Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: VA/05309/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 July 2015	**On 13 July 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mr TAHIR ABBAS
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondents: Ms A Asfaw, Counsel (instructed by M-R Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Fisher on 4 June 2015 against the decision and reasons of First-tier Tribunal Judge Iain Ross who had allowed the Respondent's appeal on Article 8 ECHR grounds against refusal of his entry clearance application made under paragraph 41 of the Immigration Rules to visit his uncle and other relatives in the United Kingdom. The decision and reasons was promulgated on 13 February 2015.

2. The Respondent is a national of Pakistan, born on 15 December 1983. His entry clearance application was refused under paragraph 41 and also under paragraph 320(7B) of the Immigration Rules because of a previous application which was deemed by the Entry Clearance Officer to have relied in part on a false employer's letter. As the judge correctly noted, the Respondent's right of appeal to the First-tier Tribunal was restricted (for practical purposes) to human rights grounds. The judge found that the Entry Clearance Officer's decision interfered with the development of the Respondent's private life rights but not his family life rights. As part of the proportionality assessment, the judge found that the refusal under paragraph 320(7B) was not sustainable. He found that the Respondent was a genuine visitor and that the refusal was a disproportionate breach of Article 8 ECHR.

3. Permission to appeal was granted because it was considered arguable that the judge had erred in law when finding that although there was no family life between the Appellant and his sponsors (his uncle and grandmother), the concept of private life could include the development of relationships of that nature under Article 8 ECHR. It was arguable that the judge erred when finding that the refusal decision constituted an interference.

4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found.

Submissions – error of law

5. Mr Bramble for the Appellant relied on the grounds of onwards of appeal and the grant of permission to appeal. There was a finding of no family life which was not challenged. Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) and Adjei (visit visas –Article 8) were the key authorities. They showed that only family life between the first degree of relationship could be of sufficient importance to justify a proportionality finding in an appellant's favour. The Appellant had no private life in the United Kingdom. The decision and reasons should be set aside and the appeal remade and dismissed.

6. Ms Asfaw submitted that the Upper Tribunal authorities were not of great assistance. It should be noted that in Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) the Appellant had been unrepresented and the value of such a decision as a precedent was limited. There were *obiter* remarks. Private life was a broad concept. Razgar [2004] UKHL 27 approved Pretty v United Kingdom (2002) 35 EHRR 1, paragraph 61, where the court held the expression covered "the physical and psychological integrity of a person" and went on to observe that "Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world." What was the meaning and purpose of

the intended visit? Was there an alternative? What was proposed by the Respondent was a stay of short duration which was relevant to the proportionality assessment. The contrast with settlement was obvious. Indeed, an argument often deployed by the Secretary of State when refusing settlement claims based on Article 8 ECHR family life was that family could be maintained by means of modern communication and by visits.

7. Singh [2015] EWCA Civ 630 was a recent review of the relevant family life authorities. Family life between adult relatives was a question of fact. It was not confined to family life in the United Kingdom in an immigration law context. The judge's findings on family life were correct. In practical terms, the judge had noted that the Respondent's grandmother was 85 years old and was unable to travel to Pakistan alone. The Respondent had travelled to the United Kingdom and returned to Pakistan no less than four times. He denied the use of false documents and the judge had found in the Respondent's favour when conducting the proportionality exercise. The tribunal should not interfere with his decision.

8. In reply, Mr Bramble indicated that the Secretary of State had not specifically challenged the judge's paragraph 320(7) of the Immigration Rules finding in the Respondent's favour. The real issue was the judge's approach to private life.

9. The tribunal reserved its determination which now follows.

No material error of law finding

10. The Upper Tribunal's attention to the limited right of appeal in visit visa appeals reflects the difficulties which that limitation has presented in practice. The idea of seeking a judicial review of an adverse visit visa decision where an appellant contends that the requirements of paragraph 41 of the Immigration Rules have in fact been met calls to mind sledgehammers and nuts. It is also of some significance that entry clearance applications attract fees which an aggrieved applicant will not wish to pay a second time unnecessarily. Hence the Upper Tribunal has endeavoured to explain how compliance with the Immigration Rules may be factored into the proportionality assessment, provided of course that Article 8 ECHR is engaged at all. As Miss Asfaw pointed out in the course of her well prepared submissions, the value of Mostafa (above) is however limited by the fact that legal argument was heard only from the Secretary of State in that appeal. The value and extent of the argument in Adjei (above) may also have been limited: see, e.g., [9] of the determination. Both decisions, were, of course promulgated after Judge Ross's decision. Adjei may be seen as vindicating his approach.

11. Singh (above), also decided after Judge Ross had promulgated his decision and reasons, reiterates from a survey of ECHR jurisprudence that Article 8 ECHR in both its private and family life aspects is not territorially confined to persons in the United Kingdom. Family life between adults is a question of fact to be determined in each case.

12. The judge's treatment of the evidence was thorough and he set out his essential findings with care. Neither party has challenged his finding that there was no family life in Article 8 ECHR terms between the sponsors and the Respondent. Kugathas [2003] EWCA Civ 31 which the judge cited was approved in Singh (above). The judge gave sustainable reasons for finding that the relationship between the sponsors and the Respondent amounted to a form of private life life; see, e.g., [7] of the decision and reasons. The judge explained why he found Article 8 ECHR was engaged. At [11] the judge accurately and succinctly summarised the key authorities to which Ms Asfaw referred: see [6], above of this determination. He found that there was a real connection between the parties which the Respondent had good reason to wish to sustain and develop. In the case of the grandmother in particular there was no realistic alternative to his visiting her because of her age and infirmity.

13. Consideration of paragraph 320(7B) of the Immigration Rules was a vital element of the proportionality assessment. Mr Bramble rightly accepted that the judge's findings at [8] of his decision and reasons were open to him.

14. There was no sense in which the judge was following the impermissible approach identified in Patel v SSHD [2012] EWCA Civ 741 of seeking to use Article 8 ECHR as a general remedial power. The public interest was adequately considered by the judge who examined the immigration control aspect in detail and found that the restrictions on the visa would be observed, as shown by the travel history of the Respondent and his current strong ties to Pakistan. It was not a settlement situation when other matters would have arisen. There was here no suggestion of any resulting expense to the public purse.

15. There would have been no point in parliament's provision for continuing Article 8 ECHR appeals in visit visas despite ending full appeals under paragraph 41 of the Immigration Rules unless it was accepted that not every situation can be covered by the Immigration Rules: see SS (Congo) [2015] EWCA Civ 387 for the latest authority in this field. Successful appeals will be rare but the present appeal provides an example. The judge properly found that the interference with the Respondent's private life was neither justified nor proportionate.

16. The tribunal accordingly finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of a material error on a point of law and stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell