



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

Appeal Numbers: HU/04171/2017  
HU/04174/2017

**THE IMMIGRATION ACTS**

**Heard at Priors Courts, Decision & Reasons Promulgated  
Birmingham On 2<sup>nd</sup> April 2019 On 08<sup>th</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**BALVINDER KAUR (FIRST APPELLANT)  
SHINGARA SINGH (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - NEW DELHI**

Respondent

**Representation:**

For the Appellants: Mr H Samra of Harbans Singh & Co Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellants appeal against a decision of Judge Shanahan (the judge) of the First-tier Tribunal (the FtT) promulgated on 11<sup>th</sup> April 2018.

2. The Appellants are Indian citizens born 15<sup>th</sup> July 1956 and 8<sup>th</sup> October 1962 respectively. They are married. They applied for entry clearance to visit their daughter and her family in the UK.
3. The applications were refused on 1<sup>st</sup> February 2017. The Respondent contended there was no right of appeal, but the Appellants appealed on human rights grounds.
4. The appeals were heard together by the judge on 6<sup>th</sup> March 2018. The judge found that Article 8(1) of the 1950 European Convention on Human Rights was not engaged. The judge found that the Appellants had not proved that family life existed with their adult daughter and her family, which would engage Article 8. The judge therefore did not consider it necessary to go on and consider whether the Appellants could have met the requirements of the Immigration Rules. The appeals were dismissed.

### **The Application for Permission to Appeal**

5. The Appellants applied for permission to appeal to the Upper Tribunal. It was submitted that the judge had erred by failing to take into account that the Sponsor, the daughter of the Appellants, had been granted humanitarian protection and therefore could not return to India to visit her parents.
6. It was also contended that the judge had failed to engage with the fact that the Appellants wished to visit their grandson in the UK on his first birthday and take part in religious and cultural rituals.

### **The Grant of Permission to Appeal**

7. Permission to appeal was granted by Judge S H Smith of the FtT in the following terms;
  - “2. The grounds assert that the judge erred in failing to engage with the grant of humanitarian protection enjoyed by the Sponsor, the fact that the Sponsor cannot return to India to visit the Appellants, and the fact that the proposed purpose of the visit visa was to visit their grandson for cultural and religious purposes on the occasion of his first birthday.
  3. There is an arguable error of law. The judge did not consider whether any of the requirements of the Immigration Rules were met, addressing the matter solely on the basis of whether family life existed for the purposes of Article 8. Arguably, the judge should have first addressed Article 8 through the lens of the relevant Immigration Rules, before then addressing Article 8 outside the rules.”
8. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

## **My Analysis and Conclusions**

9. At the hearing both representatives indicated that they were in agreement that the judge granting permission had in fact erred in law at paragraph 3 in finding it arguable that the judge should first have addressed Article 8 through the lens of the Immigration Rules. Both were in agreement that the starting point in appeals such as this, is to consider whether Article 8 is engaged.
10. Mr Mills submitted that the judge had not erred in law. Mr Samra submitted that the judge had erred by not taking into account that this was a rare or unique case, in that the Sponsor had been granted humanitarian protection.
11. The judge did not err in law in consideration of these appeals. The judge adopted the correct legal approach. That approach is firstly to consider whether Article 8 is engaged. If Article 8 is not engaged, then the appeals go no further, as they are human rights appeals.
12. The judge referred to the appropriate Upper Tribunal authorities and Court of Appeal authorities at paragraph 20 and applied those authorities correctly. The judge went on to consider whether Article 8 was engaged on the basis of family life. This was considered at paragraphs 24-30 of the decision.
13. The judge noted at paragraph 24 that the Sponsor had not seen the Appellants since 2004, and had no contact with them between 2004 and 2009, but contact was resumed in 2009 and the Sponsor speaks to the Appellants on the telephone and Skype at least once a week.
14. The judge found at paragraph 26 that the relationship between the Sponsor and Appellants is that of adult daughter and parents. The judge noted at paragraph 29 that the grandchildren are aged 1 and 4 years and have not met the Appellants.
15. The judge made reference to Kugathas [2003] EWCA Civ 31 and was not satisfied on the evidence submitted that the relationship between the Appellants and the Sponsor and her family amounted to family life. The judge took into account all material evidence and reached a conclusion open to her to make on the evidence. Her conclusion is supported by the Court of Appeal case law referred to at paragraph 20 of the FtT decision.
16. Having found that family life did not exist, the judge was correct to conclude at paragraph 31 that it was not necessary to go on and consider the Immigration Rules. Because Article 8 was not engaged, the Appellants could not succeed with their human rights appeal.
17. The fact that humanitarian protection had been granted to the Sponsor, was not a relevant consideration when considering whether Article 8 was engaged. The grounds upon which permission to appeal was granted

disclose a disagreement with the conclusion reached by the judge but do not disclose any error of law.

### **Notice of Decision**

The decision of the FtT does not disclose an error of law. I do not set aside the decision. The appeals are dismissed.

### **Anonymity**

The FtT made no anonymity direction. There has been no request made to the Upper Tribunal for anonymity, and I see no need to make an anonymity direction.

Signed

Date 2<sup>nd</sup> April 2019

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

The appeals are dismissed. There are no fee awards.

Signed

Date 2<sup>nd</sup> April 2019

Deputy Upper Tribunal Judge M A Hall