Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: VA/19231/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 February 2016	**On 22 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

ZAITOON BEGUM
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Chan (KBM Solicitors)
For the Respondent: Ms A Everett (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Zaitoon Begum, a citizen of Pakistan born 1 March 1965, against the decision of the Entry Clearance Officer of 28 October 2013 to refuse her application for entry clearance. That appeal having been allowed by the First-tier Tribunal, the Secretary of State now appeals to the Upper Tribunal with permission.

2. The application was for Ms Begum to visit her daughter in the United Kingdom, Mehnaz Bi, to be present at the birth of her child. Ms Bi's father, Muhammad Riaz, was the Appellant's husband by way of a polygamous marriage: he acknowledged

that he was "conscious of the fact that you can only keep one wife in the United Kingdom" in an accompanying declaration.

3. The Entry Clearance Officer refused the application because of dissatisfaction with the evidence as to the availability of rental income said to be received by her, and due to inadequate information as to the location of her husband, all of which cast doubt as to whether she would truly leave the United Kingdom at the end of her visit. An Entry Clearance Manager upheld that refusal taking the view that there was no established family life between the couple given that the Appellant was Mr Riaz's second wife and had not regularly visited him here; it was their choice to live in different countries. The decision thus did not interfere with any family life and was in any event proportionate.

4. This decision has already been the subject of appeal proceedings, a decision of 23 October 2014 of the First-tier Tribunal finding that the Appellant met all the requirements of the Immigration Rules, impressed as it was by the oral evidence from Mr Riaz and Ms Bi and by the fact that Ms Begum had previously returned abroad after visiting this country in 2011. However the subsequent success of the appeal was predicated on satisfaction of the Immigration Rules alone, the Judge overlooking the fact that her jurisdiction was limited to the decision's compatibility with Article 8 of the Human Rights Convention. The appeal was accordingly remitted for re-hearing afresh.

5. This time around the First-tier Tribunal recorded the Sponsor's evidence before it that Mr Riaz visited Ms Begum for three months each year, most recently from March to June 2015, during which period they would cohabit. He supported Ms Begum by giving her cash during his visits, which supplemented her income from rent. Now he had retired it was Ms Bi who would be financing her mother's visits in future. Ms Begum had no children in Pakistan, though in this country she had a son and daughter-in-law. In Pakistan she had her brother-in-law and his family (who was a neighbour to her), and three sisters and their children. Ms Bi had visited her mother in 2011 and 2012. Ms Begum and the Sponsor's father had married in 1982; he had come to the United Kingdom in 1955 or 1956.

6. Allowing the appeal, the First-tier Tribunal found that it was appropriate to treat the earlier decision as the starting point, and joined with that Tribunal in accepting the application's credibility and compatibility with the Immigration Rules; it accepted the further evidence given before it as to the regularity of visits between Ms Begum and Mr Riaz. Having directed itself in accordance with the decision in *Mostafa*, it found that family life was established given the closeness of the relationships shown by the family's history. As to proportionality, compliance with the Immigration Rules might be a weighty factor though it was not determinative. Assessing whether the decision struck a fair balance between private right and public interest, the First-tier Tribunal concluded that the Appellant's good character, and those statutory considerations that were relevant applying section 117B of the Nationality Immigration and Asylum Act 2002 to the

facts of the case, pointed in favour of finding continued refusal of the application to be disproportionate.

7. Judge Grimmett of the First-tier Tribunal granted permission to appeal on 23 December 2015 on the basis that there was an arguable error in the acceptance of family life when it had not been established that family life had previously been enjoyed in the United Kingdom. Before me Ms Everett relied on the grounds of the appeal which had alleged that the parties to the relationship had chosen to conduct their family life via a pattern of lengthy visits by the Sponsor to the Appellant. For the Respondent Ms Chan contended that there were family relationships interfered with by the decision to refuse entry clearance beyond that of husband and wife, and there was no evidence that it was financially realistic for Mrs Bi or the children to visit Pakistan regularly. The decision was unflawed by any relevant error of law.

Findings and reasons

8. The relevant Immigration Rules (the old Rule 41 rather than the modern Appendix V given the date of decision) are those governing visit appeals and have of course already been identified as satisfied. *Mostafa (Article 8 in entry clearance)* [2015] UKUT 112 (IAC) reminds us that the satisfaction of those Rules, however, does not carry the day for a visitor Appellant, for with effect from 25 June 2013, section 52 of the Crime and Courts Act 2013 amended section 88A of the Nationality, Immigration and Asylum Act 2002 so that there is no right of appeal against refusal of entry clearance in a family visitor case except on grounds alleging that the decision shows unlawful discrimination or is unlawful under Section 6 of the Human Rights Act 1998.

9. The acceptance on the earlier appeal that Rule 41 is satisfied does, of course, give the Appellant a positive footing from which to launch this appeal, for it permits her to assert that she has firmly established herself as a person who will not remain beyond 6 months and fully intends to leave the United Kingdom at the end of her visit, who will not abuse the route by living here for extended periods through frequent or successive visits and does not intend to take employment or otherwise conduct economic activities here; and can be maintained and accommodated adequately out of resources available to the family without recourse to public funds or taking employment.

10. The difficulty for the Secretary of State is in establishing that her grounds in truth constitute a legitimate challenge. They read very much as a submission on the merits of the appeal at first instance without identifying any of the recognised forms of error of law. In her submissions Ms Everett argued that inadequate reasons were given: but the reasoning of the Judge below is perfectly transparent. It was accepted that family life was established given the lengthy pattern of visits and the various connections between the family members. It adjudged that the interference was a significant one that rendered it sufficiently serious to engage Article 8 ECHR, and it went onto find, by reference to a range of public interest factors that the decision of the Secretary of State to refuse entry clearance was

disproportionate. It seems to me that the balance that was struck was a perfectly reasonable one and that no evidence was overlooked.

11. As to the submission that the First-tier Tribunal should have found that the established pattern of this family's life was such that the immigration decision would not threaten the ability of Mr Riaz to continue to visit Mrs Begum abroad, that ignores the fact that the First-tier Tribunal specifically directed attention to this feature of the case, and fails to appreciate the whole basis of Mrs Begum's application, which was not founded on any particular wish to see her husband in this country but rather to spend time with her daughter in order to help her to bring her granddaughter into the world (and, inevitably given the passage of time since which has seen the granddaughter born, to spend time with the two of them). It seems to me that the reasons given by the First-tier Tribunal fully sufficed and were sufficiently detailed to show the principles upon which it acted and the reasons for its decision.

Decision:

The decision of the First-tier Tribunal does not contain any material error of law and stands. The appeal of the Secretary of State is dismissed.

Signed: Date: 5 February 2016

Deputy Upper Tribunal Judge Symes