**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: VA/07045/2014**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 9 February 2016** | **On 22 February 2016** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS SHAMIM AKHTAR**
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr Nath, Senior Home Office Presenting Officer
For the Respondent: Mr D Balroop, instructed by Malik Law Chambers

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State against a decision of First-tier Tribunal Judge Adio dated 4 September 2015 allowing an appeal brought by Mrs Shamim Akhtar against a decision of an Entry Clearance Officer dated 15 October 2014 refusing her entry clearance to the United Kingdom as a visitor. In this decision I shall refer to the parties as they were before the First-tier Tribunal, that is that Mrs Akhtar is the Appellant and the Entry Clearance Officer is the Respondent.

2. The Appellant is a national of Pakistan who was born on 1 January 1948. She was 66 years old at the date of the decision. She has children

resident in the United Kingdom, particularly her adult son, Mr Zaeem Baig. He is settled and is a British national. He has children aged 11, being a son, and twins, a boy and a girl, aged 15. The Appellant had twice previously successfully applied for entry clearance to visit the United Kingdom and had visited the country between 24 February 2007 and 13 May 2007 and again on 13 November 2008 until 21 December 2008. Mr Baig had also visited the Appellant in Pakistan, most recently I believe in 2013. The Appellant lives with another adult daughter in Pakistan.

3. In her application for entry clearance the Appellant said that she wished to visit Mr Zaeem Baig and his family. That application was refused on the grounds that the Entry Clearance Officer believed that she had not demonstrated that she was financially supported as she claimed. She had not demonstrated that she was residing with any family members in Pakistan or demonstrated the level of her own funds or her financial circumstances. The Entry Clearance Officer was not satisfied as to her circumstances in Pakistan or that she had demonstrated that there would be adequate accommodation provided to her on arrival in the United Kingdom. The application was refused on the basis that she was not a genuine visitor and did not satisfy the requirements of Immigration Rule 41.

4. An appeal lies against such decision now only on limited grounds which include human rights grounds. The Appellant brought such an appeal, that appeal being heard before the judge at Hatton Cross on 18 August 2015. The Sponsor gave evidence at the hearing. The judge made certain findings of fact which included at paragraph 7 in the light of all the evidence the judge had heard that the Appellant was a genuine visitor and did satisfy all of the relevant requirements to Rule 41 of the Immigration Rules. The judge was conscious of the fact that it was necessary for the Appellant to establish that Article 8(1) was engaged in such an appeal in order for the appeal to have any merit irrespective of the fact that she met the requirements of paragraph 41.

5. In considering the Appellant's family ties with the United Kingdom the judge held as follows:

> "6. Applying the decision of the Upper Tribunal I have considered the case of **Razgar [2004] UKHL 27**. I have considered whether the refusal of entry clearance affects the family life of the Appellant and the Sponsor. Although the Appellant is living in Pakistan the fact remains that she has always been receiving financial support from her son in the UK the Sponsor since her husband died. The Appellant has shown me evidence which goes back before the date of decision. Although this is evidence which had been submitted after the date of decision it is appertaining to the date of decision as the Sponsor has always stated that he has supported his mother. There is therefore the element of financial dependency on the Sponsor in the UK and that creates a family life also. I also note that the Appellant was visited by the Sponsor and his family in 2013. The Appellant did not make it

clear in her Visa Application Form that she is supported by friends and family and that would definitely include the Sponsor in this case. I therefore find that there is a dependency in the relationship between the Appellant and the Sponsor. The Appellant has also visited the UK in 2007 and 2008 and the Sponsor has visited the Appellant with his family in 2013."

6. I also find it necessary to refer to a passage at paragraph 9 of the judge's decision as follows:

> "9. Having found that the Appellant has not failed to meet the requirements of the Immigration Rules at the time of the decision I now consider whether the Respondent's decision is a proportionate one. The Appellant is 67 years old and she has a son who has been supporting her for a long period of time. He is self-employed and he is only able to spend a maximum of thirteen days with his mother whereas his mother who was retired is in a position to spend more time with him and her grandchildren in the United Kingdom. Bearing in mind the very good immigration history of the Appellant the fact that there is a very good bond and relationship between the Appellant and the Sponsor as well as her grandchildren. Maintenance of effective immigration control is in the public interest according to Section 117B(1) of the Immigration Act 2014. The Appellant satisfies all of the requirements of paragraph 41 of the Rules and has a good history of compliance of coming to the UK. Her history of compliance and her strong family relationship with her grandchildren and son and her age and the desire of the Sponsor to spend more quality time with his mother which he is unable to do due to his self-employment makes the Respondent's decision in this case disproportionate."

The appeal was thus allowed.

5. The Respondent sought permission to appeal against that decision in grounds dated 16 September 2015 arguing that the judge undertakes a proportionality assessment at paragraph 6 but fails to make a reasoned finding in relation to family life. Whilst the Sponsor provides financial support it is submitted that this in itself is not sufficient to demonstrate that the relationship goes beyond the normal emotional ties between a parent and adult child. It was also argued that the judge's assessment of proportionality was inadequate. The Respondent then puts forward various alternate methods that family life could be enjoyed as between the parties to this relationship, such as the Sponsor taking family holidays in Pakistan and communicating with the Appellant by modern means of communication. It was suggested that a visit by the Appellant to the Sponsor is not the only option open to them. It was then argued that the judge's proportionality assessment did not explain why the refusal of a visa which only allows the parties to be together temporarily was a disproportionate interference with Article 8 rights.

6. Permission to appeal was granted on this ground by Judge of the First-tier Tribunal Colyer on 7 January 2016.

7. I have heard from the Respondent in support of those grounds of appeal. It seems to me that the principal argument being advanced by the Respondent is that Article 8(1) was not engaged in this matter and, referring to the grounds of appeal, the judge had concentrated on issues of financial support and that such support was not sufficient to demonstrate a relationship engaging Article 8. I find that that ground is not made out. I have quoted above the deliberations of the judge as between the family life enjoyed between the Appellant and her family members in the United Kingdom. It is true that at paragraph 6 the judge examined the financial dependency of the Appellant on the Sponsor in the United Kingdom. However it is also recorded that they had a record of visiting one another and it was recorded at paragraph 9 that the Appellant has a very good bond and relationship between herself and the Sponsor, her son, as well as the grandchildren. This relationship was described as a strong family relationship with her grandchildren and son.

8. I find that the challenge brought by the Respondent is essentially one of perversity. The judge heard evidence from the Sponsor about his relationship with his mother and his mother's relationship with his own children and the judge made findings of fact as I have set out as to that relationship. It is clear that the judge held that that relationship constituted family life. If the Respondent's challenge is that there was no evidential foundation for such a finding I find that that criticism is not made out.

9. I find that the remainder of the Respondent's criticisms of the judge's decision are just that; criticisms, amounting to a mere disagreement. It seems to me that when applying the guidance of the President in the case of Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) that in the case of appeals brought against refusal of entry clearance under Article 8 ECHR the claimant's ability to satisfy the Immigration Rules is not the question to be determined by the Tribunal but is capable of being a weighty though not determinative factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control. The President in other passages of Mostafa also pointed out that the purpose of Rule 41 was to facilitate family visits. It is clear in the present case that the judge held that the Appellant was a genuine visitor and that she met all of the relevant considerations in paragraph 41 of the Immigration Rules. He also held, sustainably, I find, that there was family life as between the Appellant and her family members in the United Kingdom.

10. There remains then, I find, no coherent proposition advanced by the Secretary of State as to why entry clearance ought not to be granted to the Appellant. The suggestions that family life could continue by the Sponsor visiting the Appellant in Pakistan or that family life might continue by the use of modern means of communication fails to acknowledge the recognition given by the President in the case of Mostafa to the

importance of family visits. There seems to me to be no reason in logic or on policy grounds, once Article 8(1) is engaged, upon the judge being satisfied that the requirements of Rule 41 are met, and in circumstances where the refusal of entry clearance amounts to an interference with the family life enjoyed between the Appellant, the sponsor, and his family, for this Appellant to be refused entry clearance. I find that the Respondent's grounds identify no material error of law in the judge's decision. I dismiss the Respondent's appeal and I uphold the decision of Judge Adio.

**Notice of Decision**

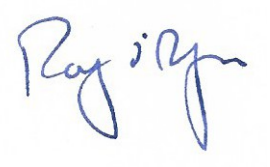
The making of the First tier Tribunal's decision did not involve the making of any error of law.

I dismiss the appeal brought by the Secretary of State.

I uphold the decision of the First tier Tribunal

No anonymity direction is made.

Signed: Date: 17.2.16



Deputy Upper Tribunal Judge O'Ryan