



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13753/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11 December 2017

Decision & Reasons Promulgated
On 11 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

ENTRY CLEARANCE OFFICER, UKRAINE

Appellant

and

MR OLEKSANDR BASHKIRIEV
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Deller, HOPO
For the Respondent: Ms S Bashkireva

DECISION AND REASONS

1. The Entry Clearance Officer appeals with leave against the decision of First-tier Tribunal Judge Devittie to allow the appeal of the respondent on Article 8 grounds, following refusal of his application for entry clearance as a visitor.
2. The respondent will from herein on be referred to as the applicant for ease of reference.
3. The applicant made an application to visit his daughter, Ms Bashkireva and grandson in the United Kingdom. The ECO's reasons for the refusal read as follows:

You state that you will travel to the UK for six months and that you are retired. You have not declared your monthly income but state you spend 40 per month on living costs. I note that you were previously issued a visit visa in October 2013, valid from 9 October 2013 to 9 October 2015. You visited the UK between 25 October 2013 and 20 April 2014 (six months) and again between 9 November 2014 and 19 May 2015 (six months). Now following a visa refusal last month in November, you are again seeking a 2-year visit visa in order to visit the UK for six months. The Immigration Rules provide in 1V4.2 that an applicant must satisfy the decision maker that they are a genuine visitor. This means that the applicant will not live in the UK for extended periods through frequent or successive visits, or make the UK their main home.

In light of the above I am not satisfied that you are genuinely seeking entry as a visitor or that you therefore meet the requirements of Appendix V4.2 of the Immigration Rules. I therefore refuse your application because I am not satisfied that you meet all the requirements of the United Kingdom Immigration Rules.

4. The judge heard evidence from the applicant's daughter.
5. The judge said it was not contested that the applicant met the maintenance and accommodation requirements under the Immigration Rules. The sole ground on which the application was refused was that the frequency of the applicant's visits to the UK gave rise to concerns, that successive visits had the effect of making the United Kingdom the applicant's main home.
6. The judge stated that in the context of this case, this is a 76 year old pensioner who is apparently in good health and who deems it fit to visit his daughter once every year in the United Kingdom. There was no suggestion that he did not have any other family members in the Ukraine and that he would need to make the United Kingdom his main home. There was no suggestion that he was without adequate means in the Ukraine. He has scrupulously adhered to the terms of his previous visas. The judge found that to deny him a visitor visa in this instance, would in effect be to impose upon him a penalty that is not warranted.
7. The judge was satisfied having regard to the evidence as a whole, including the evidence of the applicant's sponsor, who gave credible evidence as to the applicant's intentions at the hearing, that it has been demonstrated that the applicant intends to return to the Ukraine and that he does not intend to make the United Kingdom his main home.
8. The judge held as follows at paragraph 6

This is an immigration appeal. In considering the proportionality of the refusal of entry clearance under the Immigration Rules the extent to which the applicant meets the requirements of the Immigration Rules is a relevant consideration. In this instance I found that the applicant does meet the requirements of the migrations. He seeks entry clearance to visit his daughter. Having regard to previous visits, there can be no doubt that the refusal does interfere with family life as the appellant has become accustomed to visiting his daughter

on an annual basis. The public interest in the maintenance of effective immigration control is not in my view a significant factor in my assessment of proportionality – nor, is the economic wellbeing of the UK, as the sponsor’s resources in terms of accommodation and maintenance are not in contention.

9. Consequently, the judge found that in all the circumstances the refusal to grant the applicant entry clearance constituted a disproportionate interference with a right to family life under Article 8 of the ECHR.
10. Permission was granted to the appellant ECO on the basis that it is arguable that the judge erred in his assessment as there was no reason for concluding that Article 8 family life exists between the two adults concerned.
11. The ECO’s grounds relied on case law, such as **MS (Article 8 - family life - dependency - proportionality) Uganda [2004] UKIAT 00064** and **Kugathas v SSHD [2003] EWCA Civ 31**. Both cases establish that in circumstances where family life is put forward as existing between an adult child and his parents, there needs to be further elements of dependency involving more than emotional family ties. The grounds argue that there was no finding of additional dependency or ties beyond normal emotional ties such as to amount to family life for the purposes of Article 8.
12. I agreed with Mr Deller that the judge applied a flawed approach. The judge failed to follow the step by step principles in **Razgar**. Further, I find that the judge failed to identify what there was about the relationship between the applicant, his daughter and his grandson that warranted the protection of Article 8(1). In other words, the judge failed to identify whether something more existed than the normal emotional ties between an adult parent and his adult child and his grandson.
13. The judge’s failure to identify whether legally there was family life between the applicant and his daughter and grandson meant that his decision was flawed and could not stand.
14. I remake the decision on the evidence that is before me.
15. Ms Bashkireva accepted that there was no financial dependency between her and her applicant father. She said that family life does not switch off or cease when a child reaches the age of 18. I accept that.
16. She said her reason for having this arrangement with her father is that she works as a contractor and is unable to take leave in order to visit her father in the Ukraine. This is because if she takes annual leave she does not get paid. Her son is 13 years old and loves to have a discussion on physics with her father. Her father’s visits contribute to the social and educational interests of the child. Although they are not financially dependent on each other, they are dependent on each other emotionally. Further, as the child’s paternal grandparents are deceased, the applicant is now the only surviving grandparent. Her son needs the support of his grandfather in his social development.

17. Having heard from the sponsor and having considered the submissions made by Mr Deller, I am not persuaded that the evidence of the sponsor demonstrates that there is family life between her and the applicant that engages Article 8(1).
18. The sponsor accepted that there was no financial dependency between her and her father. I find that there is an emotional dependency between the applicant and his daughter. His daughter is his only child and as a result there is a strong emotional bond between them. I find that the social and educational support given by the applicant to his grandson forms part of the normal relationship between a grandparent and a grandchild. I do not find that it takes the relationship beyond the normal emotional ties such as to amount to family life for the purposes of Article 8. Consequently, I find that Article 8(1) is not engaged. This means that there was no need for me to go through the remaining steps in **Razgar**.
19. The appeal of the applicant is therefore dismissed.

No anonymity direction is made.

Signed

Date: 10 January 2018

Deputy Upper Tribunal Judge Eshun