



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/06252/2014
OA/06254/2014

THE IMMIGRATION ACTS

Heard at Field House
On 4 August 2015

Decision & Reasons Promulgated
On 2 September 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

**Merajuddin Qazizada
Asmia Qazizada
[No anonymity direction made]**

Appellants

and

The Entry Clearance Officer Islamabad

Respondent

Representation:

For the appellants: Mr A Bandegani, instructed by Parker Rhodes Hickmotts
Solicitors

For the respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Merajuddin Qazizada, date of birth 12.3.95, and his sister, Asima Qazizada, are citizens of Afghanistan.
2. These are their appeals against the decision of First-tier Tribunal Judge Kelly promulgated 15.1.15, dismissing their linked appeals against the decision of the

Entry Clearance Officer, dated 24.4.14, to refuse entry clearance to the United Kingdom to settle with their father, who was granted humanitarian protection in the UK with limited leave to remain to 8.1.19. The Judge heard the appeal on 9.1.14.

3. First-tier Tribunal Judge Osborne granted permission to appeal on 18.3.15.
4. Thus the matter came before me on 4.8.15 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Kelly should be set aside.
6. In granting permission to appeal Judge Osborne purported to find errors of law in (1) the alleged failure of the First-tier Tribunal Judge to decide whether the manner in which the appellants would be maintained in the UK would contravene the requirement that third party funds are not acceptable in such circumstances; and (2) failing to take into account pursuant to section 55 of the Borders Citizenship and Immigration Act 2009 the best interests of the appellant's younger brother, a minor.
7. With respect to Judge Osborne, at the permission stage the test is not whether there are errors of law in the decision, but whether there are arguable errors of law. It is not for Judge Osborne to usurp the function of the Upper Tribunal to determine whether there are material errors of law in the making of the decision such as to require the decision to be set aside.
8. In respect of the best interests of the appellant's younger brother, who lives in the UK with the appellant's father, it far from clear that the best interests are to have his elder and siblings come to the UK when they are adults and inevitably going to be pursuing their own independent lives. Three of the appellants siblings live in the UK and three others remain in Afghanistan.
9. At §27 the judge was not satisfied that there was any particularly strong bond between the appellants and their father, given that they are adults, aged 19 and 21 at the date of decision, and living independent lives, even though they have financial support from their elder brother in the UK, and live in the former family home, from where the first appellant goes to university. The judge found that the father had little apparent interest in the appellants. He spoke with them only every two weeks or so, and was unaware of the extent or frequency of the financial support provided by the appellant's elder brother, an IT consultant for KMPG. At §21, the judge was only just persuaded that there was any family life between the appellants and their older brother in the UK.
10. It was common ground in the appeal at the First-tier Tribunal that as adults the appellants could not meet the requirements of the Rules for entry clearance as children. Neither did they meet the very high threshold for adult dependent relatives under Appendix FM, as explained in §6 of the decision. However, the fact that they

do not meet these requirements is highly relevant to any consideration of family life outside the Rules under Article 8 ECHR. The Rules are the Secretary of State's proportionate response to private and family life claims and set out the circumstances and the threshold judged to be appropriate to grant entry clearance on the basis of family life. In effect, in order to justify granting entry clearance outside the Rules the appellants would have to show that their circumstances are compelling and insufficiently recognised in the Rules, so that the decision of the Entry Clearance Officer to refuse leave would be unjustifiably harsh. The First-tier Tribunal Judge did not address this issue, but proceeded to consider Article 8 ECHR. However, in the case of the relationship between adult children and their father and other siblings, two of whom were children at the date of decision, where the judge has found no emotional bonds beyond those to be expected of such relatives (the Kugathas test), it is difficult to see what justification there would be for granting leave to enter on the facts of this case.

11. Nevertheless, the judge found both family life (though it is not entirely clear between which relatives and the appellants) and that the consequences of the decision were sufficiently serious to engage Article 8 ECHR, but ultimately concluded that in the proportionality balancing exercise between on the one hand the rights of the appellants and other family members and on the other the legitimate and necessary aim to protect the economic well-being of the UK through immigration control, the balance fell against the appellants and so that the decision to refuse entry clearance was proportionate.
12. I am not satisfied that the claimed errors of law at §20 of the decision are material to the outcome of the appeal. The judge stated that there was an absence of detailed evidence of the elder brother's financial commitments, when such was to be found in the appellants' bundle, and stated that the appellants would be entitled to access public funds in the UK, when leave would be granted with a condition precluding recourse to public funds. Mr Tarlow pointed out that whilst there is some evidence of the elder brother's financial income, including a positive credit balance, there was no relevant income/expenditure statement to show what his outgoings are and who else he might be financially supporting. In the circumstances, I am not satisfied that there was any error of law in §20.
13. In any event, I find that little relevant to the outcome of the appeal turns on these findings. The appeals were not dismissed because the judge thought that the appellants would be a drain on public funds. The appeals were dismissed for the reasons set out between §25 and §27, where the judge found there was no particularly strong bond of affection between the appellants and their father so as to render it imperative that they be reunited on a permanent basis. The judge stated, "It is clear that the appellants are singularly unhappy with the current state of their private lives in Afghanistan. However, the purpose of Article 8 is not to guarantee a happy life. It is to guard against capricious government interference in the private affairs of the individual."

14. I find that the conclusions of the Article 8 assessment was entirely open to the judge on the evidence and for which cogent reasons have been given. As to the consideration in relation to the younger children, I find that the relationship between them and the appellants is so remote that even if the judge should have address section 55 and their best interests, I am satisfied that the outcome of the appeal would inevitable have been the same and thus no material error of law has been identified.

Conclusions:

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to the Asylum and Immigration Tribunal (Procedure) Rules.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeals have been dismissed.

A handwritten signature in black ink, appearing to read 'J. Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated