



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

Appeal Number: VA/00516/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 April 2017**

**Decision & Reasons Promulgated**

**On 08 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**ENTRY CLEARANCE OFFICER - BANGLADESH**

Appellant

**and**

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

Respondent

Representation

For the Appellants: Mr P. Singh, Home Office Presenting Officer

For the Respondent: Mr A. Islam, Counsel, Chambers of Aminul Islam

**DECISION AND REASONS**

1. The respondent (hereinafter “the claimant”) is a citizen of Bangladesh, born on 10 November 1979. Her husband and son (born on 16 February 2005) are British citizens living in the UK. On 10 November 2014 she applied for entry clearance to visit the UK for four weeks. Her application was considered by the appellant (“the ECO”) under Paragraph 41 of the Immigration Rules and refused on the basis that it was not accepted that she intended to leave the UK at the end of her visit.

2. The claimant appealed and her appeal was heard by First-tier Tribunal Judge Shamash. In a decision promulgated on 14 October 2016, the judge allowed the appeal. The ECO appeals, with permission, against Judge Shamash's decision.

### Decision of the First-Tier Tribunal

3. The judge found that the claimant is the mother of a minor child, aged 10 at the time of the application, who had been in the UK for under a year when the application was made. The claimant had been her son's sole carer before he moved to the UK (with his father) and he now lived with his aunt (the claimant's sister).
4. Having directed herself that the sole ground of appeal in visit visa cases is whether there is a breach of Article 8 ECHR and that the relevance of the Immigration Rules is to inform the Article 8 decision, the judge applied the five stage test delineated in Razgar.
5. The judge found that Article 8 was engaged and refusing entry clearance interfered with the claimant's family life.
6. At paragraph 26 the judge assessed whether the interference with Article 8 rights was in accordance with the law and stated:

*"I accept the evidence of the sponsor, Mrs Khanom, that there is sufficient money to meet the costs of the entire visit, to pay for the ticket, that the accommodation has been certified as suitable....There is evidence of family ties in Bangladesh and I accept the evidence of Ms Khanom that the [claimant] is responsible for caring for her mother law. I therefore find that the decision of the respondent is not in accordance with the law".*

7. The judge then proceeded to assess the proportionality of refusing the claimant entry to the UK. The judge stated, at paragraph 32, that she weighed the concerns of the ECO that the claimant would not return to Bangladesh against the needs of a child to see his mother. At paragraph 35 the judge stated that the claimant's son, as a British citizen, has the right to see his mother and is not in a position on his own to travel to see her in Bangladesh.
8. With respect to the ECO's concern about the claimant not returning to Bangladesh, the judge found at paragraph 36:

*"I am satisfied that the [claimant] comes from a traditional Bangladeshi family, that she lives currently with her mother in law and I find on the balance of probabilities that she intends to return to look after her mother in law."*

### Grounds of Appeal and Submissions

9. The grounds of appeal argue that the refusal decision does not amount to an interference with family life as there are no reasons why the claimant's son's father could not take her son to Bangladesh or why her son could not travel alone. The grounds refer to a website for Biman Bangladesh Airlines and stated that it caters for unaccompanied minor children. The grounds also state that the decision to deny the claimant entry was proportionate in the interests of effective immigration control.
10. Before me, Mr Singh, argued that there was nothing to prevent the claimant's son, accompanied by his father or aunt, or travelling unaccompanied, visiting his mother. It was the family's choice to bring him to the UK and the family life between him and his mother does not require them to be in the same country. Mr Singh highlighted the concerns of the ECO about the lack of intention on the part of the claimant to return.
11. Mr Islam's response was that it was open to the judge to find family life and that the finding that the Immigration Rules were satisfied was an important factor in proportionality assessment under Article 8. He argued that the judge gave proper consideration as to whether the claimant's son could reasonably be expected to travel to Bangladesh.

### Consideration

12. The first question for the judge to address was whether Article 8(1) of the ECHR was engaged. As explained in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC), this is an intensely factual and contextual question. Whilst it will frequently not be the case that Article 8 is engaged where there is a relationship between an adult child and his/her parent, it is not unusual for a case to come within the scope of Article 8(1) where the relationship in question concerns a parent and a young child. In *Mostafa* at para [24] the Tribunal stated:

“... In practical terms this [a refusal of entry coming within the scope of Article 8(1)] is likely to be limited to cases where the relationship is that of husband and wife or other close life partners **or a parent and minor child** and even then it will not necessarily be extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together.”  
[emphasis added]

13. The evidence before the judge was that the claimant speaks to her (then, 11 year old) son almost every day and that she was his sole carer until he moved to the UK, less than a year before the application was made. The evidence also showed that the claimant's sister (with whom the claimant's son resides) has looked into options for the son to travel to Bangladesh to visit his mother but does not see this as realistic in the foreseeable future. In these circumstances, I am satisfied that the judge was entitled to find that denying the claimant entry to the UK interfered with her and her son's family with consequences of such gravity as to potentially engage Article 8.

The fact that the claimant's son might be able to travel to Bangladesh on his own does not alter this assessment.

14. Having found Article 8 was engaged, the next question for the judge to consider was whether the interference was in accordance with the law. The judge addressed this at paragraphs 26 and 36 of the decision (cited above at paragraphs 6 and 8). It was for the judge to evaluate the evidence on this issue, which she has done, and it was open to her to conclude that, on the balance of probabilities, the claimant would return to Pakistan and that the Immigration Rules were satisfied.
15. I also cannot discern an error in the judge's approach to the assessment of whether refusing the claimant entry to the UK was proportionate to the legitimate aim of enforcing immigration control. The judge has considered a number of factors, one of which was that the claimant was able to satisfy the Immigration Rules. There was no error in treating this as a weighty factor (see the headnote to Mostafa). In the proportionality balancing exercise the judge has taken into account all material factors. The weight afforded to each factor was a matter for her and the grounds amount to no more than a disagreement with her conclusion.

#### Decision

- A. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- B. The appeal is dismissed.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 5 May 2017

