



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

Appeal Number: HU/01440/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 March 2018**

**Decision & Reasons  
Promulgated**

**On 23 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**NATTHAPHOL BUROMKHOT  
(ANONYMITY DIRECTION NOT MADE)**

**and**

**ENTRY CLEARANCE OFFICER - BANGKOK**

Appellant

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed against a decision of Judge of the First-tier Tribunal Norton-Taylor who in a determination dated 13 March 2017 dismissed his appeal against the decision of the Entry Clearance Officer, made on 2 June 2015 to refuse his application, under paragraph 297 of the Immigration Rules, for entry clearance to join his father Mr Thathiron Buromkhot, who is now a British citizen, in Britain.

2. The appellant is a citizen of Thailand born on 3 September 1998. Judge Norton-Taylor made a clear finding of fact which was that at the date of application and indeed the date of decision the appellant's father was exercising sole responsibility for the appellant and that the appellant met the requirements of the rules. However, as this was an appeal on human rights grounds only, the judge set out in paragraphs 37 onwards his reasons for dismissing the appeal on those grounds.
3. He stated firstly that the appellant could not now satisfy any provisions of the Rules because he had attained majority on 3 September 2016. He then went on to consider the rights of the appellant under Article 8 of the ECHR within the framework set out in the judgment of the House of Lords in **Razgar**. He accepted that there was family life between the appellant and his father although he stated that the bonds were not, in his view, particularly strong as the appellant and his father had lived apart for over eleven years. He then went on to say that he did not consider that there was interference with their family life given that the appellant was managing very well by himself in Thailand and was now an adult. He therefore concluded that the Article 8 claim could not succeed.
4. He did, however, go on to consider, in the alternative, the issue of proportionality stating somewhat obliquely that he was doing so "(the third and fourth **Razgar** questions not being in dispute)". He found that despite the fact that he had concluded that the appellant met the requirements of the Rules in 2015 the passage of time, which he accepted was not the fault of the appellant, was not compelling and found that that weighed in favour of the respondent.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Osborne who stated in the grant of permission that the judge had wrongly applied the **Razgar** questions and that it was arguable that the judge should have found that the decision was not in accordance with the law and had he done so the assessment of proportionality would have resulted in a different conclusion.
6. Mr Wilding stated that he accepted that there was an error of law in the determination of the judge and indeed that the judge should have allowed the appeal. He referred to paragraph 27 of the Immigration Rules which makes it clear that an application for entry clearance is to be decided in the light of the circumstances existing at the time of the application. The appeal should not have been dismissed on account of the appellant attaining the age of 18 years between receipt of his application and the date of decision.
7. Mr Wilding stated further that the Immigration Rules are considered to be human rights compliant. That being the case that where an appellant would succeed under the Rules as indeed Judge Norton-Taylor had found that the appellant would have done at the date of application then the

decision should have been found to be in breach of his rights under Article 8 of the ECHR.

8. He therefore indicated that it would be appropriate for me to set aside the decision of the First-tier Tribunal Judge and substitute for the decision of the First-tier Judge a decision allowing the appeal on human rights grounds. This I now do.

**Notice of Decision**

The appeal is allowed on human rights grounds.

Signed 

Date: 21 March 2018

Deputy Upper Tribunal Judge McGeachy