



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

Appeal Number: VA/07236/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18<sup>th</sup> May 2016**

**Decision & Reasons  
Promulgated  
On 1<sup>st</sup> June 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MD GIAS MIAH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer  
For the Respondent: Mr M Rana of Counsel

**DECISION AND REASONS**

1. The Appellant in this appeal is the Secretary of State and so I shall refer to Mr Miah as the Claimant. His appeal to be allowed to enter the UK to visit his brother was allowed by First-tier Tribunal Judge Atreya in a decision promulgated on 15<sup>th</sup> October 2015. The Grounds of Appeal note that the

appeal was restricted to residual grounds contained in Section 84(1)(b) and (c) of the 2002 Nationality, Immigration and Asylum Act. The grounds state that there was a material misdirection of law by the judge who had not explained that additional dependency existed such as to engage Article 8.

2. Permission to appeal was granted and thus the appeal came before me on the above date.
3. For the Home Office reliance was placed on the grounds. The judge did not explain how the ties between the brothers exceeded the normal emotional ties. I was asked to set the decision aside and dismiss the Claimant's appeal.
4. For the Claimant Mr Rana submitted that the judge had produced a very careful decision. She had dealt with the relationship between the parties. She had noted that they had been separated for six years. She had found that there was family life. She had referred to and applied the appropriate case law namely **Kaur (visit appeals/Article 8 ECHR) [2015] UKUT 487**. The judge had applied the letter of the law and there was no error.
5. I reserved my decision.

### **Decision**

6. The judge was impressed by the honesty of the Claimant's younger brother (paragraph 22) and accepted that their relationship was more akin "to father and son" in view of the Claimant's role as a father figure after their father died. He noted that the brothers had not seen each other for six years and the reason for the visit was to see his brother's baby. He accepted that the Claimant would be a grandfather figure to the Sponsor's child and the child is his first child. The judge correctly noted that the burden of proof remained on the Claimant and found that the relationship between the Claimant and his brother did amount to family life because the Claimant was a father figure to his younger brother. As the judge correctly noted family life is not confined to parents and children and can include ties between other relatives.
7. The judge went on to note, correctly, that the Claimant did meet the terms of paragraph 41 of the Immigration Rules. She then went on to apply the case of **Kaur** going on to allow the appeal on human rights grounds.
8. The judge gave clear reasons why she considered that family life existed between the brothers. There is no general proposition that in Article 8 cases family life can never be engaged between brothers - each case must be fact-sensitive. In this appeal the judge gave clear reasons why she considered the relationship between the brothers to be a very close one capable of engaging Article 8. She applied the law as set out in **Kaur** finding that the Claimant did meet the requirements of paragraph 41 of the Immigration Rules. She found that the Claimant only intended a family

visit and would return back to Bangladesh at the end of the visit. He would meet the financial requirements. She was at pains to express the close relationship between the Claimant and his brother. There is no error of law in the decision which must stand. I see no need for an anonymity order.

**Notice of Decision**

9. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

10. I do not set aside the decision.

No anonymity direction is made.

Signed

Date 1 June 2016

Deputy Upper Tribunal Judge J G Macdonald