



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

Appeal Number: HU/02892/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18 July 2017**

**Decision & Reasons
Promulgated
On 28 July 2017**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS AMTUL MATEEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Ms E Daykin, Counsel, instructed by Rashid & Rashid
Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge A J M Baldwin promulgated on 5 January 2017 which allowed the human rights appeal of the respondent, Ms Mateen, against refusal of entry clearance as a visitor.

2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Ms Mateen as the appellant, reflecting their positions before the First-tier Tribunal.
3. The background to this matter is that the appellant applied for entry clearance as a family visitor to visit her son and daughter-in-law. The appellant is a citizen of Pakistan born on 1 January 1939. The application for a visit visa was refused on 26 July 2015 because the respondent was not satisfied that the appellant was a genuine visitor or intended to leave the UK at the end of the visit.
4. The appellant appealed the decision on human rights grounds only. Judge Baldwin allowed the appeal, finding that the appellant had a family life with her adult son and daughter-in-law in the UK and that the decision was a disproportionate interference with that family life.
5. The respondent's first challenge is that the judge erred in finding that the appellant and her son and daughter-in-law had a family life for the purposes of Article 8. The respondent maintained that case law indicated that family life does not normally continue to exist between adult children and parents. More than normal emotional ties were required and the facts in this case did not support such a finding by the First-tier Tribunal Judge.
6. The respondent's second challenge was that even were family life to be found the decision could not be said to be disproportionate where it concerned only a visit and denial of that limited contact could not be said to amount to a disproportionate interference with family life.
7. Judge Baldwin set out the legal matrix relating to the Article 8 decision and relevant case law at [15] to [19]. He noted the case law of Kaur (visit appeals; Article 8) [2015] UKUT (IAC), Adjei (visit visas – Article 8) [2015] UKUT and Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC). He made proper reference to Section 117 of the Nationality, Immigration and Asylum Act at [17] and set out the correct Razgar questions at [18].
8. First-tier Tribunal Judge Baldwin made the following findings on family life at [22] – [24]:

“22. What came across particularly strongly in this case was the exceptionally close bond between the Appellant and her only son, the Sponsor, and vice versa. They lived together for 41 years and when he got married he continued to live with his mother, remaining there until he was able to join his wife in the UK. I have no doubt at all that, were it not for the persecution of his wife on account of her Ahmadi faith, the son would still be living in Pakistan with both his mother and his wife. Instead, he had to face what I have little doubt was a terribly difficult decision – particularly for one who I accept is much troubled by anxiety. He chose to be with his wife in the UK but was probably not expecting to find that his own mother would not be allowed to come and see them. Until these events, I accept there was an extremely close family life between the three of them – one which was fractured by religious persecution and maintained indirectly by the ECO's

Decision. The question is whether the Refusal is proportionate, reasonable and in the interests of effective immigration control.


23. This Appeal is not one under the Rules but, were that the position, one would have been concerned with the failure of the ECO to address the Tenant's Affidavit and the Land Ownership Extract. The financial circumstances of the Appellant, however, are wider than the issue of the rent and in any event have to be considered in the light of the credible documentary evidence which corroborates the Appellant's claim about her pension. If her pension claim is credible, as it is, it provides support for the evidence about her other income being credible. I also accept that septuagenarian Pakistani ladies may possibly be less likely to favour banks than a much younger person might do in the UK. It is not at all implausible, I find, that she might use the bank account largely for her pension credits and use rent paid in cash largely for general expenses, as has been satisfactorily explained.
 24. This case is very fact-sensitive. It is very unusual for a middle-aged son to have continued to have such an extremely close relationship with his mother and for it to continue well beyond his marriage. It is also unusual in it being a case where the son had no choice but to stop living with his mother if he were to continue maintaining a full relationship with his wife. It was no doubt an awful position in which to find himself and his mother. It is one which is also shared to no small extent by the daughter-in-law who clearly misses having an opportunity to have face-to-face chats with her mother-in-law. If it were nonetheless the case that the Appellant probably did not intend to return to Pakistan I she were able to get herself to her son's new home, there would still be a strong case for finding it was proportionate not to allow her to come here. I find, however, that it is the case that she is very well-established in her home in Pakistan, where she speaks the language and is used to the culture, environment and friendship of many people. She has also provided she is relatively comfortably situated financially. On the evidence provided, I find that her intentions probably are genuine and that it would be unreasonable and disproportionate or all three of them to deny her the opportunity very occasionally to come over to the UK for a visit. Limiting close contact to the very infrequent occasions when the son can take time off and find the finance to take himself and his wife to Pakistan would be unduly restrictive and would prejudice their Family Life in such a manner as would amount to a sufficiently serious breach of their fundamental rights. I am confident that all three of them intend she will return to Pakistan after her visit(s) and that her son and his wife appreciate that were she not to do so and were later to be removed, it would almost certainly prove to be her last visit to the UK."
9. Those findings take into account the material evidence and assess it within the correct legal framework. The reasons why Judge Baldwin found that family life was present here are clear. The appellant and her son had "an exceptionally close bond", having lived together for almost all of the sponsor's life. The very close relationship continued after the sponsor came to the UK with his wife as he returned to be with his mother extensively until prevented from doing so because he had used up his

leave; see [10]. Daily extensive telephone calls continued even though he could not visit; see [10].

10. I am satisfied that First-tier Tribunal Judge Baldwin applied the correct law on the existence of family life between adults and that the conclusion that it existed here, exceptionally, was one fully open to him on the materials. That was so even though the appellant had not lived with the sponsor and his wife for three years prior to the decision because of the visits of the sponsor and phone calls allowing their exceptionally close relationship to continue. The first ground does not have merit.
11. It is also my view that the First-tier Tribunal was entitled to find the decision here amounted to a disproportionate interference with family life. Judge Baldwin conducted the Article 8 assessment as set down in the case law of Kaur, Adjei and Mostafa requiring the Article 8 assessment outside the Immigration Rules to be conducted “through the lens of the Rules”. At [23] to [24], the judge found that the Immigration Rules were met here. There is no challenge to those findings.
12. Having found that the Immigration Rules were met, a factor relevant to the weight attracting to the public interest, the First-tier Tribunal went on at [24] to identify exceptional circumstances that showed the decision to be disproportionate. The judge identified that this was a “very unusual” situation. The relationships here were particularly strong. The family had been separated only because the sponsor’s wife was a refugee requiring international protection. The sponsor was unable to visit the appellant, having done so as much as he could in order to care for his mother whilst she was unwell, his employment leave then having run out. It was not merely a question of the appellant being unable to visit as a result of the decision but of no direct contact being possible. In my view, the particular facts here entitled First-tier Tribunal Judge Baldwin to find that the decision was disproportionate.
13. For all of these reasons I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law.

Notice of Decision

The decision of the First-tier Tribunal does not contain legal error and shall stand.

Signed: 

Date: 27 July 2017

Upper Tribunal Judge Pitt