilst the Tribunal said in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) that the appellant's ability to meet the Immigration Rules can be a weighty factor in considering proportionality, it is not determinative. In any event the First-tier Tribunal Judge did not give reasons for his finding that the appellant met the

Immigration Rules. Further, the First-tier Tribunal Judge did not consider the provisions of section 117B in assessing the proportionality of the decision. As this is a statutory requirement his failure to do so is a material error.

11. In these circumstances I am satisfied that the First-tier Tribunal Judge made material errors of law in considering Article 8 and I set aside his decision in its entirety.

#### Remaking the decision

12. As set out above the only ground of appeal relevant in this case is that the decision is unlawful under section 6 of the Human Rights Act 1998. The relevant provision of the European Convention on Human Rights is Article 8 which protects the right to private and family life. As set out above the first stage is to establish whether family life exists between the appellant and his family in the UK. I accept that the sponsors are genuine and that they have previously sponsored the appellant's two brothers, who are his business partners, and they have returned to Pakistan after their visits to the UK. I accept on the basis of the oral evidence from the sponsor's husband that the sponsors and their son went through a difficult time when their son was going through cancer treatment, that their son is now in remission and that they are close to the appellant and are in regular contact with him.
13. However I do not accept that this relationship is enough to establish that the appellant and the sponsor's family have ties over and above the normal emotional ties between adult siblings and their families. I accept Mr Kandola's submission that the appellant has a wife and 5 children in Pakistan and therefore has his own family life there. In these circumstances I do not accept that the decision of the ECO to refuse to grant entry clearance interferes with the appellant's right, or that of the sponsor or her family, to private or family life. Article 8 is not therefore engaged in this appeal.
14. I note that the sponsor was unhappy that the First-tier Tribunal Judge's mistake has led to a waste of time for him and his family. This is an unfortunate consequence for the appellant and the sponsor and her family. The only option open to the appellant, should he still wish to visit the UK, is to make a fresh application addressing the concerns raised by the ECO.
15. I find that the appellant has not demonstrated that the decision of the ECO interferes with his private or family life. I therefore dismiss the appeal.

#### Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I set the decision aside and remake it by dismissing it.

Signed

Date: 20 April 2015

A Grimes

**Deputy Judge of the Upper Tribunal**