



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/18444/2013
VA/18445/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 November 2014

Determination Promulgated
On 21 November 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

Entry Clearance Officer - Dhaka

Appellant

and

Ataur Rahman

Famita Akter

[No anonymity direction made]

Claimants

Representation:

For the claimants:

Mr T Gainsford, instructed by Charles Simmons Solicitors

For the appellant:

Mr S Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The claimants, Ataur Rahman, date of birth 10.2.57, and his, daughter Famita Akter, date of birth 3.4.91, are citizens of Bangladesh.
2. This is the appeal of the Entry Clearance Officer against the determination of First-tier Tribunal Judge Callender Smith, promulgated 5.9.14 allowing on human rights grounds the appeals of the claimants against the decisions of the respondent, dated

15.9.13, to refuse entry clearance to the United Kingdom as visitors pursuant to paragraph 41 of the Immigration Rules. The Judge heard the linked appeals on 2.9.14.

3. First-tier Tribunal Judge Andrew granted permission to appeal on 21.10.14.
4. Thus the matter came before me on 21.11.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Callender Smith should be set aside.
6. As this was a decision made after June 2013, there is no right of appeal on immigration grounds. However, the grounds raised human rights, which does entitle the claimant to a right of appeal.
7. In summary, the sole ground of appeal by the Entry Clearance Officer is that pursuant to Gulshan [2013] UKUT 00640 (IAC), the First-tier Tribunal should not have proceeded to carry out an article 8 ECHR assessment of private and family life without finding that there were compelling circumstances insufficiently recognised in the Rules for doing so and justifying, exceptionally, granting leave to remain outside the Rules on the basis that the decision was unjustifiably harsh.
8. Permission to appeal was granted on the basis that it was arguable that the judge did not give proper consideration to article 8 and in particular did not identify compelling or exceptional circumstances.
9. I find that the First-tier Tribunal judge was correct to observe at §21 that human rights grounds were pleaded in the grounds of appeal and not simply limited to grounds referred to in section 84(1)(c) of the Nationality Immigration and Asylum Act 2002. The First-tier Tribunal Judge is required in accordance with section 86 of that Act to determine the appeal on the grounds put forward. To do otherwise would be a breach of a statutory requirement. A failure to consider the article 8 claim would be likely to render the decision non-compliant with section 6 of the Human Rights Act 1998.
10. The Entry Clearance Officer might have challenged the basis of the proportionality decision, but that was not raised as a ground of appeal and there was no application to amend the grounds of appeal.
11. At §22 the judge made a peculiar finding that the decision of the Entry Clearance Officer was neither lawful nor proportionate by failing to consider the article 8 claim. If the judge considered that the decision was not in accordance with the law, the correct approach would have been to allow the appeal to the limited extent that it remains for the Entry Clearance Officer to make a decision that is in accordance with the law. However, no complaint has been made about this part of the decision. In any

event, it is open to the First-tier Tribunal Judge to apply the correct law, even if the Entry Clearance Officer did not do so.

12. In the circumstances there is no merit in the grounds of appeal.

Conclusion & Decision:

13. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each claimant remains allowed on human rights grounds.

Signed: Date: 21 November 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee award was made in the First-tier Tribunal and the situation has not changed.

Signed: Date: 21 November 2014

Deputy Upper Tribunal Judge Pickup