



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

Appeal Number: VA/04344/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 19 May 2015**

**Determination
Promulgated
On 2 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

**MRS ASMA SAEED
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr Smart, Senior Presenting Officer
For the Claimant: Mrs Nuzhat Ahmed, Sponsor

DECISION AND REASONS

1. The Specialist Appeals Team appeals to the Upper Tribunal on behalf of an Entry Clearance Officer (post reference ABU DHABI\1234870) from the decision of the First-tier Tribunal (Judge Butler sitting at Birmingham on 2 January 2015) allowing the claimant's appeal under the Immigration Rules against the decision by the Entry Clearance Officer made on 8 July 2014 to

refuse her entry clearance as a visitor for a period of one month. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant should be accorded anonymity for these proceedings in the Upper Tribunal.

The Grant of Permission to Appeal

2. On 24 February 2015 First-tier Tribunal Judge Hodgkinson granted the Entry Clearance Officer permission to appeal for the following reasons:

The grounds argue that the Tribunal had no jurisdiction to consider the appeal under the Rules, by virtue of the amendment of the 2002 Act brought about by the Crime and Courts Act, and that, additionally, there is no reasoning in relation to the Article 8 element of the decision. Both grounds are arguable and permission is granted accordingly.

Reasons for Finding an Error of Law

3. In granting permission to appeal, Judge Hodgkinson observed that the judge had allowed the claimant's visit visa appeal under the Rules, or in the alternative under Article 8 ECHR. In fact, Judge Butler only allowed the appeal under the Rules. He had no jurisdiction to do so, as the claimant had restricted appeal rights. The only ground of appeal upon which she could succeed was on the ground that the refusal to issue her with a visa breached her rights under Article 8 ECHR. Accordingly, the decision of the First-tier Tribunal was vitiated by a material error of law, such that it should be set aside and remade.

The Remaking of the Decision

4. For the purposes of remaking the decision, I received oral evidence from the sponsor about her relationship with the claimant, and about the reasons for the proposed visit. Both she and Mr Smart relied, for different reasons, on **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)**.
5. The headnote of this case states that in the case of appeals brought against refusal of entry clearance under Article 8 ECHR, the claimant's ability to satisfy the Immigration Rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control.
6. Mr Smart directed my attention to paragraph [24] where the Presidential panel said as follows:

It would therefore be extremely foolish to attempt to be prescriptive, given the intensely factual and contextual sensitivity of every case. Thus we refrain from suggesting that, in this type of case, any particular kind of relationship would always attract the protection of Article 8(1) or that other kinds of relationship would never come within its scope. We are, however, prepared to say that it will only be in very unusual circumstances that a

person other than a close relative will be able to show that refusal of entry clearance comes within the scope of Article 8(1). In practical terms it is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not necessarily be extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together. In the limited class of cases where Article 8(1) ECHR is engaged the refusal of entry clearance must be in accordance with the law and proportionate.

7. Mr Smart relied on this passage in support of the submission that the sponsor, who is related to the appellant as a sister, did not come within the scope of Article 8(1), and so the question of proportionality did not arise. Questions one and two of the **Razgar** test had to be answered against the claimant.
8. But the sponsor in reply insisted that she was a close relative of the claimant, and therefore the decision should be remade in the her favour under Article 8 ECHR.
9. The original purpose of the visit was for the claimant and her husband to attend the wedding of a niece. Only the claimant appealed against the refusal decision, as her husband decided he could not make the same arrangements again for his elderly parents to be cared for while they were both away. She told the judge below that her voluntary work in Pakistan was very important to her, and she also had her own parents and five siblings in Pakistan whom she did not wish to abandon. Since the original purpose of the visit had now gone, she wished to spend time with her family in the UK, and to do some sightseeing.
10. The sponsor told me that the claimant was one of her younger sisters. She had been born in 1966, and the claimant had been born in 1972. Altogether, she had four sisters and four brothers living in Pakistan. All of them were married. She had come to the UK in 1988 as the spouse of a person present and settled here.
11. In cross-examination by Mr Smart, she said she had been to Pakistan quite a few times. The last time she had gone was in December 2011, returning in January 2012. She always saw the claimant on her visits. When she went back to Pakistan, she stayed with her parents. Her sister lived with her husband and his parents in a house which was 40 to 45 miles away. But she would then visit her sister in her house, and her sister would also come to visit her. She kept in regular contact with her family in Pakistan by speaking to them on Skype. But technology could not replicate meeting in person.
12. I accept that there is a strong bond between the sponsor and her sister, but they do not enjoy family life for the purposes of Article 8(1). The ties between them do not go beyond the normal emotional ties to be expected between adult siblings. There is not a relationship of dependency, with the sponsor being emotionally dependent on her sister, or vice versa. So I

answer questions one and two of the **Razgar** test in favour of the Entry Clearance Officer. The interference consequential upon the refusal decision is not of such gravity as to potentially engage the operation of Article 8 ECHR, either by reference to the family lives of the claimant and the sponsor, or by reference to their private lives. Accordingly, the question of proportionality does not arise.

13. The findings of the First-tier Tribunal Judge on the merits of the refusal are nonetheless of potential value to the claimant, in that she can rely on the positive credibility findings made by the judge in support of any future application for entry clearance to visit the sponsor which she may choose to make. The Entry Clearance Officer refused the application on the ground that he was not satisfied the claimant was genuinely seeking entry for a visit, and that she would leave the United Kingdom at the end of her trip. Judge Butler found that the claimant had strong cultural, social and family ties to Pakistan which suggested she would return at the end of her stay, and the evidence which I received from the sponsor reinforces that finding.

Decision

The First-tier Tribunal had no jurisdiction to allow the claimant's appeal under the Rules, and accordingly the decision of the First-tier Tribunal is set aside and the following decision is substituted: the claimant's appeal under Article 8 ECHR is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson

