



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06893/2017
HU/06895/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19 June 2018

Decision & Reasons Promulgated
On 28 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

FS

RK

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mrs W Brocklesby, Senior Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

1. Although the appellant is the Entry Clearance Officer and the respondent is Mrs FS and her minor child, I refer to the appellants as they were before the First-tier Tribunal where Mrs FS and her son were the appellants. I note that one of the purported appeals, for a second child, was struck out as no fee was paid. The appellants had applied for a visit visa to visit the UK for two. In a decision promulgated on 2

November 2017, Judge of the First-tier Tribunal A Simmonds allowed the appellants' appeals on human rights grounds.

2. The Entry Clearance Officer appealed on the following grounds:

Ground 1: that the judge had no jurisdiction to hear the appeal as no human rights claim had been made or refused; and

Ground 2: The judge had made no adequate findings that Article 8 was engaged and the proportionality assessment was inadequate.

Error of Law Hearing

3. There was no appearance by or on behalf of the respondent family. I took into consideration further information which was submitted in the form of a Rule 24 response received on 12 June 2018. Although a further submission containing an Upper Tribunal case was also forwarded to the Upper Tribunal on the date of the hearing from the appellant, as that case was unreported I did not admit it to the proceedings.

Error of Law Discussion

4. Mrs Brocklesby relied only on ground 2. Given the decision of the Upper Tribunal President in **Baihinga (Rule 22; human rights appeals: requirements) [2018] UKUT 00090**, which included that an application for leave or entry clearance may constitute a human rights claim, even if the applicant does not, in terms, raise human rights, Mrs Brocklesby was correct to abandon ground 1.

5. I considered ground 2. I am satisfied it is made out. This was an appeal on human rights grounds only. The First-tier Tribunal Judge found that the appellants met the requirements of the Immigration Rules. She reminded herself that under the 'new rights of appeal' this is relevant but not determinative but her decision "in respect of the family relationship has to be viewed through the prism of the Immigration Rules".

6. The appellants had applied for a visa to visit family in the UK. The first appellant's brother had been killed in the UK in a road traffic accident and it was stated that the first appellant wished to visit his grave and to see her parents who were in ill health. The judge took into consideration a considerable volume of documentary evidence and was satisfied that the appellant's brother had died in the UK and that her father was seriously ill.

7. However, in going on to find, at [22], that the "first four questions are answered in the affirmative" in relation to the **Razgar [2004] UKHL 27** test, the First-tier Tribunal Judge failed to provide adequate reasons, or indeed any reasons at all, why either family and/or private life exists in this case.

8. It was incumbent on the First-tier Tribunal to consider whether there was anything that goes beyond normal emotional ties between an adult and surviving parents and/or other siblings (**Kugathas v SSHD [2003] EWCA Civ 31**). The Court of Appeal

including in Entry Clearance Officer, Sierra Leone v Kopoi [2017] EWCA Civ 1511 and Secretary of State for the Home Department v Onuorah [2017] EWCA Civ 1757 has confirmed that Kugathas remains good law. Something more must exist, such as ties of dependency.

9. The First-tier Tribunal made no findings as to any dependent relationship between the appellants and the first appellant's adult family in the UK. There was no adequate evidence before the First-tier Tribunal that might suggest anything other than normal emotional ties, notwithstanding that the family had experienced a recent bereavement and the first appellant's father was ill.
10. The fact that the first appellant had visited the UK before does not in itself support a finding that the appellants enjoy family life with their relatives in the UK. The appellant had produced evidence of strong links to Pakistan including her husband's successful employment and assets in Pakistan to demonstrate her incentive to return. The appellant in her grounds of appeal had confirmed that she was settled in Pakistan.
11. I further take into consideration that the fact that the appellant was only intending a two week visit supports the contention that the refusal of leave to enter did not involve any want of respect for anyone's family life. To paraphrase Sales LJ in Kopoi, a two week visit would not involve a significant contribution to family life in Article 8 terms, notwithstanding the legitimate reasons for wanting to visit.
12. The fact that there are strong compassionate reasons behind the application for the visit cannot, when considered in light of all the factors, establish family life where there is none. The judge failed to adequately direct herself that the fact that an individual meets the requirements of paragraph 41 does not mean that the individual succeeds on that account. Appellants must demonstrate that the refusal represents an unlawful infringement of the rights protected by Article 8 of ECHR (Adjei (Visit visas - Article 8) [2015] UKUT 261 (IAC)). The judge's findings at [20] suffer from a lack of reasoning as to why Article 8 was engaged.
13. It was also unclear from the judge's finding whether the judge was relying on family or private life in stating that Razgar was satisfied. In relation to private life, the Court of Appeal in Secretary of State for the Home Department v Abbas [2017] EWCA Civ 1393 at paragraph 18 said as follows:

"The Secretary of State has been unable to identify any case, still less a settled line of authority, in which the Strasbourg Court has held Article 8 in its private life aspect to be engaged in respect of a person outside the Contracting State seeking to enter to develop that private life. Such a conclusion would have a striking effect and undermine the often repeated starting point of the Strasbourg Court that a state has the right as a matter of well-established international law and subject to their treaty obligations, including a Convention, to control the entry, residence and expulsion of aliens. Private life as a concept has a broad reach, by contrast with family life. Even though Article 8 is a qualified right (unlike Article 3) the prospect of a very large number of individuals relying on private life in support of applications for short and long-term stays would be inevitable. To accept that the private life aspect of Article 8 could require a Contracting State to allow an alien

to enter its territory would mark a step change in the reach of Article 8 in the immigration context. As a matter of principle it would be wrong to do so. As a matter of binding authority on the approach to an expansion of the reach of the ECHR it would be impermissible to do so.”

14. Although reference was made to the Upper Tribunal decision of **Abbasi v Entry Clearance Officer, Karachi [2015] UKUT 463 (IAC)** where the then Upper Tribunal President applied **Sabanchiyeva v Russia (2014) 58 EHRR 14** and found there had been a violation of Article 8, I am satisfied that although the appellants are seeking to visit in part because of a death, the context is very different.
15. I further take into consideration what was said at paragraphs 29 and 30 of **Onuorah** including that the ambit of family life does not embrace a situation such as this.
16. As there is no family or private life in terms of Article 8, the appellants before the First-tier Tribunal cannot succeed.

Notice of Decision

The decision of the First-tier Tribunal discloses an error of law and is set aside. I remake the decision dismissing the appeal of the appellants on all grounds.

As there is a minor appellant I make an anonymity direction:

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 25 June 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT **FEE AWARD**

The appeal is dismissed; therefore there can be no fee award.

Signed

Date: 25 June 2018

Deputy Upper Tribunal Judge Hutchinson