Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/07340/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 4 November 2015	**On 9 November 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

KOKAB TABRIZI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Salam, Salam & Co
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran. She is the mother of the first sponsor. He resides in the United Kingdom with indefinite leave to remain and is married to a British national, the second sponsor. They have a son, who is of course the appellant's grandson. The appellant's application for entry clearance to visit the sponsors and her grandson was refused and she appealed that decision to the First-tier Tribunal.

2. In a decision promulgated on 21 May 2015 First-tier Tribunal Judge Chambers dismissed the appellant's appeal on Article 8 of the ECHR grounds. Judge Chambers was correct to limit his consideration to Article 8. By virtue of an amendment to s.88A of the Nationality and Immigration Act 2002, there is no right of appeal in visit cases even in a family visitor case except on grounds alleging that the decision shows unlawful discrimination or is unlawful under s.6 of the Human Rights Act 1998. In consequence, in an appeal brought on human rights grounds, judges have no jurisdiction to allow or dismiss it on the basis that it is not is or is not in accordance with the rules or is or is not otherwise in accordance with the law.

3. In the instant case Judge Chambers did not accept that there was family life for the purposes of Article 8(1) between the appellant and the first sponsor. In grounds seeking permission to appeal it was submitted that the judge failed to apply the guidance contained in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) and Adjei (visit visas) [2015] UKUT 0261 and failed to consider all and make findings of fact in relation to the relevant evidence available before making findings regarding the appellant's family life.

4. After permission to appeal was granted the SSHD submitted a rule 24 response in which it is submitted that the failure to consider the relevant case law was not material because the judge's findings were open to him in light of that guidance.

5. At the hearing Mr Salam relied upon his grounds of appeal and Mr Harrison relied upon the rule 24 notice. I reserved my decision, which I now provide with reasons.

6. I am satisfied that the judge has erred in law in his approach to family life. First, the judge cast the net of potential family life too narrowly. The judge considered whether there was family life between the appellant and her son and found that the son (the first sponsor) could exercise family life with his mother (the appellant) in Iran. The judge however failed to address the relationship between the appellant and her son's family. This included a non-Muslim British wife and young British citizen son (and the difficulties that might be involved in their travel to Iran). As set out in Mostafa, the decision in Shamin Box [2002] UKIAT 02212 is to be followed to the effect that the obligation imposed by Article 8 is to promote the family life of all those affected by the decision. The judge erred in law in failing to consider the wider ambit of the relevant family life. There was evidence before the judge that the second sponsor and her child would find it difficult to travel to Iran. The witness statements before the judge made it clear that one of the purposes of the visit was for the appellant to meet his wife's family and their son, and this could not take place in Iran. In these circumstances the judge has failed to consider whether there was a lack of respect for the promotion of family life and instead

focussed too narrowly on the fact that the first sponsor could visit the appellant in Iran.

7. Second, the judge failed to take into account the evidence of financial dependence. As noted in Kaur (visit appeals; Article 8) [2015] UKUT 487 (IAC) at [38] it is well-established that the notion of family life is not confined to parents and children and can include the ties between near relatives, including grandchildren since such relatives play a considerable part in family life. In this case there was also a large degree of financial dependence on the part of the appellant toward the sponsors, yet this was not taken into account by the judge.

8. Third, the judge has not made any clear findings regarding paragraph 41 of the Immigration Rules. Kaur at [31] establishes that it is beyond doubt that (i) evidence relating to the ability of an appellant to meet the requirements of paragraph 41 must be relevant to the assessment of whether there is a violation of Article 8; (ii) this means that it is essential for a tribunal judge deciding the Article 8 question to make any findings on the basis of all the evidence in the case. I appreciate that Kaur was promulgated after the decision under appeal however the issue was flagged up in the headnote of Mostafa as noted in Kaur [28]. It is nonetheless surprising that clear findings of fact were not made in this appeal. As I have said the judge had detailed evidence in the form of witness statements dealing with the sole issue arising under paragraph 41 – whether there was an explanation for payments into the appellant's bank account and the role this played in the appellant's intentions to leave the UK. The sponsors gave oral evidence about the issue and this evidence related to the circumstances appertaining at the time of the decision. The judge does not appear to dispute this evidence. Yet he makes no clear findings upon the issue. The issue is important (not just for the purposes of paragraph 41 which was plainly not before the judge) but because it was relevant to the assertion of financial dependency and the extent of family life.

9. It follows that the judge has erred in law in his assessment of family life. I have considered whether or not I can remake the decision for myself or whether detailed findings of fact need to be remade such that it would be more appropriate for the matter to be remitted to the First-tier Tribunal in accordance with 7.2 of the relevant Practice Direction. The judge has not made any clear findings of fact relevant to the appellant's intentions, financial dependence, or the wider ambit of family life. This needs to be done. Mr Salam also sought to highlight a number of hurdles to the second sponsor and her son travelling to Iran. He was however unable to point to evidence to support much of this. In all the circumstances it is appropriate for the decision to be remade in the First-tier Tribunal. Any further evidence that is submitted must of course be relevant to the circumstances appertaining at the date of decision.

Decision

10. I find that the decision of the First-tier Tribunal contains an error of law and I set it aside.

11. The matter needs to be remade by the First-tier Tribunal.

Directions

(1) The appeal shall be remitted to the First-tier Tribunal, which shall make clear findings of fact in line with the relevant authorities referred to above. TE: 1.5 hrs.

(2) The appellant shall file and serve a paginated indexed bundle containing all evidence she wishes to rely upon 28 days before the hearing.

(3) The respondent shall file and serve a summary of her position in light of the appellant's evidence 7 days before the hearing.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
6 November 2015