Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00757/2020**

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 4th November 2021	**On 18th November 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MIRIAH IDRESS

Appellant

and

ENTRY CLEARANCE OFFICER, LAHORE

Respondent

Representation:
For the Appellant: Ms M Bayoumi, instructed by Fountain Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

The appellant is a citizen of Pakistan who was born on 21 January 1995. On 26 September 2019, she applied for entry clearance under the family reunion rules, in particular the child/parent rule in para 352D of the Immigration Rules (HC 395 as amended). The appellant sought to join her mother and father in the UK who have been granted refugee status on the basis that they are at risk of persecution in Pakistan due to their Ahmadi faith.

On 10 December 2019, the Entry Clearance Officer refused the appellant's application under the Immigration Rules and Art 8 of the ECHR. That decision was maintained by the Entry Clearance Manager on 19 July 2020.

The Appeal to the First-tier Tribunal

The appellant appealed to the First-tier Tribunal. In a decision sent on 25 February 2021, Judge J H Napier dismissed the appellant's appeal under Art 8 of the ECHR. It was accepted before the judge that the appellant could not meet the requirements of the family reunion rule in HC 395. The appeal was, therefore, argued and decided on Art 8 outside the Rules.

Judge Napier found that Art 8 of the ECHR was not engaged in respect of the family or private life of the appellant's parents in the UK. Although the judge looked at the case as if only the family life of the appellant's parents were involved, in effect, he concluded that there was no family life between the appellant and her parents and so, in addition, the appellant's right to family life was not engaged. It was accepted before the judge, as it was before me, that the appellant could not rely upon her private life in Pakistan but she could rely upon the private life of her parents in the UK, in particular that of her mother and reliance was placed upon her mother's health in support of a private life claim.

Having concluded that Art 8 was not engaged, the judge did not go on to assess whether any interference with the relevant private or family life was proportionate. He dismissed the appellant's appeal under Art 8.

The Appeal to the Upper Tribunal

The appellant sought permission to appeal to the Upper Tribunal on six grounds challenging the judge's approach to, and findings in respect of, the existence of family life between the appellant and her parents and the impact upon the private life of her parents (in particular her mother).

On 8 July 2021 the First-tier Tribunal (Judge Ford) granted the appellant permission to appeal on some, but not all, of the grounds. The appellant renewed her application for permission to appeal to the Upper Tribunal. On 26 August 2021, UTJ Rimington granted the appellant permission to appeal on the remaining grounds. As a consequence, permission was granted upon all six grounds.

The UT Hearing

The appeal was listed for hearing before me at the Cardiff Civil Justice Centre on 4 November 2021. The appellant was represented by Ms M Bayoumi and the respondent was represented by Mr C Howells.

Ms Bayoumi developed the grounds of appeal in her oral submissions.

First, Ms Bayoumi submitted that the judge had, in para 61, conflated the issues of whether "family" and "private" life was engaged and had failed to deal with them separately.

Secondly, Ms Bayoumi submitted that the judge, in assessing whether family life was established, had failed properly to consider the issue of the appellant's financial dependency upon her parents at paras 49 – 51. She submitted that the evidence was that the appellant's only source of income was from her parents, whom, the judge found, had provided her with the equivalent of the minimum wage in Pakistan over a five year period. Nevertheless, on the basis that he did not know the appellant's outgoings in terms of her living standards and costs, he found that the evidence did not show that they provided "effective support" to the appellant. Ms Bayoumi submitted this was an improper assessment, amounting to an error of law, in determining whether there was "real or effective support" financially which was relevant to the issue of whether family life existed between the appellant and her parents.

Thirdly, Ms Bayoumi submitted that the judge had wrongly assessed, on the basis of the evidence, the appellant's accommodation situation, concluding that she was "in much more stable accommodation than she submits" (see para 54).

Finally, Ms Bayoumi submitted that there was medical evidence before the judge concerning the impact of the appellant's separation upon her mother including that it resulted in anxiety and depression. The judge had given no adequate reasons for reaching the conclusion that, despite this, her mother's private life was not engaged under Art 8.

Having heard Ms Bayoumi's submissions, whilst Mr Howells did not accept all of Ms Bayoumi's points, he accepted that the judge had materially erred in law in his assessment of whether "family life" existed between the appellant and her parents in his treatment of the financial support provided by the appellant's parents. He accepted that the judge had failed to give adequate reasons why the money provided by her parents – which was equivalent to the Pakistan minimum wage over five years – did not create financial dependency, given there was no evidence that the appellant had any other source of income. Also, Mr Howells pointed out that para 50 of the judge's reasoning reflected the issue of whether the money provided for the appellant's 'essential needs' which was, perhaps, a more appropriate assessment in the context of an EEA case where "financial dependency" had to be established (see Lim v Entry Clearance Officer, Manila [2015] EWCA Civ 1383). Mr Howells accepted that the error of approach in paras 49 – 51 factored into the judge's finding in para 61 that he was not satisfied that "family life" existed between the appellant and her parents. He accepted, therefore, that the judge's decision could not stand and should be set aside and the decision re-made.

Discussion

In the light of Mr Howells' concession, it is not necessary to deal with the legal issues in any detail. I agree with his concession. I would, however, say the following.

The judge was, as is accepted, concerned with the appellant's claim under Art 8 outside the Rules. In order to establish her claim, the appellant had to establish that Art 8.1 was engaged on the basis that "family life" was established between her and her parents and was sufficiently seriously interfered with by the refusal of entry clearance and/or that the private life of her parents in the UK (in particular her mother) was established and sufficiently seriously interfered with by the decision to refuse entry clearance. It was common ground before me that the appellant could not rely upon her own private life in Pakistan. If Art 8.1 was engaged, then the judge had to decide whether any interference was justified under Art 8.2, in particular determine whether the refusal of entry clearance was proportionate. As will be clear, the judge never moved beyond considering Art 8.1 because he found that neither family nor private life was established.

As regards the former, the judge had to decide whether, as between an adult offspring and her parents in the UK, there was "dependency" in the sense of "real" or "committed" or "effective" support (see Rai v Entry Clearance Officer, New Delhi [2017] EWCA Civ 320 at [17] – [20] per Lindblom LJ). In respect of that issue, it was relevant (though not determinative) to assess whether the appellant was financially dependent upon her parents as an aspect of determining whether the closeness of relationship was established. The accepted evidence before the judge was that the appellant's parents had funded her with the equivalent over a five year period of the Pakistan minimum wage. There was, as both representatives accepted, no evidence n that the appellant had any other source of income. All her monetary needs were, therefore, being met by her parents in the UK. The reasoning of the judge, namely that he could not decide whether this was "effective support" without evidence of her living costs and the standard of living, is inadequate and unsustainable. Whatever her needs were, on the evidence, they were being met by her parents. Whatever her outgoings were, and for which she required money, meant that she was reliant upon her parents' money to pay for it.

Mr Howells accepted that, for these reasons, the judge's reasoning in relation to whether the appellant had established "family life", having regard to any financial support from her parents in the UK, was legally flawed and unsustainable. I agree.

I also accept Mr Howells' submission that that legal error materially factored into the judge's finding in para 61 of his determination that "family life" was not established (he said "engaged").

Accordingly, the judge materially erred in law in reaching his finding that Art 8 was not engaged.

In addition, I am also satisfied that the judge failed to give adequate reasons why the private life of the appellant's mother was not "engaged" based upon

the impact on her health of the separation from her daughter. There was evidence of the impact upon her health. The judge does not explain why the refusal of entry clearance does not amount to an interference with the appellant's mother's private life. Of course, even if that is established, it will be a matter for a future judge to assess what are the implications of that under Art 8.2.

Decision

For these reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal under Art 8 involved the making of an error of law. That decision cannot stand and is set aside.

It was common ground between the parties that the proper disposal of the appeal was to remit it to the First-tier Tribunal for a *de novo* rehearing. Having regard to the nature and extent of fact-finding required, and to para 7.2 of the Senior President's Practice Statement, I agree that is the correct disposal of the appeal.

The appeal is remitted to the First-tier Tribunal for a *de novo* rehearing by a judge other than Judge Napier. No factual findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
8 November 2021