Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/01232/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 August 2015	**On 04 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

NACIRA KOUCEM
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ALGIERS

Respondent

Representation

For the Appellant: None
For the Respondent: Ms J. Isherwod, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I see no need for, and do not make, an order restricting reporting of this case.

2. This is an appeal by the appellant against the decision of the First-tier Tribunal to dismiss her appeal against the respondent's decision to refuse her entry clearance to the United Kingdom for the purpose of a family visit with her sister and niece.

3. The respondent's refusal decision was made on the basis that the requirements of Paragraph 41 of the Immigration Rules were not satisfied. The appellant appealed on the only ground open to her which was that refusing her entry to the UK to visit her sister and niece was not compatible with Article 8 of the European Convention of Human Rights (ECHR).

4. The appeal was heard by First-tier Tribunal Judge Clapham on 22 January 2015. The judge heard evidence from the appellant's sponsor (her sister). He found the sponsor to be a genuine witness. He heard evidence about how close the sponsor is to the appellant and was "in no doubt that there is close bond between the sponsor in the UK and the appellant in Algeria". He was also in no doubt about the close bond between the appellant and her niece in the UK.

5. The judge found that although there was family life between the appellant and sponsor refusal of entry could not be said to be an interference with that family life. He did not consider it necessary to assess whether refusing the appellant entry to the UK was proportionate and made no such assessment.

6. The appellant appealed. The grounds of appeal submit that the judge failed to properly address Article 8. They contend that the judge did not recognise that the respondent's decision affected a central and critical aspect of the lives of the family as a whole; he did not give sufficient weight to the practical difficulties that would be faced by the sponsor and her daughter in travelling to visit the appellant; and that he set the threshold for finding there was an interference with family life at too high a level.

7. Neither the appellant's representative nor her sponsor attended the hearing.

8. On 11 August 2015 the appellant requested an adjournment. This was refused and notice of the refusal with reasons was sent to the appellant's representatives. The notice reminded the appellant's representatives that the appeal would proceed at 10am on 28 August 2015 as listed.

9. I decided that it would be in the interests of justice to proceed with the hearing despite the appellant's non attendance. In making this decision, I had regard to Section 36 of the Tribunal Procedure Rules and noted that not only had the appellant been notified of the hearing but that it was clear from her (unsuccessful) application to adjourn the hearing that she was aware of its date and time.

10. I heard submissions from Ms Isherwood on behalf of the respondent. Referring to the recent Upper Tribunal decision in *Adjei (visit visas – Article 8)* [2015] UKUT 261 (IAC), she argued that this was a case in which the protection of Article 8 was simply not applicable.

11. In *Adjei*, the Upper Tribunal considered the application of Article 8 in the context of an adult daughter applying for entry clearance to visit her father, step mother and step siblings - a family unit with whom she had lived before they moved to the UK. At paragraph [18] the Upper Tribunal found that the circumstances of the daughter and her family in the UK did not give rise to family life for the purpose of Article 8. At paragraph [17] the Upper Tribunal in Adjei stated:

> *It is a question of fact in each case, of course, whether relationships between adult relatives disclose sufficiently strong ties such as to fall within the scope of Article 8. Ties between young adults who have yet to establish their own family life separate from their parents may constitute family life: see Nasri v France (1995) 21 EHRR 458. But this claimant has established her own family life in Ghana with her partner and their daughter and while her adult siblings in the United Kingdom have not yet*

> *done so, it is established by Advic v United Kingdom 20 EHRR CD 125 that the protection of Article 8 does not extend to links between adult siblings living apart for a long period where they were not dependant upon each other. There is no evidence of such dependence between these siblings or step-siblings. Finally, it is well established that there must be more than the normal emotional ties between adult relatives for family life to exist for the purposes of article 8 of the ECHR: Kugathas v IAT [2003] EWCA Civ 31.*

12. I also have regard to the Upper Tribunal decision in *Mostafa* [2015] UKUT 00112 (IAC) where it was stated at paragraph [24]:

> *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). 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.*

13. For the reasons set out below, I find that the judge has not made a material error of law and therefore his decision shall stand.

14. This is a case where the appellant contends that the circumstances of her relationship with the sponsor and the sponsor's daughter are such as to give rise to family life for the purposes of Article 8. However, there was no evidence of the sponsor being financially dependent on the appellant, or vice versa; and whilst the judge found there to be a close bond between the sisters, there was no evidence to support this bond being above and beyond that which one might expect between sisters and a niece. The facts of this appeal, when considered in light of the recent decisions in *Adjei* and *Mostafa,* cannot be said to give rise to there being family life such that the refusal of entry clearance falls within the scope of Article 8. The judge erred, therefore, in finding there was family life. However, as the judge went on to find there was no interference with that family life the error was not material and therefore the decision of the First-tier Tribunal should stand.

Notice of decision

15. There was not a material error of law in the First-tier Tribunal's decision to dismiss the appellant's appeal.

16. The appeal is dismissed.

17. No anonymity direction is made.

Signed

Deputy Upper Tribunal Judge Sheridan