



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: VA/00392/2014
VA/00394/2014

THE IMMIGRATION ACTS

Heard at Field House
On July 2, 2015

Decision and Reasons Promulgated
On July 27, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

MRS ELIF KURBAN
MR HAC KURBAN
(NO ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Miss Fijiwala (Home Office Presenting Officer)
For the Respondent: Ms Kanasal, Counsel, instructed by Oakfield Solicitors LLP

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellants are sister and brother and they are citizens of Turkey. They applied for entry clearance on November 5, 2013 for entry clearance to visit the United Kingdom to attend the first named appellant's daughter's wedding. Their applications were refused by the respondent on December 4, 2013 and their

appeals under Section 82(1) of the Nationality, Immigration and Asylum Act 2002, as limited by Section 84(1)(c), were lodged on December 30, 2013.

3. The case came before Judge of the First-tier Tribunal Naphthine (hereinafter referred to as the "FtTJ") on November 13, 2014 and in a decision promulgated on November 20, 2014 he allowed their appeals both under the Immigration Rules and article 8 ECHR.
4. The respondent appealed those decisions on December 4, 2014 but Judge of the First-tier Tribunal Pooler refused permission to appeal. The respondent renewed her grounds of appeal arguing the FtTJ erred by allowing the appeals under the Immigration Rules and that this finding impacted on the adequacy of reasoning in respect of the article 8 ECHR decision. Upper Tribunal Judge Goldstein gave permission on April 20, 2015.
5. The matter came before me on the above date and both parties were represented as set out above. The UK sponsor was not in attendance.
6. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to make an order now.

PRELIMINARY ISSUE

7. Ms Kanasal accepted the FtTJ erred in allowing the appeals under the Immigration Rules but submitted the decisions under article 8 were open to him.
8. Miss Fijiwala confirmed that the respondent's challenge was limited to the decision to find that article 8 was engaged and she did not challenge the proportionality findings.

ERROR OF LAW SUBMISSIONS

9. Miss Fijiwala relied on the grounds of appeal and submitted that the FtTJ erred in his approach to the issue of family life in visit visa claims. She referred to the Tribunal decision of Adjei (visit visas-Article 8) [2015] UKUT 261 and in particular paragraphs [14] to [18]. She submitted the FtTJ erred in finding that article 8 was engaged because the purpose of the visit was for a marriage and because in observant Turkish families casual living together with a partner that was not marked by a ceremony, was not acceptable. The FtTJ should have considered the parties and whether there was any dependency rather than the purpose of the visit itself. This was an error in law and the decision should be reversed.
10. Ms Kanasal argued the FtTJ had considered the issue of family life and in paragraph [14] he found that refusing entry clearance was a clear breach of the article 8 rights of each appellant to a family life. The FtTJ had given his reasons for why there was family life in paragraphs [15] and [16] and this appeal amounted to

nothing more than a disagreement with the decision. Adult relatives had rights of appeal otherwise the law would state they did not.

FINDINGS ON ERROR IN LAW

11. The government changed the law on rights of appeal over a period of time to the extent that appellants, such as these, only have a limited right of appeal on human rights grounds. The Tribunal in Adjei (visit visas-Article 8) [2015] UKUT 261 made clear the correct approach to be taken.
12. The appellants' original appeals were heard before this case was promulgated so the FtTJ did not have any guidance on the recommended approach to take.
13. It is clear the FtTJ had considerable sympathy with the appellants because he found they met the Immigration Rules and erroneously allowed their appeals both under the Rules and article 8 ECHR. The fact he found the Rules were met is a matter the parties can refer an entry clearance officer to, albeit it relates to the facts as at the date of the decision
14. The decision under the Rules is a clear error in law as there was no jurisdiction to allow such appeals. Without hesitation I set aside those decisions. I do not remake those decisions as there are no valid appeals before me.
15. The FtTJ noted the appellants had restricted rights of appeal and at paragraph [14] of his determination he found there was a clear breach of their family life rights although he did not give his reasons for this. What he did in paragraphs [15] and [16] of his determination was to make findings that a marriage could be an "important rite of life" and that observant Turkish families do not support "casual living together unmarked by a ceremony".
16. The Tribunal at paragraph [9] in Adjei (visit visas-Article 8) [2015] UKUT 261 made clear

"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 will need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule because that will inform the proportionality balancing exercise that must follow."
17. The Tribunal made clear in paragraph [10] that notwithstanding the Rules were met it was not open to a claimant to bring a challenge on that basis.
18. The Tribunal in Adjei considered various relationships and at paragraph [15] made clear that where the relationship was between parent/child or a relationship

that did not disclose any aspect of dependency or a relationship that was any different from what might be expected between such relatives, then there was no reason why such relationships could not be maintained in the way relatives who have chosen to live in separate countries manage to do so.

19. There is no evidence of any level of dependency between the appellants and the first-named appellant's mother/uncle. In fact evidence submitted demonstrates she is financially independent as a self-employed graphic designer.
20. The FtTJ erred in these appeals because he considered the appeals based on the reason entry clearance was sought and neglected to consider whether there was family life. He was required to consider dependency as adults but it was not an assessment of their wish to visit for a wedding.
21. No family life within article 8 was demonstrated and I not only find an error in law but I further find their appeals should also be dismissed under article 8 ECHR because family life is not engaged for article 8 purposes.

DECISION

22. There was a material error in law. I set aside the decisions of the FtTJ and find as follows:
 - a. There is no jurisdiction in respect of the appeal under the Immigration Rules. There is no valid appeal.
 - b. I dismiss the appeals under article 8 ECHR.

Signed:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

I make no fee award.

Signed:



Deputy Upper Tribunal Judge Alis