



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/03164/2013
OA/03179/2013

THE IMMIGRATION ACTS

Heard at Birmingham
On 20 June 2014

Determination Promulgated
On 23rd June 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

and

RABIA ASAD
MUHAMMAD MUSAB

Appellant

Respondents

Representation:

For the Appellant: Mr Smart, Senior Home Office Presenting Officer
For the Respondents: Mr Khan, instructed by Abbey Solicitors

DETERMINATION AND REASONS

The Appeal


1. This is an appeal by the Entry Clearance Officer against a determination promulgated on 13 February 2014 of First-tier Tribunal Judge Pacey which allowed the Article 8 appeals of the respondents.

2. For the purposes of this determination, I refer to the respondents as the appellants and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
3. The background to this matter is that the two appellants are nationals of Pakistan. They are mother and son. The first appellant was born on 13 October 1989 and the second appellant, was born on 3 February 2009.
4. The first appellant is married to Mr Asad Munsfidar, a British national, and he is the father of the second appellant and sponsor in this matter. The couple's second child, Fatima, a British national born on 1 January 2012 lives with the sponsor in the UK.
5. On 7 December 2012, the appellants' application for entry clearance to join the sponsor were refused.
6. The First-tier Tribunal found that the respondent had been right to refuse the appeals under the Immigration Rules as the sponsor did not provide the correct documentation to show his earnings of £24,752.
7. The First-tier Tribunal went on to allow the appeal under Article 8.
8. The respondent's challenge to that decision is that the First-tier Tribunal failed to apply properly the guidance set out by the Upper Tribunal in Gulshun (Article 8 – new rules – correct approach) [2013] UKUT 00640 and had not applied the correct criterion when considering whether outside the Rules there were compelling circumstances not sufficiently recognised under them.
9. I did not find that the respondent's challenge had merit.
10. The First-tier Tribunal judge set out the relevant guidance from Gulshan at [16]. It is unarguable that she did have the correct guidance in mind when reaching her decision, therefore.
11. Further, in MF (Nigeria) [2013] EWCA Civ 1192 particular emphasis is placed by the Court of Appeal on substance as opposed to form. The court made clear that what matters is not so much whether there is consideration of Article 8 inside or outside the Rules or under a mixture of both but rather whether the decision-maker has conducted a substantive assessment taking into account all relevant elements of the claim. Whilst the judge did not go on in terms the language the "exceptional" or "compelling circumstances" when setting out her views on the various aspects of the appellants' cases I am satisfied that her approach fulfilled that requirement.
12. In particular, at [27] she identified the very young ages of the children and how that made it "particularly important" for them to be with both parents and each other. Although the language is different, that appeared to be me to be sufficient to show that she had in substance applied her self-direction to the guidance of Gulshan. She also specifically considered the question of reapplying for entry clearance but found it did not outweigh the best interests of the children.

13. I remind myself that it is only open to me to interfere with a FtT decision if it contains a material error of law; my task is not to consider whether the decision was necessarily one that another judge would have come to. The judge's decision, although evinces a substantive consideration of relevant factors weighing for and against the claimant and for the above reasons is not vitiated by legal error.

Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 20 June 2014