



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: VA/04259/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 7 May 2015**

**Determination Promulgated  
On 12 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MANSUKH VIRJI CHHANYA**

Respondent

**Representation:**

For the Appellant: Mr Harrison (Home Office Presenting Officer)

For the Respondent: None

**DECISION AND REASONS**

1. The appellant ('the SSHD') appeals against a decision of Designated Judge of the First-tier Tribunal Baird dated 27 January 2015 in which the respondent's appeal against a decision dated 23 June 2014 to refuse him entry clearance as a visitor was allowed under the Immigration Rules.

## Issues arising

2. The issue raised in this appeal relates to the jurisdiction of the Tribunal in visitor appeals. The position of the SSHD is set out in the grounds of appeal against the Judge's decision. In summary, the SSHD submits that all applications for entry clearance as a visitor on or after 25 June 2013 only attract a right of appeal on human rights and race relations grounds. The SSHD relies upon section 52 of the Crime and Courts Act 2013 ('the 2013 Act').

## Approach of the First-tier Tribunal

3. Unfortunately Judge Baird did not have the advantage of a SSHD representative at the hearing before her. In finding that the respondent had an appeal under the Immigration Rules [3] she has erred in law. It is clear that with effect from 25 June 2013 section 52 of the 2013 Act amended section 88A of the Nationality, Immigration and Asylum Act 2002 so that there is no right of appeal against refusal of entry clearance in a family visitor case save on race discrimination or human rights grounds – see Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) at [6, 11 and 13].
4. It follows that the First-tier Tribunal has erred in law in considering and then allowing the appeal under the Immigration Rules and the decision must be set aside.

## Re-making decision

5. Mr Harrison submitted and I accept that I should remake the decision but that I only need to address Article 8 of the ECHR. The grounds of appeal against the SSHD's decision limit its submissions to the interference with family life that will be caused by the respondent not attending his niece's wedding.
6. I note the Judge's clear findings of fact. She accepted the evidence from the sponsor and his wife, and accepted that the respondent intends to leave the UK at the end of his visit. Although the sponsor and his wife did not appear before me there is no reason to go behind the Judge's factual findings, and Mr Harrison did not invite me to do so.
7. I accept that a claimant's ability to meet the Immigration Rules is capable of being a weighty, though not determinative, factor when deciding whether such a refusal is proportionate to the legitimate aim of enforcing immigration control – see Mostafa (supra).
8. I also accept that I must consider the five step Razgar [2014] UKHL 27 approach. I do not consider that any interference with the family and private life of the respondent or his relevant family members in the UK will have consequences of such gravity to potentially engage the operation of Article 8. There is simply insufficient evidence before me

to support this. Indeed the evidence is sparse. This is not a very close family relationship like that of husband and wife as in Mostafa (*supra*) at [24]. There is also very little evidence about the closeness of the relationship between the family members and all evidence points to a visit for a wedding without more. I am not satisfied that the relationship and its circumstances are such as to merit the protection of Article 8(1).

**Decision**

9. The decision of the First-tier Tribunal contains an error of law. I set it aside and I re-make the decision by dismissing the respondent's appeal under Article 8 of the ECHR.

**FEE AWARD**

10. As I have dismissed the appeal the respondent is not entitled to any fee award.

Signed:

Ms M. Plimmer  
Deputy Judge of the Upper Tribunal

Date:  
8 May 2015