Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/01657/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 3rd February 2015	**On 12th February 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NASEEM AKHTER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M Karnik of Counsel instructed by Malik Legal Solicitors Ltd
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Gladstone made following a hearing at Manchester on 12th September 2014.

2. The Appellant is a citizen of Pakistan, born on 1st January 1954. She applied to come to the United Kingdom as a visitor but was refused under paragraphs 41 and 320(7A) of the Immigration Rules. The Entry Clearance

Officer was not satisfied that the Sponsor's employment letter was genuine.

3. The Appellant appealed on the grounds that she was being denied her rights to family life under Article 8.

4. The judge said that she had no jurisdiction to determine the appeal in relation to paragraph 320(7A) and none to determine the appeal in relation to paragraph 41 because the full right of appeal had been removed under Section 52 of the Crime and Courts Act 2013.

5. The judge recorded that the Appellant had visited the UK in 2009 but subsequently in 2010, 2011 and 2012 had been refused visas. She said that the Appellant could not meet the requirements of family life under Appendix FM of the Immigration Rules and did not consider that there were compelling circumstances as identified in Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00649. There were no compelling circumstances as to why the Sponsor could not travel to Pakistan and contact by other means could take place, and she dismissed the appeal on human rights grounds.

The Grounds of Application

6. The Appellant sought permission to appeal on the grounds that the judge had failed to consider the case in the light of the five stage test of Razgar and had not taken into account relevant facts so far as Article 8 was concerned.

7. Substantial documentary evidence had been produced which demonstrated that paragraph 320(7A) had been wrongly applied and as a consequence the Appellant was potentially subject to a ten year ban. The Sponsor explained that he had been working at Kinnaird College at Manchester since December 2013 and had provided documentary evidence to establish that he had been so employed. The college's Director had informed the Entry Clearance Officer that the document produced was not genuine but has subsequently confirmed that there had been an administrative oversight in denying the authenticity of the letter. There is ongoing legal action against her.

8. The Appellant has property as well as two children who are settled in Pakistan and has previously visited the UK and complied with her terms and conditions. She intends to return.

9. Permission to appeal was granted by Judge Zucker on 11th December 2014. Judge Zucker said that arguably the original judge was required to determine the 320(7A) point in order to properly consider the issue of proportionality both now and in respect of any future applications which the Appellant might make. It was also arguable that the judge's approach to Article 8 generally was flawed.

Submissions

10. Mr Karnik submitted that the refusal under paragraph 320 was not covered by the removal of the full right of appeal against refusal of entry clearance to visit the UK set out in paragraph 52 of the Crime and Courts Act 2013, because the impact of a paragraph 320 refusal was much more severe than a refusal under paragraph 41. He also submitted that, once the Appellant had passed through the gateway of being able to argue a breach of her human rights, then all issues were at large.

11. The fact that the Rules provided for family visits was a recognition that families required a particular form of protection. The ten year ban was an interference with the Appellant's and Sponsor's private and family life. The fact that the Entry Clearance Officer had acted so swiftly upon the information from the college was unfair since the Appellant had no opportunity of countering the accusation made in the report.

12. He submitted that the Tribunal was bound to reach a conclusion in respect of the 320 point in assessing the proportionality of the decision. He relied on the decision of R (on the application of) Gudanaviciene & Others v the Director of Legal Aid Casework and the Lord Chancellor [2014] EWCA Civ 1622 which was concerned with legal aid in immigration cases, and relied on the following passage:

> "The focus of article 6(1) is to ensure a fair determination of civil rights and obligations by an independent and impartial tribunal. Article 8 does not dictate the form of the decision-making process that the state must put in place. But the focus of the procedural aspect of article 8 is to ensure the effective protection of an individual's article 8 rights. To summarise, in determining what constitutes effective access to the tribunal (article 6(1)) and what constitutes sufficient involvement in a decision-making process (article 8), for present purposes the standards are in practice the same."

13. Fairness required a sufficient protection of the Appellant's interests.

14. Mrs Pettersen submitted that the Appellant's rights of appeal were limited to human rights grounds and the legislation did not allow her to appeal on the grounds that the decision was not in accordance with the Immigration Rules. The ten year ban would not necessarily apply since the Appellant had produced evidence to show that the information upon which the document verification report was based was flawed and indeed the Entry Clearance Officer had stated in the decision that future applications may be refused rather than would be refused. It was hard to see how Article 8 could be engaged in this case since there was no evidence that this was anything other than a normal relationship between parent and child.

Findings and Conclusions

15. Section 52 of the Crimes and Courts Act 2013 abolished the full right of appeal in family visitor visa cases preserving a limited right of appeal on race relations and human rights grounds only. In this case the Appellant was refused under paragraph 41, because the Entry Clearance Officer was

not satisfied that she had an intention to return to Pakistan, and paragraph 320 in reliance upon a false document.

16. The Appellant was refused entry clearance under two different paragraphs of the Immigration Rules. However the application which she made was to come to the United Kingdom as a visitor and her right of appeal against that decision is limited to race relations and human rights grounds. The fact that there is a second ground for refusal does not exempt the Appellant from the effect of the Crime and Courts Act 2013 in abolishing the right of appeal.

17. There is no appeal against this decision on the grounds that the Entry Clearance Officer's decision was not in accordance with the law or the Immigration Rules.

18. If it can be shown that the Respondent acted unfairly that would be a relevant consideration for the purpose of assessing proportionality. The problem for this Appellant however is that, in order to reach the fifth Razgar question she has to establish that the decision interferes with her right to private and family life.

19. Mr Karnik accepted that private life is not at issue here since the Appellant is not in the UK and has only been here as a visitor some five years ago. He said that there was an interference with her right to family life but he has adduced no evidence at all to show that family life exists in this case. There is absolutely nothing in the evidence to show that there are more than the normal emotional ties between the Appellant, the mother and the Sponsor, her adult child.

20. Moreover, even if the issue of proportionality was reached it is hard to see how the Entry Clearance Officer acted unfairly in relying on the clear information before him which was that the Sponsor had produced a false document. The fact that the Sponsor has now provided evidence that reliance on that document was mistaken does not mean that the original decision was taken unfairly. There is no obligation on an Entry Clearance Officer to ask for comments from the Sponsor on the information in a document verification report before acting on it.

21. The Appellant now has clear evidence to refute the information in the report. That evidence will be taken into account in a subsequent application when consideration is given whether it would be right to invoke paragraph 320(7B). It is hard to see how the Appellant has in fact been prejudiced save by the fact that she no longer has a right of appeal against the refusal to grant her a visit visa, which is a matter for Parliament and not the Tribunal. The Court of Appeal's decision has no relevance here.

22. Since neither family nor private life is established in this case it follows that there can be no breach of the United Kingdom's obligations under Article 8 by this decision and no error by the Immigration Judge.

Notice of Decision

The original judge did not err in law. The Appellant's appeal is dismissed.

No anonymity direction is made.

Signed Date 10/02/2015

Upper Tribunal Judge Taylor