



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

Appeal Number: VA/18956/2013

THE IMMIGRATION ACTS

Heard at Field House, London

**Decision and
Promulgated**

Reasons

On 14 April 2015

On 17 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ENTRY CLEARANCE OFFICER, ABU DHABI

Appellant

and

HASSAN AYAZ KHAN

Respondent

Representation:

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer

For the Respondent: Mr A Jafar, instructed by Lee Valley Solicitors

DECISION AND REASONS

1. At the end of the hearing I gave my decision that the decision and reasons statement of First-tier Tribunal Judge Lal contained legal errors such that it had to be set aside and remitted to the First-tier Tribunal to be heard afresh. I reserved my reasons, which I now give.
2. The judge allowed the appeal, finding the decision was not in accordance with the immigration rules because he was satisfied Mr Khan intended to

leave at the end of his proposed visit. This had been the sole reason for refusal. The judge also found that Mr Khan's family life was not respected by the decision because it prevented family reconciliation following difficulties that arose from his brother, the sponsor, marrying outside the family.

3. The first legal error is that the judge did what he was not permitted to do. The appeal was against the decision of 15 September 2013 refusing entry clearance as a visitor under paragraph 41 of the immigration rules. Because the application for entry clearance was made after 25 June 2013, Mr Khan could only bring an appeal on race relations and/or human rights grounds. Although the grounds recognised this limitation and relied solely on human rights grounds, the judge did not. He made findings in relation to the immigration rules, reaching a conclusion opposite to that of the Entry Clearance Officer, regarding the appellant's intention to leave, even though he had no jurisdiction.
4. The second error arose from the failure of the judge to identify why Article 8 was engaged given the facts presented. He accepted there was family life but gave no reasons for so doing other than on the basis that Mr Khan was related to people living in the UK. As is clear from all sources of law (for example, Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)), relationship is not enough of itself to establish family life except with regard to the relationships between a husband and wife or between parents and their dependent children. This lack of reasoning undermines the findings made. Similarly, private life is not of itself established by a desire to visit (see, for example, Sun Myung Moon (Human rights, entry clearance, proportionality) USA [2005] UKIAT 00112). The failure to give adequate reasons is a legal error.
5. Mr Jafar sought to defend the judge's findings but could only do so by reference to evidence and arguments not mentioned by the judge. This approach merely confirms that there is inadequate reasoning and the statement must be set aside.
6. Mr Jafar sought to preserve the findings relating to Mr Khan's intention to leave the UK. I have decided that is not appropriate because the Tribunal has no jurisdiction in relation to the immigration rules relating to visitors and to preserve this finding would suggest that it had some jurisdiction after all. In addition insofar as the issue of intention to leave might be relevant to the human rights issues, it will be for the next judge to decide whether such a finding will be necessary at all.
7. I refer to the next judge having to decide because in the circumstances I have described, the judge having made significant procedural and other legal errors, the only proper course of action is for the appeal has to be remitted for hearing afresh.

Postscript

8. Following the hearing Mr Jafar asked my clerk to recall the hearing. Unfortunately, Mr Kandola had departed the hearing centre. His colleague, Mr Kyriacou, attended in his place. Mr Jafar said he had instructions and for

costs reasons the appellant and sponsor did not want to pursue the appeal and in order to preserve the finding as to intention to leave now wanted to withdraw the appeal.

9. I pointed out two factors that prevented me from acceding to this request. First, I had given my decision orally at a hearing under rule 40 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and that disposed of the proceedings, although I confirmed I would put it in writing with reasons. Secondly, in any event it was not Mr Khan's appeal; it was the Entry Clearance Officer's.
10. Mr Jafar advised that in the circumstances he would advise Mr Khan to pursue the remitted appeal in the First-tier Tribunal. Whether that occurs will depend on what future instructions are given.

Decision

The Entry Clearance Officer's appeal to the Upper Tribunal is allowed because the decision and reasons statement of Judge Lal contain errors on points of law. That decision and reasons statement is set aside and the appeal against the immigration decision of 15 September 2013 is remitted to the First-tier Tribunal.

Directions

The following directions apply to the remitted hearing unless they are superseded by other directions given by the First-tier Tribunal.

1. The remitted appeal is to be heard by any First-tier Tribunal Judge other than Judge Lal.
2. The only issue to be considered in the remitted appeal is Article 8 of the human rights convention.
3. The parties are at liberty to file and serve any documents on which they seek to rely but must do so at least 14 days before the hearing. Failure to do so may result in evidence not being admitted.

Signed

Date **14 April 2015**

Judge McCarthy
Deputy Judge of the Upper Tribunal