



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

**Appeal number: VA/05392/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On October 6, 2015**

**Decision and Reasons  
Promulgated  
On October 8, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**MR ARAFA ABDELRASOUL ELADY AHMED  
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

Appellant

Mr Bramble (Home Office Presenting Officer)

Respondent

Ms Patel (Sponsor)

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a national of Egypt. The background to this case is that the appellant and sponsor are friends. The appellant applied for a visit visa to come to the United Kingdom for six weeks on July 14, 2014.

3. The respondent refused the application finding the appellant did not satisfy the relevant requirements of the Rules and appeal rights were limited under section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002.
4. The appellant appealed this refusal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 4, 2014.
5. The matter was heard by Judge of the First-tier Tribunal Young on April 23, 2015 and in a decision promulgated on May 12, 2015 the Tribunal allowed his appeal under the Immigration Rules.
6. The respondent applied for permission to appeal on May 14, 2015 submitting the Tribunal had erred by considering the appeal under the Rules in circumstances where there was no right of appeal.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Grimmett on July 8, 2015 on the basis that the Tribunal had erred in allowing the appeal under the Rules.
8. Ms Patel, on behalf of the appellant, filed a Rule 24 response on July 29, 2015 and I have had had regard to this document.
9. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.
10. Having read the papers in this appeal and in particular the Tribunal's decision I am satisfied that the Tribunal made an error in law by allowing this appeal under the Immigration Rules.
11. Section 84(1)(c) of the 2002 Act limits the right of appeal in entry clearance cases to human rights grounds or race discrimination issues. Race discrimination was never raised in the original grounds or at the hearing. This was a private visit in the sense that the sponsor and appellant were friends but were not related. They are not family for the purposes of the Rules.
12. The Tribunal erred in allowing the appeal under the Immigration Rules because it had no power to make that finding. The Tribunal was entitled to consider the matter under ECHR legislation, as that had been raised in the grounds of appeal, and should have either allowed or dismissed the appeal only on that basis.
13. I indicated to Ms Patel that although I had considered despite her Rule 24 statement there was an error in law and I set aside the decision under the Immigration Rules.
14. I raised with Mr Bramble what his approach to human rights would be and he referred me to a raft of decisions including Mostafa (Article 8 in entry

clearance) [2015] UKUT 112 (IAC), Adjei (visit visas-article 8) [2015] UKUT 261 (IAC) and Kaur (visit visa appeals; article 8) [2015] UKUT 487 (IAC).

15. At paragraph [24] of Mostafa the Tribunal stated-

“...We are, however, prepared to say but it will only be in very unusual circumstances that a person other than a close relative will be able to show that the refusal of entry clearance comes within the scope of article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not necessarily be extended to cases where, for example, the proposed visit is based on a whim or not add significantly to the time that the people involved spent together....”

16. It is clear from this decision that very few cases will satisfy the test that would enable a successful appeal under article 8.

17. Moreover, it is common ground that the government removed any rights of appeal for visitors many years ago by bringing in legislation that restricted appeals to certain categories of family members. Whilst Ms Patel sought to persuade me that she was a family member I am satisfied that she is not a family member for the purposes of either the Immigration Rules or article 8.

18. There is nothing raised in her grounds that would engage article 8 for private life purposes. There is no reason for private life to be engaged in circumstances where both parties are unrelated and live in separate countries and their only contact has been when the sponsor has met them outside the United Kingdom and can continue to do so.

19. Whilst I sympathise with the sponsor at her frustration of the legal system there is no basis to consider granting this appeal under article 8.

20. In her Rule 24 response Ms Patel referred to the case of Moon (Human rights, Entry clearance, Proportionality) [2005] UKIAT 112 in which the Tribunal confirmed that the only article invoked in an entry clearance appeal under article 8 was family life.

21. Accordingly, I find that any appeal under ECHR legislation is doomed to failure and I dismiss of this appeal.

### **DECISION**

22. There was a material error. I set aside the original decision and remake the decision and dismiss the appeal under ECHR legislation.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award as the appeal has been dismissed.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis