



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

Appeal Numbers: VA/01803/2014
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THE IMMIGRATION ACTS

**Heard at Field House
On 9th July 2015**

**Decision & Reasons
Promulgated
On 12th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**GABRIEL BAMIDELE OGUNDELE (FIRST APPELLANT)
ALICE ADEBISI OGUNDELE (SECOND APPELLANT)
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - LAGOS

Respondent

Representation:

For the Appellants: Mr Slatter, Counsel for Graceland Solicitors, Lewisham
For the Respondent: Mr Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are husband and wife and are nationals of Nigeria. The First Appellant's date of birth is 11th September 1939 and the Second Appellant's date of birth is 22nd May 1942. They appealed against the decisions of the Respondent dated 20th March 2014 refusing to grant them

entry clearance as general visitors to the United Kingdom and limiting their appeals to grounds listed in Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002. They wish to visit their daughters in the United Kingdom. Their appeals were heard by Judge of the First-tier Tribunal Callow on 12th January 2015. The appeals were dismissed in a determination promulgated on 24th March 2015 under Article 8.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Reid on 1st June 2015. The grounds rely on **Mostafa [2015] UKUT 00112 (IAC)** and argue that the judge made material errors of law by conflating private and family life and thus materially affecting his decision. Reference is made to paragraphs 19, 20, 28 and 31 of the determination. The grounds state that the judge failed to have regard to **Mostafa** which was promulgated after the hearing in these appeals but before the judge's determination was promulgated.
3. This is an error of law hearing.

The Hearing

4. This appeal is based on the Appellants' human rights only. The said case of **Mostafa** is not a country guidance case but can be given weight. It is an Upper Tribunal decision which was heard by Mr Justice McCloskey, President, and Upper Tribunal Judge Perkins.
5. The Appellants' representative referred to the three Grounds of Appeal. Permission was granted, although the application was out of time. The permission is based on the case of **Mostafa**.
6. Counsel submitted that the judge misdirected himself on the law. The Tribunal has no power to consider Grounds of Appeal alleging that the decisions were not in accordance with the Rules or the law. What the Tribunal has to do is consider whether the decisions are incompatible with the right to respect for a private and family life under Article 8 of the Convention.
7. Counsel referred me to paragraph 27 of the determination. He submitted that the judge found there to be no family life, according to the test laid down in **Kugathas [2003] EWCA Civ 31**. Counsel submitted that private life should have been considered. He submitted that the Appellants have the right to establish their relationship with their two British daughters and their grandchildren in the UK. He submitted that private life may exist where family life does not. He submitted that the First-tier Judge conflated private and family life in his analysis and this is an error of law.
8. Counsel submitted that the Appellants visit for a few weeks every year and have always returned to Nigeria at the end of their visits. He submitted that there is a close relationship and the Appellants should be able to enjoy family and/or private life with their children and grandchildren.

9. He submitted that the Appellants are both over 70 years old and have regularly visited the United Kingdom since 1960. I was referred to paragraph 6 of the determination. He submitted that the children are gainfully employed and I was referred to their daughters' witness statements which state that it is more difficult for them to visit the Appellants in Nigeria because of their work and their children's schooling. He submitted that each case is fact-sensitive. He submitted that paragraph 27 of the determination does not do justice to the circumstances of this case. It is not enough for the judge simply to state that the existence of a private and family life has not been established. He submitted that there are private life ties which have to be addressed with the specific facts of the case and because of the way matters have been dealt with in paragraph 27 the outcome of the appeal has been affected.
10. Counsel submitted that because of this, the decision should be set aside.
11. I was referred to paragraph 28 of the determination and the case of **Razgar [2004] UKHL 27**. The case of **Mostafa** was referred to. This is a family life case. A husband wishing to visit his wife in the UK. I was referred to paragraph 16 of that case. Counsel submitted that the Appellants' desire to be together with their daughter and grandchildren in their home area for a short period is very human and understandable. He quoted from paragraph 16 that "preventing the visit would not be a technical or inconsequential interference and should be permitted subject to the proportionate requirements of immigration control." He submitted that his clients' case meets that threshold. There are young grandchildren in this case and this reduces the threshold. He submitted that the terms of Article 8(1) require to be adhered to and ties should be allowed to develop normally in families. He submitted that there would be an interference with the Appellants' Article 8 rights and with their daughters' and grandchildren's Article 8 rights if they are prevented a visit to the United Kingdom. He submitted that the First-tier Judge used too high a threshold.
12. He submitted that that particular issue has not been properly considered by the judge and is a relevant consideration.
13. He submitted that although the terms of the Rules cannot be considered, the Rules have to be taken into account in the balancing exercise when proportionality is assessed relating to Article 8. I was referred to paragraph 9 of **Mostafa** which states that in that case the claimant had shown that refusing him entry clearance interfered with his and his wife's private and family life so it was necessary to assess the evidence to see if the claimant meets the substance of the Rules. This paragraph states that this is because the ability to satisfy the Rules illuminates the proportionality of the decision to refuse entry clearance.
14. I was then referred to the case of **Adjei [2015] UKUT 0261 (IAC)**. He submitted that at paragraph 13 of that case the point made in **Mostafa** is reiterated. This states that where Article 8 may be engaged it is

necessary to see whether the substance of the Rules has been met. He submitted that refusal under the Rules requires to be considered when proportionality is assessed and that the First-tier Judge did not address this.

15. The Presenting Officer made his submissions and referred to his Rule 24 response.
16. He submitted that there is no material error of law in the determination as this is a private life claim. The First-tier Judge found that there was no family life between the Appellants and their adult children and grandchildren. I was asked to accept that this is purely a private life claim. He submitted that even if Article 8 and private life are considered on their own, a person who satisfies the Tribunal that he meets the requirements of paragraph 41 of HC 395 does not succeed on that account. He still has to demonstrate that the refusal represents an unlawful infringement of rights protected by Article 8 of ECHR. He submitted that for a person who does not satisfy the requirements of paragraph 41 to succeed in an appeal, there would have to be cogent and compelling reasons demanding that he should succeed.
17. He submitted that all the jurisprudence relating to Article 8 in this situation consists of family life cases. This is not a family life case but a private life case only. He referred to the cases of **Adjei, Mostafa** and **Shamin Box [2002] UKIAT 02212**, all of which are family life cases. He submitted that for Counsel's argument to succeed immediate family members have to be involved to make a refusal disproportionate. He submitted that in this case young children are not directly involved and neither are family life issues.
18. He submitted that there are problems with private life cases as there is no jurisprudence. Even the European cases on this issue relate to family life.
19. He submitted that because this is a private life case compelling and exceptional circumstances have to be engaged.
20. I was referred to the case of **SS (Congo) [2015] EWCA Civ 387** and the Presenting Officer submitted that in this case there was a wide margin of appreciation given to the state. He submitted that this margin of appreciation is even greater when private life cases are considered.
21. He submitted that there is no error in the judge's determination and that the determination should stand.
22. Counsel submitted that the family life cases referred to can be relied on when this case is assessed. He submitted that these Appellants have grown up children but this does not mean they are not entitled to have relationships with them. He submitted that each case has to be decided on its own facts and although this is a private life case the Appellants and their families' private lives all need protection. He submitted that the Appellants are visiting close relatives and in the case of **Adjei**, although

private life is not considered at all, the facts of the case have been considered and at paragraph 15 it is stated that there is no good reason why the UK based relatives cannot visit the claimant in Ghana if they wish to do so. Counsel submitted that there are significant difficulties for the Sponsors in this case travelling to Nigeria with their children. The family require to live in the United Kingdom and I was again referred to the **Kugathas** test. He submitted that the Presenting Officer is wrong to say that that is not material.

23. I was asked to set aside the First-tier Judge's decision.

Decision & Reasons

24. It is significant that there is no jurisprudence relating to private life. All the jurisprudence relates to family life and because of this, for the Appellants' appeal to succeed there have to be cogent and compelling reasons demanding this. I find that this is a private life case. There are no compelling reasons to enable the claim to succeed.

25. I find that the case of **Mostafa** is not material as at paragraph 27 of the determination in the case before me, after the judge had considered all the facts and circumstances of the case, he found that family life had not been established. He goes on to state that there is no general obligation to promote contact between independent adults, even if they are related. It has not been shown that there are ties of support either emotional or economic in existence, which go beyond the ordinary and natural ties of affection that would accompany a relationship between parents and adult children living in different countries. In these circumstances he found that Article 8 was not engaged.

26. In the next paragraph the judge states that it has not been established that the interference, if this appeal is dismissed, will have consequences of gravity engaging Article 8. Article 8 does not impose on a state a general obligation to respect a visitor's choice of country in order to undertake a family visit.

27. The judge has made these findings based on what was before him. He finds that Article 8 is not engaged and the case of **Adjei** states that it is unlikely that Article 8 will be engaged in all except a few very narrow cases.

28. This claim does not represent an unlawful infringement of rights protected by Article 8 of ECHR. Counsel has submitted that there are cogent and compelling reasons in this case for allowing the appeal, but although he states it is difficult for the Sponsors and their families to go to visit the appellants in Nigeria, there is nothing before me to show that that is the case. I accept that it would be more expensive and that the children have jobs and the grandchildren are at school, but the Appellants are only seeking to visit for two weeks and the judge has found that a two week visit would be possible to the Appellants by their children and grandchildren in the United Kingdom.

29. The family life cases which have been presented and referred to relate to closer family members, e.g. husband and wife or other close life partners or a parent and a minor child.
30. In this case the judge found that based on the refusal letter the terms of the Immigration Rules could not be satisfied. This is only relevant in the proportionality assessment of Article 8 based on the case law quoted by both parties' representatives but it can be taken into account in a proportionality assessment. This does not support the Appellants' claim.
31. I find that the fact that the judge did not take **Mostafa** into account is not material. The case of **Mostafa** deals with a very narrow range of claimants and the Appellants in this case are not included in that range.
32. With regard to the findings in the determination on paragraph 320(7A) of the Rules, if the Appellants are not satisfied relating to this, then a judicial review is the next step.
33. I find that the existence of family life has not been established in this case. This is a private life case. I find that to dismiss the appeal will not result in consequences of such gravity as to engage Article 8. I find that the judge took into account the facts of the case and reached his decision accordingly.

Decision

34. There is no material error of law in the judge's determination promulgated on 24th March 2015.
35. The determination of Judge of the First-tier Tribunal Callow must stand.
36. No anonymity directions are made.

Signed

Date

Deputy Upper Tribunal Judge Murray

