



IAC-AH-SC-V1

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

Appeal Number: VA/05343/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 12th November 2015**

**Decision & Reasons Promulgated
On 26th November 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**MR IMRAN UL HASSAN ABBASI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr A Abbasi (Sponsor)

For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This appeal to the Upper Tribunal is brought by the Appellant in respect of a decision of the First-tier Tribunal (Judge Cox) promulgated on 19th May 2015, dismissing his appeal against the Respondent's decision of 23rd July 2014 refusing to grant him entry clearance to come to the UK as a visitor.
2. The Appellant had applied for entry clearance in order to visit his brother (the Sponsor) and his sister in the UK. It appeared that his main concern was to see his brother and do some sightseeing because in completing his entry clearance application form he said;

“I intend to meet my real elder brother and his family as well as to see Great Britain - beauty and historical places”.

3. The application was refused without the Appellant being interviewed. According to the refusal notice, it was concluded that he did not meet the requirements of paragraph 41 of the Immigration Rules because he had failed to show that he intended to leave the UK at the end of the proposed visit. Detailed grounds of appeal were lodged in which it was contended that the relevant requirements of Rule 41 were met and that the decision amounted to a breach of the Appellant’s rights under Article 8 of the European Convention on Human Rights (ECHR).
4. The appeal was listed for an oral hearing. Of course, the Appellant being out of the country was unable to attend. His Sponsor (his brother) did not attend and the Appellant was unrepresented. A Presenting Officer attended on behalf of the Respondent. Judge Cox, in the circumstances, decided to proceed. He noted that the appeal could only be pursued on human rights grounds, which was clearly correct, but said that there was no evidence before him to demonstrate that there was family life within the meaning of Article 8 between the Appellant and the Sponsor. He concluded, therefore, that the Appellant had failed to show any human rights breach such that the appeal had to be dismissed.
5. There followed an application for permission to appeal to the Upper Tribunal. The basis of it was that there had been unfairness because the Sponsor had contacted the First-tier Tribunal to request an adjournment but no such adjournment had been given. Permission to appeal was granted by a Judge of the First-tier Tribunal on the basis that it was possible that an adjournment request had been overlooked. What was clear was that no such request had reached Judge Cox. Permission having been granted the matter came before the Upper Tribunal.
6. At the hearing before me the Sponsor told me that he had sent an e-mail, via his mobile telephone, to the First-tier Tribunal seeking an adjournment. He had done so because his grandmother had fallen ill which necessitated him having to travel to Pakistan to see her. The First-tier Tribunal had sent an e-mailed reply in which it was indicated that they would “sort things out”.
7. In response to some questions put by me the Sponsor said that the Appellant is his younger brother. He is married. The Sponsor has lived in the UK for some eighteen years. He last saw the Appellant in Pakistan around the time of the appeal hearing before Judge Cox (the appeal was heard on 7th May 2015) and that, prior to that, they had seen each other in either 2012 or 2013. The family are very close. It is not necessary for the Appellant to visit the Sponsor but the Sponsor would like the Appellant to see his house. They are brothers and are close but no more than that. The visit is not really needed.

8. I did not find it necessary to hear anything further from the Sponsor or anything from Mr Diwnycz.
9. I found the Sponsor to be entirely straightforward and credible. There is no record of his having made an e-mail adjournment request but, my having found him to be credible, I am quite happy to accept that he did so. It appears, then, that that request was not acted upon so that there was unfairness in the hearing proceeding in his absence although, of course, that was not the fault of Judge Cox. However, as noted above, an appeal against a refusal to grant entry clearance as a visitor can now only be brought and can only succeed on human rights grounds. On the facts of this case the only article of the ECHR which can conceivably have relevance is Article 8 which affords a qualified protection to the right to respect for family life. There is, as is well-established, a five stage process involved in a consideration of article 8 arguments. Those five stages encompass, the asking of these questions;
 - (a) Is there any interference with family life brought about by the decision under challenge?
 - (b) If so, is that interference of such gravity as to engage Article 8?
 - (c) Is any such interference lawful?
 - (d) Is any such interference proportionate?
 - (e) Is any such interference in pursuance of a legitimate aim?
10. This is a relationship between two adult brothers. I appreciate the Appellant also has a sister in the UK but I did not hear any evidence from her (she was not present at the hearing) and, as indicated, the Appellant said the main purpose was to see his brother (the Sponsor). I accept that they are a close family but the Sponsor was not able to identify any factors which would point to their relationship being anything other than a normal relationship between adult brothers. There is, for example, no indication of any unusual emotional dependency. The two brothers live in separate countries. The evidence of the Sponsor shows that he is able to visit the Appellant in Pakistan so that the refusal of the visit visa has not prevented the periodic ongoing contact which they have, continuing.
11. I appreciate there is authority to say that a consideration of whether the requirements of the Immigration Rules are met is an important component of an Article 8 consideration. However, there is also authority pointing to the fact that the first sorts of questions to be asked will be whether Article 8 is engaged and, if so, whether there is any interference with Article 8 rights. On the basis of the Sponsor's very frank evidence I would conclude that, in fact, there is no basis to concluded that the decision under appeal does interfere with Article 8 rights. Further, even if does, there is nothing to show that that interference is of such gravity as to engage Article 8.
12. In all of the above circumstances whilst I am prepared to set the decision of Judge Cox aside on the basis of procedural unfairness I go on to make

the, in my view, inevitable decision that the appeal must be dismissed because Article 8 is not engaged.

Notice of Decision

- 13. The decision of the First-tier Tribunal did involve an error of law. It is set aside.
- 14. I re-make the decision by dismissing the Appellant's appeal.
- 15. No anonymity order is made

Signed

Date

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed

Date

Upper Tribunal Judge Hemingway