



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

Appeal Number: VA/18459/2013

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 22 December 2015**

**Decision and Reasons
Promulgated
On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ENTRY CLEARANCE OFFICER (ECO), ABU DHABI

Appellant

and

**MRS KURSHEED
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr I Ali, instructed by Mohammed Iftikhar (sponsor)

DECISION AND REASONS

1. The appellant ECO appeals against the determination of First-tier Tribunal Judge Sangha that was promulgated on 29 September 2014.
2. Mr Mills relied on the grounds of appeal and submitted that since those grounds were settled there had been significant developments in the case law relating to human rights grounds and family visitor appeals. I will have to consider that case law below and therefore do not recount all of

Mr Mills's submissions at this juncture. It is sufficient to say that the ECO alleges that Judge Sangha failed to make appropriate findings to give adequate reasons for his finding that article 8(1) ECHR was engaged on the facts of this case. As a result, the judge had no proper basis for considering proportionality.

3. In reply, Mr Ali relied on his skeleton argument and reminded me that even though Judge Sangha had not had the benefit of the jurisprudence that has developed since he allowed the appeal in the First-tier Tribunal, his decision and reasons were fully consistent with the approach now advocated in such guidance. Mr Ali took me through relevant sections of the current case law to advance his submissions but as I will have to examine the case law below I do not need to rehearse his arguments in full here. It is enough to say that he reminded me of parts of the current jurisprudence which he said undermined the arguments presented by Mr Mills.
4. At the end of the hearing I gave my decision which is to dismiss the ECO's appeal (with the effect that the decision of Judge Sangha is upheld). I gave brief reasons at the end of the hearing but indicated I would reserve my full reasoning which I now give.
5. Mr Mills and Mr Ali both direct me to the current case law on the proper approach to human rights grounds in family visitor appeals.
6. It is well known that the changes brought about by s.52 of the Crime and Courts Act 2013 restricted the grounds of appeal available to family visitors from 25 June 2013 when the right of appeal for family visitors was removed from part 5 of the Nationality, Immigration and Asylum Act 2002. As a result, from that date a family visitor who is refused entry clearance was able to appeal against the refusal of entry clearance only on grounds relating to human rights and race relations issues.
7. I mention that further changes to the 2002 Act introduced by the Immigration Act 2014 and in force from 6 April 2015 means there is no longer a right of appeal against a refusal of entry clearance but that is of no relevance to this appeal because the decision refusing entry clearance was made on 12 September 2013.
8. The appellant in this appeal relied on human rights grounds only, and relied in particular on her family life rights protected by article 8 ECHR.
9. As is usual when the law changes significantly the Upper Tribunal is quickly put in a situation to resolve disputes as to what the changes actually mean and how they apply. There have been a number of cases and the following two bring the relevant considerations and guidance together: Abbasi and another (visits - bereavement - Article 8) [2015] UKUT 463 (IAC) and Kaur (visit appeals; Article 8) [2015] UKUT 487 (IAC). Between them, these decisions provide guidance as to the fact that visits can be an integral part of respecting family life even if there is no element

of dependency and of the role the immigration rules have when assessing whether an immigration decision gave proper respect to family life.

10. I turn to the determination and whether the findings made are in accordance with the current case law.
11. Judge Sanga's determination reveals that his starting point was whether the appellant would have met the immigration rules then in force regarding visitors. At paragraph 14 he found that the appellant met the relevant requirements and this led Judge Sangha's to his conclusion at paragraph 17 that the ECO's refusal of entry clearance was arbitrary to the extent that it was not in accordance with the law.
12. At paragraph 15 Judge Sangha properly directed himself to the limited grounds of appeal and in the subsequent paragraph found that the appellant enjoyed family life with her relatives settled in the UK. He gives detailed reasons for that finding, identifying that the family has maintained relationships through family visits over a number of years.
13. In light of these findings, it is unsurprising that Judge Sangha concluded that because family life existed between the appellant and her relatives in the UK and because the decision appealed against was not in accordance with the law, the decision refusing entry clearance could not be proportionate in all the circumstances. These points summarise paragraphs 18 and 19 of his determination.
14. I am satisfied that the findings and decisions made are fully in accord with the current case law. It is evident from Abbasi that family life can take different forms. Although Mr Mills suggests that Judge Sangha gave insufficient reason for finding family life exists in this case, it is clear from the detail in paragraph 16 that is an allegation without any reasonable foundation. The human rights convention required the ECO to respect family life and that includes recognising the fact that extended members of a family might need to visit each other from time to time to maintain their relationships. Judge Sangha's careful examination of the evidence as set out in paragraph 16 reveals that this is such a case.
15. Having found family life exists, the fact that the requirements of the immigration rules were in fact met at the date of decision was strong evidence that the ECO's decision was not in accordance with the law and therefore arbitrary. This is not to say that the ECO was not entitled to make the decision appealed against. The complaint is that the ECO failed to give proper consideration to the evidence and arguments presented. Judge Sangha's careful analysis upheld that complaint. He was entitled to come to those findings and on so doing, because he gives ample and cogent reasons, there is no possibility of regarding his findings as being legally perverse.
16. Having found that the requirements of the immigration rules had in fact been met at the date of decision can only be a significant factor in

assessing proportionality because, as we know from the guidance in Kaur, the immigration rules set out public policy regarding immigration. There can be no public interest in maintaining a decision to refuse entry clearance where the requirements of the immigration rules are met. As a result, and as identified by Judge Sangha in paragraph 19, the personal circumstances of the appellant and her relatives outweigh the public interest.

17. The only negative comment regarding the determination might be that the structure might have been different if Judge Sangha had the benefit of the current case law. But that is no criticism because even without the benefit of current case law, the fact he dealt with every relevant issue reveals that his determination is somewhat prescient of the guidance that followed.
18. Because there is no legal error in the determination, I dismiss the ECO's appeal to the Upper Tribunal with the effect that I uphold the decision of Judge Sangha for the reasons he gave.

Decision

The ECO's appeal to the Upper Tribunal is dismissed because there is no legal error in the determination of Judge Sangha and his decision is upheld.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal