



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/22294/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> August 2018  
and 13<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 18 September 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABDUL RASHID  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr L Tarlow (28/08/2018) and Mr T Wilding (13/09/2018) (Senior Home Office Presenting Officers)

For the Respondent: Mr R Parkin (instructed by Khan Solicitors) on 28/08/2018 and Mr R Wilcox (instructed by Archbold Solicitors) on 13/09/2018.

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a Decision of Judge Samimi of the First-tier Tribunal promulgated on 18<sup>th</sup> December 2017 by which she allowed the appeal.
2. For the sake of continuity and clarity I will continue to refer to Mr Rashid as the Appellant in this decision and the Secretary of State as the respondent.

3. The Appellant before the First-tier Tribunal had made an application for leave to enter the UK for a period of six months to visit his family. The Sponsor is his youngest son who resides in the UK with his wife and their daughter. Additionally, his older son lives in the UK as do 4 of his daughters.
4. The Entry Clearance Officer refused the application on the basis that the Appellant did not meet the Immigration Rules and also refused the application on human rights grounds.
5. There is only a right of appeal in this case because the refusal was a refusal of a human rights claim. There is no appeal against a refusal of an entry clearance application.
6. The Judge of the First-tier Tribunal heard evidence from the Sponsor and considered first of all whether the Appellant met the requirements of the Immigration Rules and found at paragraph 6 of her Decision and Reasons as follows: -

“Having had regard to the Sponsor’s oral and documentary evidence it is clear that he has been able to show he is able to maintain and accommodate the Appellant. This has been accepted in the ECO’s Notice of Decision and has been equally not challenged during the course of submissions before me. The Appellant has previously visited the United Kingdom in 2010, when he had a six month visit visa but returned to Pakistan after six weeks. I find that the Sponsor, whose evidence I have accepted has made it clear that the Appellant who is a healthy man with his own homeopathic practice where he works every day for at least five hours per day, and where he visits his wife’s grave on a daily basis, attends his local mosque, visits friends and has a number of hobbies and substantial family and social network will be complying with the requirements of the Immigration Rules and that he is a genuine visitor will return to Pakistan within the period of his leave.”

7. The Judge then goes immediately on in the same paragraph to find that the Appellant’s continued separation from the Sponsor and his other children in the United Kingdom constitutes a violation of Article 8 of the ECHR to the extent that the continued interference with the family life between the Appellants and the Sponsor is disproportionate to the interest of immigration control. The Judge indicated that she had considered the case of Mostafa (article 8 in entry clearance) [2015] UKUT 112 (IAC) and Kaur (visit visa appeals: article 8). The Judge then quoted from the final paragraph of Mostafa using underlining to stress the following: -

“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 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 spent together.”

8. The Secretary of State applied for and was granted permission to appeal to the Upper Tribunal on the basis that it was an error of law for the Judge to allow the appeal because she accepted the Appellant met the Immigration Rules without making a finding that there was family life for the purposes of Article 8.
9. The matter first came before me on 28th August 2018. On that occasion I heard representations from Mr Parkin in an effort to defend the Decision and Reasons. However, I found on that day that the Judge had made a material error of law in failing

to consider and identify how Article 8 is engaged. The Judge was required to do that before embarking on a consideration of whether or not the Appellant met the requirements of the Immigration Rules. The case of Adjei [2015] UKUT 0261 makes clear that in such cases the first question a Judge should ask himself is whether Article 8 is engaged. If it is not then the Tribunal has no jurisdiction to consider the Entry Clearance Officer's decision under the Rules and should not do so. If Article 8 is engaged then the Judge may need to look at the rules in the proportionality exercise.

10. In this case the Judge considered first the requirements of the Immigration Rules and at no time identified how Article 8 was engaged.
11. I preserved the findings that the Appellant met the requirements of the Immigration Rules but set aside the Decision and Reasons otherwise and adjourned it for a resumed hearing to decide the single issue of whether Article 8 is engaged and if so whether the decision was disproportionate.
12. Between the hearing on 28th August and the 13<sup>th</sup> September resumed hearing, the Appellant had changed representatives and on 13<sup>th</sup> September was represented by Mr Wilcox.
13. At the commencement of the hearing Mr Wilcox made an application for an adjournment. He said that it had come to his attention on the morning of the hearing that there was significant additional evidence that was not before me. He said that the Sponsor and his older brother in the United Kingdom give significant financial support throughout the year to the Appellant and there is a regime of their visiting their father whereby one of them is with him all the time. He went on to explain that he would be seeking to establish that there was almost a constant presence with the father in Pakistan in addition to financial payments and this would go to show more than the normal emotional ties between a parent and adult child.
14. The Appellant has been represented throughout these proceedings, albeit that he has now changed representatives. His original representatives filed a bundle for the purposes of today's hearing including what purported to be an up-to-date statement and various other documents contained in a bundle of 85 pages. The statement, dated only 11th September 2018 makes no reference whatsoever to financial contributions or constant presence with the father of one or other of his sons. No mention of that is made either in the statement lodged in advance of the hearing before the First-tier Tribunal, in a Statutory Declaration prepared in May 2016 or in the oral evidence before the First-tier Tribunal.
15. Mr Wilding opposed the adjournment application on the basis that there had been ample time to provide appropriate evidence. I refused the adjournment application on the basis that there had been ample time to provide such evidence; clear directions had been given by me on 28th August and I could take evidence of the matters referred to from the Sponsor. Mr Wilcox indicated that the Sponsor's wife was also at court and he would like to call her to give evidence albeit she had not provided a witness statement. With Mr Wilding's agreement I directed Mr Wilcox to take a statement of evidence from the wife so that Mr Wilding would read it prior to the commencement of the hearing. The case was stood down for that to be drafted.

## The Evidence

16. At the resumed hearing I heard evidence from the Sponsor and his wife neither of whom required the services of an interpreter, although one had been requested.
17. The two witness statements contained in the bundle for the First-tier Tribunal and for the resumed hearing were not in truth witness statements, but rather skeleton arguments reciting case law. Mr Wilcox therefore decided that he would rely on the Statutory Declaration contained in the original bundle prepared in May 2016 but unsigned. The Sponsor signed and dated it as his statement at the commencement of his evidence.
18. In that statement the Sponsor indicated that he lives with his wife, a British citizen, and their daughter born in October 2010 and also a British citizen.
19. His father, the Appellant, is 79 years old and although could make an application to reside in the UK with him as a dependent relative, would not do so because he has a wonderful life in Pakistan. He says that his father is well settled with extended family in Pakistan; that he has a strong family, social and economic life in Pakistan.
20. The Sponsor points out that his father has previously visited the United Kingdom and returned within the time limit. As at May 2016, when that statement was prepared, the Sponsor was in full-time permanent employment as a fleet maintenance manager with AST travel at an annual salary of £17,680.
21. By the time of the hearing the Sponsor was still carrying out the same type of employment but on a self-employed basis which he had commenced in July this year.
22. The additional evidence that the Sponsor gave, not contained or given previously, was that he is one of seven children of the Appellant. He has one older brother in the United Kingdom, two sisters living in Nottingham, two sisters living in Birmingham and one who lives in Pakistan with the Appellant. The sister who lives with the Appellant is divorced with one child. The sisters in the United Kingdom are all married with children as is his brother. His older brother works as a taxi driver.
23. He confirmed that his father made the application to come to the UK to see his children and his grandchildren.
24. When asked why it was that the family could not go to Pakistan to visit, the Sponsor said that he had been there but it was not easy. He has a business in the United Kingdom and it is very hot in Pakistan. Some of the children are working or at school or at University and it is very hard for everyone to go. The plan is for the Appellant to visit the United Kingdom when he can visit with the entire family.
25. In terms of his relationship with his father and his brother's relationship with his father the Sponsor said that their mother died a long time ago and they become very close to their father. He said that this year he has been to Pakistan twice and that his brother has been every year. His brother sends £100 a month approximately to his father in Pakistan and he sends money irregularly but usually totalling £1000 per annum. The Sponsor said his father did not need the money but they sent it because he is their father and they want to give him something.

26. The Sponsor said that if the Appellant was not able to travel it would be a disaster. He is very attached to his father which is why he wants to bring him to the UK. He started his own business a couple of months ago and it would be very hard for him to go to Pakistan. Also, he said that when he goes to Pakistan his daughter speaks to him every day on the telephone and cries; indeed, he said that the last time he went to Pakistan she was ill and he had to come back.
27. The Sponsor said that he was the closest to his father of all his siblings because he is the youngest.
28. He said his father was in good health and that he is a homoeopathic dr. His father last visited the UK some 5 to 6 years ago when his wife was pregnant with their daughter.
29. In cross-examination the Sponsor was asked about his visits to Pakistan. He said that he had been twice this year. He had gone in mid-July intending to stay until October but the notice of hearing 28 August came and so he came back early. He had been there for seven weeks. Prior to that he had been there over winter, maybe January or February of this year.
30. In January or February of this year the Sponsor said that on that occasion his brother and sisters also went. When he went this summer, he went on his own.
31. The Sponsor said he did not go to see his father the previous year and the last time he was there was perhaps 2016. He also said that prior to the visit in 2016 the last time he had been there was 2013.
32. He was asked how often his brother goes to Pakistan and while he did not know for certain thought it was about the same as him and also that his sisters go quite often. They all stay with their father when they visit Pakistan and at the present time one of his sisters is there.
33. I then heard evidence from the Sponsor's wife who adopted her handwritten statement as true and correct.
34. She confirmed that she had been married to the Sponsor for 13 years and she said that her husband had a deep connection with his father, particularly as they had lost their mother. She said that the siblings visited as often as they could but it was now more convenient for him to come to the UK than for them to go to Pakistan.
35. She was asked why she said in her statement there was disruption in the family when her husband went to Pakistan and she said that with having to go quite a lot she struggled with their daughter and also that her daughter misses him a lot. It is difficult for the family to go there because of school, the cost and the hot weather. When the Sponsor is away their daughter misses him and she becomes ill.
36. She confirmed that both she and the Sponsor worked and their joint net income is £2000 per month. When asked how much they could save each month she said at a push £600.
37. She confirmed that she and her husband sent £500 to £600 twice a year to the Appellant and her brother-in-law roughly £100 a month.

38. When she was asked what the consequences would be of her husband not being able to see his father she said it would be hard. She said that if she couldn't see her own father it would upset her and she went on to say that it was not fair that every time he wanted to see his father he had to fly to Pakistan.
39. In cross-examination the Sponsor's wife confirmed the Appellant's evidence about his recent visits to Pakistan and that their daughter had only been once in 2013 when she met her grandfather for the first time. She confirmed that there was a two-year gap after that before another visit and she also confirmed that the Sponsor's brother and sisters also go to visit Pakistan. She also indicated that one of her husband's sisters is currently in Pakistan.

### **Submissions**

40. Mr Wilding made brief submissions to the effect that this family unit would, quite simply, prefer the convenience of the Appellant visiting the UK rather than them having to travel to Pakistan. The evidence was that the money sent to Pakistan was not required by the Appellant but was a gift. He said this was an ordinary family unit which did not equate to Article 8 being engaged. The status quo can and will continue and the Entry Clearance Officer's decision does not interfere with the existing family life enjoyed by this family.
41. Mr Wilcox submitted that, as he had accepted at the outset, the test for engagement with Article 8 was as set out in the case of Kugathas [2005] EWCA Civ 31. He argued that the evidence that I had heard was of a bond particularly between the Sponsor and his father which went beyond normal emotional ties. He referred to the fact that there would be great disruption caused if it was not possible for the Appellant to have regular and ongoing direct contact with his sons and the Sponsor in particular. The bond, he said, was evidenced by money being sent which was not required for the Appellant's support but it was indicative of the bond.
42. He said that it cost a considerable amount of money for the Sponsor to spend prolonged periods in Pakistan and the fact that he did so was evidence of a connection over and above the normal emotional ties between adult child and his father.
43. He said that the refusal does disrupt the status quo because it is getting to the point where the status quo is financially unsustainable. There was a very considerable cost to sending the Sponsor to Pakistan with the frequency that they have been accustomed to particularly now that he is establishing his own business. It is also, he argued, highly disruptive to the Sponsor's relationship with his wife and daughter. He argued that his relationship with his daughter, who is now aged seven, is a developing one and it is perfectly plausible for that relationship to mean that when he goes to Pakistan she is caused considerable emotional distress.
44. He argued that it was perfectly reasonable for the family to have decided that it was no longer sustainable for the Sponsor to make these long trips to Pakistan and that if the Appellant is not granted entry clearance there will be disruption to a quite unique relationship between him and his youngest son especially given the cultural milieu.

45. Finally, he submitted on that basis that Article 8(1) is engaged. He relied on the proposition in Mostafa that the Appellant's ability to satisfy the Immigration Rules was a weighty factor and he urged I should find the refusal a disproportionate breach of Article 8.

### **Findings**

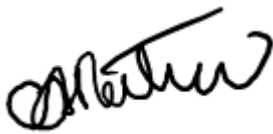
46. It is quite clear that the picture I have been painted of the nature of the family life at the hearing on 13th September was significantly different from that presented to the First-tier Tribunal and indeed at any time prior to the day of the hearing.
47. It is not true to say that visits from the UK to Pakistan were undertaken to ensure that at some time there is always one of the children with their father. The evidence simply did not support that.
48. The family life particularly relied upon in this case is that of the Sponsor with his father. However, the Sponsor has not visited anything like as often as I was initially led to believe. He has not even visited every year. There was an almost three-year gap between his going in 2013 and going in 2016.
49. There was considerable emphasis made before the First-tier Tribunal as to what a wonderful and happy life the Appellant enjoys in Pakistan. He still works seven days a week at a job that he loves and he goes swimming and fishing every week. The evidence was then that he meets friends every day and goes to his local mosque every day. He loves walking and has no interest in remaining in the United Kingdom as he loves his life in Pakistan.
50. On the basis of the evidence about the Appellant's life in Pakistan he is quite clearly a fit and energetic man despite his years who is financially and emotionally independent. Notwithstanding the fact that six of his seven children are settled in the UK he has no wish to join them.
51. I accept of course that the Sponsor and his siblings love their father and would wish to see him more often. I accept that they choose to send him monetary gifts because they love him and he is their father. That however does not amount to anything over and above the normal emotional ties between adult children and their father. I agree with Mr Wilding's submission that although a pleasant and close, loving family, the reality is that this is a perfectly normal family.
52. Family members emigrate around the world with the inevitable consequence that their ability to see the relations they leave behind in their home country will be significantly hampered and they will see them far less frequently than previously. That is a natural consequence of six of the Appellant's seven children choosing to leave Pakistan and settle in the United Kingdom.
53. The Sponsor is perfectly capable of visiting Pakistan to visit his father as indeed are his siblings as has been proved by the history. I was given nothing to support the suggestion that visiting him in Pakistan is becoming unsustainable; indeed, the siblings in the UK are in a far better position to travel long distances than their 79-year-old father. I was given no credible reason why it has suddenly become difficult for them to travel to Pakistan. Of course, I accept that it is expensive. However, the

Sponsor's wife's evidence was that they could save £600 per month. That equates to £7,200 in the year, sufficient to finance regular visits to Pakistan. The Sponsor does not need to spend extended periods in Pakistan. Whilst I am happy to accept the Sponsor's daughter will miss him when he goes away, that is a temporary absence, they can keep in contact by modern methods of communication including Skype and it is only a temporary absence.

54. The Upper Tribunal's comments in Mostafa make clear that even when the relationship in a family visit appeal involves husband-and-wife or parent and minor children that will not always be sufficient to engage Article 8. In a case such as this where we are talking about an Appellant and an adult child where they have been separated across continents for many years and yet have sustained a relationship and can continue to sustain a relationship it falls a long way short of engaging Article 8. The limited family life that this family has enjoyed is a direct consequence of their choice to live across continents. It can continue as it has done and the Entry Clearance Officer's decision does not interfere with that.

### **Notice of Decision**

55. The Secretary of State's appeal is allowed such that the decision of the First-tier Tribunal is set aside and in re-deciding the appeal it is dismissed.
56. There has been no application for an anonymity direction and I see no justification for making one.



Signed

Date 13<sup>th</sup> September 2018

Upper Tribunal Judge Martin