



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/19424/2016**

Appeal Numbers:

HU/19425/2016

THE IMMIGRATION ACTS

Heard at Bradford

**Decision &
Promulgated
On 9 May 2018**

Reasons

On 1 May 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

**AZAZ AHMED
YASMIN MEHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondents: Mr Nasser Hussain Ali (Sponsor)

DECISION AND REASONS

1. I shall refer to the Entry Clearance Officer as the respondent and the respondents as the appellants (as they appeared before the First-tier Tribunal). The appellants, Azaz Ahmed and Yasmin Mehmood, were born respectively on 9 April 1994 and 28 September 1963, are a son and mother and citizens of Pakistan. They applied for entry clearance in the United Kingdom as visitors but were refused by decisions of the Entry

Clearance Officer (ECO) dated 5 July 2016. They appeal to the First-tier Tribunal (Judge Hindson) which, in a decision promulgated on 16 October 2017, allowed the appeal on Article 8 ECHR grounds. The ECO now appeals, with permission, to the Upper Tribunal.

2. The judge noted that the sponsor and his family last visited Pakistan in 2014. The sponsor's wife suffers from hepatitis C, fibromyalgia and impaired vision. The judge also noted that "the youngest child has health problems of his own" but he does not state what those problems may be. The judge did, however, conclude that it was "extremely difficult" for any of the UK based family to visit Pakistan, a matter "made worse by the considerable cost involved of flights for them all in term time." The judge failed to explain why the family would have to travel in term time. The visit appears to be for the appellants to visit their "sister/daughter and her children."
3. Following an extremely brief account of the circumstances and evidence, the judge proceeded to make findings. He noted the appellants' "good immigration history" and found that the sponsor provided evidence that was consistent with "what the appellants claim" although it is unclear exactly what he means by that statement. The judge, without giving any reasons, found that the appellants were "well-established in Pakistan both economically and socially." He found, as he was entitled to find, that they would return to Pakistan following their short visit. He concluded that the provisions of HC 395 (the Immigration Rules) were met. He did not consider in any detail the reasons given by the ECO for rejecting the application. He did, however, move directly to Article 8 and concluded that "additional aspects" of the appeal led him to conclude that it would be disproportionate to dismiss it. He refers only to the "health of the second appellant's daughter" being a "significant obstacle to her travelling to Pakistan to see her family either alone or with her husband and children. This is made more difficult by the health problems [unspecified in the decision] of her youngest child." Whilst the judge refers to having "medical evidence in relation to both" he fails to explain why that medical evidence had led him to conclude that the ECO's decision was disproportionate.
4. I have no doubt that the judge had sympathy for the appellants and sponsor in this case. He has, however, simply failed to make any attempt at a structured analysis of the appeal on Article 8 grounds or, indeed, attempt to give any cogent reasons for allowing the appeal on human rights grounds. I find that his decision is flawed accordingly. I have set it aside. I have remade the decision. I am aware that Article 8 cannot be used, as the judge has used it in this case, to allow an appeal simply where no appeal can be made in respect of the Immigration Rules. The grounds of appeal cite *ECO Sierra Leone v Kopoi* [2017] EWCA Civ 155 at [30]:

In my view, the shortness of the proposed visit in the present case is a yet further indication that the refusal of leave to enter did not involve any want of respect for anyone's family life for the purposes of Article 8. A three week

visit would not involve a significant contribution to "family life" in the sense in which that term is used in Article 8. Of course, it would often be nice for family members to meet up and visit in this way. But a short visit of this kind will not establish a relationship between any of the individuals concerned of support going beyond normal emotional ties, even if there were a positive obligation under Article 8 (which there is not) to allow a person to enter the UK to try to develop a "family life" which does not currently exist.

5. Whilst I am aware of the practical difficulties claimed by the appellants and sponsor which might prevent the sponsor's family travelling from the United Kingdom to Pakistan, I am reminded that those difficulties alone simply do not establish that the short visit proposed by the appellants would "involve a significant contribution of family life in the sense in which that term is used in Article 8." The parties have concentrated on the problems involved in travelling rather than upon the strength of the emotional ties which might justify allowing the appeal on Article 8 grounds. In the circumstances, the appeal is dismissed. I would make one final comment. The ECO's grounds of appeal do not take issue with the judge's finding that these appellants met the requirements of HC 395. In the circumstances, I do not set aside those findings although I do set aside the judge's decision. The First-tier Tribunal's findings may be of assistance to the appellants should they decide in the future to make another application for entry clearance.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 16 October 2017 is set aside. The judge's finding that the appellants met the requirements of HC 395 is preserved. I have remade the decision. The appellants' appeals against the decision of the ECO dated 5 July 2016 is dismissed on human rights grounds.

No anonymity direction is made.

Signed

Date 8 MAY 2018

Upper Tribunal Judge Lane

I have dismissed the appeal of the appellants and therefore there can be no fee award.

Signed

Date 8 MAY 2018

Upper Tribunal Judge Lane