



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: VA/18587/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 August 2015**

**Decision & Reasons Promulgated  
On 10 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SUBI BEGUM  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr I Khan, Counsel, instructed by JA Stifford Law, Solicitors

**DECISION AND REASONS**

**The History of the Appeal**

1. The Appellant, a citizen of Bangladesh, applied, together with her mother, for entry clearance to visit in the UK her husband, who has two children by his previous marriage to his first wife, the Appellant's sister, who has sadly died.
2. The applications were refused. The ensuing appeals were heard by Judge Cockrill sitting at Taylor House on 13 January 2015. Both parties were represented, the appellants by Mr Khan. In a determination of 13 January

2015, promulgated on 19 January, the judge allowed the appeal of the Appellant, whilst dismissing that of her mother. At the hearing before me Mr Khan said that the mother's appeal had been withdrawn.

3. The Respondent sought permission to appeal, essential on the grounds that the Article 8 proportionality assessment by the judge was inadequate and was being utilised beyond its proper scope as a general dispensing power, bearing in mind that it is virtually the only ground of appeal in a visit visa application. As subsequently supplemented by procedural directions, permission to appeal was granted on 4 March 2015, by Judge Chambers in the following terms:
  - “1. Permission is sought in time, to appeal against the decision of Judge of the First-tier Tribunal T Cockrill promulgated on 19 January 2015.
  2. The ground seeking permission challenge the findings of the Judge that family life arrangements would be breached by refusing entry clearance to the appellants to visit the Sponsor.
  3. The grounds are arguable. Permission is granted.”
4. The Sponsor attended the error of law hearing before me, which took the form of submissions. I have taken these into account, together with the skeleton argument of Mr Melvin. I reserved my decision.

## **Determination**

5. **Adjei (Visit visas - Article 8) [2015] UKUT 261 (IAC)** held that the first question to be addressed in an appeal against refusal of entry clearance as a visitor where only human rights grounds are available is whether Article 8 is engaged at all. If it is not, which will not infrequently be the case, the Tribunal has no jurisdiction to embark upon an assessment of the decision of the Respondent under the Immigration Rules and should not do so. If Article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the Rules, because that may inform the consequent proportionality balancing exercise. As held in **Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)**, this is capable of being a weighty, although not determinative, factor in deciding proportionality.
6. The issue is whether Judge Cockrill considered whether Article 8 was engaged at all. He did not articulate and answer this question. He addressed the application of Article 8 in paragraphs 43, 50 and 53, concluding that the level of interference with the right of the Appellant to respect for her family life was sufficiently marked and disproportionate to the need for the maintenance of effective immigration control. These paragraphs may be construed to either conclusion about whether he considered whether Article 8 was engaged at all. Read in the context of the decision as a whole, which reviews all of the evidence, I conclude that he did address this question, concluding that Article 8 was engaged.

7. On that basis, the application for permission to appeal argues that the proportionality assessment is inadequate. The judge considered the reasons given by the Sponsor preventing him travelling to Bangladesh. The Respondent submits in the permission application that he had visited Bangladesh in order to marry the Appellant and that he was able to do so. This becomes a disagreement upon the judicial findings of fact. It does not, however, evidence an error of law. I find that the conclusions which the judge reached were reasonably open to him on the evidence and not therefore erroneous in law.
8. Mr Melvin added an additional oral submission that the approach of the judge was perverse. On a holistic assessment of the decision, I do not accept this challenge.
9. I accordingly conclude that the decision of the judge does not reflect an error of law.

### **Decision**

10. The original determination does not contain an error of law and is upheld.
11. No anonymity direction is made.

Signed

Dated: 5 August 2015

Deputy Upper Tribunal Judge J M Lewis