Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/ 06428/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16th October 2015	**On 23rd November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

MS SANA NADEEM

Claimant

Representation:
For the Appellant: Mr S Whitwell, Senior Presenting Officer
For the Claimant: Mr S Canter, Counsel

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Howard allowing the Claimant's appeal on human rights grounds with reference to Article 8.

2. In a Refusal Letter dated 24 April 2014, the Entry Clearance Officer (ECO) refused the Claimant's application for entry clearance as the child of a person present and accorded refugee status in the UK pursuant to paragraph 352D of the Immigration

Rules. The First-tier Tribunal promulgated its decision allowing the Claimant's appeal against that decision on 27 May 2015.

3. The Appellant appealed against that decision. The grounds upon which permission to appeal was granted may be summarised as follows:

   (i) It is arguable that the judge erred in miscalculating the age of the Claimant; and

   (ii) It is arguable that the judge erred in his consideration of Article 8 in the 'overall circumstances'.

4. The Appellant was granted permission to appeal by First-tier Tribunal Judge Hollingworth. I made clear to the parties that my view was that the grant of permission was limited to the *AM (S.117B)* [2015] UKUT 260 (IAC) point raised in ground 2, given that there was no overall Article 8 point taken in the grounds.

5. I was provided with a Rule 24 response from the Claimant's previous counsel and with a Skeleton Argument in supplementation by her present counsel, Mr Canter.

No Error of Law

6. At the close of submissions, I indicated that I would reserve my decision, which I shall now give. I do not find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.

7. In relation to the first ground, I find that the Secretary of State's appeal must fail given the immateriality of the error that is revealed. The Claimant accepts there was a mistake of fact in relation to her age. Her date of birth is 25 January 1995. She was 18 years of age at the date of application on 16 January 2014, whereas the judge thought she was 17 years of age. She was 19 years of age at the date of decision, and the judge thought she was 19 years of age as is clear from paragraph 25(5) of the determination.

8. The error in ground 1 therefore comes down to a misapprehension of fact by the judge in mistakenly thinking that the Claimant was 17 years of age at the date of application whereas she was 18 years of age. The Claimant accepts that her age may have affected the proportionality assessment however as is pointed out, the appeal succeeded outwith the Immigration Rules based upon the judge's evaluation of Article 8. It is true that the judge considered the rules for entry clearance applicable to minors (namely paragraph 297) which must have affected his decision however; such consideration would not have made any difference to the outcome of the appeal because the remainder of the judge's findings were clearly in favour of the Claimant. This is obvious from the subparagraphs of paragraph 25 that discuss the family's history, cultural background and religious and other circumstances.

9. In dealing with the questions gauging proportionality pursuant to *Razgar*, the judge notes at paragraph 25(1) that the Claimant enjoys family life with her parents notwithstanding that she is over 18 years of age. Then, in considering the second question at paragraph 25(2) the judge notes the Claimant's age is 19 years of age. In

short, the Claimant's age as an adult is clearly at the forefront of the judge's mind when the Article 8 consideration is approached.

10. The judge then further notes that the Claimant is a young adult, and has not established an independent life. It is also noted that the Claimant's father was a refugee and so could not visit his daughter in Pakistan.

11. The Claimant's ability in English was not challenged at the First-tier hearing but at any rate the judge was satisfied that she would quickly become proficient in English. It is also noted that she is financially supported by her father and in particular that there was no reason to consider that the Claimant would become a burden on UK taxpayers. Further still, it is crucial to the outcome of the appeal that the Claimant's family life and inability to continue that family life was properly balanced against the statutory form of the public interest, given shape by section 117B(1) of the Nationality, Immigration and Asylum Act 2002.

12. It is clear given that the father is a recognised refugee that family life could not be pursued in Pakistan and consequently, the proportionality of the interference in family life is placed under greater strain.

13. By the fifth paragraph of that consideration and the proportionality question, it is clear that the balancing exercise performed beforehand results in the scales tipping in favour of the Claimant overall.

14. The conclusion the judge reaches is furthermore in keeping with the recent Court of Appeal authority of *Singh & Anor v Secretary of State for the Home Department* [2015] EWCA Civ 630 at [24] where the Court confirmed that adult children do not lose their family life ties once achieving the age of majority, particularly where they have not formed an independent family unit of their own. This echoes the Court's findings previously made at [45] of *AP (India) v Secretary of State for the Home Department* [2015] EWCA Civ 89.

15. Therefore, with the misapprehension of fact removed from that balancing exercise, is it likely that the judge would have come to a different conclusion? In light of the above analysis of the judge's consideration and the binding authorities, I think not.

16. Turning to the remaining ground concerning the section 117B point, in my view, the fact that the judge considered the English language and financial independence factors in favour of the Claimant were merely two reasons given amongst many others for finding in favour of the Claimant. Those factors were balanced against the public interest (as already noted above) and the determination does not contradict *AM (S.117B)* as there is no independent entitlement to entry that the Claimant has accrued from consideration of these factors alone. Indeed, by reverse analogy, those factors would not result in a different outcome were they to be removed from the judge's consideration.

17. Consequently, the grounds do not reveal an error of law such that the decision should be set aside.

Decision

18. The appeal to the Upper Tribunal is dismissed.

19. The decision of the First-tier Tribunal is affirmed.

Signed Date

Deputy Upper Tribunal Judge Saini