IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/03393/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 August 2015	**On 21 August 2015**
Oral decision	

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

KHALID BOUBESS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, NEW YORK

Respondent

Representation:
For the Appellant: Mr H Kannangara, Counsel instructed by Tremont Midwest Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the determination of First-tier Tribunal Judge Rastogi promulgated on 23 March 2015 in which she dismissed the appellant's appeal against the decision made on 10 April 2014 to refuse him entry clearance to the United Kingdom as a visitor. That refusal was based on two grounds, firstly a failure to meet the

requirements of paragraph 41 of the Immigration Rules and second on the basis that paragraph 320(7B) of the Immigration Rules applied.

2. In brief the appellant had said that he wished to come to the United Kingdom to see Manchester United playing and he would be staying for a period of five days between 3 and 8 May 2014. He had also said that his father would be here.

3. We note that the appellant has three nationalities and passports: Lebanese, Jordanian and now Canadian. The application was unusually made for entry clearance as a visitor although he is not a visa national because a previous application for entry clearance had been refused on the basis of a failure to declare that he had previously held Jordanian nationality and a passport. These matters are set out in the Entry Clearance Manager's appeal review and in the notice of refusal.

4. It is, we regret to say, not clear from the decision under appeal what happened at the hearing, (or even if there was one) before Judge Rastogi. In her decision Judge Rastogi records at paragraph 4 that the matter was listed before her, that the appellant had provided a witness statement and skeleton argument and a bundle had been prepared; and, that a Miss Greening had attended the appeal. The judge then records:

> "Before I was ready to deal with the case I received a message via my clerk that both Mr Lumb and Miss Greening were of the view that I did not have jurisdiction to hear the appeal and as such an oral hearing was not required."

She then records that she did not have jurisdiction and notes at paragraph 6 that at no stage in the witness statement or the skeleton argument was Article 8 raised and on that basis she considered she had no jurisdiction. The judge did however at paragraph 8 go on to conclude that in any event there was no breach of Article 8 rights.

5. The appellant sought permission to appeal on the grounds that the judge had recorded that the appellant's representative had agreed that the judge did not have jurisdiction; that this was incorrect; and, that he wanted to have the matter heard but his representative was advised by the court clerk that the judge was not willing to hear the case as she did not consider she had jurisdiction. It is submitted further that had the hearing proceeded it was likely to have been allowed, there being clear errors in the current decision at paragraph 7 of the grounds and that the judge had erred in her assessment of Article 8 family life.

6. Permission was granted on 16 June 2015 by First-tier Tribunal Judge Heynes who observed that it was not clear from the Record of Proceedings whether any hearing took place.

7. We heard submissions from Mr Kannangara who accepted that there was before us no statement from Miss Greening or anyone else who had been present at the hearing. We consider that this is a significant defect and

we do not accept the fact that a ground of appeal which had been signed by a solicitor for him is capable of constituting evidence for the purposes identified by the Upper Tribunal as necessary in Azia (proof of misconduct by judge) [2012] UKUT 00096 (IAC).

8. We do however have significant concerns about the decision of Judge Rastogi. First there is a Record of Proceedings in which both Miss Greening and the Presenting Officer, Mr Lumb are mentioned. There appears to be a brief note to the effect that it was conceded by the parties that she had no jurisdiction. The decision also appears to indicate that the hearing took place because both representatives are named in the record of proceedings yet this is directly at odds with what is recorded in the decision which is that there was no hearing. Further, we have some concern about the nature of the concession made. The concession appears to be that there is no jurisdiction to consider human rights, being the only ground of appeal permissible pursuant to Section 84(1) (c) of the 2002 Act, yet this was clearly mentioned in the grounds of appeal to the First-tier Tribunal at paragraph 3. The judge therefore appears to have accepted on a somewhat unclear basis a concession which was on its face wrong. Whilst that would not in itself have been a basis on which we would have found there was a procedural error giving rise to an error of law we consider that given the unsatisfactory nature of the decision which it is not at all clear on what basis the judge proceeded to determine the appeal, whether it was in an oral hearing or on the papers and accordingly we consider that it should be set aside. We gave that indication at the hearing before us and invited the parties to make submissions on Article 8.

9. Mr Kannangara accepted and we consider he was right to do so that as was identified in the decision of Mostafa (Article 8 in entry clearance) **[2015] UKUT 00112** that the appropriate course of action is to answer the five questions set out in Razgar. He submitted first that there was in this case a failure to respect the appellant's private or family life and second that the interference would have consequences of such gravity potentially to engage the operation of Article 8. He accepted also the considerations of the Immigration Rules would only arise if we were to go on to consider questions (4) and (5) as set out in **Razgar,** it of course being necessary for the first three questions to be answered in the affirmative before the analysis could properly continue to that stage.

10. Mr Kannangara sought to persuade us that Article 8 was engaged in this case given that the appellant does have a private life and that that involved him attending a football match for which he had paid and the accommodation for which he had paid in Manchester and that the intention was also to join his father here who had been travelling from Lebanon. He also submitted that not being able to do so was of sufficient gravity to engage the operation of Article 8. With respect we disagree with both of these propositions. Whilst we accept that the appellant has a private life, even assuming that the European Convention on Human Rights is engaged in this case given the limits on territoriality enshrined in Article 1 of the Convention we do not consider that the interference in not

being able to attend a football match in Manchester which members of the appellant's family (who do not live in the United Kingdom)would be attending amounts to an interference and second we do not consider that the nature of any alleged interference reaches anywhere near having sufficient gravity to engage the operation of Article 8 although we accept that the threshold is low; coming to the United Kingdom to attend a football match is well below the low threshold needed to engage that.

11. As we have found that both questions 1 and 2 within the **Razgar** framework fall to be answered in the negative, it is unnecessary for us to continue to consider the remaining questions and thus we do not need to make any findings with respect to the Immigration Rules.

12. For these reasons, we conclude that the decision made was not a breach of the appellant's rights pursuant to Article 8 of the Human Rights Convention and for that reason we dismiss the appeal.

13. In conclusion therefore we find first that the determination of the First-tier Tribunal did involve the making of an error of law. We set it aside and we remake the decision by dismissing the appeal on the only ground available, that is, human rights pursuant to Section 84(1) (c) of the 2002 Act.

SUMMARY OF CONCLUSIONS

The decision of the First-tier Tribunal involved the making of an error of law. We set it aside. We remake the decision by dismissing the appeal on all grounds.

Signed Date

Upper Tribunal Judge Rintoul