



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

Appeal Number: OA/11804/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On 25th January 2016**

**Decision and Reasons
Promulgated
On 26th January 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Islamabad

Appellant

and

N M

(no anonymity direction made)

Respondent

Representation:

For the Appellant: Mr Kotas, Senior Home Office Presenting Officer

**For the Respondent: Mr Lemer, Counsel instructed by SAJ Law
Chambers**

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan date of birth 29th July 1993. On the 6th August 2015 the First-tier Tribunal (Judge Eban) allowed his appeal against a decision to refuse to grant him entry clearance. The Entry Clearance Officer in Islamabad (ECO) now has permission to appeal against the First-tier Tribunal's decision¹.

¹ Permission granted by First-tier Tribunal Grimmatt on the 2nd December 2015

Background and Matters in Issue

2. The basis of the Respondent's application for entry clearance was that he should be permitted to join his parents and elder brother in the United Kingdom. He had remained in Pakistan when they had come to the UK in September 2013 in order to claim asylum. By the 23rd May 2014 they had been recognised as refugees, and on the 14th July 2014 he made an application to join them.
3. The decision to refuse entry clearance is dated 18th August 2014. The ECO correctly observed that the Respondent was no longer a minor. He was aged 20 at the date of the application and so could not meet the requirements of paragraph 352D(ii) of the Immigration Rules, wherein the provisions for refugee family reunion are expressed. In respect of Article 8 the ECO considered the "particular circumstances" advanced in the application and found no exceptional reasons to justify a grant of entry clearance outside of the Rules: "you are not handicapped and you have not been disadvantaged here to date". This decision was upheld by an Entry Clearance Manager on the 12th November 2014 who suggested that if the Respondent wished to see his parents they could visit him in a third country.
4. When the appeal came before the First-tier Tribunal the ECO did not attend. The Tribunal heard oral evidence from the Respondent's parents and his brother.
5. There being no dispute that the Respondent could not succeed with reference to the Rules, the appeal proceeded on Article 8 grounds alone.
6. Noting that the Respondent was still young and that he had not made an independent life for himself the Tribunal found that he continued to have a family life with his parents. Having regard to the guidance in AG (Eritrea) v SSHD [2007] EWCA Civ 801 it found Article 8 to be engaged. The decision was one lawfully open to the ECO to take in pursuit of the permissible aim of the maintenance of the economic well-being of the country by the consistent application of immigration control.
7. Turning to the question of whether the decision to refuse entry clearance was in all the circumstances proportionate the Tribunal listed the factors relevant to the Respondent. Those which might be said to be in his favour included:
 - He was aged 20 at the date of the application
 - That the Respondent's parents and brother have been recognised as refugees
 - He is alone without his close family, with whom he has lived all his life

- His family are not able to return to Pakistan to be with him because they have a well-founded fear of persecution in Pakistan
- The Respondent is a practising Ahmadi from a well-known family of Ahmadis and as such is vulnerable in a very hostile society
- His parents desperately want to be reunited with him
- There is evidence that he is suffering from depression
- There is evidence that his mother is suffering from depression

Factors listed which might be said to support the ECO's position included:

- The Respondent could visit his family in the UK
- He is at an age where he might be expected to get a job and establish his own independent life
- He has no connection to the UK apart from his parents and brother
- He has spent his whole life in Pakistan and is familiar with the language and culture
- There is no reason why his family cannot continue to support him financially in Pakistan

8. Having made those findings the Tribunal set out its reasoning as follows:

"This is not a case of mere preference as to which country the appellant and his parents and elder brother reside in. In this case there are parents and an elder brother who cannot return to Pakistan, and a twenty year old who has not yet formed an independent life without his family. In my view the circumstances of this particular case point firmly towards an outcome favouring family reunion, which would be in accordance with the spirit of the Refugee Convention. The ordinary considerations of immigration control, such as the need to show maintenance without additional recourse to public funds, are waived in cases concerning the close family members of refugees. In this case the appellant does not meet the requirements of the family reunion rules because he was 20 when he made his application and not under 18. I am very conscious that article 8 does not give me a general discretion to dispense with the requirements of the Immigration Rules, however the combination of circumstances behind this case are sufficiently serious and compelling and compassionate to require admission. This is a family which has been split up because of persecution. As such, I do not give decisive weight to the issue of maintenance of the economic well being of the country in the proportionality balancing exercise.

Looking at all the circumstances and balancing the respective interests

of the parties, I find that the decision to refuse entry clearance amounts to a disproportionate interference with family life ...”

9. The ECO’s grounds of appeal are, in summary, that the First-tier Tribunal has erred in:
 - i) Failing to have regard to applicable principles in respect of family life, in particular whether family life can be said to exist between the sponsors and the adult Respondent: see Kugathas [2013] EWCA Civ 31
 - ii) Failing to give adequate reasons for the finding that there are exceptionally compelling features in this case.
10. Judge Grimmett of the First-tier Tribunal granted permission in the following terms: “it is arguable that in allowing the appeal under Article 8 the Judge erred in assessing the situation at the day of application, when the Appellant was nearly 20, rather than at the date of the hearing when he was 22 and had been living apart from his parents for two years”.

Error of Law

Preliminary Issue

11. At the outset of the hearing Mr Kotas distanced himself from the terms of the grant of permission. He agreed that Judge Grimmett appeared to have granted permission on a point of law which was simply misconceived: this being an entry clearance appeal the relevant date for review was the date of decision, that being the 18th August 2014. The fact that the Appellant was 22 by the date of the appeal was not relevant at all. He maintained however that following this guidance in Ferrer (limited appeal grounds; *A/vi*) [2012] UKUT 00304 (IAC) he should be permitted to pursue all grounds argued:

“Where the First-tier Tribunal judge nevertheless intends to grant permission only in respect of certain of the applicant’s grounds, the judge should make this abundantly plain, both in his or her decision under rule 25(5) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and by ensuring that the Tribunal’s administrative staff send out the proper notice, informing the applicant of the right to apply to the Upper Tribunal for permission to appeal on grounds on which the applicant has been unsuccessful in the application to the First-tier Tribunal.”

Although the grant of permission did not refer to the other grounds, it had not made it abundantly clear that they were excluded.

12. Mr Lemer opposed this submission. He submitted that Judge Grimmett had plainly only granted permission in respect of one matter; that matter having been conceded in the Respondent’s favour, the appeal should go no further.

13. I found that the ECO was entitled to plead all grounds. Although neither the *Kugathas* nor the public interest point merited a mention in the grant of permission, Judge Grimmett had not made it abundantly clear that they were being excluded. I therefore proceeded on the basis that *Ferrer* permission had been given in respect of all grounds.

Ground 1: Family Life

14. It was the ECO's case that the First-tier Tribunal had erred in failing to have regard to the applicable principles in assessing the nature of this family life, and further that on the facts as found was wrong to have found Article 8 engaged. The First-tier Tribunal appears to have assumed that there is a family life because of the biological relationship and there are "no findings of any dependency". In his oral submissions Mr Kotas pointed to the "voluntary" nature of the separation between parents and son, a submission underpinned by an assertion that when his family fled to the UK in 2013 the Respondent elected to stay behind at university.
15. There is no merit in this submission. The Tribunal was clearly cognizant throughout that this young man is no longer a minor, that being the reason for refusal under the refugee family reunion provisions in the Rules. The Tribunal directed itself to the most authoritative statement of the law as it relates to Article 8 and "adult children", the dicta of Sir Stanley Burnton LJ in *Singh v SSHD* [2015] EWCA Civ 630. That guidance is in essence that there is no requirement of exceptionality in assessing whether an adult child maintains a family life with his parents, but that there must be something more than the ordinary ties of love and devotion. In this case the Tribunal was plainly satisfied that this was the case. It found as fact (contrary to the suggestion in the grounds) that the Respondent was not leading an independent life and that he remained entirely financially dependent on his father. There being no 'bright line' between minority and majority he remained part of this family unit. He had no other close family in Pakistan. As a practising Ahmadi he was, like his parents had been, "vulnerable in a very hostile society". That was no doubt one of the factors leading to the depression suffered by both mother and son and the fact that the separation is causing great distress to all concerned. As Stanley Burnton LJ notes in *Singh*, "it all depends on the facts". On these facts, the First-tier Tribunal was entitled to conclude, for the reasons it gives, that Article 8 was engaged.
16. As to the point that the Tribunal had failed to weigh in the balance the "voluntary" nature of the separation, this sits rather uneasily with the fact that mother, father and brother were all granted international protection; this amounts to an acceptance that they were forced to leave Pakistan for their own safety. I can see no reason to interfere with the Tribunal's finding that "this is a family

which has been split up because of persecution”.

Ground 2: Article 8 ‘outside of the Rules’

17. The complaint made by the ECO is that the features identified in the determination are not capable of amounting, even if taken cumulatively, to sufficiently serious and compelling factors so as to warrant a grant of leave to enter outside of the Rules.
18. It is with substantial justification that Mr Lemer characterised this submission as a disagreement with the outcome of the appeal.
19. The Tribunal began its deliberations by properly directed itself to the reason for refusal, that being that the requirements of the appropriate immigration rule, paragraph 352D, were not met. The reasoning on Article 8 proportionality thereafter contains no misdirection. At paragraph 16 the determination identifies the task at hand: “I have to balance the private interests of the appellant and his family on the one hand against the public interest in the maintenance of the economic well-being of the country by means of effective and consistent immigration control on the other”. Careful regard has had to the weight to be attached to the public interest at paragraph 17. The factors weighed in the balance in the proportionality assessment are set out with clarity and cannot be reduced to the fact of the biological relationship. The cumulative factors which led the First-tier Tribunal to allow the appeal under Article 8 were the fact that this family have been split up because of persecution, that the application would have succeeded but for the Respondent’s age, that he is alone in Pakistan with no close family, that he has not established an independent life and remains part of this family unit, that his whole family are refugees in the UK, that he himself is a practising Ahmadi who is “vulnerable in a very hostile society”, that his parents are desperately worried about him to the extent that his mother has been diagnosed with depression, and that he is depressed. On those facts it was open to the Tribunal to find that this decision was disproportionate, or to put it another way that the outcome of the decision was, for the Respondent and his family, “unjustifiably harsh”.

Decisions

20. The determination of the First-tier Tribunal contains no error of law and it is upheld.

Upper Tribunal Judge Bruce
26th January 2016