



IAC-AH-DP-V1

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

Appeal Number: VA/07268/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 12th February 2016**

**Decision & Reasons
Promulgated
On 4th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MUHAMMAD ASGHAR KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEAANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr David Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hetherington, promulgated on 6th July 2015, following a decision at Birmingham on 23rd June 2015. In the determination, the Judge allowed the appeal of Muhammad Asghar Khan whereupon the Respondent

Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Grant of Permission

2. On 20th September 2015, permission to appeal was granted by the First-tier Tribunal on the basis that the Judge had erred in law in allowing the appeal of the Appellant, in that the Judge was wrong to find that the Appellant met the requirements of the Immigration Rules as well as of Article 8 of the ECHR. Since 25th June 2013 Grounds of Appeal for visit visa appeals have been restricted to human rights or race relations grounds.
3. The case of **Adjei (visit visas - Article 8) [2015] UKUT 0261** makes it clear that the primary question is whether Article 8 of the ECHR is engaged for visitor appeals at all. It will infrequently be involved. If it is not involved then the Tribunal does not have jurisdiction to embark upon an assessment of the decision of the ECO under the Rules and should not do so.
4. In the instant case, at paragraph 22 of his decision, the Judge concluded that there is family life between the Appellant and the Sponsor who are two adults but he has not given clear reasons for making that finding.

The Submissions

5. At the hearing before me on 12th February 2016, Mr Mills, appearing as Senior Home Office Presenting Officer on behalf of the Respondent Secretary of State, submitted that the Judge had erred in law because the only right of appeal since 25th June 2013 was on human rights grounds or on racial grounds. The hearing in this matter was in June 2015 and the President's guidance in **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112** and in **Adjei [2015] UKUT 0261** was clear that appeal rights were restricted quite dramatically after 2015.
6. The Sponsor in this case was an adult daughter of the Appellant. The presumption in **Mostafa** is that Article 8 is not engaged. The Judge should have started with that presumption that Article 8 was not engaged. Instead, at paragraph 22 the Judge begins from the premise that "everyone has the right to respect for his private and family life, his income and his correspondence" and that "the obligation imposed by Article 8 is to promote the family life of those affected by the decision" (paragraph 22).
7. There had to be a level of dependency going beyond the normal between the Appellant adult daughter and her father. This had not been shown.
8. Accordingly, the appeal could not have been allowed under Article 8.
9. For the Appellant, there was in attendance Dr Ghazal, the medically qualified doctor daughter of the Appellant. She submitted that her father had made five trips to see her in the UK and that they had always

respected the law and will continue to do so and no matter what happens. She submitted that she was only asked for a simple visit from him. She was a single parent. She said that she had two children and one of them was diagnosed with special needs and had severe problems and the second one, recently born, was also showing signs of having such a disability as to require a special needs certification. She needed her own father to be here to provide her with some support now and again because she had no-one else and her father had visited in the past and there was a family life between her children and her father.

10. In reply Mr Mills submitted that there has now been a limited right of appeal in visitor visa cases. The Judge had ignored that limitation and had allowed the appeal by engaging in a freestanding Article 8 exercise. Whether or not the Sponsor would honour and recognise the importance of immigration controls and return back to Pakistan was entirely relevant. What matters is whether Article 8 is engaged. The leading case has now made it clear that it was not engaged. This was the presumption and the Judge had to start with the presumption.

No Error of Law

11. I am satisfied that the making of the decision by the Judge did not involve the making of an error of law, notwithstanding Mr Mills' succinct and measured submissions before me. My reasons are as follows.
12. First, this is a case where the Appellant's eldest child has a sleep disorder and severe intellectual disorder, as the Judge found, and his mental age is eighteen months, although he is aged 9 years. He has challenging behaviour. He does not communicate. The second child, is aged 7 years, but is suspected of having mild autism and has yet to be diagnosed (see paragraph 10).
13. The Appellant's Sponsor, Dr Ghazal, cares for the children herself. She works as a hospital doctor. She has no friends and she has no social life (see paragraph 11). Given the family situation at home, the Judge found that, "it would be impossible for Dr Ghazal, along with her children, to fly to visit the Appellant in Pakistan" (see paragraph 13).
14. On the other hand, the Appellant, the father of Dr Ghazal, and the grandfather of the two children, has visited the United Kingdom five times since 2008, and the Judge observed that, "he has never overstayed. Dr Ghazal said that she guaranteed the Appellant would return to Pakistan at the end of the period of the visit" (paragraph 14).
15. In an earlier Tribunal appeal, when the Appellant also succeeded in securing his visit visa, Judge Broe in a decision promulgated on 22nd August 2015, had said that "he has no reservations at all about Dr Ghazal's credibility. She was frank and gave honest answers to all of the questions asked her" (see paragraph 15).

16. Judge Hetherington in the instant appeal also said that, “I do have no hesitation in finding that I have no reservations at all about Dr Ghazal’s credibility” (paragraph 16).
17. The essential question, however, is whether Article 8 is engaged. The general position, well set out in established cases, is that there is no Article 8 right to visit. Normally it is possible for the people in the UK to just as well visit the friends and relatives in the foreign country. This is plainly not the case here, and the Judge so found (see paragraph 20). As the Judge observed the Appellant’s eldest child’s behaviour

“is so extreme that for his protection he constantly wears a helmet to prevent his injuring himself when he engages in head banging. If Dr Ghazal’s elder son were to be taken to an airport, and/or on a long flight, he would not merely be disorderly and disruptive, such a course of action would be intolerable for Dr Ghazal and all others generally both at the airports and on the flights” (paragraph 21).
18. However, even more importantly than this, the Judge recognised that in the instant case, with the Appellant having made five visits in the past to come and see Dr Ghazal and the children, that there was an established family life between them (see para 22), and it was in this context that the present appeal was being heard.
19. Judge Hetherington observed that, “Dr Ghazal and her children like to share the Appellant’s life and relationship as they have been doing within the short lives thus far ...” (see paragraph 22).
20. In **Mostafa**, the Tribunal made it quite clear that Article 8 cases are fact sensitive. The factual circumstances in the instant case are plainly very different from what one would encounter in most visit cases. In **Mostafa**, the Tribunal stated that,

“it would ... be extremely foolish to attempt to be prescriptive, given the intensely factual and contextual sensitivity of every case. Thus we refrain from suggesting that, in this type of case, any particular kind of relationship would always retract the protection of Article 8(1) or that other kinds of relationship would never come within its scope” (see paragraph 24).
21. This was the position here. The Appellant’s daughter, Dr Ghazal, has two children, both of whom are very challenging and have severe health problems. She has no friends and she has no social life. She is entirely dependent upon the help that her father gives when he arrives. He has been to this country no less than five times recently and has returned back every time. Two previous judges have taken the view that Dr Ghazal is a person of integrity and her credibility is unassailable. When appeal have been allowed and the Appellant has entered the UK as a visitor, he has always then returned back to Pakistan. This is a fact that no decision-

maker can ignore. In these circumstances the Judge was entitled to conclude as he did.

Decision

There is no material error of law in the original Judge's decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

28th April 2016

Approval for Promulgation

Name of Deputy Judge issuing approval:	Professor S S Juss
Appellant's Name:	Muhammad Asghar Khan
Case Number:	VA/07268/2014

Oral decision (please indicate) X

I approve the attached Decision and Reasons for promulgation

Name: Professor Satvinder Juss

Date: 28th April 2016

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

Other Information:

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