

**Upper Tribunal
(Immigration and Asylum
Chamber)**
HU005452015



Appeal Numbers:

HU005462015

THE IMMIGRATION ACTS

**Heard at Field House
On 16 May 2016**

**Decision & Reasons
Promulgated
On 23rd May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

**MUNIR AHMED
AMTUL RAUF
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

The Appellant

1. The application for permission to appeal was made by the Secretary of State acting on behalf of the Entry Clearance Officer, Abu Dhabi but nonetheless I will describe the parties as they were described before the First-tier Tribunal, that is Mr Munir Ahmed and Mrs Amtul Rauf as the appellants and the Entry Clearance Officer as the respondent.

2. The appellants are husband and wife and citizens of Pakistan born on 1 January 1952 and 1 January 1955 respectively and they made an application to visit their elderly uncle in the United Kingdom. It would also appear that the appellants also have two brothers who are EEA nationals who also live in the United Kingdom. First-tier Tribunal Judge Obhi allowed the appellants' appeals against the refusal of the Entry Clearance Officer to their visit visa application. The Entry Clearance Officer made his decision on 21 May 2015. The Secretary of State with permission challenges that decision which was made on the papers by Judge Obhi on 19 January 2016.
3. The Entry Clearance Officer did not believe that the appellants intended to return to Pakistan following their visits, noted that the appellants had previously made three separate applications for entry clearance during an eight month period, that they had no declared source of income and declared no income or assets of their own or provided any evidence of remaining family in Pakistan.
4. It should be noted that the appellants appealed under Section 82 of the Nationality, Immigration and Asylum Act 2002 which establishes a right of appeal in respect of most immigration decisions but the right of appeal against the decision to refuse a visit visa in all categories was abolished by Section 52 of the Crime and Courts Act 2015 save where the decision is contrary to Section 6 of the Human Rights Act or the Race Relations Act.
5. The challenge by the Secretary of State on behalf of the Entry Clearance Officer to Judge Obhi's decision was effectively that the judge had made a material misdirection in law because Article 8 will not normally exist between adult siblings, parents and adult children and the case of **Kugathas v Secretary of State [2003] EWCA Civ 31** made the point that there is no presumption of family life and that family life is not established between an adult and his surviving parent or other siblings unless something more exists than normal emotional ties. It was submitted that none of the criteria were met in this case.
6. It was submitted that there should be an indication that the issue of how one person would be dependent on the relative in relation to more than normal emotional ties further to **Ghising and Others [2015] UKUT 00567 (IAC)**. It was also submitted that the judge had, in error, drawing an analogy with **Abbasi and another (visits - bereavement - Article 8) [2015] UKUT 00463 (IAC)** in stating that
"I am therefore satisfied that the refusal of entry clearance to see an elderly or infirm relative who is close to death is an interference with the private and family lives of the appellants and their close family members".
7. It was contended that it still needed to be clear that the elements of family life with the person in the UK were established. Furthermore it was pointed out that the Tribunal in **Abbasi** did not refer to the jurisprudence

in **Kugathas**. It was also pointed out that in the decision there appeared to be no proportionality assessment or why it was disproportionate.

8. In sum I find in response to Mr Bramble's submissions that there is an error of law in this decision. The judge records in paragraph 13 of his decision that he has little detailed information about the nature of the relationship between the appellant's late uncle and themselves, and merely states that the fact that the second appellant's brother, Mr Ahmed, was present at his death indicates that the relationship with the family was strong. The judge also adds that the fact that they also wished to visit him knowing he was close to his final days was indicative of a strong relationship with him but there was no indication of, for example, the last time they saw each other. The judge clearly added that he was confused as to the age of the uncle. There was no indication as to any money or passing or dependency such that there were more than normal emotional ties. Indeed in the documentation which was supplied by the appellants in their appeal suggested that in fact they are financially independent and are in receipt of a pension.

9. I also turn to paragraph 9 of the judge's determination where he says there is very limited information about the brothers or their lives in the UK and adds

"The only additional information which is given in the papers sent to the ECO is that the couple have a 'maternal uncle'".

10. The judge notes that Wadi Hussain who is the uncle is in poor health and that he is

"officially 90 years old but thought to be probably around 10 years older than that"

and that the judge notes from additional papers submitted in support of the appeal but not seen by the Entry Clearance Officer that in fact the uncle had passed away in November 2015 and there is further complications as to the date on the death certificate.

11. The reasoning was inadequate to demonstrate the requirements as indicated by **Kugathas** and the evidence recorded regarding the extent of the relationship fails to support or substantiate a relationship that falls within the ambit of a protected family life.

12. In sum I am not persuaded that the evidence shows that there is a close relationship such as to satisfy the test or guidance set out in cases such as **Kugathas** or the line of authorities set out in **Mostafa (Article 8 in entry clearance)** [2015] UKUT 00112 (IAC). Indeed, the judge, at paragraph 12, states that the relationship between the adult siblings is *not the type of close relationship* which existed in the case of **Mostafa**. There is no evidence in this case that there is indeed a close relationship or

indeed the nature of that relationship is between the appellants and the uncle.

13. I find that the first point of the five principles as set out in **Razgar v SSHD [2004] UKHL 27** cannot be satisfied. I am not persuaded that there is any engagement in either family and/or private life in this appeal and therefore the appeal should accordingly be dismissed.

Notice of Decision

The First-tier Tribunal made an error of law and the decision is set aside. I remake the decision and dismiss the appeal of Mr Munir Ahmed and Mrs Amtul Rauf.

No anonymity direction is made.

Signed

Date 20th May 2016

Deputy Upper Tribunal Judge Rimington

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20th May 2016

Deputy Upper Tribunal Judge Rimington