



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00215/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 19 January 2018

**Decision & Reasons
Promulgated**

On 29 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

ENTRY CLEARANCE OFFICER

Appellant

And

**MS QARSHI MOHAMUD JAMA
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr D. Milis, Senior Home Office Presenting Officer

For the Respondent: Ms K. Cronin, Counsel instructed by Wesley Gryk Solicitors

DECISION AND REASONS

1. The Specialist Appeals Team brings an appeal on behalf of an Entry Clearance Officer from the decision of the First-tier Tribunal (Judge Thorne sitting at Taylor House on 21 April 2017) allowing on Article 8 grounds the claimant's appeal against the decision to refuse her entry clearance for the purposes of visiting her wheel-chair bound daughter, who had suffered a severe spinal cord injury due to TB meningitis and in respect of whom a Consultant Neurologist had opined on 4 April 2017 that it would be very difficult for her to travel to Africa to see her mother. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the

claimant requires to be accorded anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. In the grounds of appeal, the Specialist Appeals Team pleaded that the Judge was wrong to find that the appellant and the sponsor had family life with each other, as there was no evidence nor was there a finding that there were further elements of dependency involving more than normal emotional ties. Also, the proportionality assessment was inadequate.
3. It was established case law that family life within the meaning of Article 8 would not normally exist between adult siblings, parents and adult children. Where family life did not exist, generally Article 8 would not be engaged. **Kugathas v SSHD [2003] EWCA Civ 31** said at paragraph [25] that because there is no presumption of family life, family life is not established between an adult and his surviving parent or other siblings "*unless something more exists than normal emotional ties*". Reference was also made to paragraph [20] of **Kugathas** where the following was said:

Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on these grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8.

4. On 16 November 2017 Judge Boyes granted permission to appeal as the grounds were arguable.

The Hearing in the Upper Tribunal

5. At the hearing before me to determine whether an error of law was made out, Mr Milis conceded that there was no merit in either ground of appeal. With reference to the first ground, he accepted that there were more than normal emotional ties between the claimant and her daughter.

Discussion

6. A concession of fact must always be accepted by the Tribunal. The same does not apply to a concession of law. Judge Thorne left himself vulnerable to an error of law challenge because he did not directly address the question of whether there were more than normal emotional ties. There was clearly not practical dependency, as mother and daughter lived on separate continents.
7. Until recently, there was some ambiguity about whether it was necessary to show a disproportionate interference with established family life in a visit visa appeal, or whether it was enough to show a disproportionate interference with the private life rights of the applicant and/or the UK sponsor. However, three recent decisions of the Court of Appeal have given a clear answer to this question. These are the decisions of the Court of Appeal in **Kopoi [2017] EWCA Civ 1511**, **Abis [2017] EWCA Civ**

1393 and Onuorah [2017] EWCA Civ 1757.

8. In **Onuorah**, the Court of Appeal held that **Kugathas** remains good law, and that it applies to visit visa cases just as much as it applies in settlement cases. Giving the leading judgment of the Court, Singh LJ at paragraph [35] said that there were two reasons for not distinguishing the guidance given by the Court of Appeal in **Kugathas** in a visit visa case:

First, as a matter of principle, the question whether there is “family life” for the purpose of Article 8 is a logically prior question and cannot depend on the purpose for which an application for entry clearance is made. Secondly, the shortness of the proposed visit is, if anything, an indication that a refusal of leave to enter did not involve any want of respect for the Respondent’s family life for the purpose of Article 8: see *Kopoi* at para. 30 (Sales LJ) which I have quoted above.

9. In **Kopoi**, Sales LJ said at paragraph [30] as follows:

A three week visit would not involve a significant contribution to family life in the sense in which that term is used in Article 8. Of course, it would often be nice for family members to meet up and visit in this way. But a short visit of this kind would not establish a relationship between any of the individuals concerned of support going beyond normal emotional ties, even if there were a positive obligation under Article 8 (which there is not) to allow a person to enter the UK to try to develop a “family life” which does not currently exist.

10. At paragraph [32] of his decision, Judge Thorne held that there was a genuine and subsisting relationship of mother and daughter between the claimant and the sponsor. But this did not mean that they already had family life together in the **Kugathas** sense, which is the necessary precondition for Article 8(1) being engaged.
11. However, the significance of Mr Milis’ factual concession is that the Judge was right to find that Article 8(1) was engaged and the Entry Clearance Officer can no longer assert that any deficiency in the reasoning of the Judge was material to the outcome.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and so the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 26 January 2018

Judge Monson

Deputy Judge of the Upper Tribunal