Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/07233/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
On 26 October 2015	**On 30 October 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MUHAMMAD DIN

Appellant

and

ENTRY CLEARANCE OFFICER, ABU DHABI

Respondent

Representation:
For the Appellant: Miss A Darvishzadeh, of Ethnic Minorities Law Centre, Edinburgh
For the Respondent: Miss S Aitken, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The applicant is a citizen of Pakistan, whose date of birth is recorded as 1 January 1942. He applied for a family visit visa, naming his UK relatives as his daughter, granddaughter and grandson. The respondent refused that application by notice dated 14 October 2014, not being satisfied that the appellant is a genuine visitor who would leave the UK once admitted.

2. It is not entirely clear from the papers on file what evidence was before the Entry Clearance Officer and what was produced later regarding the

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alleged difficulty or impossibility of the appellant's daughter travelling to visit him. The original application does appear to have included a statement by his granddaughter (dated 9 September 2014) saying that her mother is "currently unwell" and her grandfather can see her only by travelling to the UK.

3. The Entry Clearance Officer's decision says at the second bullet point that there are no insurmountable obstacles preventing "your sponsor from visiting you in Pakistan". The sponsor stated in the application appears to be his granddaughter, although the reference in the decision may be rather to his daughter.

4. A letter from the appellant's daughter's GP dated 12 May 2015 is in the appeal bundle submitted to the First-tier Tribunal. This shows that Mrs Bibi has suffered from bronchiectasis since at least 1989 (when she had a lobectomy) and states that it would be "unwise for her to travel on long air flights because of the bronchiectasis."

5. Judge Hutchinson dismissed the appellant's appeal by determination promulgated on 29 May 2015. The judge found at paragraph 15 that the relationship between the appellant and his daughter or any other family in the UK did not go beyond normal ties among adult relatives. Article 8 was therefore not engaged.

6. The judge went on to find in the alternative that the evidence regarding Mrs Bibi's inability to travel had been exaggerated by her and by her daughter, particularly as she had been able to travel in the past, and in absence of further detailed information from the GP.

7. The appellant's grounds of appeal to the UT submit that the judge gave inadequate consideration to submissions and evidence on proportionality; adopted an unreasonably narrow interpretation of the nature of the family relationship; there was a legitimate expectation for father and child to visit each other, particularly where the mother of the child passed away while the child was very young; the ability to visit a sick child was capable of forming a protected aspect of family or private life; the breadth of protection available was illustrated by *Mostapha* (Article 8 in entry clearance) [2015] UKUT 00112; the judge failed to consider the implications of the evidence; no reasonable judge would have concluded that a decade might reasonably elapse between visits, particularly as the appellant is now aged 73 and his daughter medically unwell.

8. A judge of the First-tier Tribunal granted permission to appeal on the view that the judge might have failed to have sufficient regard to the views of the appellant's daughter's GP on her fitness to travel, and might have failed to apply both *Mostapha* and *Adjei* (visit visas – Article 8) 2015 UKUT 00261.

9. Miss Darvishzadeh had usefully prepared her submissions in writing. These follow the lines of the grounds. It is accepted that *Mostapha* does

not concern a relationship with an adult child, but it is argued that in the circumstances of this case the relationship forms a protected aspect of family or private life, given the "unusual circumstances" of the daughter having lost her mother when very young, the strong bond which continued between father and daughter, the daughter's medical condition such that she is advised against a long flight, and the common human and natural wish for a visit between an aging parent and a sick child. The argument seeks to distinguish this case from *Adjei* in that there is no suitable alternative for maintaining the relationship. The judge ought to have found that Article 8 was engaged. The Tribunal should have carried out a balancing exercise in respect of the appellant's ability to satisfy the Immigration Rules and the human rights grounds. The Entry Clearance Officer had accepted that the appellant's granddaughter could adequately maintain and accommodate him without recourse to public funds. The only matter in dispute [in terms of the Rules] was whether the appellant demonstrated sufficient ties to Pakistan. He owns land there and had produced letters of support from his sons in Pakistan, family photographs, and so on.

10. Summing up for the appellant, Miss Darvishzadeh accepted that the appellant would have to show that he could both meet the terms of the Rules, and make out his case under Article 8. For all the reasons given, she submitted that he had done so and that the determination of the First-tier Tribunal should be reversed.

11. Miss Aitken submitted that *Adjei* made it clear that the appellant firstly had to show that Article 8 was engaged, and breached to a possibly disproportionate extent, before turning to the requirements of the Rules. This case did not meet the first requirement. The evidence failed to show that family life existed for Article 8 purposes. That was a finding open to the judge and properly reached, and everything else in the determination was in the alternative. This case involved a sponsor aged 50, born in 1965, who came here to get married and had her family here. She has returned to Pakistan only 4 times. There was a relationship between an adult parent and an adult child, but not one which engaged Article 8. They had carried on a long distance and intermittent relationship through the choices made in the course of life. In *Mostapha* at paragraph 24 it was held that it would "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 this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners are a partner and minor child …" This was not a case showing any such exceptional circumstances. The medical symptoms went back over 26 years, and covered a period during which the daughter had made at least 2 of her visits to Pakistan.

12. Miss Aitken agreed with my observations that the judge's comments on meeting in Europe and on visits at intervals of a decade appeared somewhat strained, but she submitted that they showed no material error.

13. Ms Darvishzadeh in reply said that although the medical report had been available only after the grounds of appeal were filed, the information about it being unwise for the daughter to travel was part of the original application. This was a longstanding condition. It could reasonably be inferred that although she had felt well enough to visit Pakistan in the past, she could not contemplate doing so now. There was no good reason in the determination for finding the evidence on that aspect to be exaggerated. It was a significant consideration whether father and daughter might be able to see each other ever again.

14. I reserved my determination.

15. Everything that might properly be advanced has been advanced on behalf of the appellant, both in the First-tier Tribunal and in the Upper Tribunal. However, I find that the respondent's first point is a good one: the case does not get past the judge's finding that family life had not been shown for Article 8 purposes.

16. The family life generally protected by Article 8 is that between spouses (or similar partners in life) and between parents and minor children. Whether family life extends beyond that is a question both of law and of fact, but primarily of fact, for a judge in each case. As indicated at paragraph 24 of *Mostapha*, cases are likely to be limited to those classes of relationship unless in very unusual circumstances. The circumstances here are sympathetic, but not unusual. The judge was entitled to find that Article 8 was not engaged, for the reasons she gave. That is decisive of the case.

17. The judge heard the witnesses. She did not find them to be downrightly unreliable, but to be exaggerating the medical difficulties. That finding was open to her on all the evidence, and the explanation given has not been shown to be less than legally adequate. (It is plain enough that the difficulties of visiting Pakistan were being made the most of; the evidence as a whole does not suggest that the appellant's daughter might not travel, breaking her journey if necessary into "short hops".)

18. It is also questionable whether the appellant had brought evidence to show that the case met the requirements of the Immigration Rules. The judge did not express a view on that. In light of *Adjei*, she was right not to do so; but it is at least in the balance whether any other outcome might have been achieved.

19. The appellant and his relatives understandably disagree with the outcome of the case, but they have not shown it to be legally flawed in any way which might entitle the UT to interfere.

20. The determination of the First-tier Tribunal shall stand.

21. No anonymity order has been requested or made.

Upper Tribunal Judge Macleman
29 October 2015