



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

Appeal number: VA/01651/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On January 12, 2016**

**Decision & Reason Promulgated
On January 14, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

**MR SYED NASEEM ABBAS
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

Appellant

Ms Johnstone (Home Office Presenting Officer)

Respondent

Represented by the sponsor, Mr Javed

DECISION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, citizen of Pakistan, applied on February 11, 2014 for a family visit visa to come to the United Kingdom to meet the sponsor and other family members. The respondent refused this application on February 27, 2014 and a limited right of appeal under section 84(1)(c) of

the Nationality, Immigration and Asylum Act 2002 was offered. This appeal was lodged on March 27, 2014 and at paragraphs [40] and [46] human rights issues were raised.

3. The appeal came before Judge of the First-tier Tribunal Hague on September 17, 2014 and he allowed the appeal under the Immigration Rules in a decision promulgated on October 1, 2014.
4. The respondent sought permission to appeal that decision on October 7, 2014 on the ground the judge had erred by allowing the appeal under the Immigration Rules when no power existed. Permission to appeal was granted by Judge of the First-tier Tribunal Pullig on November 13, 2014 on that basis.
5. The matter came before me on the above date and on that date I heard submissions from both Mr Javed and Ms Johnstone.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.

ERROR IN LAW

7. I indicated to both parties that there was a clear error in law because as identified in both the grounds and the grant of permission the judge had no power to allow the appeal under the Rules as he merely had an appeal under human rights before him. There was therefore a clear error in law and I set aside that decision.

DISCUSSION AND FINDING

8. The Judge had not dealt with the matter that was before him and accordingly I asked Mr Javed for some details about the appellant and himself and other family members. It was apparent from his account that the appellant was self-sufficient in Pakistan with a large family and was not dependant on any of his family either here or in Pakistan. Similarly, his family in the United Kingdom were not dependant on him. Ms Johnstone had no questions for him and I indicated to Mr Javed that I would have to consider any human rights claim in light of Kaur (visit appeals; article 8) [2015] UKUT 00487 (IAC), Mostafa (article 8 in entry clearance) [2015] UKUT 00112 (IAC) and Adjei (visit visas-article 8) [2015] UKUT 0261 (IAC).
9. The Tribunal has made clear that in order to succeed under article 8 in a visit visa appeal the appellant will have to demonstrate a factual content to the claimed private and family life. In other words the appellant has to demonstrate real family ties and simply meeting the Rules does not mean article 8(1) is engaged. The denial of the visit has to have a material impact on article 8(1) rights and the evidence from Mr Javed was that he saw the appellant whenever he visited Pakistan and that he had seen him on three or four occasions over the last ten years.

10. Additionally, ties between two adults will not as a rule constitute family life for article 8 (1) purposes unless there is dependency over and above normal emotional ties (Singh and another [2015] EWCA Civ 74).
11. As there is no dependency between the appellant and sponsor or anyone else in the United Kingdom article 8(1) is not engaged. As article 8(1) is not engaged I am not required to consider the other tests set out in Razgar [2004] UKHL 00027 and in particular the proportionality of the decision.

DECISION

12. There was a material error and I set aside the earlier decision including the fee award made.
13. I have remade the decision and dismissed the appeal under ECHR legislation.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis