Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/02362/2015
VA/02367/2015
VA/02368/2015
VA/02365/2015

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision and Reasons Promulgated**
On 27th November 2017	**On 15th December 2017**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

ASHRAF RAHMAN SHIPLU
ASHRAFUZZAMAN ABDULLAH
LABLU LABLU
JILAKHA BEGUM

Appellants

And

ENTRY CLEARANCE OFFICER -BANGLADESH

Respondent

Representation:

For the Appellants: Mr C. Mannan, instructed by way of Direct Access.
For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Bangladesh, who made applications for entry clearance to visit the United Kingdom for a period of six weeks primarily in order to visit a family relative who was terminally ill.

2. Those applications were refused by the Entry Clearance Officer in decisions taken on 10 March 2015. Each Appellant received a refusal notice setting out the reasons given for refusing their applications for entry clearance. Each notice purported to take account of the compassionate nature of the application but stated that each Appellant must show that they qualify for a visa by explaining their own circumstances. It was further acknowledged that a letter of invitation been provided with supporting documents and that the sponsor was in a position to maintain and accommodate each Appellant during the visit. However the decision letters went on to state that "your sponsor is only one element of the application and I must assess the information you have provided about yourself separately from that provided by your sponsor." The entry clearance officer, after considering each Appellant's particular financial circumstances and evidence provided, concluded that he was not satisfied that they had presented a complete and accurate picture of their personal and economic circumstances in India. It is of note that the Appellants in this appeal are all nationals of Bangladesh. Furthermore, the Entry Clearance Officer was not satisfied that they would leave the United Kingdom at the end of their visit or that they were genuinely seeking entry as visitors for a period not exceeding six months. Each application was refused because the ECO was not satisfied, on the balance of probabilities that they met the requirements of the relevant paragraph of the United Kingdom Immigration Rules.
At the end of the decision letters, the following is set out:
"Your right of appeal is limited to the grounds referred to in section 84(1) (c) of the Nationality, Immigration and Asylum Act 2002."

3. The appeal was heard on 30th September 2016 by the First-tier Tribunal Judge Abebrese who on that occasion heard evidence from the sponsor, Mr Miah. The appeals were dismissed for the reasons set out in the Decision of the First-tier Tribunal Judge.

4. The Appellant sought permission to appeal that decision and on 8 May 2017 permission was refused by FTT Judge Ford. However further grounds of permission to the Upper Tribunal were provided and on 1 August 2017 Upper Tribunal Judge Rimington granted permission for the following reasons:

> "It is argued that grounds in respect of the application of permission to appeal to the First-tier Tribunal Judge were indeed served. The Appellants have now obtained legal advice. Nonetheless time was extended by the Tribunal in considering the application. The grounds to the upper Tribunal have now been amended to state that the judge's decision (i) applied the wrong burden of proof (ii) was contradictory in that it appeared to allow third Appellants appeal only to then dismiss the appeal and further (iii) failed to consider Article 8 at all. I note human rights was the only basis of the appeal. I grant permission of the grounds (ii) and (iii) identified above only. The judge clearly directed himself on the appropriate burden and standard of proof."

5. At the hearing before the Upper Tribunal on the 20th September 2017, Mr Mannan appeared on behalf of the Appellants and Mr Nath on behalf of the Respondent. There had been a number of large bundles provided to the Tribunal principally dealing with the financial and personal circumstances of the individual Appellants. With the assistance of Mr Mannan, he provided a composite bundle which he stated included all the relevant documentation. The bundles had not been received by the presenting officer.

6. It became clear at that hearing that there was agreement between the advocates that the decision of the First-tier Tribunal Judge did involve the making of an error on a point of law as identified in the grant of permission at (iii) namely that the judge had failed to deal with Article 8 at all. Mr Mannan had submitted that the judge was plainly aware that the nature of the visit was on compassionate grounds for the family members to visit their relative in United Kingdom who was terminally ill. However, there was no reference in the determination to the identity of their family relative or those compassionate circumstances which had been referred to in the application form but also at the beginning of the decision letters in relation to each Appellant. He also submitted that a further reason that had been given was to visit a new-born child of the

family. Thus he submitted there was evidence before the judge upon which he should have taken into account and made an assessment of the Article 8 issues.

7. In determination promulgated on the 21st September 2017 I set out the decision on the error of law as follows:

"8. Mr Nath behalf of the Respondent agreed with that assessment. In the light of the agreement reached between the advocates that the decision did disclose the making of an error on a point of law, it is only necessary for me to set out why I agree with them.

9. The Appellants appealed to the Immigration and Asylum Chamber. Their appeal rights were limited and in essence they could only bring their appeal on human rights grounds.

10. The First-tier Tribunal Judge considered that the Appellants had not adequately addressed the concerns expressed by the ECO in respect of paragraphs 41(i) and (ii) of the Immigration Rules. However, the First-tier Tribunal Judge did not appear to take into account that this was an appeal limited to human rights grounds which in practical terms on the facts of this case meant limited to Article 8 grounds, and was not an appeal under the Immigration Rules. Accordingly, an ability to meet the requirements of the Immigration Rules was not determinative of the outcome in the appeal. It was a matter that might sound in the proportionality assessment, that is to say the evaluation pursuant to the fifth of the Razgar questions, but it was not in itself determinative or not of the existence of family life which was the starting point for any appeal brought under the limited grounds.

11. The Judge does not advance any further analysis or consideration of the facts of family life and does not deal with the issue of the existence of family life. There was some information, albeit limited, which related to the compassionate nature of the visit that was intended which had been set out in the application form and recited at the beginning of the decision letters. The determination fails to deal with this issue at all. At the time of the hearing, the sponsor was acting in person on behalf of the

Appellants and it does not appear that he was asked any questions that related to the Article 8 assessment which was the starting point for the appeal.

12. For those reasons, the decision cannot stand and shall be set aside. Both advocates agree that the correct course is for the Upper Tribunal to remake the decision after hearing the evidence of the sponsor and considering the documentation provided. Therefore the appeal will be listed for a resumed hearing with the following directions.

13. Any further documentary evidence relied upon by the Appellants shall be filed and served on the Tribunal and the Presenting Officer's Unit no later than 7 days before the resumed hearing in a bundle that has an index and is paginated. The Appellants shall serve and file a copy of the composite bundle (provided by Mr Mannan) upon the Presenting Officer's Unit (if not already done so) within 21 days of this determination being served."

8. Thus the appeal came before the Upper Tribunal on 27 November 2017 to re-make the decision. At that hearing the Appellants were again represented by Mr Mannan and the Secretary of State by Mr D. Clarke.

9. Since the appeal had been before the Upper Tribunal on the 21st of September 2017, there had been decisions made by the Court of Appeal dealing with the issue of family life in entry clearance visit appeals; those decisions are Entry Clearance Officer, Sierra Leone v Kopoi [2017] EWCA Civ 1511 and Secretary of State for the Home Department v Onuorah [2017] EWCACiv 1757. The parties were aware of those decisions and had copies available. In addition Mr Mannon referred to the Tribunal to the decision in Abassi and another (visits-bereavement – Article 8) [2015] UKUT 463.

10. As set out above, directions were given on the previous occasion as to the documentation to be filed and served by the parties. However the sponsor had sent to the Tribunal bundles of documentation relating to each Appellant. Those bundles consisted of the evidence relating to their financial and other circumstances. Those

documents had already been provided in a composite bundle that Mr Mannan had organised for the previous hearing. In addition under cover of a letter dated 17 November 2017 (received by the Tribunal on 23 November 2017) the sponsor sent to the Tribunal the following documents; a witness statement from the sponsor dated 18 November 2017, a statement by the sponsor for the hearing on 20 September 2017, a copy of the First-tier Tribunal's decision and the grounds of appeal against the decision of the First-tier Tribunal and the grant of permission.

11. As to the issues, Mr Mannan confirmed that the issue for the Tribunal was to consider the human rights aspect and not the financial circumstances. He made reference to the bundles of documents that had been subsequently provided and made reference to a witness statement at HB10 and that it was accepted that Mr Uddin had not seen his relatives for six years and that he could not sponsor them which is why his eldest son, Mr Miah, had sponsored the application. Mr Mannan confirmed that the financial aspects were not challenged but that the focus was on the compassionate circumstances of the case which were not factored in by either the entry clearance officer or the First-tier Tribunal decision. Mr Clarke on behalf of the Secretary of State agreed that the issue was one of human rights and if Article 8 was engaged to consider factors in the proportionality assessment.

12. I indicated to the parties that it would be helpful for the sponsor in his oral evidence to provide details as to the nature of the relationships between the parties and the specific Appellants in this appeal. Despite the adjournment there had been no witness statements dealing with this aspect or any written evidence. However it was possible to construct a family tree which provided an overview of the family relationships in issue.

13. I heard oral evidence from the sponsor. He confirmed that he had provided a witness statement dated 18 November 2017, found in the bundle, and the sponsorship declarations that he had made (see HB9). He explained in his evidence that his father,

Mr Uddin, had three sisters and two brothers. They all resided in Bangladesh save for his brother Burnhan who worked in Saudi Arabia. He described the family relationships between the Appellants and Mr Uddin. Jilakha Begum was his sister and Mr Ashrafuzzaman Abdullah is the son of Salma Begum, Mr Uddin's sister. Mr Ashraf Rahman Shiplu is the son of Jilakha Begum and Mr Lablu Lablu is the son of Lechu Begum, Mr Uddin's other sister.

14. He confirmed in his evidence that the applications for entry clearance were made in February 2015 and were decided in March 2015. His father died on 1 September 2017. He stated that his father's letter (HB 10) confirmed that he had not visited Bangladesh and the family members for more than six years at the date of the letter. As to the purpose of the visit, he stated that his father was very ill and that he had wanted to go to hospital in Bangladesh but they would not let him. He could not travel as he was taking medication. He stated that he could not go, then he would like to see his relatives. He looked after his brothers and sisters and had good relationships. He confirmed that he wanted private treatment in Bangladesh but that the doctors had said that he could not travel. He said that Mr Uddin's parents had died when he was young and he had looked after his brothers and sisters.

15. He was asked in evidence in chief why Lechu Begum and Salma Begum had not sought to visit the United Kingdom at this time. The sponsor made reference documents at pages 107 and 111 that she could not visit as she had had an operation. In respect of Salma, she could not visit because she had had a bypass operation. He confirmed there was no evidence of this but there was a letter at page 83 relating to her family circumstances.

16. The sponsor made reference to Mr Uddin's brothers. One brother lived in Saudi Arabia but could not apply to visit because he could not take time off work. His other brother had children and a wife and was needed to look after the property and that he was not able to visit the United Kingdom "for their safety".

17. Mr Mannan asked the sponsor about the grounds of appeal that he had drafted which referred to errors that the First-tier Tribunal judge had made (in relation to compliance of immigration rules). The sponsor stated that he had supplied all the material to the judge including the disputed evidence and made a hearing bundle. He thought it was unnecessary to keep all of the papers and are therefore made to bundles after that.

18. He was asked a number of questions in cross examination. It was put to him that in relation to Lechu Begum, she had an operation in February 2015 and was discharged therefore was there any reason why she could not travel since her discharge? The sponsor referred to the letter at page 111 giving the reasons that she could not come as she could not travel. He was asked that since that time, has there been any reason why she had not been able to visit? The sponsor made reference to the operation having taken place and that she was not fit enough to travel. He was asked if he had any other evidence that was more recent as to her circumstances.

19. In relation to Salma Begum, he was asked if there was any evidence as to her operation. Beyond the letter at page 83, the sponsor stated that there was no other evidence. He explained that he was not legally trained and did not know it was required. It was put to him that that was 2 ½ years ago and did he know if she had recovered? The Sponsor stated that he did not know.

20. As to the circumstances of Mr Uddin's brother in Bangladesh, the sponsor was asked why he could not leave his family and property. The sponsor stated that it was exam time for the children and that they needed to go to school. It was suggested that the children could stay with other male relatives and family members but the sponsor stated that "no one who could be trusted to look after his wife and children". The sponsor made reference to a visit he made 8 to 10 years ago. As to the circumstances of Mr Uddin's brother in Bangladesh she stated that he was not able to have any time off work.

21. He was asked questions about Mr Uddin's illness and confirmed that he had been ill for a period of four years before the application was made in 2015. He first had a diagnosis in 2013. He stated that they did not visit because it was "not serious". When asked about other types of contact, the sponsor said that there was contact via telephone. When asked why there was no evidence of this, he stated that he did not know it was a requirement. The sponsor stated that they had also used Whats app communications.

22. When asked about financial support from Mr Uddin to family relatives, he said that he did not support them. The sponsor stated that he gave financial support to Mr Shiplu and his mother on special occasions for example Eid by way of gifts. He confirmed that there was no dependency but they would send gifts.

23. He confirmed that the nephews were married but with no children. He further confirmed that Mr Uddin last saw his nephews eight years ago (six years at the time of the letter at HB 10). The sponsor confirmed that he had not visited Bangladesh for 7 to 8 years. When asked why, he stated it was impossible to do that because of his job (he is a bus driver) and he has young children. His wife also had medical problems.

24. At the conclusion of the evidence I heard submissions from each of the parties. They are set out in the record of proceedings. Mr Mannan submitted that there had been a significant error in the First-tier Tribunal's decision in not considering family life between the relatives and not looking at the compassionate circumstances. He submitted that this was not a family visit but to visit Mr Uddin. He submitted that whilst the evidence demonstrated that there had not been visits made in the intervening years, the sponsor had given detailed explanations as to why the more immediate family members were unable to visit before and had not made applications in March 2015. He said that the evidence was "compelling and candid". In this context he referred to the written evidence at HB 10, from Mr Uddin that he was not able to sponsor the family relatives as he was a pensioner. He submitted that the family were

very close and the sponsor have provided a sponsorship declaration at HB 9 agreeing to give them all financial support for the duration of the visit.

25. He submitted that the First-tier Tribunal did not look at the documents relating to Mr Uddin's illness (at HB5-7) and that material had been before the Entry Clearance Officer. There was no indication from the evidence that the sponsor or any of the family members had breached any immigration rules. As regards the refusal decisions, the evidence of the sponsor was that he had created bundles and submitted all the documents to the ECO and that all that information was there at the time of the applications. At the Tribunal he had only handed in documents relating to the issues set out in refusal letter but that he had already posted documents.

26. In relation to the law, he did not seek to go behind the decisions of the Court of Appeal however, the circumstances of the present Appellants were significantly different than those in the cases referred to by the Court of Appeal.

27. Mr Clarke, on behalf of the Secretary of State submitted that the appeal should be dismissed. He made reference to the decisions of the Court of Appeal and that the decision of Abbasi could be distinguished. In that decision, the Tribunal had not considered the decision of Kugathas therefore the decision of Abbasi was of a limited nature. On the evidence before this Tribunal, all four Appellants were adults and each had their own independent family units. Whilst cases are highly fact sensitive, love and affection is insufficient to found family life. He submitted that there was a paucity of evidence in this case and that the last time any visits were made were approximately eight years ago. Any assertions made about contact in the intervening periods was uncorroborated. Whilst there may have been contact, it does not demonstrate evidence that goes beyond normal emotional ties. Furthermore he submitted there was no evidence of dependency from the relatives. This would include financial dependency but the evidence of the sponsor was that he would provide money on special occasions. In conclusion he submitted taking all the evidence into account that it had

not been established that there was "family life" in accordance with the legal definition.

28. He further submitted that the evidence as to why the more immediate family relatives had not visited Mr Uddin in was not satisfactory and that the evidence did not support the claim that they were unable to visit.

29. Mr Mannan by way of reply submitted that family life did not rely on a narrow definition and that it was not suggested in the authorities you could not have family life with someone who resided abroad. He submitted it was important to look at the purpose of the application which and in line the strength of the family life. In this case the purpose of the application suggested that family life was "very strong".

30. Mr Manning made reference to the decision in Abbasi and that the facts of this appeal were covered by the ratio of that decision.

31. At the conclusion of the evidence I was at my decision which I now give.

Discussion:

32. Article 8 provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

33. Since the appeal had been before the Upper Tribunal on the 21st of September 2017, there have been three decisions made by the Court of Appeal dealing with the issue of private and family life in entry clearance visit appeals; those decisions are SSHD v Abbas [2017] EWCA Civ 1393, Entry Clearance Officer, Sierra Leone v Kopoi [2017] EWCA Civ 1511 and Secretary of State for the Home Department v Onuorah [2017] EWCA Civ 1757.

34. In his submissions Mr Mannan did not seek to distinguish the present case from those decisions but sought to rely on the Upper Tribunal decision in Abbasi and another (visits-bereavement-Article 8) [2015] UKUT 463. Mr Mannan relies upon the nature of the family life between the family members who are seeking to visit the United Kingdom. He submits that it is possible to have a "family life" with someone who is abroad and that the facts of these appeals, there is a "strength of family life". He relied upon the evidence of the sponsor, who had given evidence about the contact and visits made and also reasons why members of the immediate family were not able to visit (due to their personal circumstances) but that in their place, other relatives were to visit as was their their duty.

35. My starting point is that set out in the decision of SSHD v Onuorah [2017 EWCA Civ 1757 at paragraphs 22 and 35 and the question of whether an applicant is able to get through the gateway into Article 8 and thus whether Article 8 is engaged. At paragraph 22, Singh LJ stated:

> "That prior question depends, for present purposes, on whether it has been established that there was family life (or private life) between the relevant persons."

36. The leading authority on the ambit of "family life" for the purpose of Article 8 is Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. In the decision of the Entry Clearance Officer v Kopoi [2017] EWCA Civ 1511, it was held at paragraph 19 that this decision remained ""good law" (see R (Britcits) v SSHD [2017] EWCA Civ 368).

37. The relevant paragraphs of the decision in Kugathas were cited with approval in Kopoi and in Onuorah at paragraph 31 as follows:

" 31. At paras. [17]- [19] Sales LJ said:

> "17. The leading domestic authority on the ambit of 'family life' for the purposes of Article 8 is the well-known decision of this court in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31; [2003] INLR 31. The court found that a single man of 38 years old who had lived in the UK since 1999 did not enjoy 'family life' with his mother, brother and sister, who were living in Germany as refugees. At para. [14] Sedley LJ accepted as a proper approach the guidance given by the European Commission for Human Rights in its decision in *S v United Kingdom* (1984) 40 DR 196, at 198:
>
> 'Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.'
>
> He held that there is not an absolute requirement of dependency in an economic sense for 'family life' to exist, but that it is necessary for there to be real, committed or effective support between family members in order to show that 'family life' exists ([17]); 'neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together', sufficient ([19]); and the natural tie between a parent and an infant is probably a special case in which there is no need to show that there is a demonstrable measure of support ([18]).

18. The judgments of Arden LJ and Simon Brown LJ were to similar effect. Arden LJ also relied on *S v United Kingdom* as good authority and held that there is no presumption that a person has a family life, even with members of his immediate family ([24]) and that family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties, such as ties of dependency ([25]).

19. *Kugathas* remains good law: see e.g. *R (Britcits) v Secretary of State for the Home Department* [2017] EWCA Civ 368, [61] and [74] (Sir Terence Etherton MR), [82] (Davis LJ) and [86] (Sales LJ). As Sir Terence Etherton MR pithily summarised the position at [74], in order for family life within the meaning of Article 8(1) to be found to exist, 'There must be something more than normal emotional ties'."

32. Later, at para. [30], Sales LJ said:

"In my view, the shortness of the proposed visit in the present case is a yet further indication that the refusal of leave to enter did not involve any want of respect for anyone's family life for the purposes of Article 8. A three week visit would not involve a significant contribution to 'family life' in the sense in which that term is used in Article 8. Of course, it would often be nice for family members to meet up and visit in this way. But a short visit of this kind will not establish a relationship between any of the individuals concerned of support going beyond normal emotional ties, even if there were a positive obligation under Article 8 (which there is not) to allow a person to enter the UK to try to develop a 'family life' which does not currently exist."

38. In Court in Kopoi also cited with approval a passage from Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) at paragraph 29:

29. "In general terms, I consider that the Upper Tribunal (Mr Justice McCloskey, President, and UT Judge Perkins) in *Mostofa (Article 8 in entry clearance)* [2015] UKUT 112 (IAC) was correct to observe at [24] that "… it will only be in very

unusual circumstances that a person other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1)"; and I think the Upper Tribunal made pertinent comments about this when it continued: "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 necessarily be 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" (albeit I would wish to reserve my opinion whether even these comments might have expressed the position too widely, in light of the principle stated in *Abdulaziz*). Clearly, on this approach, the respondent's case does not fall within the scope of Article 8(1)."

39. I have therefore considered the factual circumstances of the respective Appellants in the light of the case law referred to in the preceding paragraphs.

40. The four Appellants made applications to visit Mr Uddin, a British citizen living in the United Kingdom on 18 February 2015. Whilst he was unable to sponsor their visits due to his medical conditions (set out in the evidence at HB 10, HB5, HB6 and HB7), Mr Miah, who is his son, was to provide the maintenance and accommodation for the four Appellants in the event that any visit took place. There is no dispute that he has the resources and accommodation available to do that. The evidence demonstrates that Mr Uddin had invited members of the extended family for a visit because he was suffering from number of medical conditions and described himself as terminally ill (see HB10; letter 14/1/2015). A letter exhibited at HB1 made reference to him having had "prostate cancer, kidney disorder, diabetes and a heart condition and is unable to travel and would like the relatives to visit him." The medical evidence provided at HB5 (dated 25th of November 2014) demonstrated that he had been undergoing treatment for cancer and had received treatment in the form of radiotherapy and chemotherapy. Is not possible to state what the outcome of the treatment was at the date of that letter.

In a further letter exhibited at HB6, dated 1 December 2015, and therefore some months after the applications were made in February 2015, it made reference to the progressive nature of his condition and that the treatment was not with "curative intent" and that he would continue to deteriorate. The Tribunal has not been provided with any further evidence that postdates the letter of December 2015. However Mr Uddin died in September 2017.

41. I make the following findings from the evidence before me. Mr Uddin had been living in the United Kingdom since 1963 (I refer to the oral evidence of the sponsor). He has a number of family relatives living in Bangladesh. He has three sisters; Jilakha Begum (who is one of the Appellants in this appeal), Lechu Begum and Salma Begum. He also has two brothers; one living in Bangladesh Haris and one working in Saudi Arabia.

42. The four Appellants are extended family members of Mr Uddin. Ashraf Rahman Shiplu, born in 1988 is the son of Jilakha Begum (who is also an Appellant). Ashrafuzzaman Abdullah born in 1991 is the son of Salma Begum and Lablu Lablu is the son of Lechu Begum. All four Appellants are adults and on the evidence before me I am satisfied that each have established independent family units of their own. The evidence relating to them demonstrates that they are married (although Mr Lablu and Mr Abdullah do not have children) and all live in extended family households.

43. Whether the protection of family life and Article 8 extends to relatives (other than those of parents and dependent minor children) depends on the particular circumstances of the case. Relationships between adults (as they are here) would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency involving "more than the normal emotional ties". I have therefore considered the evidence as to the nature of the relationships between the adults involved. I do so in the context of Mr Mannan's submission that there is a "strength of family life "established here.

44. As to evidence of previous contact between the family members, I have reached the following findings on the evidence before the Tribunal. Mr Uddin has been living in the UK since 1963. Whilst the evidence of the sponsor was that prior to this date he had

"looked after his brothers and sisters" this could not extend to the Appellant Jilakha Begum as she was born in 1964 which was after the date he had left Bangladesh.

45. It is common ground that none of the Appellants have visited the UK to visit Mr Uddin or any other family relatives save for Mr Ashraf Rahman Shiplu who visited the UK in 2009 for a period of approximately three months and then returned home to Bangladesh.

46. From the evidence before me, Mr Uddin has not seen his relatives in Bangladesh for more than six years as at the date of the letter of 14 January 2015(I refer to the letter exhibited at HB10). Mr Miah, the sponsor and his son, has not visited his extended family in Bangladesh for approximately eight years.

47. Thus the evidence demonstrates that there has been no recent and meaningful contact by way of visits for at least the last 6 to 8 years. There have been a number of reasons given as to why the close family relatives (such as sisters and brothers of Mr Uddin) have not sought to visit. In the case of Lechu Begum the sponsor's evidence was that as a result of her medical problems she was unable to travel therefore her son was to visit the UK in her place. The evidence in this regard is set out at page 111 and page 107 of the bundle. It demonstrates that she was admitted to hospital on 20 January 2015 but was discharged on 2 February 2015 after having had a gallbladder operation. However the application made for the visits were not made until 18 February 2015, after her operation and to discharge from hospital. It is not been adequately explained or indeed evidenced as to why she did not seek to visit herself. But in any event, even if that were the case, whilst in her letter she makes reference to having a duty to visit her brother, as Mr Clarke submits that has been no explanation as to why she has not sought to visit her brother on any earlier occasion .

48. As regards Salma Begum, the sponsor's evidence was that she could not visit as she had had a bypass operation. In cross-examination he had stated that this had occurred after the applications had been made. When asked if there was evidence in support of the circumstances by Mr Clarke, he made reference to page 83 which was a letter at from her giving reasons as to her inability to travel. The letter does not make reference to any operation but does make reference to her own family circumstances.

49. Mr Miah in his evidence explained that Mr Uddin's brother had not been able to visit because he was required to look after his property and his family "for their safety." In cross-examination he was asked why he could not visit with the children. The sponsor's evidence was that it was exam time. When asked why the family could not live with other male relatives whilst the visit was undertaken, the sponsor stated "no one can be trusted to look after his wife and children." He did, however, make reference to a visit that was made approximately eight years ago. When asked why he had not sought to visit in the intervening eight year period, the sponsor's evidence was that he could not come as there was no one to look after the land. Mr Uddin's remaining brother was working in Saudi Arabia and the sponsor's evidence was that he could not attend because he could not get the time off work.

50. It is therefore the sponsor's evidence that for a number of reasons as set out above, none of the immediate family members (save for Jilakha Begum) have been able to visit and that the intention was to send their children in their places.

51. In general terms I have not found the evidence to be satisfactory concerning the reasons why the immediate family members did not seek to visit Mr Uddin when the applications were made in February 2015. As set out above the evidence relating to Lechu Begum demonstrated that she had the operation prior to the applications being made and there was no updating evidence or any evidence to demonstrate circumstances thereafter. The evidence relating to Mr Uddin's brother as to why could not visit did not satisfactorily explain why he was unable to leave Bangladesh or why it was necessary for the family's safety that he remained.

52. However whether or not there were any such good reasons, the fact remains that there has been no explanation given as to why there has been no meaningful contact by way of visits to Mr Uddin in the last 6 to 8 years.

53. As to other forms of contact, when family members live in different countries contact often takes place via Skype, telephone or by Whats app messaging service. There has been no evidence provided as to this type of contact however I have no reason to disbelieve the sponsor who said that the family relatives would contact Mr Uddin by the use of such methods of communication.

54. As to any forms of dependency, I am satisfied on the evidence before me that it does not demonstrate any form of real dependency, financial or otherwise. When asked in evidence about support given, the sponsor said that Mr Uddin did not provide any financial support for his relatives. He said that he (that is the sponsor) did give family support to Mr Shiplu and Jilakha Begum on special occasions such as gifts for Eid. At the end of the evidence the sponsor stated that he wanted to add the following to his evidence "Mr Uddin did financially help his sisters until their marriages. I help the children, it is normal tradition to help each other out."

55. I am satisfied that any support given by Mr Uddin prior to his sister's marriage was many years ago. The evidence does not support any form of financial dependency between the family members. Indeed in the applications made for entry clearance it was stated that they were financially independent by reason of their respective businesses and employment. The giving of gifts on special occasions and special celebrations such as Eid and on marriages is entirely usual but does not demonstrate any financial support or dependency. I have no doubt that the extended family living in Bangladesh have maintained a level of contact and that they clearly have affection and love for each other, as all families do. However the relationships between them on the evidence before me does not demonstrate anything more than the normal emotional ties between family relatives.

56. Mr Mannan did not seek to distinguish between the right to respect for "family life "and that of "private life". His submission was that when looking at the purpose of the visit (to visit a family relative who was very ill) underlined the strength of family life. It is right to observe that in his general submissions he sought to place a visit by family members to a relative living in the UK in the circumstances of Mr Uddin, to fall within the category of cases set out in the decision of Abbasi (as cited). In that case it was held that the refusal of the visa to foreign nationals seeking to enter the United Kingdom for a finite period for the purpose of mourning with family members the recent death of a close relative of visiting the grave of the deceased is capable of constituting a disproportionate interference with the rights of the persons concerned under Article 8 of the ECHR. The decision went on to state that "the question whether Article 8 applies

and, if so, is breached will depend upon the fact sensitive context of the particular case".

57. The facts of that decision concerned two Appellants who were brothers who applied for a period of four weeks to visit their grandfather's grave and mourn, along with family members in the United Kingdom. It was refused by the Entry Clearance Officer on the basis that they had not accurately presented their circumstances or their intentions of wanting to enter the United Kingdom and the ECO was not satisfied that they would leave the UK at the end of the visit.

58. It had been argued that the decision was incompatible with their rights under Article 8 of the ECHR. In that case the applications for entry clearance had been made very shortly after the death of their grandfather in September. The application was for the purposes of reunification of all family members for the purposes of mourning (those from Pakistan and those in the United Kingdom).

59. After considering decisions of the European Court, the Tribunal held that the judge's finding that the appeal did not fall within the ambit of Article 8 was "unsustainable" and that the judges error was "driven by an impermissibly narrow approach to the scope of Article 8 protection and the concentration of the Appellants family life in Pakistan to the exclusion of both their family ties in the United Kingdom and the central purpose of their proposed visit."

60. I have considered the decision in the context of the more recent jurisprudence set out in the decisions of the Court of Appeal. In doing so I have reached the conclusion that the decision of Abassi is distinguishable from the particular circumstances of the present appeal. The Tribunal in Abassi made no reference to the decision of Kugathas in reaching its conclusions on the ambit of Article 8 and in particular whether or not family life could be engaged or whether the Appellant had Article 8 family life connections with anyone in the United Kingdom. As set out above, the decision in Kugathas remains good law and applicable in this context.

61. None of the cases referred to in Abbasi concerned the rights of entry into a contracting state by a person from outside of the contracting state. Although Abdulaziz, Cabales

and Balkandali v United Kingdom and SS(Malaysia**)** make it clear that there needs to be a family life with a person in the UK (the contracting state) and it is the impact of the decision on that person in the UK which effectively brings the case within Article1 ECHR jurisdictionally, the Tribunal in Abbasi did not refer to the jurisprudence in Kugathas when determining whether the Appellant had an Article 8 family life connection with anyone in the UK. Nor did the Tribunal in Abbasi refer to any Strasburg jurisprudence (which could displace the comments in Abdulaziz, Cabales and Balkandali v United Kingdom) in support of any contention to extend Article 8 in entry cases to protect the private lives of those not in this country. Whilst attendance at funerals and memorial services may, as a matter of fact, have some relevance when considering whether the test in Kugathas is met as between an applicant and any family members he or she is visiting here, given the comments in Abdulaziz, Cabales and Balkandali v United Kingdom and SS (Malaysia**)** it remains a question whether attendance at a funeral or memorial service can engage Article 8 in an entry appeal per se.

62. The Court of Appeal have now considered the point about private life in SSHD v Abbas [2017] EWCA Civ 1393 and concluded that there is no obligation on an ECHR state to allow an alien to enter its territory to pursue private life. Family life within the State can be relied on but this is only because the obligation rests in a large part on the fact one of the family members is already present in the Contracting State and that family life is unitary (see Khan v United Kingdom (2014) 58 EHRR SE15).

63. Some of the jurisprudence referred to in the decision of Abassi has been the subject further discussion in Onuorah (as cited) and in particular Sabanchiyeve v Russia [2014] 58 EHRR 14 (see paragraph 42 of Onuorah). However as set out, the circumstances of that case are completely different to the particular factual circumstances in Onuorah and also on the factual circumstances of the present Appellants for the reasons set out at paragraphs 42 and 43 of that decision.

64. Even if I were wrong in my conclusions above, the decision in Abbasi concerned matters relating to "death, burial, mourning and other rites" and this was not the basis of the applications made. The evidence demonstrates that Mr Uddin had invited members of the extended family for a family visit as result of his medical condition. I have set out a précis of that material earlier in this determination. The Tribunal has not been provided with any further evidence that postdates the letter of December 2015 in which the progressive nature of his medical condition was described and it was stated that his condition would deteriorate. It is not known what happened in the intervening two year period. Mr Uddin died in September 2017. Therefore the basis of the application was not relating to the circumstances as identified in the case of Abassi.

65. Furthermore on the particular facts of this case, the purpose of the visit extended beyond that of visiting Mr Uddin. While ostensibly the Sponsor has stated that the visit was to be for the purposes of visiting his father, who was too unwell to travel, the evidence of the Appellants themselves make reference to this being a general family visit. The letter from his sister Salma Begum (exhibited at page 83) whose son is the Appellant Ashrafuzzaman Abdullah, makes reference to the purpose of the visit which is to visit Mr Uddin and "other family members." Similarly the evidence from Lechu Begum exhibited at page 107 (who is the mother of Lablu Lablu), makes reference to her son visiting her brother and other family members. The sponsor's declaration at HB9 at paragraph 2 similarly makes reference to the family relations having not seen his young son who was aged two years. Thus from the evidence before the Tribunal this appears to be a general family visit although I would accept that this may have been prompted by the circumstances of Mr Uddin's illness.

66. A further difficulty is that there is no evidence for the Tribunal that the Appellants are seeking to visit the United Kingdom now for the purposes of mourning or to visit family relatives in this context. Despite there having been an adjournment and the lack of evidence relating to family and private life which had been advanced before the First-tier Tribunal, no further evidence has been provided from the Appellants

themselves as to the continuation of the applications for visits in the light of the present circumstances. Thus it has not been established on the factual circumstances before me that this is the basis now of their appeals on human rights grounds. Consequently for those reasons I accept the submissions made by Mr Clarke that on the particular facts of these appeals, it is not been established that Article 8 is engaged and that there is "family life" as it is defined.

67. In reaching this decision it does not preclude circumstances in which there are compassionate circumstances that underpin a family visit. The current immigration rules provide a mechanism by which family visits can be made to the United Kingdom and will be for an individual Appellant to provide the evidence not only as to why they seek a visit at that particular time but to demonstrate that the rules are met. In this case the Entry Clearance Officer was not satisfied as to the financial and personal circumstances of the four Appellants and therefore refused their applications for the reasons given in their respective decision notices. There is an available remedy in law to challenge the decision under the immigration rules which is by way of judicial review of the decision. This does not rely on establishing a breach of Article 8 rights but whether on the material before the entry clearance officer it was not rationally open to him to reach such a conclusion. Though the sponsor has provided a large amount of documentation on behalf of the Appellants to demonstrate their compliance with the immigration rules, the ambit of this hearing has been to consider the only ground of appeal which is on human rights grounds. The conclusion reached is that on the particular facts of this case Article 8 is not engaged. However that does not preclude any further applications made for visit visas by the Appellants involved, to visit family members in the United Kingdom under the immigration rules and no doubt the Entry Clearance Officer will give careful consideration to the documents which evidence their financial and personal circumstances in Bangladesh in any future application.

DECISION

The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. The appeals are dismissed on human rights grounds.

Signed: SM Reeds

Upper Tribunal Judge Reeds
14th December 2017