



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

Appeal Number: VA/02792/2014

THE IMMIGRATION ACTS

Heard at Field House

On 18 March 2015

**Decision & Reasons
Promulgated
On 9 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**REHENA KOUSAR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Vidyadharan, Home Office Presenting Officer

For the Respondent: Ms Hulse, Counsel for Harris Ali & Co, Solicitors, Middlesex

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State, however for convenience I shall now refer to the parties as they were before the First Tier Tribunal.
2. The Appellant is a citizen of Pakistan born on 15 July 1955. She appealed against the decision of the Respondent dated 20 July 2014 refusing to grant her entry clearance to the United Kingdom as a family visitor. Her appeal was heard by Judge of the First Tier Tribunal Symes and the

appeal was allowed on human rights grounds in a determination promulgated on 10 December 2014.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First Tier Tribunal Cruthers on 3 February 2015. The grounds of application state that the Judge failed to give adequate reasons for findings of a material matter. Case law states that family life, within the meaning of Article 8 will not normally exist between adult siblings, parents and adult children so in this case, Article 8 is not engaged. They state that 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 to qualify under the Rules, are necessary for legitimate aims and are proportionate. The grounds state that the Respondent's refusal does not interfere with family life within the meaning of Article 8. The case of **MS Uganda [2004] UK IAT 0064** is referred to and the refusal of entry clearance in this case does not interfere with the existing family and private life of the parties as they are in different countries and the sponsor has previously travelled to Pakistan to visit, after the birth of each of her children. They state that the proportionality assessment is inadequate and does not explain why the refusal of a visa which only allows the parties to be together temporarily is a disproportionate interference with those Article 8 rights. These state that the Judge is seeking to rely on Article 8 as a general dispensing power.

The Hearing

4. This appeal is restricted to human rights grounds or race discrimination grounds:- in this case human rights grounds.
5. The Presenting Officer submitted that she is relying on the grounds of application. She submitted that the Judge clearly empathised with the Appellant and wanted to allow the appeal under the Rules but was unable to do so. Because of this he considered the Appellant's human rights at paragraph 20 of the determination and referred to the case of **Razgar [2004] UKHL 27**. He referred to the test being whether normal emotional ties between parents and an adult son or daughter are enough to constitute family life. He stated that there is a need for an element of dependency over and above the norm, between a parent and his or her adult child but that everything depends on the circumstances of each case. He found that the Appellant and the sponsor enjoy family life.
6. The Appellant's daughter is the sponsor in this case. She left Pakistan in 1998 and the Presenting Officer submitted that the Judge did not explain why it would be disproportionate for this visit not to go ahead. She submitted that the visit only leads to a temporary situation and the Appellant can reapply for a visa and address the Entry Clearance Officer's concerns which are set out in the refusal letter, in particular the Appellant's intention and likelihood of returning to Pakistan within the terms of her visa.

7. She submitted that the Judge considers the said case of **MS** and states that all the terms of the Immigration Rules have been met, but the Entry Clearance Officer was not satisfied that this is a genuine visit. He was aware of the Appellant having visited many times before and of her returning within the terms of her visas but, on this particular occasion, he was not satisfied that the Appellant was a genuine visitor and found that the terms of the Rules could not be satisfied.
8. She submitted that the Entry Clearance Officer and the Entry Clearance Manager were not satisfied with the whereabouts of the Appellant's husband and were not satisfied with the bank statements and the money available to the Appellant for the purpose of her visit.
9. She submitted that Article 8 is not engaged and there is an error of law in the Judge's determination.
10. I asked Counsel for the Appellant, about the fall-out between the Appellant and her husband, referred to in paragraph 11 of the determination. I was told that this was in 2007 and at paragraph 11 the judge accepts that they have been reconciled. The appellant visited her daughter, the sponsor, in 2008 and returned within the terms of her visa.
11. Counsel for the Appellant made her submissions relying on the terms of the determination.
12. She submitted that there is family life between the Appellant and her daughter and her grandchildren. She submitted that family life is not something rigid and the Judge was aware of there requiring to be something beyond normal emotional ties when adult family members' relationships are considered, but the Judge found that on the facts of this case there is family life.
13. She submitted that it is true that now that the application has been refused the only way the Appellant's application can succeed is under Article 8 of ECHR. She submitted that this should be successful. I was asked to consider the case of Huang in which Lord Bingham refers to family members depending on each other and she referred to settlement applications where children under 18 can apply to settle with their parents in the United Kingdom. She submitted that the Appellant is over 18 but that does not mean that she has no relationship with her daughter and grandchildren in the United Kingdom. She referred to the case of **Bank Mellat v Her Majesty's Treasury (No 2) [2013] UK SC39** at paragraph 25 in which it is stated that the analysis of the factual case advanced has to be properly considered. This case refers to a freer balance being struck between the rights of the individual and the interests of the community and states that the severity of the consequences has to be assessed. She submitted that the Home Office's intention is not for there to be endless appeals and the Secretary of State's objective is not to prevent grandparents from seeing their grandchildren. She submitted that this case should not have been

dismissed as the Appellant's circumstances are the same as they have been since 1998 and she has visited many times since then.

14. Counsel submitted that this Appellant has her family life in Pakistan but that does not mean that she does not have family life with other family members who do not live in Pakistan. She submitted that this Appellant has a very good immigration history and there is no fairness in the refusal of the application by the Respondent, especially as there is no right of appeal under the Rules, when the facts are the same as before. She submitted that there is nothing which states that Article 8 can only apply to children under 18. This would be unrealistic situation.
15. She submitted that it cannot be right for the Appellant to have to make another application under the Rules and on the basis of what is said in the said case of **Bank Mellat**, when the circumstances are considered, Article 8 is engaged as there is continuing family life between the Appellant, her daughter and her daughter's children.
16. Counsel submitted that it cannot be right to keep the Appellant's grandchildren away from her.
17. I put to her that the reasons for refusal are that this is not a genuine visit and the Entry Clearance Officer was not satisfied with the bank account and statements produced, or the whereabouts of the Appellant's husband.
18. Counsel submitted that the Appellant's husband is in the family home in Pakistan and the appellant lives in a joint household. She submitted that discretion should have been applied and the appeal should have been allowed under Article 8. She submitted that there is an error of law in the determination.
19. The Presenting Officer submitted that in the determination, the Judge is using Article 8 as a dispensing power because the terms of the Rules cannot be satisfied and that this must be an error of law. She submitted that the reasons put forward by Counsel for Article 8 being engaged are untenable.
20. The Presenting Officer submitted that Article 8 is not engaged. If the application is refused there is no interference with the existing family and private life of the Appellant or her daughter. She submitted that the appellant's daughter can visit the Appellant in Pakistan as she has done before.

Determination

21. It is clear from the First Tier determination that the Judge believed that the Appellant's application for entry clearance should have been allowed. He states that all the terms of the Rules have been met but what he does not appear to have considered properly is the fact that the Entry Clearance Officer was not satisfied with certain aspects of the

application, being the financial situation of the Appellant and the whereabouts of her husband. The Entry Clearance Officer may have had in his mind the fact that in 2007 the Appellant and her husband had a fall-out. He would also have been aware of the Appellant's visit in 2008 and the fact that she returned within the terms of her visa and he would have been aware of her previous visits. For the Judge to state that the Appellant satisfies every dimension of the Immigration Rules, in that her maintenance and accommodation arrangements are adequate and she has ample incentive to return to Pakistan in the future, as she has done so many times in the past, cannot be correct. The Entry Clearance Officer's decision, which was supported by the Entry Clearance Manager's report, is clear. He was not satisfied with some of the elements of the application.

22. Family visit appeals are restricted to residual grounds contained in Section 84(1)(b) and (c) of the 2002 Nationality, Immigration and Asylum Act. What the Judge has done in this case is find that in his mind that the terms of the Rules have been satisfied. Because of this he has allowed the appeal on human rights grounds. The Appellant's family life is in Pakistan, not in the United Kingdom. This is an application for a visit to the UK on a temporary basis for limited duration. The refusal does not interfere with family life within the meaning of Article 8, relating to the appellant's family life and her daughter's and grandchildren's family life.
23. There was nothing before the Judge to indicate that in this case there are further elements of dependency involving more than normal emotional family ties between the Appellant and her daughter. The refusal does not interfere with the existing family and private life of the Appellant or her daughter. The sponsor has been away from Pakistan since 1998 and the sponsor can visit her mother in Pakistan and can take her children with her.
24. The Judge's proportionality assessment is flawed. There is no disproportionate interference with the Appellant's Article 8 rights or with her daughter's Article 8 rights if this application is refused. As stated by the Presenting Officer, the Judge has relied on Article 8 as a general dispensing power and this is an error of law.
25. The Appellant can reapply and can address the points raised in the Entry Clearance Officer's refusal letter.

Decision

26. I find that there is a material error of law in the First Tier Tribunal's determination and I am setting this aside.
27. The Appellant's appeal is dismissed on human rights grounds.
28. The Appellant's representative asked me to grant leave for her to appeal but I refused this.

29. No anonymity direction has been made.

Signed

Date **1 April 2015**

Deputy Upper Tribunal Judge Murray