



**Upper Tribunal
(Immigration and Asylum Chamber)
VA/04543/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29th September 2015**

**Decision and Reasons
Promulgated
On 29th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**THE ENTRY CLEARANCE OFFICER - WARSAW
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

MR SAMUEL KYERE

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr J Kyere, Sponsor

DECISION AND REASONS

Anonymity

1. The First-tier Tribunal (FtT) did not make an anonymity direction. I have not been asked to make one and see no public policy reason for doing so and none is made.

Background

2. This is an appeal by the Entry Clearance Officer (hereafter “the respondent”) against the decision of the First-tier Tribunal (FtTT) (Judge J H H Cooper). On 29th April 2015 the FtTT allowed the appeal of Mr Kyere

(hereafter “the claimant”), a citizen of Ghana, against the decision of the respondent dated 10th July 2014 refusing his application for entry clearance as a family visitor.

3. The issue raised in this appeal relates to the jurisdiction of the Tribunal in visitor appeals. The position of the respondent is set out in the grounds of appeal against the Judge’s decision. In summary, the respondent submits that all applications for entry clearance as a visitor made on or after 25th June 2013 only attract a right of appeal on human rights and race relations grounds pursuant to section 52 of the Crime and Courts Act 2013 (‘the 2013 Act’).

Error of Law

4. Judge Cooper considered the evidence and found the claimant’s intentions as a visitor were entirely genuine. He found that entry clearance should have been granted under the Immigration Rules and he allowed the appeal. In the circumstances, the judge stated that it was unnecessary to consider the appeal on human rights grounds [at 20 to 26]. In allowing the claimant’s appeal under the Immigration Rules [27] I find the judge erred in law. It is clear that with effect from 25th June 2013 section 52 of the 2013 Act amended section 88A of the Nationality, Immigration and Asylum Act 2002 so that there is no right of appeal against refusal of entry clearance in a family visitor case save on race discrimination or human rights grounds – see Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) at [6, 11 and 13].
5. Thus, in allowing the appeal under the Immigration Rules, I find the judge was in error in considering the matters in relation to which he had no jurisdiction and in failing to deal with the human rights claim which had been raised in the grounds of appeal. The errors are such that the decision must be set aside and should be re-made.

Re-making the Decision

6. At the hearing the Sponsor confirmed that there was no further evidence upon which reliance was placed and the parties agreed that I could remake the decision on the evidence before the FtTT.
7. The Sponsor submitted that the claimant was a genuine visitor. He stated that he could not understand why his brother was not allowed to visit the UK where he would be supported by family members.
8. Mr Avery submitted that the Rules should be regarded as a complete code and there were no provisions within them which would meet the claimant’s circumstances. There were no compelling circumstances to permit consideration on human rights grounds outside the Rules. In particular, he argued that it had not been shown that there was family life between the claimant and his brother on the basis set out in Kugathas [2003] INLR 170 which required there to be more than mere emotional ties between kinships of this kind. He also stated that a fresh application could be made in order to overcome the problems raised in the refusal.

9. It has been identified in the decision of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 that the appropriate course of action is to answer the five questions set out in Razgar. The considerations of the Immigration Rules would only arise if I were to go on to consider questions (4) and (5) as set out in Razgar [2004] UKHL, it of course being necessary for the first three questions to be answered in the affirmative before the analysis could properly continue to that stage. I have borne in mind that the burden is on the claimant to show on balance Article 8 is engaged, and that it is for the respondent to justify the proportionality of her decision.
10. The Appellant wished to visit his family and friends and attend a family christening ceremony in the UK. Neither the evidence before me nor information already put before the FtTT leads me to conclude that the claimant and his sponsor have a relationship which goes beyond emotional ties. There is nothing to suggest a relationship of dependency. The claimant is a student pursuing studies in the Ukraine with the assistance of government scholarships. There is no basis upon which I could conclude that the relationship between the claimant and his sponsor, or, any other sibling in the UK, is anymore than that of adult siblings with emotional ties. Thus, I conclude there is no family life between the claimant and sponsor or any other sibling in the UK. It follows that the human rights claim can advance no further than the first stage of the five-stage test set out in Razgar (supra).
11. As I have found that question 1 within the Razgar framework falls to be answered in the negative, it is unnecessary to continue to consider the remaining questions and thus I do not need to make any findings with respect to the Immigration Rules.
12. In conclusion, therefore, I find that the decision of the FtTT did involve the making of an error of law. I set it aside and I remake the decision by dismissing the appeal on the only ground available, that is, human rights pursuant to Section 84(1) (c) of the 2002 Act.

DECISION

The FtTT made an error on a point of law such that the decision should be re-made. I re-make the decision by dismissing the appeal on human rights grounds.

FEE DECISION

The FtTT made a fee award and I set this aside also. The appeal is dismissed. There is no fee award.

Signed

Date



Deputy Upper Tribunal Judge Bagral

