



IAC-TH-CP-V2

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

Appeal Number: VA/02343/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 April 2016**

**Decision & Reasons Promulgated  
On 28 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**MANSOORA SALEEM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. She was born on 10 October 1965. She appealed against the respondent's refusal to grant her entry clearance as a visitor dated 9 February 2015.
2. In a decision promulgated on 30 December 2015, Judge Pears (the judge) allowed the appellant's appeal. See in particular [8] of the decision.
3. The grounds claim the judge made a material misdirection of law. S.52 of the Crime and Courts Act came into effect on 25 June 2013, restricting the appeal rights for visitors with regard to any applications made on or after 25 June 2013. The changes made amended s.88A of the Nationality, Immigration and Asylum Act 2002 as inserted by the 2006 Act which

removed the rights of appeal for persons visiting specified family members except on human rights and race relations grounds under s.84(1)(b) and (c) of the 2002 Act.

4. The judge failed to make any findings with regard to the only available rights of appeal under s.84(1)(b) and (c) of the 2002 Act. Further, the judge failed to have regard to the statutory public interest considerations under s.117B of the 2002 Act.

### **Submissions on Error of Law**

5. Ms Isherwood relied upon the grounds.

### **Conclusion on Error of Law**

6. The refusal correctly identified the appellant's limited rights of appeal. I find the Entry Clearance Manager's subsequent review dated 30 June 2015 confusing in that whilst he refers to the limited right of appeal, he goes on to say "*I kindly ask the Immigration Judge to consider the appellant's right to a full appeal in the interest of continuity and fairness before considering her grounds for appeal any further.*" What that sentence means I do not know, however, it might have misled the judge into thinking he was being asked to take all factors into account, notwithstanding that this was a limited right of appeal. Be that as it may, **Virk [2013] EWCA Civ 652** at [23] is authority that statutory jurisdiction cannot be conferred by waiver or agreement or the failure of the parties or the Tribunal to be alive to the point.
7. The grounds of appeal raised human rights issues with which the judge did not engage.
8. The respondent has shown errors of law in the decision such that I set it aside so it can be heard again de novo.

### **Notice of Decision**

The decision of the First-tier Tribunal contains errors of law, is set aside and shall be remitted to the First-tier to be heard again de novo.

Anonymity direction not made.

Signed

Date 25 April 2016

Deputy Upper Tribunal Judge Peart