IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/04484/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th August 2015	**On 21st August 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON

Between

ENTRY CLEARANCE OFFICER

Appellant

and

OGHENERUKEVBE SHARLYN WILCOX
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms A Fijiwala, Home Office Presenting Officer
For the Respondent: Ms E Onoyivbe, Sponsor

DECISION AND REASONS

The Appeal

1. This is an appeal on behalf of an Entry Clearance Officer against the decision of First-tier Tribunal Judge Cohen, sitting on 23 April 2015, who allowed Ms Wilcox's appeal against the decision of the Entry Clearance Officer dated 14 July 2014 to refuse her entry clearance as a visitor. The First-tier Tribunal did not make an anonymity direction and there was nothing before me to suggest that Ms Wilcox should be accorded

anonymity for these proceedings. For the purposes of this decision I refer to the parties as they were in the First-tier Tribunal.

2. In summary, the Appellant is a citizen of Nigeria born on 14 May 1978. She is the youngest of eight siblings and has 5 siblings together with nieces and nephews in the UK whom she wishes to visit. The Appellant made her application in July 2014.

3. On 19 June 2015 First-tier Tribunal Judge Chohan granted the Entry Clearance Officer permission to appeal on the basis that the grounds were arguable. The grounds argued that the judge erred in law by allowing the Appellant's appeal under the immigration rules as the appellant had only a limited right of appeal.

Error of Law

4. On 25 June 2013 section 52 of the Crime and Courts Act 2006 was commenced. This restricted appeal rights for visitors seeking to visit family members in the UK and the restrictions apply to any applications made on or after 25 June 2013. The Crimes and Courts Act amended section 88A of the Nationality, Immigration and Asylum Act 2002 to remove the right of appeal for persons visiting specified family members. However appeals are still permitted under section 84(1)(b) and (c) of the 2002 Act, namely on human rights and race relations grounds. As no grounds were pleaded by the Appellant in relation to race relations the only ground on which she could ever have succeeded was on the ground that the refusal to issue her with entry clearance breached her rights under Article 8, ECHR.

5. Accordingly the decision of the First-tier Tribunal to allow the appellant's appeal under the immigration rules was vitiated by a material error of law such that it must be set aside and remade.

Remaking of the Decision

6. For the purposes of remaking the decision, I heard detailed submissions from Ms Onoyivbe, who relied on the bundle before the First-tier Tribunal, including witness statements from the Appellant as well as the Appellant's (and indeed the sponsor's) siblings (together with various other documents and the sponsor's skeleton argument. The sponsor had also produced a reply to the Respondent's grounds for appeal to the Upper Tribunal). A number of the Appellant's siblings were in Court before me and available to give evidence. However Ms Fijiwala indicated that she did not wish to cross-examine any of these witnesses and it was agreed that their statements would stand in evidence. I have carefully taken into account, in the round, all the evidence before me, even if not specifically referred to below.

7. Ms Fijiwala relied on **Adjei (visit visas – Article 8) [2015] UKUT 261 (IAC)** which clarified that the first question to be addressed in an appeal

against refusal to grant entry clearance as a visitor where only human rights grounds are applicable, is whether article 8 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 entry clearance officer's decision under the immigration rules and 'should not do so'. Only if Article 8 is engaged, may the Tribunal need to look at the extent to which the claimant is said to have failed to meet the requirements of the immigration rules as that may inform the proportionality balancing exercise. **Adjei** confirmed that **Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)** was not authority for any contrary proposition. In addition:

> "As compliance with para 41 of HC 395 is not a ground of appeal to be decided by the Tribunal, any findings concerning that will carry little weight**,** especially if based upon arguments advanced only by the appellant. If the appellant were to make a fresh application for entry clearance the ECO will, if requested to do so, have regard to the assessment carried out by the judge but will not be bound by those findings to treat the appellant as a person who, at least at the date of the appeal hearing, met the requirements of paragraph 41."

8. Ms Fijiwala submitted that the relationship between the Appellant and the sponsor and her extended family in the UK did not amount to family life and she submitted that Article 8 was not engaged.

9. Ms Onoyivbe detailed submissions included reliance on **Mostafa** (above) and she referred me to the evidence that she submitted showed that the Appellant met the requirements of the immigration rules. Ms Onoyivbe insisted that the family were very close relatives and that the decision should be remade in the Appellant's favour under Article 8 ECHR.

10. I have reminded myself of paragraph 24 of the Presidential panel in **Mostafa** which, as pointed out in **Adjei,** made clear that it was dealing with a very narrow range of claimants, who might attract the protection 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."

11. Although I have reminded myself that the Tribunal in **Mostafa** stated that they were not suggesting that other kinds of relationships would never come within the scope of Article 8(1) I am not satisfied that the case of this Appellant engages Article 8.

12. Although I accept that the evidence before me paints a picture of a family that stays in touch and where the UK based relatives are very anxious to see the Appellant (and I note that in Court before me I was referred to one of the Appellant's sisters who is also based in Nigeria and who is currently based in the UK) I am not satisfied that it has been demonstrated that

they enjoy family life for the purposes of Article 8(1). The ties between the Appellant and the sponsor and the extended family of siblings and nieces and nephews does not go beyond the normal emotional ties to be expected between adult siblings and their offspring. The Appellant is 37 years old and is a lawyer in Nigeria and is married and in employment there. There is no relationship of dependency either by the Appellant on the sponsor or any of her relatives in the UK, or vice versa.

13. It is a question of fact in each case whether such relationships disclose sufficiently strong ties such that they fall within the scope of Article 8(1). However, as noted above the appellant has established her own family and private life in Nigeria, as has her adult siblings in the UK. The adult family has lived apart for a reasonably long period of time and although various members of the family appear to have visited Nigeria, there was no evidence of any dependency, financial or otherwise, during this period. It is established law that there must be more than normal emotional ties in these circumstances for family life to exist for the purposes of Article 8(1) of the ECHR: **Kugathas [2003] EWC Civ 31.**

14. In my findings in this case there is no family life, for the purposes of Article 8(1). In respect of private life any interference as a result of the refusal of entry clearance does not have consequences of such gravity as to potentially engage the operation of Article 8, either by reference to the family lives of the Appellant and the sponsor and the extended family, or by reference to their private lives. Therefore the question of proportionality and the issue of the Appellant meeting the requirements of the immigration rules, does not arise before me.

15. For these reasons I allow the appeal of the Entry Clearance Officer. The First-tier Tribunal had no jurisdiction to allow the appeal under the immigration rules. I remake the decision dismissing the Appellant's appeal against refusal of entry clearance.

Notice of Decision

16. The Judge of the First-tier Tribunal made an error of law and his decision to allow the appeal is set aside. I substitute a fresh decision to dismiss the appeal.

Signed Date: 19 August 2015

M. M. Hutchinson
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

As this is the Secretary of State’s successful appeal, there can be no fee award.

Signed Date: 19 August 2015

M. M. Hutchinson
Deputy Judge of the Upper Tribunal