



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

Appeal Number: VA/06614/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 January 2016**

**Decision & Reasons Promulgated  
On 3 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**THE ENTRY CLEARANCE OFFICER (DHAKA)**

Appellant

**and**

**MR EHSAN AHMED**  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr A Miah, counsel

**DECISION AND REASONS**

1. The Entry Clearance Officer (ECO) appeals the decision of First-tier Tribunal Judge James, promulgated on 13 August 2015, allowing an appeal against a decision to refuse the respondent leave to enter the United Kingdom as a visitor.

**Background**

2. On 16 September 2014, the respondent, aged 22, sought leave to enter

the United Kingdom, along with his parents, in order to visit his adult siblings who reside in the United Kingdom. His application was refused on 24 September 2014 as the ECO was not satisfied that he was genuinely seeking entry only as a visitor or that he intended to leave the United Kingdom at the end of the visit. The ECO particularly noted that the respondent had unsuccessfully sought further leave to remain in the United Kingdom after his studies ended on the basis that his parents had disowned him; he suffered from schizophrenia for which medical treatment was available in Bangladesh and the respondent was unemployed, unmarried with limited familial links and no financial or economic links to Bangladesh.

3. Detailed grounds of appeal were enclosed with the notice of appeal, which stressed that the respondent had left the United Kingdom prior to his last period of leave elapsing.
4. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry on 8 December 2014. The decision to refuse entry was maintained. The ECM relied on the decision in Sun Myung Moon v ECO Seoul (2005) UKIAT 112 and was of the view that the appellant did not have any family life with the United Kingdom sponsor, or alternatively, the decision in question did not interfere with any family life.
5. The FTTJ found that the relationship the appellant has with his two sisters in the United Kingdom was over and above that of adult siblings because of his dependency upon them when he was last living in the United Kingdom. He concluded that the respondent's decision was not in accordance with the law and Article 8 ECHR.

#### Error of law

6. The grounds of application argue that the FTTJ made a material error of law in finding that there were additional elements of dependency between the respondent and his sisters at the date of the decision, when the respondent was living with and being cared by his parents in Bangladesh. Furthermore, it was said that the FTTJ's proportionality assessment failed to consider that the respondent and sponsors may maintain their relationship via modern methods of communication and that there was a lack of adequate reasons as to why the sponsors may not visit the respondent in Bangladesh.
7. FTTJ PJM Hollingworth granted permission to appeal, stating that it was arguable that the FTT failed to provide sufficient reasons for finding there to be family life; that he made an insufficient assessment in relation to the issue of the genuineness of the visit and that it was arguably an error of law in relation to the adequacy of the FTTJ's reasoning in relation to visits to Bangladesh.
8. At the hearing before me, Mr Tufan relied upon the decisions in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC), Adjei (visit visas)

- Article 8) [2015] UKUT 261 (IAC) as well as the judgment in SS (Congo). In essence, he argued that Article 8 was not engaged at all and stressed that it would be rarely the case that a case other than involving partners or parents would come within the scope of Article 8(1).

9. Mr Miah argued that the FTTJ had found dependency between the respondent and sponsor and he was entitled to make that finding. He further said that the FTTJ was empowered to make findings on Article 8; that the proposed visit was not based on a whim and that the decision should stand.
10. In reply, Mr Tufan stressed that in relation to leave to enter cases, it had to be an exceptional case or there had to be compelling circumstances justifying entry on Article 8 grounds.

#### Decision on error of law

11. The FTTJ erred in categorising the respondent's relationship with his sisters in the United Kingdom as family life for the following reasons.
12. The respondent sought entry to the United Kingdom with his parents in order to visit his sisters, a brother and do some shopping [VAF 73]. Hitherto, he obtained 6-month visit visas in 2001, 2005, 2009, as well as under Tier 4 in 2009 [VAF 26 & 28]. Thereafter the appellant varied his leave to remain in the United Kingdom, being granted Discretionary Leave to Remain (DLR) until 14 March 2014, solely in order to enable him to complete his studies. Notwithstanding an outstanding application for leave to remain, the respondent left the United Kingdom prior to his DLR expiring. At the time of the ECO's decision, the respondent had been residing with his parents in Bangladesh for approximately seven months.
13. The claim of family life was made because the respondent suffers from an enduring mental illness and during his studies in the United Kingdom, as found by the FTTJ at [15], the respondent's sisters were taking responsibility for his welfare. However, at the time of the ECO's decision the respondent was cared for by his parents and that had been the position for months. Indeed, the FTTJ remarks at [23] "*He resides with his parents due to his mental illness and is not an independent young adult. He is reliant on his parents for accommodation and maintenance, as well as care for his illness.*" Furthermore, the respondent intended to travel to the United Kingdom with his parents and return with them to Bangladesh. Therefore, while the relationship the respondent had with his sisters when he was residing with them previously might have amounted to family life at the time, on account of his vulnerability, this was not the position at the time of the ECO's decision. Accordingly, the FTTJ erred in finding that family life had been established between the respondent and his sisters at the time of the decision.
14. I accordingly, set the decision of the FTTJ aside, albeit I did not disturb

his findings of fact.

### Decision on remaking

15. I was able to immediately remake the decision in this case on account of Mr Miah's acceptance that there was no further evidence to be adduced. I therefore invited submissions from both representatives. Mr Miah summarised the FTTJ's findings at [15] and [16] and argued that Article 8 was engaged. He considered that this case could be distinguished from that in SS (Congo) and that the simple question was whether it was proportionate for the ECO to refuse entry. He argued that there were special features to this case and there was no issue of a poor immigration history.
16. Mr Tufan repeated his earlier submissions and argued that if there were to be an issue of dependency now, this would tend to suggest that the respondent was intending a longer stay than suggested in his visa application. Mr Miah responded, urging me not to entertain any unfounded suspicions as to the respondent's motivation.
17. I have been guided by what was said in the headnote in Adjei; *"The first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 of the ECHR is engaged at all. If it is not, which will not infrequently be the case, the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the Rules and should not do so. If article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule..."*
18. As indicated above, I conclude the respondent did not enjoy a family life with his sisters in the United Kingdom after March 2014. The application for entry was made in September 2014 when the respondent's needs were being addressed by his parents, with whom he was intending to travel.
19. I have also been guided by [24] of Mostafa where comment was made that *"it will only be in very unusual circumstances that someone other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not be necessarily extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together. "*
20. Evidently, the respondent's relationship with his sisters does not amount to that of a close life partner or parent and child and there was no element of dependency in place at the time of the visa application. Furthermore, the respondent was intending a visit of only two months

and the evidence of his sisters was not that they could not visit the appellant in Bangladesh ([26] and [27] of the decision) but that their work and childcare issues meant that such visits could not be carried out in term time or their limited annual leave had to be used. Therefore, even had I found there to be family life, it is the case that the relationship between the parties, as at the time of the decision, could continue by way of short visits by the sisters to the respondent in Bangladesh.

21. As family life has not been established, there is no need for me to embark on a proportionality assessment.

22. I accordingly allow the ECO's appeal.

### Decision

- (1) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law
- (2) The decision of the FTTJ to allow the appeal under Article 8 ECHR is set aside.
- (3) I substitute a fresh decision to dismiss the respondent's appeal under Article 8 ECHR.

No application for anonymity was made and I could see no reason to make such a direction.

Signed

Date: 30 January 2016

Deputy Upper Tribunal Judge Kamara