



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

Appeal Number: VA/01384/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 April 2015**

**Determination
Promulgated
On 30 April 2015**

Before

**LORD BANNATYNE
UPPER TRIBUNAL JUDGE MARTIN**

Between

**JATINBHAI RAJNIKANT PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, BOMBAY

Respondent

Representation:

For the Appellant: Ms Julian Norman, Counsel

For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of the First-tier Tribunal dated 9 September 2014.

Background

2. The background is as set out in paragraph 2 of the First-tier Tribunal's determination:

“2. The Appellant applied for entry clearance as a family visitor. The application was refused on 10.2.14 because the Respondent contended that the Appellant had previously contrived in a significant way to frustrate the intention of the Immigration Rules as set out in paragraph 320 (11); and that he had previously used deception in an application for entry clearance as specified in paragraph 320 (7A) and that any future applications may be refused under paragraph 320 (7B) until 10.2.24; and further that the Respondent was not satisfied the Appellant intended to leave the U.K. at the end of any visit he might make”.

3. The appeal before the First-tier Tribunal was limited to the decision being unlawful in terms of Section 6 of the Human Rights Act. The appellant relied on Article 8 which was therefore before the First-tier Tribunal.

4. For the purposes of the appeal before us the only material findings were these:

“10. No evidence has been placed before me to suggest there exists more than normal emotional ties between the two. Both are adults. I therefore did not find that the Appellant has proved that Family Life subsists between himself and his sister”.

and, at paragraph 12:

“12. Even if I had found that Family Life exists between the parties, I would not have found that I had jurisdiction to decide these matters when the only permissible grounds are human rights”.

5. On the basis of the foregoing findings the appeal on Article 8 was dismissed by the First-tier Tribunal.

6. The appellant sought to appeal to this court and permission to appeal was initially refused before the First-tier Tribunal but thereafter was granted by the Upper Tribunal. The material parts of the grant of permission are as follows:

“2. However I grant permission on the other grounds advanced on behalf of the Appellant; it is arguable that the judge did have jurisdiction to hear the appeal with effect from 25th June 2013 Section 52 of the Crime and Courts Act 2013 amended Section 88A of the 2002 Act so there was no right of appeal against refusal of entry clearance in a family visit case except on the grounds alleging the decision showed unlawful discrimination or was unlawful under Section 6 of the Human Rights Act 1998. The Appellant relied upon the second aspect of human rights and therefore Article 8 of the ECHR was before the judge. Whilst the judge did not find that there was family life between the Appellant and sibling, the evidence upon which that decision was reached was not set out in the determination and therefore it is not possible to see how he reached that decision on the evidence. The Tribunal had to decide whether or not the obligation imposed by Article 8 to promote family life of those affected by the decision (see **Shamin Box [2002] UKIAT 02212**). In other words, whether the UK authorities were under any obligation to promote family life between adult siblings and that was the issue to

consider on the evidence and in particular the nature and quality of the relationship asserted, noting that adult siblings of course are not like husband and wife.

3. The grounds contend that evidence was given at the hearing concerning these issues of family life but as they are not recorded in the determination it is difficult to make any assessment of whether family life was engaged and there was the obligation imposed by Article 8.
4. For those reasons I grant permission. In those circumstances it may also be arguable that it would be necessary to consider issues under Paragraph 320 when conducting a proportionality balance if, of course, it was found that family life was engaged”.

Error of Law

7. At the outset of the hearing we advised the parties that on reading the case we had arrived at a preliminary view that it was very difficult to sustain the decision of the First-tier Tribunal on the basis of the various points articulated within the permission to appeal. Having advised parties of our preliminary position Mr Bramble did not on behalf of the Secretary of State seek to seriously counter that view and did not put forward any detailed arguments as to why the decision should be upheld.
8. We were satisfied that there were clear and material errors in the determination as articulated in the permission to appeal and accordingly the decision required to be set aside.
9. We thereafter moved to re-make the decision.

Evidence

10. We heard evidence from a single witness, namely: the appellant's sister. The summary of her evidence was that she was very, very close to the appellant. She spoke to him almost every day on the phone. She had been in the UK for 28 years. The appellant had been here illegally for about ten years during that time but had returned to India in about 2003. In 2006 he had come to this country for about four weeks. Thereafter she had visited India every year. She said she very much wanted to see the appellant, she was missing seeing nephews and nieces and he had not been to see her in a long time. She said that he would return to India if he were allowed entry to the UK and she emphasised that it had taken eight years for him to apply for a visa. In cross-examination she stated that during the period he had been here illegally he had not told her that his position in this country was not lawful.
11. Our attention was also directed to two witness statements: one from the appellant's brother-in-law. In this statement, however, he made no reference to family life.

12. The other statement to which reference was made was one given by the appellant and all he said in relation to the issue of family life and in particular his relationship with his adult sister was this (at paragraph 10):

“I have family in the UK too – my sister lives here with her family – and I want to be able to visit them – for my children to meet them and to see the UK with me”.

13. Counsel for the appellant also advised us that it was the position of a niece of the appellant who lived in this country that she wished the appellant to give her away at her wedding. Further a grandmother in India, if she wished to come to this country, wanted the appellant to accompany her, although she had made no application to come here.
14. We then proceeded to hear submissions.

Submissions for the Respondent

15. Mr Bramble submitted that on the evidence there was nothing more than normal emotional ties between the appellant and his sister. He in particular referred to the appellant not confiding in his sister that he was here illegally until he was found by the authorities and submitted that that showed a relationship which was not very close.
16. He directed our attention of Mostafa (Article 8 in Entry Clearance) [2015] UKUT 00112 (IAC). In particular he drew our attention to the observations of the Upper Tribunal in paragraph 24. He submitted that having regard to these observations that this case did not reach the threshold to engage Article 8.

Submissions in reply on behalf of the Appellant

17. Ms Norman submitted that on the whole evidence there was clearly an unusually close relationship between the appellant and his sister.
18. She submitted that on the whole evidence there were more than normal emotional ties between the siblings and that Article 8 was accordingly engaged.
19. She accepted that the decision in Mostafa gave her a hill to climb. However, she submitted that she had climbed that hill and that in fact there was certain support for her position by reference to paragraph 16 of Mostafa.

Discussion

20. The core issue in this appeal is this: is the relationship between the appellant and his sister (adult siblings) of such a nature as to attract the protection of Article 8 ECHR?

21. In considering that question the observations of the Court of Appeal in Kugathas v SSHD [2003] EWCA Civ 31 are of relevance. This case involved an adult's relationship with his mother and adult siblings. The court of Appeal were of the view that the following passage in S v United Kingdom [1984] 40 DR 196 was still relevant:

"... generally, the protection of family life under Article 8 involves co-habiting dependents, such as parents and other dependant minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults ... would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than normal emotional ties".

22. Certain further helpful observations have been made by the Upper Tribunal with respect to the issue of the threshold of engagement of Article 8 in entry clearance cases in Mostafa. At paragraph 25 the Upper Tribunal says this:

"... we refrain from suggesting that, in this type of case, any particular kind of relationship would always attract the protection of Article 8(1) or that other kinds of relationship would never come within its scope. We are, however, prepared to say 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). 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 ...".

23. The above observations leave open that in a case of two adult siblings there may be unusual circumstances, sufficient to engage Article 8, however, in this case we can identify no such circumstances. We are persuaded that there is nothing beyond the ordinary and natural ties of affection that would normally accompany a relationship between adult brother and sister.
24. In coming to this view we have considered all of the evidence which was placed before us and in particular would refer to the following: the appellant says nothing in his statement about any particular close relationship with his sister and on looking to his statement there is nothing therein which shows anything other than normal emotional ties between an adult brother and sister.
25. When the appellant's sister's evidence is considered it again amounts to no more than showing that there are normal emotional ties between an adult brother and sister. Her evidence in essentials came to this: she kept in touch with the appellant and would like to see him. These are the ordinary and natural ties of affection that accompany the relationship of an adult brother and sister. It appeared somewhat odd to us that if as she claimed there was a very close relationship between her and the appellant he had not told her at an early stage that he was staying illegally in this country. Ms Norman submitted that we should not take such an inference from this piece of evidence and submitted that it could just as well show a

very close relationship, in that where there was such a relationship he was not prepared to admit that he was acting unlawfully. We prefer the opposing view. Also, if they were especially close why did it take eight years for the family to get the appellant to apply for a visa?

26. The evidence that the niece would like to have the appellant give her away at her wedding and that the grandmother would like him to accompany her to the UK if she made an application to come to this country we are satisfied add nothing in relation to the question of family life.
27. For the foregoing reasons we hold we hold that no family life existed and Article 8 was accordingly not engaged.
28. For the foregoing reasons having reconsidered the matter we dismiss the appeal.
29. We make no anonymity direction.

Signed

Date

Lord Bannatyne
Sitting as a Judge of the Upper Tribunal