



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: VA/05444/2014**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2016**

**Decision & Reasons  
Promulgated  
On 4 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**RUBACCA AZIZ GILL  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kotas, Home Office Presenting Officer  
For the Respondent: Ms S Walter (Appellant's sister and sponsor)

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

No anonymity order was made by the First-tier Tribunal. I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Gillespie promulgated on 6 August 2015 ("the Decision").

For ease of reference, I refer below to the parties as they were in the First-Tier Tribunal albeit that the Secretary of State is technically the Appellant in this particular appeal. Permission to appeal was granted to the Secretary of State on 20 November 2015 by First-tier Tribunal Judge Holmes. The Secretary of State's decision is in fact that of the Entry Clearance Officer dated 30 July 2014 refusing the Appellant entry clearance as a visitor from Pakistan.

2. The Appellant intended to come to the UK to visit her sister, Mrs Walter. At the time of the application her sister was pregnant and was encountering complications. Since then and prior to the appeal hearing her sister gave birth. However there are further compassionate circumstances noted by the Judge and in relation to which I have heard from the Appellant's sister, Mrs Walter at the hearing today. The Appellant's brother-in-law is on a waiting list for a heart bypass operation. That is an urgent waiting list and it appears that he is quite ill. I am told that his consultant supports the Appellant coming to the UK on the basis it would be of assistance to her sister who has three children all under the age of eight, who does not drive and who will have some difficulties in dealing with the children in her husband's absence whilst he is in hospital and some difficulties in visiting her husband when he is admitted for his operation.
3. This is not a judicial review of the Entry Clearance Officer's decision but an appeal. As such the Appellant had only a limited right of appeal and could appeal only on human rights grounds. The Judge therefore considered the appeal on Article 8 grounds and concluded that the appeal should be allowed on that basis.
4. The Secretary of State appeals on one ground only, namely that the Judge misdirected himself in law because he failed to have regard to the case law concerning the engagement of Article 8 in cases involving adult siblings. He made no reference to the relevant case law. The Secretary of State relies on the case of **M S (Article 8 - Family Life - Dependency - Proportionality) Uganda** [2004 UKIAT 00064, **Kugathas v SSHD [2003] EWCA Civ 31** and **Ghising and others** [2013] UKUT 00567 (IAC). Since those decisions there has been a further judgment from the Court of Appeal in **Singh and Singh v SSHD [2015] EWCA Civ 630** to which I will return.
5. The Secretary of State also says that the Judge erred in moving directly to finding an interference with Article 8 arising from the fact that he found that the Appellant satisfies the requirements of Rule 41 of the Immigration Rules without first considering whether family life exists at all. She relies in that regard on the case of **Adjei (visit visas - Article 8) [2015] UKUT 0261 (IAC)** .
6. The basis for the Entry Clearance Officer's refusal was that he did not consider that the Appellant's circumstances in Pakistan were such that she had any incentive to return. In relation to that decision, the Judge says this at [3] of the Decision:

“The only requirements placed in issue by the respondent were those relating to the genuineness of the intentions of the appellant as a visitor, namely Rules 41(1) and 41(2). In particular the respondent is not satisfied that the appellant enjoys settled circumstances in Pakistan such that she has any incentive to return and intends to enter the United Kingdom solely for the purpose of a family visit.”

7. Having recited the evidence given to him by the Appellant’s sister the Judge concludes at [6] as follows:

“On these facts supported by the evidence given, I am satisfied that the appellant did in fact meet all the requirements for the grant of entry clearance and that she did so at the time of decision.”

8. I make that point because it was suggested to me by Mr Kotas, and I agree, that having found that the appellant was a genuine visitor, certainly at the time of the Entry Clearance Officer’s previous decision, and those findings not having been challenged it is appropriate for me to set out that fact so that the Entry Clearance Officer can be asked to take note of those findings if the Appellant makes any further application.

9. However the error which is asserted by the Secretary of State in the Decision does not relate to that finding but the allowing of the appeal on Article 8 grounds. In that regard, what the Judge has done is to transpose the finding that the Appellant could satisfy the requirements of the Rules to the issue of whether Article 8 is engaged. The fact that the Appellant could satisfy the Rule may be material to the issue of proportionality of the refusal if Article 8 is engaged but it is not the starting point for the finding that Article 8 is engaged.

10. That question has to be answered by consideration of whether there exists family life between the Appellant and her sister, Mrs Walter. The cases on which the Secretary of State relies suggest that what is required is an emotional dependency. As the case of **Singh and Singh** makes clear, that will depend on the individual facts of the case. **Singh and Singh** was itself a case involving an adult child and his parents and it is perhaps easy to see why the Court of Appeal reached the decision that it did on the facts of that particular case. However, having reviewed the previous case law such as **Kugathas** and a number of ECtHR authorities, the crux of the Court of Appeal’s reasoning is as follows:

“[24] I do not think that the judgments to which I have referred lead to any difficulty in determining the correct approach to Article 8 in cases involving adult children. In the case of adults in the context of immigration control there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in *Kugathas* did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more.....”

I pause there because the rest of that paragraph deals with the relationship between a young adult and his or her parents which is not relevant here.

11. Turning then firstly to the question of whether there is an error of law in the Decision, the Judge did not consider at all the question of whether there existed an element of dependency between the Appellant and Mrs Walter and whether the relationship was such as to found a family life. As sisters, they are clearly family but that is not enough to justify a finding of family life. There is no presumption; it all depends on the facts. The Judge has failed to refer to any of the relevant case law in this regard and in the circumstances I am satisfied that there is an error of law in the Decision. It therefore falls to me to remake the Decision.
12. I have listened carefully to everything which Mrs Walter has said to me today. I sympathise greatly with her circumstances, with the illness of her husband and the difficulties she may have in coping with the children in the absence of her sister or other family support to assist her. However those difficulties cannot form the basis of the interdependency such as to engage Article 8. They may reflect the level of interference but they cannot create the engagement in the first place. There is no evidence that the Appellant and her sister are particularly close or have remained in particularly close contact or that one supports the other on a regular basis which might or might not lead to a finding that Article 8 is engaged. In this case, there is not enough evidence to even get that issue off the ground.
13. On the evidence before the Judge, therefore, I am quite unable to find that Article 8 is engaged in this case. That disposes of the appeal before me which therefore stands dismissed. As I have already noted, the Judge found (and there is no challenge to these findings) that, at the time of the ECO's decision under challenge, the Appellant satisfied the Immigration Rules because the Judge found that she was a genuine visitor. It is open to the Appellant to make a further application on that basis to the Entry Clearance Officer and to rely on those findings.
14. Mrs Walter suggested to me at one point in her submissions that the Appellant is not entitled to make a further application within a period of six months if she has had an appeal dismissed. Mr Kotas was unaware of such a provision and I cannot find any foundation for that submission in any of the papers which I have seen. However, assuming that to be right, I make plain that there are changed circumstances in this case both in the fact that Mrs Walter's husband is quite ill and in the fact that Mrs Walter requires her sister to come and provide her with support during the period when her husband is in hospital. The fact that the findings in this appeal are that the Appellant is (or was at the time of the decision) a genuine visitor is also a changed circumstance which the Entry Clearance Officer may well need to take into account when considering any further application.

**Notice of Decision**

**I am satisfied that the First-tier Tribunal Decision contains a material error of law. I set it aside. I re-make the Decision by dismissing the Appellant's appeal.**

Signed

A handwritten signature in black ink, appearing to read 'J. Smith', written in a cursive style.

Upper Tribunal Judge Smith

Date 2 February 2016