



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

Appeal Number: VA022422015

THE IMMIGRATION ACTS

**Heard at Field House
On 16 May 2016**

**Decision & Reasons Promulgated
On 24 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

VISA OFFICER

Appellant

and

**Mr SHAHID SOHAIL
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Presenting Officer

For the Respondent: No attendance and not represented.

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by First-tier Tribunal Judge Parkes dated 20 April 2016. The appeal relates to a decision by First-tier Tribunal Judge Boardman promulgated on 19 February 2016. For ease of reference and for ease in following this decision, I shall continue to refer to Mr Sohail as the Appellant and the Visa Officer as the Respondent.
2. The Judge had allowed the Appellant's appeal against the Respondent's decision to refuse his application for entry clearance based on Article 8 of the European Convention on Human Rights.

3. The application for entry clearance related to difficult circumstances whereby the Appellant had sought entry to the United Kingdom for a period of four weeks to see his brother who was dying. The brother was called Mr Mohammed Arif. Sadly he passed away by the time the appeal came to be heard. The Sponsor was another of the Appellant's brothers called Mr Ghulam Farid.
4. The Judge had considered the matter on the papers, as requested by the Appellant.
5. The Respondent's grounds of appeal against the Judge's decision can be summarised as stating that:
 - (a) Case law showed that family law within the meaning of Article 8 will not normally exist between adult siblings;
 - (b) None of the criteria from the cited case law was met in this case. There was no evidence that the Appellant and Sponsor enjoy family life in the United Kingdom;
 - (c) The Judge referred to the case of **Abbasi and another (visits-bereavement-Article 8)** [2015] UKUT 00463 (IAC) but that concerned family life of those already in the contracting state and that was not so in this case;
 - (d) The Judge had not made a finding as to whether paragraph 41 of the Immigration Rules had been met and he failed to have regard to the decision in **Kaur (visit appeals: Article 8)** [2015] UKUT 00487 (IAC); and
 - (e) The proportionality assessment was not adequate.
6. At the hearing before me Mr Whitwell said that he adopted the grounds of appeal. There needed to be something at paragraph 26 which set out more because to elaborate it beyond usual family life. There was a material misdirection in law. The findings as to proportionality were challenged. Was the accommodation suitable or statutorily overcrowded? The determination was silent on whether the Appellant will return. The public interest depends on the circumstances. It was not quite clear. This was factored in at paragraph 33. **Abbasi** was distinguishable. The nature of the family life was that it could not be met elsewhere. The prayers could be repeated elsewhere. It was not being said that **Abbasi** was not good law.
7. I had reserved my decision.
8. Firstly dealing with the Respondent's grounds that there were no adequate findings in respect of accommodation, it is clear that the ground of appeal is wrong. The Judge noted at paragraph 11, page 4 of

the decision, that there was a property inspection report before him. The Judge then made findings at paragraph 30(e) of his decision that he accepted the evidence in respect of the suitability of the accommodation.

9. The Judge also made clear and unequivocal findings in respect of the Appellant's intention to return to Pakistan after the visit. The Judge had seen various net worth and other documents relating to the Appellant. Therefore there is nothing in those grounds. The Appellant is a businessman running a plastics business to which he would return. He also has a family in Pakistan to return to.
10. The Appellant had visited the United Kingdom in the past. This was said to be an opportunity to grieve in England.
11. It is obvious that being able to pray and to pay one's respects at a grave or monument with other family members who live in the United Kingdom is very different from doing so from thousands of miles away. This was not lost on the Judge.
12. It is against the background of the Judge being satisfied in respect of the requirements of paragraph 41 of the Immigration Rules that he went on to consider Article 8. He did so by reference to the recent case law.
13. That case law included the decision in **Abbasi**. Paragraph 1 of the Judicial headnote makes it clear that,

1. The refusal of a visa to foreign nationals seeking to enter the United Kingdom for a finite period for the purpose of mourning with family members the recent death of a close relative and visiting the grave of the deceased is capable of constituting a disproportionate interference with the rights of the persons concerned under Article 8 ECHR.

14. The Upper Tribunal said at paragraph 12,

12. The analysis in [11] above highlights the need for a structured, sequential approach in cases of this kind and in Article 8 cases generally: see [Razgar v SSHD \[2004\] UKHL 27](#), at [17]. The first question for the tribunal is whether the benefit, or facility which the Secretary of State is requested to confer - in this case, an entry visa for the specific and time limited purpose advanced - is protected by Article 8. If this yields an affirmative answer, the second question is whether the impugned decision interferes with the claimant's right to respect to private and/or family life. If this question also is answered affirmatively, the enquiry then shifts to the territory of Article 8(2), raising the third question, namely whether any of the specified legitimate aims is engaged. If this produces a negative answer a breach of Article 8 is thereby established. On the other hand, if a legitimate aim is identified, the fourth, and final, question to be addressed is whether the interference is a proportionate means of promoting the aim in question. It is in this context and at this stage that issues relating to the extent and impact of the interference will be considered in the balancing exercise.

15. In this case the not only did the Judge refer to the Upper Tribunal's decision in **Abbasi** he also referred to other case law which included references to the Court of Appeal's judgment in **Kughathas**.
16. The Judge went through the **Razgar v Secretary of State for the Home Department** [2004] UKHL 27 matters. The Judge concluded that the matters for which entry clearance was sought constituted a matter of private and family life protected by Article 8(1). The decision to refuse entry interfered with those family and private life rights of the Appellant but also the British family members. The Judge said that although the legitimate aim was immigration control but noting that both maintenance (which was accepted by the Respondent) and accommodation (which was proved to the Judge's satisfaction) meant that the factors in s117B Immigration Nationality and Asylum Act 2002 did not arise.
17. The Judge noted at paragraph 33(d) that this was an exceptional case. It was. He noted it was fact specific.
18. Despite the Respondent's references to the Upper Tribunal's decision in **Kaur** that adds little to the Respondent's case because of the mistaken belief in the original grounds that the accommodation and intention aspects were not dealt with by the Judge. They both were in clear terms.
19. In the circumstances, the Respondent's grounds of appeal, mistaken as they are, do not show that there is a material error of law. On the contrary, the Judge's decision shows a careful, detailed and correct exposition of the law with clear findings of fact. This was an unusual case to which great attention was given and the public interest was specifically and fully considered with great weight given to it.
20. Accordingly the decision of the First-tier Tribunal Judge stands.

Notice of Decision

The decision of the First tier Tribunal Judge did not involve the making of a material error of law and stands.

The Visa Officer's appeal is dismissed.

The Appellant's appeal remains allowed. As does the order making the fee award in his favour.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mahmood

Date: 16 May 2016