



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08449/2017
HU/08450/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 17th July 2018

Decision & Reasons Promulgated
On 6th August 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

MR MUHAMMAD SHAHID RAMZAN JANJUA
MRS TAFHEEN NADEEM
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: No appearance or representation on behalf of the Appellants
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with permission, the decision of the First-tier Tribunal (Judge O'Hanlon) who, in a determination promulgated on the 4th April 2018 allowed the appeals of the Appellants against the decisions made to refuse entry clearance as visitors to the United Kingdom.
2. Whilst the appeal is brought by the Secretary of State for ease of reference I shall refer to the parties as they were before the First-tier Tribunal.

The applications made by the Appellants:

3. The Appellants are husband and wife and are citizens of Pakistan, who made applications for entry clearance to visit the United Kingdom for a period of 2 weeks on the 1st July 2017.
4. Those applications were refused by the Entry Clearance Officer in decisions taken on the 13th July 2017. Each Appellant received a refusal notice setting out the reasons given for refusing their applications for entry clearance. In respect of the first Appellant, the Entry Clearance Officer considered whether the Appellant met the requirements of Appendix V: Immigration Rules for visitors but refused the application because he was not satisfied that the Appellant met the requirements of paragraphs the 4.2 - 4.10 Appendix V: Immigration Rules for visitors for the following reasons:
 - Whilst it is acknowledged that the sponsor stated that he will pay for your maintenance in the UK and you have submitted financial documents to confirm their funds, I have to be satisfied about the circumstances in which you live in Pakistan.
 - In making the above assessment I have to your circumstances and the credibility of your trip. The starting point for the assessment of any Visa application is the information contained in the Visa application form and supporting documents.
 - You have stated the obvious application form that you are (self) employed and earn PKR 312170 (£2326) a month with no additional income/with additional savings held. To support your circumstances you have submitted title deeds, ID documentation and several business documents that relate to the registration of your stated business but no other documentation related to the day-to-day management/financial activity or current operation of your stated business. As such this leads me to doubt your business is currently functioning, and that the source of funds held in your bank account has been sourced from your stated self-employment.
 - Whilst it is acknowledged there are funds in this account, it is noted your personal accounts opening balance was PK are 1000 which suggest little financial activity prior to this date and is not reflective of the activity after this date.
 - You have submitted no other documentation or given an explanation to clarify the above concerns. As such I am not satisfied these documents are a reflection of your stated economic circumstances or that these funds are for your exclusive use. Based on the documentation available to me today I am not satisfied that your employment, financial and economic circumstances are as stated. In view of these concerns I consider that you have not provided a satisfactory basis upon which I might assess your current stated circumstances in Pakistan and it undermines the credibility of your application.
 - You have submitted no other documentation to confirm any immediate family members remaining in Pakistan. Given this and the above concerns I am not

satisfied you have shown that your ties to Pakistan are sufficient incentive to leave the UK at the end of your proposed visit.

- In view of the above concerns I am not satisfied that you have shown on the balance of probabilities, your ties to Pakistan (or elsewhere) are sufficient to provide you with an incentive to leave the UK at the end of your proposed visit. I am not satisfied that you are genuinely seeking entry as a visitor or intend to leave the UK at the end of your visit (paragraph the 4.2 (a) (c) of the Immigration Rules.
- I have therefore refused your application because I am not satisfied, on the balance of probabilities that you meet all of the requirements of the relevant paragraph of the United Kingdom Immigration Rules.

5. At the end of the decision, is a heading "future applications" which stated as follows: "any future UK visa applications you make will be considered on their individual merits, however you are likely to be refused unless the circumstances of your application change. In relation to this decision there is no right of appeal or right to administrative review".

6. The decision letter in respect of the Appellants wife also made reference to the applicable Immigration Rules for visitors under Appendix V the 4.2 – 4.10. In her case the refusal of the Visa was in the following terms:

- Whilst it is acknowledged that your sponsor states they will pay your maintenance in the UK you have submitted financial documents to confirm their funds, I have to be satisfied about the circumstances in which you live in Pakistan.
- In making the above assessment I have to your circumstances and the credibility of your trip. The starting point for the assessment of any Visa application is the information contained in the Visa application form and supporting documents.
- You have stated in your Visa application form that you are financially dependent on your spouse. It is noted his applications been refused as we were not satisfied that his financial and economic circumstances were as stated. As you are dependent on him, I consider that you have not provided any satisfactory basis upon which I might assess your circumstances, or the likelihood of your intention being to leave the UK on the completion of your proposed visit.
- You have submitted no other documentation to confirm any immediate family members remaining in Pakistan. Given this and the above concerns I am not satisfied you have shown that your ties to Pakistan are sufficient incentive to leave the UK at the end of your proposed visit.
- In view of the above concerns I am not satisfied that you have shown that, on the balance of probabilities, your ties to Pakistan (or elsewhere), are sufficient to provide you with an incentive to leave the UK at the end of your proposed visit. I am not satisfied that you are genuinely seeking entry as a visitor or intend to leave the UK at the end of your visit (paragraph the 4.2 (a) (c) of the Immigration Rules.

7. The grounds of appeal were filed on both Appellant's behalf on 3 August 2017 and annexed to the grounds were documents which had not been provided with the application including a death certificate, doctors letters, bank statements before and after the refusal letter, children's evidence and financial evidence and previous UK visas.
8. In the grounds it was stated that the first Appellant had applied for a visit of two weeks for compassionate reasons on the basis that his wife's father (his father-in-law) had died and was buried in the UK and wanted to participate in death prayers. Furthermore it stated that his wife's mother (his mother-in-law) and his sister were also "gravely ill". The grounds made reference to having stated at questions 85 and 89 (first Appellant) and questions 81 and 85 (second Appellant) about the purpose of the visit and attached the death certificate as evidence. The grounds again made reference to his wife's mother (his mother-in-law) and that his sister were also "seriously ill" in the UK and were referred to UK doctors letters. The grounds also made reference to the circumstances constituting "exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant a grant entry clearance outside the requirements of the Immigration Rules." The grounds then went on to comment on the refusal of entry clearance relating to the financial aspects, the employment incentives and their immigration history. The final part of the grounds at "D" make reference to the "applicable law" in which it was stated that the decision of the entry clearance officer was "against the spirit of recent decision of the Tribunal "Abbasi and another (visits - Article 8) [2015] UKUT 00463 and also made reference to the Appellant, who could not meet the relevant Immigration Rules must show "compelling reasons" why should consider outside the Immigration Rules citing the decision SS and others (Congo) [2015] EWCACiv 387.
9. Following the grounds of appeal, a review was undertaken by the Entry Clearance Manager (ECM) on 12 February 2018. He noted that the decision to refuse entry clearance was not a refusal of human rights claim nor was it a refusal of an application made under the EEA regulations and therefore was not an appealable decision under section 82 of the Nationality, Immigration and Asylum Act 2002 and that there was no valid appeal before the Tribunal.
10. As to the merits of the appeal, the ECM was satisfied that the original decision to refuse was correct and in accordance with the law. The ECM considered whether the particular circumstances set out in the appeal constituted "exceptional circumstances" which might warrant a grant of entry clearance outside the requirements of the immigration rules but "following a thorough assessment of the appeal I am satisfied that there is no basis in such a claim." The decisions to refuse entry clearance were maintained.
11. It appears from the papers that following the grounds of appeal being put before the First-tier Tribunal, on 8 August 2017 a duty judge considered the question of the validity of the Appellant's appeal and determined that it was arguable that human rights are raised in the application and that accordingly the appeal was valid.

The decision of the First-tier Tribunal:

12. The appeal was heard on the 22nd March 2018 by the First-tier Tribunal Judge O'Hanlon who on that occasion heard no evidence from the sponsor and decided the appeals on the papers.
13. The judge began by considering as a preliminary issue the validity of the appeal. He set out "I found that the application made by both the first and second Appellant arguably did raise human rights issues in the application and that accordingly I find that the Appellants did have grounds for appeal open to them." That is the extent of the consideration.
14. The judge then went on to set out the legal framework and at [13] is that the only right of appeal is that the decision is unlawful under Section 6 of the Human Rights Act 1998. He then went on to state "it will be necessary to consider the Immigration Rules notwithstanding the fact that the appeal relates to Article 8 only. The question of whether or not the Appellant's application to satisfy the requirements of the Immigration Rules will be relevant in my consideration of Article 8 of the ECHR."
15. At [17] the judge summarised the Appellants' case based upon the written evidence as follows; the first and second Appellants wish to visit the United Kingdom on compassionate reasons. The second Appellant's father died and is buried in the UK and wants to participate in his death prayers. The second Appellant's mother and first Appellant sister are ill and they wish to visit them. The first Appellant is in employment in Pakistan in the second Appellant is financially dependent upon him. The Appellant shown evidence of the balance of his bank account in Pakistan and he is a retired naval officer but is now employed as an operations manager and would not abandon such a good job and stay legally (this should be illegally) in the UK. They have three children who would remain Pakistan while they visit United Kingdom. They have considerable ties to Pakistan.
16. The judge set out his findings at paragraph 19 - 30. At paragraphs 21 - 25 the judge considered the appeal against the Immigration Rules and the further evidence submitted with the appeal to substantiate his claim concerning his financial circumstances in Pakistan. In particular the judge found that the application form made it plain that the Appellant stated that he was in full-time employment (and not self-employment). When looking at the additional new information, he had provided documentation relating to his naval pension, his monthly payslip and letter from his employers. The documentation was consistent with the information in the application thus the judge found that he was employed as claimed. At the bank balance, the further bank statements provided with the appeal showed activity both prior to the application and after the application and it had shown therefore that the bank account was showing regular activity which is contrary to the refusal letter. The judge also considered the economic circumstances of the first Appellant but stated that "given my findings in relation to the question the bank account and the employment of the Appellant in Pakistan I do not share the Respondent's concerns regarding the credibility of the Appellant." As to immediate family members, the judge made

reference the application form referring to 3 children and that with the appeal the first Appellant submitted a family registration certificate confirming he had three children living within Pakistan who would be remaining there. Thus the judge found at [24] that he had children many in Pakistan and therefore had shown that his ties were sufficient incentive to leave the United Kingdom.

17. At [25] he was therefore satisfied that it shown on the balance of probabilities that his ties to Pakistan provided him with an incentive to leave the UK at the end of the visit and that he was “genuinely seeking entry as a visitor and intends to leave the UK at the end of the visit”. At [26] he found that as the second Appellant’s application was dependent upon the first, he also found that she was seeking entry as a visitor intended to leave the UK at the end of the visit.
18. The judge then returned to the law at [27] noting that the only ground of appeal is that the decision is unlawful under Section 6 of Human Rights Act 1998. The judge went on to state “I however find that both the first and second Appellants do satisfy the Immigration Rules and that this is a factor which I can bear in mind when considering whether or not their rights in relation to Article 8 has been breached by the Respondent’s decision. The judge then went on to consider the five stage test in Razgar at paragraphs 28 – 30]. He found that the refusal of the Respondent was an interference by a public authority with the right to respect for their family life and therefore such an interference engage the operation of Article 8. And that the first and second Appellants indicated they wished to visit the United Kingdom to visit with family members and therefore the refusal interfered with their right to family life and were sufficient to engage the operation of Article 8.
19. At [29] the judge then went on to consider the public interest considerations under section 117B and when considering the maintenance of effective immigration control, stated that having found that they could meet the Immigration Rules, the public interest and excluding the Appellants “must be very low” because the UK immigration policy commits those to meet the requirements of the rules to be admitted and to stay.
20. At [30] in conclusion when looking at proportionality, he balanced the personal interests of the first and second Appellants against the public interest considerations and again reiterated that having found that the Respondent erred in finding that they did not meet the Immigration Rules he considered that their personal circumstances outweighed the public interest because the public interest consideration is low. He went on to state that “both the Appellant had a legitimate basis for expecting to be admitted to the United Kingdom as they satisfy the Immigration Rules.
21. The judge found that the rights of the first and second Appellants outweighed any public interest considerations and therefore the decision was not proportionate and was a breach the rights of both Appellants and Article 8. The judge therefore allowed the appeals.

The appeal to the Upper Tribunal:

22. The Respondent sought permission to appeal that decision.

23. On the 18th April 2018 FTTJ Chohan granted permission for the following reasons:

“In short, it is argued that the judge erred in the Article 8 assessment as a judge failed to identify what family life had been established.

It is apparent from the judge’s decision the judge concluded that the Appellant met the requirements of the relevant immigration rules. The judge then went on to consider Article 8 and found that it would be a disproportionate interference in the Appellant’s family life. However, in view of the fact that the Appellants claim is based on coming to the United Kingdom as visitors, it is not clear from the judge’s decision what family life had been established bearing in mind that the Appellant reside in Pakistan and any family members are in the United Kingdom. Accordingly, there is an arguable error of law.”

24. At the hearing before the Upper Tribunal the Respondent was represented by Mr Diwnycz, Senior Presenting Officer. There was no appearance on behalf of the Appellants. I considered the case file and noted that there had been correspondence between the Appellants and their sponsor and family relative Mr Ahmed. The original application forms made reference to an address in London however the correspondence sent to the Tribunal set out that the Appellants had requested that the sponsor attend and that he was living at a temporary address in Bradford. They therefore requested that the hearing took place in Bradford which is why it was listed there rather than in London. The Appellants were asked to provide details of the sponsor and on 13 June 2018 the sponsors address in Yorkshire was provided. Therefore the court issued the notice of hearing to the sponsor at the address nominated on 19 June 2018.
25. There has been no further correspondence from the Appellants or from the sponsor. I therefore decided that the appeal should proceed in the absence of the sponsor as no further communications had been received and from the information in the file I was satisfied that the notice of hearing had been served. I therefore had the documentation that had been sent previously by both Appellants.
26. Mr Diwnycz relied upon the written grounds. In addition he provided a copy of the decision in SSHD v Onuorah [2017] EWCA Civ 1757.
27. The grounds were as follows:

Ground 1: making a material misdirection of law; on 6 April 2015 the new appeal regime established under the Immigration Act 2014 came fully into force. This meant that under section 82 of the 2002 Act, as amended, a person may appeal to the Tribunal where a decision has been made to refuse a protection claim, refuse a human rights claim or revoke a protection claim. But in the case of a visitor application there will be only a right of appeal were human rights claim had been made and refused.

Ground two: making a material misdirection of law. It is established case law that family life, within the meaning of Article 8, will not normally exist between adult siblings, parents and adult children. Family life does not exist and generally Article 8 will not be engaged. An application to come to the UK as a visitor is a

temporary visit of limited duration and the requirements that need to be met qualify under the rules are necessary for legitimate aims and are proportionate.

The grounds make reference to the decision of Kugathas [25] and the decisions in *SSHD v Onuorah* [2017] EWCA Civ 1757 and *ECO v Kopoi* [2017] EWCA Civ 1511 which it is said reinforced the existing case law in respect of family life and the purposes of Article 8.

The grounds go on to say that the judge at [28] found that the decision amounted to an interference with the Appellant's right respect family life and Article 8 was engaged and because they have indicated their wish to visit the UK to visit family members "therefore the refusal interferes with their right family life and is sufficient to engage the operation of Article 8." The grounds submit that the judge failed to have regard to any of the established case law in making this finding. There is no basis finding, on the evidence, that the Appellants and their family members in the UK enjoy family life together the purposes of Article 8.

28. The grounds also criticised paragraph 25 where the judge found that the Appellants met the requirements of the Immigration Rules. At [30] the judge stated that "both the Appellant had a legitimate basis for expecting to be admitted to the United Kingdom as they satisfy the Immigration Rules." The grounds submit the finding was made on the basis of evidence was not submitted to the ECO with the application, it was not submitted until the appeal. The correct course of action would have been for the Appellants to make a fresh application submitting all the relevant evidence. Furthermore there is no finding the prayers must necessarily take place in the UK nor that the family members in the UK cannot travel. Therefore the visit may take place in Pakistan or in a third country and the decision does not amount to an interference of the purposes of Article 8. The proportionality assessment is inadequate, it does not explain why the refusal of the Visa which only allows the parties to be together temporarily is a disproportionate interference of Article 8 rights. It is therefore submitted that the Appellants have not demonstrated that the interference with any right family and/or private life resulting from the refusal has given rise to such grave consequences such as to engage Article 8.

Decision on error of law:

29. I have therefore considered the grounds advanced by the Respondent. Having done so I am satisfied that the decision of the First-tier Tribunal judge discloses the making of an error on a point of law. I shall set out my reasons for reaching this conclusion. As the grounds set out, the changes brought about by the Immigration Act 2014 had an effect upon appeal rights. The Appellant's appeal rights were limited and in essence they could only bring their appeal on human rights grounds asserting that the decision was unlawful under section 6 of the Human Rights Act 1998. Mr Diwncyz behalf of the Respondent did not seek to argue any jurisdictional point.
30. That being the case, it was incumbent upon the judge to consider whether Article 8 was in fact engaged on the particular factual matrix advanced on behalf of the

Appellants. However the judge did not begin his analysis in this way. Instead the First-tier Tribunal Judge considered that the Appellants had adequately addressed the concerns expressed by the ECO in respect of Appendix V of the Immigration Rules. The 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.

31. Whilst the judge did make reference to the applicable legal framework at paragraphs [10-13], and then again at [27] the Judge began his analysis with the evidence relating to the Immigration Rules and to visitor appeals but does not consider Article 8 on the basis of a consideration of the facts of family life and does not deal with the issue of the existence of family life and whether it is engaged at all. He misses out the first stage of the Article 8 analysis. 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 of appeal.
32. 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.
33. The judge records the following at [28]:" I find that the refusal of the Respondent is an interference by public authority with the exercise of the first and second Appellants rights to respect their family life and that such interference does engage the operation of Article 8. The first and second Appellants have indicated that they wish to visit United Kingdom to visit with family members and therefore the refusal interferes with their right family life and is sufficient to engage the operation of Article 8." He therefore made no reference to the factual circumstances of those involved before finding that there was "family life" based on the fact that they had family members in United Kingdom.
34. As set out in the grounds, beyond stating that there were family members in United Kingdom, the decision failed to establish what the nature of the relationships were between the adults concerned and ignored the principles set out in Kugathas v SSHD[2003] EWCA Civ 31 relating to the establishment of family life between adults.
35. The grounds also make reference to the more recent legal authorities relating to Article 8 in the context of family visits (see paragraph 10 of the grounds). The judge did not make any reference to those cases and thus gave no consideration to the principles that were relevant.
36. For those reasons, the decision cannot stand and shall be set aside. As to the remaking of the decision, the directions that are sent out with the grant of permission state at paragraph 4 that there is a presumption that, in the event of the Tribunal deciding that

the decision of the First-tier Tribunal is to be set aside as erroneous in law, the remaking of the decision will take place at the same hearing. The fresh decision will normally be based on the evidence before the FtT and any further evidence admitted (in accordance with Rule 15(2A)) together with the parties' arguments. The parties must be prepared accordingly in every case.

37. As set out earlier there has been no further correspondence from the Appellants. I have set out that the notice of hearing was served upon them and also the nominated sponsor at the address notified to the Tribunal. The sponsor has not attended the hearing, the Appellants have not provided any further submissions or any evidence beyond that provided to the FtT. The correct course is for the Upper Tribunal to remake the decision considering the documentation provided.

The re-making of the decision:

38. As the grounds set out at paragraph 10 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.
39. In the appeal grounds submitted on behalf of the Appellants there is a reference to the decision in Abbasi and another (visits-bereavement - Article 8) [2015] UKUT 463. None of those authorities (or the one identified by the Appellants') had been considered by the First-tier Tribunal Judge when reaching his decision.
40. The submissions that were set out in the Appellants' grounds 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.
41. My starting point is that set out in the decision of SSHD v Onuorah [2017] EWCA Civ 1757 which is relied upon by Mr Diwnycz, 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."
42. 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).
43. The relevant paragraphs of the decision in Kugathas were cited with approval in Kopoi and in Onuorah at paragraph 31 as follows:

“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."

44. 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 *Mostafa (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)."

45. I have therefore considered the factual circumstances of the respective Appellants in the light of the case law referred to in the preceding paragraphs. The application form makes reference to the first appellant having a brother in the UK (the sponsor). There is also reference to his mother and sister but no addresses are given for them. There is also reference to his wife's father having passed away in the UK (see q85) and that his wife's mother and his sister are "gravely ill".
46. 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. There is no evidence as to the nature of the relationships between the family members identified. There is no history provided as to when the family members living in United Kingdom either entered into the United Kingdom, whether they were born in United Kingdom or any particulars that relate to their circumstances. Similarly there is no evidence as to whether those relatives have maintained contact and if so in what way. Furthermore there was no evidence concerning the maintenance of the relationships by way of visits. The grounds make reference to previous visits to the United Kingdom. However the copy extracts provided in the papers make reference to these visits being granted in 1995 and 1996 and were therefore a long time ago. The evidence demonstrates that there has been no recent and meaningful contact by way of visits since that time or vice versa.

47. As to any forms of dependency, there is no evidence before me to show any dependency financial or otherwise. There is a complete lack of evidence by reference to the family circumstances.
48. The grounds make reference to the visit on the basis of visiting to partake in prayers and cites the decision of Abbasi in support. 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 or 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”.
49. 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.
50. 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).
51. 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.”
52. 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 Abbasi is distinguishable from the particular circumstances of the present appeal. The Tribunal in Abbasi 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 is still applicable.
53. Furthermore, 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 Articles of the 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 Strasbourg 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.

54. The Court of Appeal also considered the point about private life in their decision of The Secretary of State for the Home Department 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).
55. Some of the jurisprudence referred to in the decision of Abbasi has been the subject further discussion in Onuorah (as cited) and in particular Sabanchiyeva 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.
56. Furthermore on the particular facts of this case, the purpose of the visit extended beyond that of visiting for prayers but to also visit other family members. The application form provided some information to suggest that there were two family members who were ill but no details were given as to the nature of their illnesses. The grounds provided that further medical information. There was a letter (undated) that stated that SB was an inpatient and unable to travel. No further details were provided as to the nature of any illness, or her medical history. As to the first Appellant's sister there was a letter dated 26 June 2017 setting out the medication taken and reference to her circumstances including a reference to being very unwell and unable to look after herself and "totally reliant on her family". Her home address given at the top of the letter is in a different geographical location to the hospital (page 30) and no information is given as to her particular circumstances and the dates or other family members referred to. There is no further information provided as to their present circumstances relevant to any Article 8 assessment that could be carried out.
57. Given the lack of evidence that relates to the family members, their relevant history and circumstances it is not possible to make any findings to demonstrate the existence of family life in the context of the case law that I have set out. I have reached the conclusion that on the particular facts of this case it has not been demonstrated that

Article 8 is engaged. It is for the Appellants to demonstrate on the balance of probabilities the factual circumstances that they rely upon. The Immigration Rules provide the basis 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 Appellants and therefore refused their applications for the reasons given in their respective decision notices. The applicable remedy in law to challenge the decision under the Immigration Rules is by way of judicial review of the decisions. 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 a lawfully or rationally open to him to reach such a conclusion. No attempt was made to challenge the decisions on this basis.

58. Despite the conclusion that I have reached, it does not preclude any further applications made for visit visas by the Appellants involved to visit family members in the United Kingdom. Given the findings made by Judge O'Hanlon as to their circumstances in Pakistan, no doubt the Entry Clearance Officer will give careful consideration any documentation provided which evidences their financial and personal circumstances in any future application and in the light of the positive findings of fact made by Judge O'Hanlon.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law. The decision is set aside and is re-made as follows: the appeals against the decisions of the Respondent are dismissed.

Signed

Date: 30th July 2018

Upper Tribunal Judge Reeds