



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/01037/2015

THE IMMIGRATION ACTS

Heard at Field House
On 14 April 2016

Decision & Reasons
On 28th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MR MUHAMMAD AKRAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Ms S Sreeraman, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Graham sitting at Birmingham on 3 September 2015) dismissing on Article 8 ECHR grounds the appellant's appeal against the decision of an Entry

Clearance Officer to refuse him entry clearance as a family visitor for a period of fifteen days.

The Reasons for the Grant of Permission to Appeal

2. On 14 March 2016 Upper Tribunal Reeds granted the appellant permission to appeal for the following reasons:
 1. Whilst this was a case in which jurisdiction was restricted to human rights considerations, in the light of the decision of **Kaur (Visit appeals: Article 8) [2015] UKUT 00487** it is arguable that the judge erred in the consideration of Article 8 in the context and against the background of the evidence of the Appellant's ability to meet the Immigration Rules.
 2. Furthermore, as the grounds set out, the judge arguably erred in law by not considering the evidence submitted in relation to his wish to visit his grandmother in the light of the evidence provided both with the application and subsequently and as to whether the interests covered by Article 8 were of a 'particularly pressing nature' so as to give rise to a 'strong claim that compelling circumstances may exist to justify the grant of leave to enter outside of the Rules'. (See decision in **SS (Congo) [2015] EWCA Civ 387** and decision in **Kaur** (as cited)).

Relevant Background

3. The appellant is a national of Pakistan, whose date of birth is 15 October 1979. In his application form for a visit visa, he said he planned to arrive in the UK on 30 December 2014 and to stay here for fifteen days. He would be staying with his brother, Mr Ramzan Muhammad, at his brother's home in Coventry. In part 5, he was asked to give details of his family in the UK, and whether he intended to visit them or stay with them. In the box at question 65 the appellant entered details about his brother, and also about his grandfather, Mr Yunis Muhammad. The implication of the details entered was that his grandfather lived with his brother at the family home in Coventry.
4. At part 7, he was given the opportunity to provide additional information. He was asked whether there was any other information which he wished to be considered as part of his application. He left this blank.
5. Earlier in the application form, the appellant was asked to give details about his father and mother. He said his father had been born in Rawalpindi on 1 January 1919, and his mother had been born in Rawalpindi on 5 June 1923.
6. The ECO bundle contains an undated letter from Dr Kaye of Chelsea and Westminster Hospital in London SW10. This stated that Saleema Begum (D.O.B. 1 January 1935) was currently an inpatient at Chelsea and Westminster Hospital. She was unable to travel and her family would like to come and visit given her condition.

The Reasons for Refusal

7. On 28 December 2014 an Entry Clearance Officer in Abu Dhabi gave his reasons for refusing the appellant's application to visit his brother in the UK for a period of fifteen days. He stated he was self-employed, running Moon Motors, and that he earned 100,000 PKR (£636) per month. As evidence, he had submitted his bank statement. This document in isolation did not demonstrate evidence of an ongoing business or that the business was owned by him. Furthermore, the deposits into the bank account were in excess of his stated monthly income. The document submitted in support of the application did not provide evidence of the origin of the funds going into his bank account. So he was not satisfied that the bank account actually represented his financial circumstances.
8. He stated his sponsor would maintain and accommodate him during his visit. But the documents he submitted in support of his application did not demonstrate this.
9. Given all the above, he was not satisfied he had actually presented his circumstances or intentions in wishing to enter the United Kingdom. This meant he was not satisfied he was genuinely seeking entry as a family visitor for a limited period or that he intended to leave the United Kingdom at the end of the period of the visit as stated by him; or that he could maintain and accommodate himself in the United Kingdom without recourse to public funds or employment; or that he could meet the cost of the return or onward journey.

The Grounds of Appeal

10. In the grounds of appeal, the appellant said he had applied to come to the UK as a family visitor on compassionate circumstances and humanitarian grounds. His grandmother was seriously sick in the UK due to her old age, and he directed the Entry Clearance Officer's attention to "her doctor's letter" which he had attached.
11. No further mention was made of the grandmother in the remaining and extremely lengthy grounds of appeal, which ran to nine pages in total, almost entirely directed at the appellant's circumstances in Pakistan, and hence the merits of the refusal under the Rules.

The Entry Clearance Manager's Appeal Review

12. On 28 April 2015 the Entry Clearance Manager gave his reasons for upholding the refusal decision. As the appellant had applied for a family visit visa after 25 June 2013, he had been correctly afforded only a limited right of appeal. He alleged in his grounds of appeal that the decision breached the Human Rights Convention, but no details on why he considered this to be the case had been provided. There was no reason to believe that the appellant had any family life with his UK sponsor. But if he had, he had not shown any interference with it because he could continue to enjoy that family life in the same way he had done hitherto. No satisfactory reason had been put forward as to why the appellant's relative in the UK was unable to travel to Pakistan or to a third country to be with the appellant.

13. It was for the appellant to discharge the burden of proof. In response to the concerns raised by the Entry Clearance Officer in the refusal decision, the appellant stated that due to the nature of his business his income fluctuated on a monthly basis. He had provided several documents in relation to his business which were not provided at the time of the application. He provided a letter from his accountant and his tax document to show that the business had an income of PKR 1,275,000. But he was unable to distinguish the appellant's personal income from his business income. The appellant had also provided invoices in an attempt to justify the large deposits into his account. But these were just printed A4 receipts which had been initialled and could have been produced at any time. So he was still not satisfied that the appellant's circumstances in Pakistan were as claimed, and this led him to question his intentions in travelling to the United Kingdom now.

The Decision of the First-tier Tribunal

14. The appellant did not request an oral hearing, and so his appeal was determined by Judge Graham on the papers. In her subsequent decision, Judge Graham gave her reasons for dismissing the appeal in paragraphs 10 to 15, which I reproduce verbatim below:

- "10. The Appellant made an application to visit his brother in the United Kingdom for a period of fifteen days. Since the refusal and reconsideration of this application by the Entry Clearance Manager the Sponsor submits a witness statement dated 8th August 2015 in which he states that the Appellant's grandmother has serious medical problems in the United Kingdom and is suffering from heart failure and continues to be at high risk of cardiac events. The Sponsor states that the purpose of the Appellant's visit was for compassionate reasons as stated in his application form (Part 7 Additional information). The Respondent's bundle contains the application form but there is no Part 7 included in the Respondent's bundle. There is no indication that compassionate circumstances relating to the grandmother were considered by either the Entry Clearance Officer or the Entry Clearance Manager and there is no evidence before me to confirm that the Appellant and Mrs Saleema Begum are related as claimed or at all. I am satisfied that this aspect of the Appellant's Appeal can be dealt with by way of a fresh application where the circumstances of the Appellant's relationship with Saleema Begum can be fully considered.
11. In respect of the Appellant's relationship with the Sponsor in the United Kingdom I have considered whether the Appellant's right to respect for their family life under Article 8 ECHR is engaged by refusing him entry clearance to the UK to visit his relatives. I am satisfied that the Appellant cannot bring himself within the Immigration Rules. I have considered the relationship between the Appellant and his family in the UK.
12. I have considered the Strasburg case of **Advic v The United Kingdom 1995]** **ECHR 57** where the Commission said '...in accordance with the Commission's case-law, the exclusion of a person from a country in which his close relatives reside may raise an issue under Article 8 of the Convention. However, in examining cases of this nature the Commission's first task is to consider whether a sufficient link exists between the relatives concerned to give rise to the

protection of Article 8 of the Convention. Although this will depend on the circumstances of each particular case, the Commission has already considered that the protection of Article 8 did not cover links between adult brothers who had been living apart for a long period of time and who were not dependent on each other. Moreover, the relationship between a parent and an adult child would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties....'

13. The Court also stated in **Mokrani v France** [2003] 40 EHRR 123 that 'relationships between adults do not necessarily benefit from protection under Article 8 of the Convention unless the existence of additional elements of dependence other than normal emotional ties can be proven'. In **Kugathas** [2003] EWCA Civ 31 the Court of appeal reiterated the dicta of the Strasbourg cases but added that the further element of dependency did not have to be economic and stated that it would be necessary to show that ties of support, either emotional or economic were in existence and go beyond the ordinary and natural ties of affection that would accompany a relationship of that kind. In the Court of Appeal case of **JB (India)** [2009] EWCA Civ 234 it was said that the approach in **Kugathas** must be applied to the question whether 'family life' for the purposes of Article 8 subsists between parents and their adult children. There must be 'elements of dependency going beyond the normal emotional ties'. If such dependency is not found then the refusal to admit members of the family simply does not constitute interference with family life. In the later case of **AAO** [2011] EWCA Civ 840 the Court of Appeal gave guidance on the point and stated that family life would not normally exist between parents and adult children within the meaning of Article 8 in the absence of further elements of dependency which went beyond normal emotional ties. The Court also said that Financial dependency was not in itself sufficient to create a strong family bond under Article 8.
14. I am satisfied that each case must be determined on its facts. In this Appeal the Appellant wishes to visit his brother. There is no evidence before me which would lead to a finding that the Appellant was in poor health or that his relationship with his adult sibling involved any emotional dependency. I am bound to find that the Appellant does not have a 'family life' with his brother in the United Kingdom and therefore refusing him entry clearance cannot be an interference with family life. Therefore Article 8 is not engaged in this Appeal.
15. Accordingly I find that Article 8 ECHR is not engaged in this Appeal and the appeal is dismissed."

The Application for Permission to Appeal

15. In his reasons for appealing the decision of the First-tier Tribunal, the appellant said that he had referred to his ailing grandmother's condition in his VAF in answer to questions 80 and 84, and he had also stated her name in answer to questions 81 and 82. His infirm grandmother was close to death, and there was no other route by which the appellant could visit his ailing grandmother. The whole plan and intent of the appellant had been taken away and thwarted by the decision of the Entry Clearance Officer.

The Error of Law Hearing

16. Although the appellant asked for an oral hearing, there was no appearance before me by either his UK sponsor or a legal representative. He was clearly aware that the hearing was taking place, as the day before someone had faxed to the Upper Tribunal on his behalf a copy of **Abbasi and another (visits - bereavement - Article 8) [2015] UKUT 00463 (IAC)** for me to take into consideration when evaluating the appellant's error of law challenge.
17. On behalf of the Entry Clearance Officer, Ms Sreeraman submitted that the appeal should be dismissed. She relied on the contents of the appellant's application form, which she had produced pursuant to the direction of Upper Tribunal Judge Reeds. She also relied on the Rule 24 response settled by her colleague, Mr Chris Avery of the Specialist Appeals Team. At paragraph [10] the judge found there was insufficient evidence before her to establish the relationship between the appellant and Mrs Saleema Begum. Given this finding, it was difficult to see how she could have taken the Article 8 consideration any further. Furthermore, even if she had, it is difficult to see how any protected Article 8 right could have been established, given the apparent circumstances of the case.

Discussion

18. In **Kaur (visit appeals; Article 8) [2015] UKUT 487 (IAC)** the Tribunal said at paragraphs [28] to [30] that there was, on analysis, no conflict between **Mostafa and Adjei**. The Tribunal continued in paragraph [31]:

“In any event, even if we are wrong in our analysis of the reasoning in these two cases, we consider it 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. If an appellant is contending that the ECO was wrong about matters of evidence, relating to intention, finances etc., then the Tribunal Judge must decide whether this is in fact so. He cannot simply rely on the ECO's findings, but neither can he (as happened in **Adjei**) simply rely on what an appellant avows.”

19. Earlier, at paragraph [27] the Tribunal said as follows:

“Overall, unless an appellant can show that there are individual interests at stake covered by Article 8 ‘of a particularly pressing nature’ so as to give rise to a ‘strong claim that compelling circumstances may exist to justify the grant of LTE outside the Rules’; (see **SS (Congo)** at [40] and [56]), he is exceedingly unlikely to succeed. That proposition must also hold good in visitor appeals.”

20. In the light of **Kaur**, Judge Graham left herself vulnerable to an error of law challenge by avoiding taking the factual situation as regards the ability of the appellant to meet paragraph 41 as her starting point. Nonetheless, a failure to do so will not be material if the judge has given adequate reasons for finding that Article 8(1) is not shown to be engaged.

21. There was no satisfactory evidence before the judge to show that the appellant had asserted in his application that one of the purposes, or the main purpose, of his fifteen day visit to the United Kingdom was to visit his ailing grandmother in Chelsea and Westminster Hospital. It was asserted by the sponsor that the topic had been addressed in part 7 of the application form, but the version of the form that was in the ECO bundle was missing two pages; and so, as the judge said, there was no part 7 included in the ECO bundle. Accordingly, she could not verify the sponsor's claim.
22. Although the version of the application form provided to the Upper Tribunal shows that part 7 was left blank, and also that there was no mention of a grandmother in the remainder of the application, there remains an evidential gap as the version of the completed application form in the ECO bundle is a more extended version than that which has been produced to me. It may be that this is because the version in the ECO bundle is the version which the appellant signed, and handed over in person, whereas the version produced by Ms Sreeraman reflects a parallel online application. But at all events, the versions are different in that the version in the ECO bundle has more questions. The last question in the version produced by Ms Sreeraman is question 67 arising under part 7, whereas the last question and answer shown in the application form in the ECO bundle is question 79, which is the last question in part 4.
23. So there is the possibility of the sponsor being correct in asserting that in one version of the application form the appellant mentioned his grandmother. However, overall I consider this is unlikely, having regard to the absence of any mention of her in the other version of the application form, and also because of the way she is introduced in the notice of appeal. She is introduced as a reason for expediting the appeal. It is not suggested at this juncture that the Entry Clearance Officer has ignored what the appellant said in his application form, in particular in part 7.
24. The Entry Clearance Manager in his review clearly ignored the (new) claim that the purpose of the visit was for the appellant to visit his grandmother who was seriously sick in a hospital in London. The fact that the Entry Clearance Manager ignored the potential implications of this did not relieve the judge of the obligation to evaluate the appellant's Article 8 claim. So to that extent it was not an adequate response on the part of the judge to say that this aspect of the claim could be dealt with by way of a fresh application.
25. However, the judge made a parallel finding which means that any error in her approach is not material. Her parallel finding is that there is no evidence before her to confirm that the appellant and Mrs Saleema Begum were related as claimed or at all. This was a finding which was clearly open to the judge on the evidence that was before her. Mrs Begum had not been mentioned in the application (so far as the judge could see) and the letter from the doctor was undated. Moreover, the brother with whom the appellant was going to stay lived in Coventry, whereas Mrs Begum was in a hospital in West London. Furthermore, the date of birth assigned by the

doctor to Mrs Begum meant that she was younger than the appellant's parents, and so she could not be related to him as a grandmother.

26. In the light of this sustainable finding, the Article 8 claim fell away. The appellant had not shown that Article 8(1) was engaged, either by reference to his putative relationship with Mrs Saleema Begum, or by reference to his undisputed fraternal relationship with his UK sponsor. Thus, the decision of the First-tier Tribunal does not disclose a material error.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date **28th July 2016**

Deputy Upper Tribunal Judge Monson