



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

Appeal Number: VA/03987/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 April 2015**

**Determination Promulgated
On 24 April 2015**

Before

**LORD BANNATYNE
UPPER TRIBUNAL JUDGE GLEESON**

Between

**ENTRY CLEARANCE OFFICER, ABU DHABI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

MIRZA NASEER AHMED

Respondent

Representation:

For the Appellant: Mr Avery, Home Office Presenting Officer

For the Respondent: Mr M F Baig, Sponsor

DECISION AND REASONS

Introduction

1. The appellant in this matter is the Entry Clearance Officer, Abu Dhabi (hereinafter referred to as "the ECO"). The respondent, Mr Ahmed is hereinafter referred as "the applicant".
2. The appeal was against the decision of the First-tier Tribunal dated 22 January 2015.

Background

3. The applicant is a national of Pakistan, who was born there on 25 October 1956. The applicant appealed to the First-tier Tribunal against the decision of the ECO dated 23 June 2014 which refused to grant him entry clearance as a general visitor.
4. The applicant's application was made under paragraph 41 of the Immigration Rules. He declared his intention to visit the United Kingdom for two or three weeks for the purpose of seeing his children who are British citizens and who live with their mother, also a British citizen.
5. The right of appeal to the First-tier Tribunal was a limited one but in the instant case the only live issue at the appeal was Article 8 ECHR.
6. The ECO's grounds of refusal were: the applicant had failed to prove his personal and financial circumstances in Pakistan. Moreover, the applicant's sister, wife and children lived in the United Kingdom. The ECO was not satisfied that the applicant was genuinely seeking entry to the United Kingdom as a visitor nor that he intended to leave the United Kingdom at the end of his visit nor that he could be maintained and accommodated without recourse to public funds.

The First-tier Tribunal's findings

7. The only evidence heard by the First-tier Tribunal came from Mr Baig, the applicant's sponsor and eldest son who was in his 20s. The First-tier Tribunal accepted his evidence.
8. On the basis of his evidence the First-tier Tribunal held that:
 - The applicant had three sons in this country and the two younger children were aged 7 and 4.
 - The applicant kept in daily touch with his children by means of Skype and regularly visited them in the UK. This was confirmed by reference to his last UK visa which was a multiple entry visa valid for five years which expired on 19 February 2014.
9. The First-tier Tribunal also made this finding at paragraph 13:

"13. Because the Appellant has previously held a multiple entry visa, and has used that visa to visit the United Kingdom, and is evidently a well educated man, the tribunal infers that the relevant and necessary documents had been submitted with the visa application. It is difficult to believe otherwise, since the Appellant had nothing to hide, was in a position to submit a strong application and had previous [sic] experience of doing so. It is also the tribunal's experience that the quality of decision making and of compliance with the tribunal's directions at the Abu Dhabi post is regrettably variable. It was a relevant consideration although by no means a decisive one that the Appellant had a satisfactory history of past travel to the United

Kingdom and of compliance with his visa conditions. Taking all material matters in to account, had there been a right of appeal against the decision under the Immigration Rules, paragraph 41, the tribunal would have had no hesitation in allowing it.”

10. The First-tier Tribunal found that family life existed between the applicant and his children and this finding was not challenged before us.
11. At paragraph 16 the First-tier Tribunal in relation to the Article 8 issue found as follows:

“... the tribunal finds that the decision [of the ECO] was incorrect and that the Appellant’s application should have been allowed. That must have a major bearing on proportionality, in that the tribunal finds that the Appellant would have complied and will comply with his visa conditions. The best interests of the Appellant’s minor sons, aged 4 and 7, must be taken into account: section 55, Borders, Citizenship and Immigration Act 2009. The tribunal finds that it is obviously in their best interests to maintain such contact as they have with their father, which includes a pattern of personal visits on his part. They are too young to travel to Pakistan on their own. The public interest under Article 8.2 ECHR is satisfied because there was no evidence to show that the Appellant is likely to breach his visa conditions or otherwise infringe United Kingdom law if he is permitted to visit the United Kingdom for two or three weeks as he declared he intended”.
12. The above finding was made in the context of a submission on behalf of the ECO that given the form of family life chosen by the appellant the ECO’s decision was not an interference with family life in that it could be maintained by visits of the family to the applicant in Pakistan.

Submissions of behalf of the ECO

13. Mr Avery maintained the position advanced in the grounds of appeal. He submitted that:
 - First, the First-tier Tribunal’s conclusion that the two younger children were too young to travel was not supported by any evidence.
 - Secondly, the First-tier Tribunal had failed to have regard to the evidence that Mr Baig was old enough to accompany his younger brothers to Pakistan. An alternative to that would be taking advantage of the assistance offered by airlines to unaccompanied children who were travelling with them.
 - Thirdly, it followed from the above that the First-tier Tribunal’s decision was inadequately reasoned.
 - Fourthly, it was his position that family life could be maintained by visits to Pakistan and by way of electronic communication.

Reply on behalf of the Applicant

14. The applicant was not legally represented, however, Mr Baig did appear on behalf of the applicant. He opposed the appeal on behalf of the applicant. It was his position that the First-tier Tribunal had given an adequately reasoned decision.

Discussion

15. Family life in this case amounted to periodic visits when the applicant met his children and daily electronic communication between the applicant and his children.
16. The submission made on behalf of the ECO to the First-tier Tribunal with reference to Article 8 was this: the ECO's decision given the above form of family life did not interfere with family life, in that the applicant's family could visit him in Pakistan.
17. Accordingly, given the foregoing, the first question which the First-tier Tribunal had to consider was this: against that factual matrix did the decision of the ECO interfere with family life?
18. The First-tier Tribunal does engage with this question and answers it in a single sentence at paragraph 16 of its determination as follows:

"They are too young to travel to Pakistan on their own" (referring to the minor sons who are aged 4 and 7).

We are persuaded that the reasoning on this core issue is inadequate.

19. These children are not babies who require their mother to be with them constantly and it is therefore insufficient simply to assert that the children are too young to travel to Pakistan on their own. Such an assertion is not an adequate reason. Children of this age, not uncommonly fly unaccompanied, with the assistance of airlines and their staff.
20. The First-tier Tribunal does not take this into account. In these circumstances the finding that the children are too young to fly on their own, is not adequately reasoned. It has left out of account a material matter.
21. Moreover, the First-tier Tribunal, which was aware of the age of Mr Baig, and accordingly on the face of it was also aware that Mr Baig could accompany his younger brothers to Pakistan in order to visit the applicant does not consider this option. This was clearly a further means of maintaining the visits between the applicant and his children and in our view had to be considered by the First-tier Tribunal. It was a material matter which was before it. Its failure to consider this matter evidences the lack of adequate reasoning in relation to its core finding.

22. Beyond the above we believe that the First-tier Tribunal has allowed itself to be influenced in its decision on Article 8 by its views as regards the ECO's substantive decision, with respect to which the First-tier Tribunal had no jurisdiction. Certain elements in the ECO's decision require to be considered in the overall assessment of proportionality, however, the observations of the First-tier Tribunal go beyond that (see: in particular paragraph 13 and 16 of its determination). In our view these observations stray into an area which was not within its jurisdiction and infect its decision on the Article 8 issue.
23. For the foregoing reasons we allow the appeal on behalf of the ECO.
24. We have considered whether we should re-hear the matter and re-make the decision. However, we believe we should not. We are clearly of the view that the matter requires to be remitted to a differently constituted First-tier Tribunal. We are persuaded that the nature of the errors of law make it not appropriate for this matter to be re-made by this Tribunal.
25. No anonymity direction is made.

Signed

Date **23 April 2015**

Lord Bannatyne
Sitting as a Judge of the Upper Tribunal