



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/18460/2013

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons Promulgated

On 4 March 2016

16 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

MRS SHAKEELA BIBI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr I Ali, counsel

DECISION AND REASONS

1. The Entry Clearance Officer (ECO) appeals the decision of First-tier Tribunal Judge Sangha, promulgated on 26 September 2014, allowing an appeal against a decision to refuse the respondent leave to enter the United Kingdom as a visitor.

Background

2. On 19 August 2013, the respondent, then aged 57, sought leave to enter the United Kingdom, in order to visit her adult daughter, HJ, who resided in the United Kingdom with her husband and four daughters. A covering letter from HJ's husband (the sponsor), explained that his wife had travelled frequently to Pakistan to see her mother but this was becoming "*increasingly difficult*" owing to the children being at school. He also mentioned that his wife's sister was married to his own brother and that they also had four children. Otherwise, the sponsor emphasised that the respondent had close family in Pakistan, including "*her husband and two sons;*" that she had grandchildren, a home and savings in Pakistan and would happily return there after the visit. The sponsor proposed to meet the cost of her return tickets and any other costs of the visit.
3. The visa application was refused on 11 September 2013 as the ECO was not satisfied that the respondent was genuinely seeking entry only as a visitor or that she intended to leave the United Kingdom at the end of the visit. The ECO particularly noted that there was no evidence that the respondent was supported by her husband and did not accept that her personal and financial circumstances were as she had claimed.
4. Detailed grounds of appeal were enclosed with the notice of appeal, in which it was argued that family life was engaged where a mother wished to visit the above-mentioned family members. It was said that the family members in the United Kingdom were "*unable*" to visit Pakistan owing to changing circumstances, notwithstanding previous frequent visits. It was further argued that the appellant had a home, husband and four children in Pakistan.
4. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry on 14 January 2014. The decision to refuse entry was maintained. The ECM relied on the decision in Sun Myung Moon v ECO Seoul (2005) UKIAT 112 and was of the view that the appellant did not have any family life with the United Kingdom sponsor, or alternatively, the decision in question did not interfere with any family life. It was noted that no "*satisfactory*" reason had been put forward as to why the relative in the United Kingdom was unable to travel to Pakistan.
5. The FTTJ found, in essence, that the relationship the respondent had with her daughter, son-in-law and grandchildren amounted to family life. He concluded that the respondent's decision was not in accordance with the law because the appellant met the requirements of the Rules relating to visitors and also that the decision breached the respondent's rights under Article 8 ECHR.

6. Error of law

7. The grounds of application argue, under the first ground that the FTTJ made a material error of law in reversing the burden of proof in his finding that the onus was on the Secretary of State to show that there was no breach of Article 8. Furthermore, it was said that the FTTJ had used Article 8 as a general dispensing power and that the decision in question did not impinge upon the respondent's family life.
8. The second ground drew attention to the fact that the FTTJ allowed the appeal as not being in accordance with the law on the basis that the requirements of the Immigration Rules had been met and that this was outside his jurisdiction.
8. Permission to appeal was granted on the basis that it was arguable that the FTT failed to adequately explain why he concluded there was family life; it was also unclear when the parties last lived together and whether there was any dependency. The grounds were also said to be arguable.
9. At the hearing before me, Mr Mills relied upon the decisions in Mostafa (Article 8 in entry clearance)[2015] UKUT 00112 (IAC), Adjei (visit visas - Article 8) [2015] UKUT 261 (IAC) and Kaur (visit appeals; Article 8) [2015] UKUT 00487 (IAC). In essence, he argued that Article 8 was not engaged at all and emphasised that it would be rarely the case that a case, other than that involving partners or parents of minor children, would come within the scope of Article 8(1).
10. Mr Ali argued that permission ought not to have been granted on the basis that family life was not established, because this did not form part of the grounds of appeal. He did not accept that this was an obvious point. He asked me to accept that family life was established owing to the biological connection between the respondent and her family and that, with reference to Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC), this did not come to an end because the children had become adults.
11. Mr Ali asked me to note that the FTTJ had recognised that the respondent did not live with her family in the United Kingdom in reaching his findings. With regard to whether there was any interference with family life, Mr Ali said that the sponsor found it "difficult" to visit Pakistan owing to school and work commitments. He told me that the last visit was in December 2013, during which the respondent had lost her husband. She wanted to spend more "quality time" with the grandchildren since then. He further argued that the family members in the United Kingdom were limited in the time they could spend in Pakistan, whereas the respondent was not so restricted. He conceded that only a three-week visit was proposed in the visa application.
12. Mr Ali relied on Abbasi and another (visits - bereavement - Article 8) [2015] UKUT 463 (IAC) and argued that the public interest was less potent in some contexts; asking me to note that the respondent wanted time to grieve with her family and

that this scenario was recognised in the case law. He conceded that the respondent's husband had died three months after the decision to refuse entry to the United Kingdom.

13. Mr Ali was of the view that there was no need to show dependency in order to establish family life in visitor cases; in this he referred to the very last sentence of Mostafa.
14. In reply, Mr Mills stressed the need for dependency, referring to Adjei. He acknowledged that absent dependency, family visits could engage Article 8(1), if there was something compelling in addition, with reference to Abbasi, where a visit was proposed following a death and in order to attend to post-funeral rites. In this case, the bereavement was a post-decision issue and did not form part of the reasons why the FTTJ found that family life existed. The FTTJ conclusions as to family life were not open to him where there was no dependency and nothing compelling. The only outcome was the opposite.
15. I permitted Mr Ali to add to his submissions at his request. He added that Mostafa was presided over by a presidential panel and there had been no mention of dependency then, nor was there in Kaur. However, if I was not with him, he wished to state that the respondent was financially dependent on her daughters in the United Kingdom.
16. In further reply, Mr Mills drew my attention to the fact that at the time of the hearing, the evidence was that the respondent was a widow who had applied for a widows' pension and was dependent upon her sons in Pakistan as well as her daughters in the United Kingdom. Whereas at the time of the decision she was married and was probably reliant on her husband's pension.

Decision on error of law

17. I find that the grounds of appeal were sufficiently widely drafted to include a challenge to the FTTJ's finding that there was family life. In [1(a)] of the grounds it is argued that the FTTJ erred in stating that the burden was on the Secretary of State to show there was no breach of Article 8. It is apparent from [20] of the decision and reasons that this was indeed the approach of the FTTJ and given that he considered that the ECO had not discharged the burden, he failed to adequately address whether there was family life at all, in line with the relevant case law.
18. In the alternative, I consider that the FTTJ granting permission rightly considered the issue of whether family life was established to be an obvious point in an appeal based on Article 8.
19. The FTTJ erred in categorising the respondent's relationship with her adult children and their families in the United Kingdom as family life for the following reasons.
20. The FTTJ failed to provide any or any adequate reasons for his finding that there was family life. At [19] and [20] he repeats that he finds family life, "*even though she is an adult and despite the vast distance that separates them.*" Yet nowhere are there any positive findings, which might explain what led him to be satisfied that family life

existed between a mother and her adult children who lived in different countries.

21. I find that the FTTJ's misunderstanding in relation to the burden of proof might explain why he considered it was unnecessary to engage properly with the issue of family life.
22. Furthermore, the FTTJ did not adequately explain why he considered the ECO's decision to amount to an interference with family life, in view of the evidence before him showing that the family in the United Kingdom had regularly visited the respondent in Pakistan and were not prevented from doing so in the future.
23. I accordingly, set the decision of the FTTJ aside, albeit I did not disturb his findings of fact between [11] and [14]; that is that the respondent had satisfied him as to her personal and financial circumstances.
24. The ECO's appeal is, therefore, allowed.

Decision on remaking

25. I was able to immediately remake the decision in this case on account of Mr Ali's acceptance that there was no further evidence to be adduced. I therefore invited submissions from both representatives.
26. Mr Ali maintained that family life existed on account of the blood relationship between the respondent and her daughters and other relatives in the United Kingdom. He referred me to the six visits from United Kingdom family to Pakistan, which took place between 2001 and 2013. He relied on the sponsor's witness statement as to the difficulties experienced by the family here in visiting Pakistan owing to the differing ages of the children and stages of their education. The family was unable to spend time together. He emphasised that the respondent was only intending a visit of three weeks and was not planning to settle here. The relationship between a grandparent and grandchildren was valuable and it was not reasonable for the family in the United Kingdom to continue to visit the respondent in Pakistan. The finding of the FTTJ that the Rules were met was not challenged and this was a weighty factor in deciding whether refusal was proportionate. There was no prejudice to the ECO in the respondent succeeding.
27. Mr Mills argued that the respondent's case fell down at the first and second questions set out in Razgar. He relied on his earlier submissions. Article 8 was not engaged, with reference to Mostafa and Adjei. The only potential argument was the bereavement issue, however this occurred after the date of decision and this matter could not be relied upon. If I was not with him on that issue, there would be no interference. What was argued was only that it was more convenient for the respondent to visit the United Kingdom. There was no evidence that visits to Pakistan were impossible, just more difficult. The respondent could apply for a further visit visa; this time with positive preserved findings from the FTTJ. He believed that the ECO would abide by those findings. Mr Mills accepted that if I

reached the fifth question in Razgar, then it was likely to be disproportionate to refuse entry.

28. Mr Ali replied, by stressing that the respondent now had nine grandchildren and restating his reliance on Adjei.
29. At the end of the hearing I reserved my decision.
30. The respondent sought entry to the United Kingdom in order to visit her daughters, sons-in-laws and their children for a period of three weeks. Hitherto, various combinations of these relatives had visited the respondent in Pakistan on four occasions prior to the decision to refuse entry and two occasions immediately thereafter. At the time of the ECO's decision, the respondent was residing with her husband and two sons in Pakistan. According to the sponsor's letter of support, the respondent had a home and savings and her husband had income from his pension.
31. Following the ECO's decision, the respondent's husband had, sadly, died and an additional reason for visiting arose, that of wishing to grieve with her children in the United Kingdom. The issue of the respondent's bereavement post-dates the ECO's decision and owing to section 85(5) of the 2002 Act, is not a matter which can be considered on appeal.
32. I have been guided by what was said in the headnote in Adjei; *"The first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 of the ECHR is engaged at all. If it is not, which will not infrequently be the case, the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the Rules and should not do so. If article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule..."*
33. In considering whether there is family life between the respondent and her daughters, I have had regard to Kugathas v SSHD (2003) INLR 170, where it was said that, in order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son would not, without more, be enough.
34. This is a case where I consider there to be no element of dependency and no evidence of a relationship, which extends beyond normal emotional ties. At the time of the decision, the respondent was enjoying family life with her husband in Pakistan and potentially with her adult sons who had continued to live in the family home. The respondent's relationship with her children in the United Kingdom was maintained by a series of visits in the years following their respective decisions to leave Pakistan in order to live in the United Kingdom with their husbands.
35. I therefore conclude that the respondent did not enjoy a family life with her

daughters in the United Kingdom.

36. While it has been said that the respondent is financially dependent upon her daughters in the United Kingdom, I note that this situation arose following her husband's death and during the period when she was awaiting an award of a widows' pension. At the time of the ECO's decision, the respondent was living with and financially supported by her husband, possibly with some contribution from her sons in Pakistan. Indeed the sponsor's supporting letter makes no reference to financial support from the United Kingdom.
37. I have also been guided by [24] of Mostafa where comment was made that *"it will only be in very unusual circumstances that someone other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not be necessarily extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together."*
38. Evidently, the respondent's relationship with her daughters and their families does not amount to that of a close life partner or parent and child and there was no element of dependency in place at the time of the decision to refuse entry. Furthermore, the respondent was intending a visit of only three weeks and the evidence of her daughters was not that they could not visit the appellant in Pakistan but that their husbands' work and children's schooling made it more difficult to organise such visits. Therefore, even had I found there to be family life, it is the case that the relationship between the parties, as at the time of the decision, could continue by way of short visits by the daughters and their families to the respondent in Pakistan, much as it had previously.
39. As family life has not been established, there is no need for me to embark on a proportionality assessment.
40. I accordingly dismiss the appeal.

Decision

- (1) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law
- (2) The decision of the FTTJ to allow the appeal under Article 8 ECHR is set aside.
- (3) I substitute a fresh decision to dismiss the respondent's appeal under Article 8 ECHR.

No application for anonymity was made and I could see no reason to make such a direction.

Signed

Date: 5 March 2016

Deputy Upper Tribunal Judge Kamara