



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/06622/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 7 October 2015

Decision and Reasons Promulgated
On 8 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

EREEFA NAZAM

Appellant

and

ENTRY CLEARANCE OFFICER COLOMBO

Respondent

Representation:

For the Appellant: Mr H Farook, the sponsor

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against the decision of the ECO of 2 October 2014 to refuse her application for entry clearance to visit her family in the UK for 2-3 months. First-tier Tribunal Judge Jones dismissed the appeal.
2. The appellant's right of appeal in this case is limited to the grounds that the decision is unlawful on race discrimination grounds or under section 6 of the Human Rights Act 1998. There is no allegation of race discrimination in the appellant's grounds of appeal to the First-tier Tribunal or elsewhere. The issue for the First-tier Tribunal Judge was therefore whether the decision to refuse entry clearance breaches the

appellant's right to private life or family life with her relatives in the UK. The First-tier Tribunal Judge correctly identified this as the issue in the determination.

3. The First-tier Tribunal Judge noted the evidence given by the sponsor that he was to provide the £1000 to be available to the appellant for her visit and that the ECO had therefore been wrong to refuse the application on the basis that the appellant had not provided evidence that she had these funds. The Judge accepted the sponsor's evidence that the appellant had a genuine reason for her visit, to provide practical and emotional support to her daughter at the time of her confinement and the birth of her child, and that she had previously left the UK after a visit in similar circumstances previously. However the Judge said that, even accepting the sponsor's evidence, she could not allow the appeal on the grounds that it is wrong under the Rules because the only ground she could consider is whether the decision breaches the appellant's rights under the European Convention on Human Rights.
4. The Judge went on to say [13];

"I accept that there are emotional ties between the appellant and her relatives in the UK and the sponsor is providing her with some financial support. But, having regard to the guidance in Mostafa, I find her relationship with them is not so unusual or exceptional as to engage Article 8 of the Convention. Her appeal cannot therefore succeed."
5. Permission to appeal was granted on the basis that it is arguable that the First-tier Tribunal Judge may not have given sufficient reasons for finding that, for Article 8 purposes, there is no family life between the appellant and her UK based relatives.
6. I heard submissions from Mr Farook who said that the appellant has a family relationship with himself, her daughter and their three children who are all based in the UK. He submitted that it is necessary for the appellant to visit the UK for the relationships to evolve and develop. The appellant can visit for a few months at a time whereas the sponsor and his family can only travel to Sri Lanka for a few weeks at a time, when work and school holidays permit. He also pointed out that it makes more financial sense for the appellant to come to the UK than for a family of five to travel to Sri Lanka. He submitted that the maintenance of family ties through visits is important in his culture. He said that the appellant has applied for entry clearance on 6 occasions and was granted entry clearance only once, when she stayed for three months and returned to Sri Lanka. He also said that he provides the appellant and her husband with financial support. He submitted that not all of his oral evidence was taken into account by the First-tier Tribunal Judge.
7. Dealing with the last point first I am satisfied that the First-tier Tribunal Judge took all of the evidence into account. The Judge need not set out all of the evidence. The Judge was clear that she accepted that the sponsor is credible. The Judge did not fail to consider any evidence which is of relevance to the issues to be determined in this case.
8. In the decision in Kaur (visit appeals; Article 8) [2015] UKUT 00487 (IAC) the Upper Tribunal gave the following guidance as summarised in paragraph 3 of the head note;

“3. Unless an appellant can show that there are individual interests at stake covered by Article 8 "of a particularly pressing nature" so as to give rise to a "strong claim that compelling circumstances may exist to justify the grant of LTE [Leave to Enter] outside the rules": (see SS (Congo) [2015] EWCA Civ 387 at [40] and [56]) he or she is exceedingly unlikely to succeed. That proposition must also hold good in visitor appeals.”

9. I accept that the First-tier Tribunal Judge could have been clearer in her finding as to whether there is family life between the appellant and her UK based family. However, in saying that there is nothing ‘unusual’ or ‘exceptional’ in so as to engage Article 8 [13] the Judge makes it sufficiently clear that she does not accept that family life has been established because there is nothing over and above the normal emotional ties between the appellant and her adult daughter and son-in-law and her grandchildren.
10. In my view it is clear from the determination as a whole and the evidence before the Judge why she made the decision that there was no family life within Article 8. In these circumstances the Judge did not have to go on to consider Article 8 (2) and issues of proportionality. Even if the Judge had accepted that there is family life within Article 8 in this case and gone on to consider proportionality she would have had to weigh the public interest in the maintenance of immigration control against any interference in family life. Given her finding that there is nothing unusual or exceptional in this case it is inevitable in my view that would have reached the conclusion that any interference with family life is proportionate. This is particularly so given that it is open to the appellant to make a fresh application for entry clearance with all relevant evidence.
11. Accordingly the Judge approached this appeal properly. As Ms Fijiwala acknowledged, the Judge correctly looked at the Rules and found that they were met. Having considered the evidence relating to the Rules the Judge went on to consider Article 8. In my view, when read in the context of the determination as a whole, the finding at paragraph 13 that there is no family life for the purposes of Article 8 was open to her.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

The decision of the First-tier Tribunal shall stand.

Signed

Date: 7 October 2015

A Grimes
Deputy Judge of the Upper Tribunal