



IAC-FH-AR-V1

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

Appeal Number: VA/01650/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 January 2016  
Extempore**

**Decision & Reasons Promulgated  
On 29 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ENTRY CLEARANCE OFFICER - CHENNAI**

Respondent

**and**

**THIRUMARAN SELLATHURAI  
(ANONYMITY DIRECTION NOT MADE)**

Claimant

**Representation:**

For the Appellant: Miss N Willocks-Briscoe, Home Office Presenting Officer  
For the Respondent: Miss L Turnbull, Counsel, instructed by S Satha & Co

**DECISION AND REASONS**

1. The respondent in this case, the Entry Clearance Officer, appeals with permission against the determination of First-tier Tribunal Judge Callender-Smith promulgated on 3 August 2015. That appeal was a decision of the Entry Clearance Officer to refuse Mr Thirumaran Sellathurai (to whom I refer as the claimant) entry clearance as a family visitor in order to visit his brother who lives and works in the United Kingdom, as he was not satisfied that he met the requirements of paragraph 41 of the Immigration Rules.

2. The matter first came before the First-tier Tribunal on 5 February 2015. The Judge allowed the appeal under the Immigration Rules which he should not have done, there being no jurisdiction to do so. Permission to appeal that decision was granted to the Entry Clearance officer. In a decision by Deputy Upper Tribunal Judge Appleyard promulgated on 3 June 2015, that appeal was allowed. The findings of fact were nonetheless preserved and the matter was remitted to Judge Callender Smith again to make a further decision on Article 8.
3. In his second decision which gave rise to this appeal, Judge Callender Smith directed himself as to the five steps to be undertaken in line with the decision in **Razgar** and concluded that all of the five questions fell to be answered positively. He found that family and private life were engaged; that there was a sufficient degree of gravity in this case and, ultimately, that it would on the facts of this case be disproportionate to refuse entry clearance.
4. The thrust of the Entry Clearance Officer's grounds of appeal to the Upper Tribunal are that the judge misdirected himself in law in that within the meaning of Article 8 family life will not normally exist between adult siblings in which case Article 8 would not be engaged and that there had in this case been no proper findings as to family life.
5. When the matter came before me Miss Willocks-Briscoe for the Entry Clearance Officer submitted that it was clear that on this case the judge had simply failed to make any findings with respect to whether family life existed or not and that accordingly the decision was flawed.
6. Miss Turnbull for the claimant submits that in this case it had been open to the judge to conclude that family life did exist in this case given the particular circumstances in which the claimant was living in Sri Lanka, where he has significant caring responsibilities both for the sponsor and his mother and also looking after a younger brother.
7. It is submitted that although there is no indication of financial dependency in this case that there is clear emotional dependency between the brothers and on that basis the principles set out in the decision in **Kugathas** [2003] EWCA Civ 31 are met.
8. I consider, having looked at both decisions of the First-tier Tribunal that there is no indication that the judge turned his mind as to the question of whether there was family life in this case. It is established law that there is in the case of adult siblings no presumption of family life. It was thus incumbent on the judge to consider that issue and to make findings thereon.
9. Whilst it is implicit within the judge's statement that there are consequences of sufficient gravity to engage Article 8 private and family life rights that he had found family life exists, there is simply no reasoning for this and no findings of fact which could explain to the Entry Clearance

Officer why it was that he concluded that there was, unusually in this case, family life. Given that I am satisfied that that finding was in error I am satisfied also that it is material because if family life is not established then the remainder of the questions identified in **Razgar** would not fall to be asked. On that basis the decision that entry clearance decision was disproportionate cannot stand and accordingly for these reasons I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law which affected the outcome and I set it aside.

10. In remaking the decision I have taken into account the evidence of the sponsor who appeared before me to adopt his witness statements and also the declaration he had made in support of the initial application for judicial review. He was not cross-examined.
11. The primary issue in this case is whether there has been family life established between the sponsor and his brother, the respondent. It is sufficiently clear from the decision of the Upper Tribunal in **Kaur (Visit appeals Article 8) [2015] UKUT 00487** that the issue of whether there is family life is of significant importance. That is referred to in particular at paragraph 6 where the principles set out in **Mustafa** are identified in which it is stated that it is only in unusual circumstances that a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where there the relationship is that of husband and wife, other close life partners or a parent and minor child.
12. That is not to say that there cannot exist family life for the purposes of Article 8 between two adult siblings. That much is clear from the **Kugathas** and **Ghising** [2012] UKUT 00161 (as approved in **Gurung & others** [2013] EWCA Civ 8) adopting the characterisation of the nature of family life adopted by the Upper Tribunal in that case. If the family life does not exist then by definition there can be no interference with it and there is of course therefore no need to consider questions 3, 4 and 5 as identified in **Razgar** and it would not be possible to make any finding on proportionality.
13. The evidence of the relationship between the sponsor and his brother is set out in the various documents which have been produced to me. These are in chronological order of their creation, a statement at page 83 of the bundle, which is headed "Additional Information". This is provided by the claimant himself and sets out his circumstances in Sri Lanka. This is followed by an affidavit by the claimant which confirms at page 84 his relationship to the sponsor. That is not in dispute.
14. Further evidence is given in a declaration of sponsorship at page 94 which again sets out the circumstances of the sponsor's job and family in the United Kingdom. Little is said in any of these documents about any degree of dependency although it is implicit that there is close relationship between the sponsor and his brother. But it is equally important to note that both of them have families of their own and as Miss Willocks Briscoe

submitted, there is no evidence here of there being any financial dependency. Further evidence appears in the witness statements which have been produced by the sponsor, primarily a statement of 4 February 2015 supplemented by an additional statement made on 10 July 2015.

15. Again this set out the circumstances of when and how they live and it is explained that the claimant looks after the family home. He runs his own business and cares for his mother and for the younger brother who has Down's Syndrome. It is said at paragraph 6 of the first statement that the sponsor has a particularly good relationship with his brother who is said to be a successful businessman and has a comfortable and fulfilling life.
16. The explanation for the visit is that the sponsor wishes his brother to come and see him in the United Kingdom and it is said further that this is because he feels he owes him this and also that there are now significant difficulties in him continuing the visits he has until now made on a regular basis of roughly twice a year since 2002.
17. I have no reason to doubt the evidence that there is a close relationship between the claimant and his brother. It is also unchallenged that the sponsor's daughter has been badly affected by the decision but I do not consider that any of this evidence comes anywhere near establishing that there is unusually in these circumstances a family life between the appellant and the sponsor that exists for the purposes of Article 8. That is not to say they do not have a close bond, merely that it does not meet the necessary requirements to engage Article 8.
18. My reasons for this are that both adults are clearly capable of running their own lives, both are successful in their own right and whilst I accept that they share responsibility for their elderly mother and a younger brother who has Down's Syndrome, that does not indicate any degree of the necessary dependency that there would need to be to establish unusually in these circumstances a family life.
19. It is not suggested that there is any financial interdependency and I am not satisfied either on the evidence before me that there is any significant emotional dependency between the two. Insofar as their relationship with the mother is concerned, this would appear to be that both of them share responsibilities to the mother but that does not in my view indicate or show to the necessary standard that they have a family life together with.
20. Taking the evidence as a whole, I am not satisfied that it has been shown that the claimant has established a family life with his brother. It therefore follows that there being no family life it is difficult to see how it could be said that Article 8(1) of the Convention is engaged and I am not satisfied on the particular facts of this case that it is so engaged.
21. On that basis it is unnecessary for me to consider the matter any further and in terms of the **Razgar** question it is unnecessary for me to answer questions 2 to 5. Further, and in any event, even were I wrong in that

matter I am not satisfied that any interference given the nature of the relationship which exists between two brothers who have equally established themselves properly in business who continue their relationship by means other than visits through other communications, that the interference is of sufficient gravity to engage the Convention in any event.

22. Accordingly I find that the claimant has not satisfied me that the decision to refuse entry clearance was in breach of his obligations pursuant to Article 8 of the Human Rights Convention and I therefore dismiss the appeal on that basis.

### **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by dismissing the appeal.
3. No anonymity direction is made.

Signed

Date: 27 January 2016

Upper Tribunal Judge Rintoul

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 27 January 2016

Upper Tribunal Judge Rintoul