



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

Appeal Number: HU/13988/2015
HU/14109/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 October 2018**

**Decision & Reasons promulgated
On 11 January 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KHALID [J]

[J]

(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Semega-Janneh instructed by Beachwood Solicitors Ltd.

For the Respondent: Mr M Diwnycz – Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellants appeal with permission a decision of First-tier Tribunal Judge Caskey promulgated on 27 July 2017 in which the Judge dismissed the appeals on human rights grounds.

Background

2. The appellants are citizens of Afghanistan born on 14 May 1999 and 10 March 2001 respectively. They are brothers. Each applied for entry clearance in order to join their older brother who lives in the United Kingdom. The appellants claim they are being cared for by a family friend in Pakistan. The applications for entry clearance were refused and the decision upheld on review by an Entry Clearance Manager.
3. The Entry Clearance Officer (ECO) noted the appellant's case but found in the refusal:

"I have also considered whether the particular circumstances set out in your application constitute exceptional circumstances which, consistent with the right to respect for family life contained in Article 8 the European Convention on Human Rights, might warrant consideration by the Secretary of State of a grant of entry clearance to come to the United Kingdom outside the requirements of the Immigration Rules. However I am satisfied that you do not meet the requirements of paragraph 352 D and you have not provided any evidence of any exceptional circumstances regarding your application. I am also satisfied that you have not exhausted all the avenues of application within the Immigration Rules that lead to consideration of your application outside the rules. I accept that this decision may result in limited interference with the Right to Family Life as described in Article 8. However, I remind myself that this is a qualified right, and I am satisfied that the decision is justified and proportionate in the interests of maintaining an effective immigration control."

4. The decision maker noted the UK-based sponsor stated he has a wife in Afghanistan but that it was not clear how she is currently residing in that country when the appellants claim they are unable to do so, and that given the lack of any documentary evidence of their circumstances the decision-maker was not satisfied the appellants were part of the family unit which included their sponsor when he left Afghanistan - see paragraph 352D(iv) of the Immigration Rules.
5. The Judge found the sponsor to be a credible and articular witness and sets out findings from [11] of the decision under challenge. The Judge analysed the merits of the appeal outside the Immigration Rules by reference to Razgar before concluding at [17 - 20]:

"17. The maintenance of an effective system of immigration control is in the public interest. Factors such as that and having a clear system that provides consistent and predictable outcomes is a factor in favour of the Appellants not being granted permission to enter the United Kingdom. The younger the Appellants remains a child, and his best interests require to be a primary consideration. However, even taking that into account, I note that the child has never been to the United Kingdom and does not speak English. I do not consider that the radical alteration in his life would necessarily be in his best interests.

18. I indicated earlier that I was satisfied in the present case that family life exists between the Appellants and their sponsor. However, as I also made clear, the level of contact and interrelationship between the Appellants and their Sponsor is limited to, in reality, two recent visits of approximately one month each, and regular communication by Skype and Viber, etc, as well as financial support and being involved in arranging for the care of the Appellants in Pakistan because of the familial link. In addition, that there was life together when the appellants were very young.
 19. I do not seek to diminish in any way the relationship between the Appellants and the Sponsor, but I require to weigh the interests of maintaining that relationship, and more particularly allowing it to develop against the interests of immigration control, and the fact that the clear and consistent view of Parliament is that support for the wider family of refugees is to spouses and dependent children of those recognised as refugees.
 20. In all the circumstances, I do not consider the decision to be disproportionate.”
6. The appellant sought permission to appeal which was granted by another judge the First-Tier Tribunal, the operative part of the grant being in the following terms:
- “3. The grounds are not well particularised and unhelpfully state that “a more detailed argument on each of the points will be provided in the appellant’s statement and bundle” but the matters raised are arguable. I grant permission despite the clear and detailed decision of the Judge. In my judgement, although the issue of immigration control had to be given very high prominence, the facts of this case appear to raise issues which the Upper Tribunal should consider further. The Appellant’s solicitors are directed to file and serve the skeleton argument not less than 14 days before the hearing.”
7. No such skeleton argument was provided in accordance with the specific direction set out in the grant of permission.

Error of law

8. The Immigration Rules provide for Refugee Family Reunion for family members. Family members are: a partner (husband, wife, civil partner or the person the person with refugee status has been in a genuine relationship with for 2 years before applying to settle) and/or their child or children under 18. The provisions of the Immigration Rules do not therefore apply force to a situation such as this where the application is made by the sponsors brothers.
9. That does not mean however that the appellant’s have no effective remedy to challenge the decision of the ECO. The claim they cannot succeed under the Rules must be that they are entitled to succeed outside the Rules by reference to article 8 ECHR on the basis of family

life with the refugee in the United Kingdom. This is the basis on which the application was properly considered by the Judge.

10. The approach to be taken is the structured approach set out by the House of Lords in Razgar which the Judge followed. The fifth and final question to be considered if it is found a protected right exists and responses to the other questions lead to the fifth question is whether the decision under challenge, in this case refusal of entry clearance, is proportionate to any interference with the protected right.
11. As recognised in the grant of permission to appeal this is a well written determination in which the Judge makes findings in relation to all relevant issues before concluding, as noted above, that it had been established by balancing the rights of the appellants against the respondent's rights and right of the United Kingdom government to have effective immigration control, that the refusal of entry clearance is a proportionate response.
12. Disagreement with such a finding or desire for a more favourable outcome does not establish arguable legal error.
13. The appellants fail to establish the Judge's conclusions are outside the range of those reasonably available to the Judge on the evidence sufficient to warrant the Upper Tribunal interfering in this matter. The weight to be given to the evidence was a matter for the Judge.

Decision

14. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Signed.....
Upper Tribunal Judge Hanson

Dated the 27 December 2018