



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/12720/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21st May 2014

Determination Promulgated
On 4th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR ORANE CARBY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Mitzi Stephenson-Golding
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Jamaica whose appeal to be allowed to visit his aunt was allowed by First-tier Tribunal Judge Napthine in a determination promulgated on 10th March 2014. Grounds of application were lodged on the basis that the judge had

made a material misdirection in law. It was noted in the determination that the Presenting Officer conceded that the Appellant had a right of appeal because he was visiting his aunt (paragraph 10). However the Appellant made his application on 6th May 2013 and the Regulations in force at that time were the Immigration Appeals (Family Visitor) Regulations 2012 which came into force on 9th July 2012 and do not include "aunt" as a qualifying relative.

2. As noted in the grounds, appeal rights are established by statute and therefore cannot be conceded where no such right exists. As such it was said that the judge had no jurisdiction to hear the case and allow the appeal.
3. Permission to appeal was granted by Designated First-tier Tribunal Judge McCarthy who noted that the Immigration Appeals (Family Visitor) Regulations 2012 (SI 2012/1532) in force from 9th July 2012 applied. As he put it a person only has a right of appeal against refusal of entry clearance as a visitor if they are visiting a person related in one of the ways specified in those Regulations. The list of relationships does not include nephew to aunt and it was clear that the Presenting Officer had misled the judge into thinking otherwise.
4. Thus the appeal came before me on the above date.

Submissions

5. Mr Duffy for the Home Office relied on the grounds. The Rules had changed on 9th July 2012 and this application was dated 6th May 2013. As such the rights of appeal to a judge were very limited and despite the concession by the Presenting Officer judges were creatures of statute and the concession was wrongly made. I was therefore asked to find that there was a material error in law, set aside the decision and in remaking it dismiss the appeal.
6. The Sponsor appeared and relied on the decision made by the judge. It had been accepted that the Appellant had a right of appeal because he was visiting his aunt. The Entry Clearance Manager had reviewed the application and said there were full appeal rights for a family visitor.
7. I reserved my decision.

Conclusions

8. There is no dispute that the Appellant applied for entry clearance as a visitor on 6th May 2013, the date of refusal by the Entry Clearance Officer being 3rd June 2013.
9. The Sponsor was quite right to say that the Entry Clearance Manager had reviewed the position and stated that the application was made prior to the withdrawal of full appeal rights for family visitors; and also that Counsel for the Home Office had said the same to the judge. However it was not disputed before me, nor could it be, that that is not the case. Clearly the Rules that were in place from 9th July 2012 applied and the list of relationships does not include nephew to aunt. As such the concession

made to the judge was wrongly made and a concession made against the terms of statute is wrong in law.

10. It follows from this that the judge made a material error of law in allowing the appeal as it was not open to him to do so in terms of the Regulations. I am therefore obliged to set the decision aside and make a fresh decision dismissing the appeal.
11. The remedy for the Appellant, given that the judge found he satisfied the requirements of paragraph 41, is to lodge a fresh application and he can point to the fact that Judge Napthine was satisfied that he met all the requirements of paragraph 41.

Decision

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
13. I set aside the decision.
14. I remake the decision in the appeal by dismissing it.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald