



IAC-AH-DN-V1

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

Appeal Numbers: VA/06175/2014
VA/06176/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 2nd December 2015**

**Decision & Reasons Promulgated
On 14th January 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**BAKHTIAR AHMED
HIDA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr Diwnycz, Home Office Presenting Officer

For the Respondents: Sajid Ahmad, Sponsor

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Robson made following a hearing at Bradford on 16th April 2015.
2. The claimants made an application to come to the UK to visit their son but were refused on 21st August 2014 on the grounds that in the Entry Clearance Officer's view they had employed deception in failing to declare

that their son Aabid Nasi Khan was in the UK, under paragraph 320(7B) of HC 395.

3. They were also refused in relation to paragraph 41(i) and (ii) because the Entry Clearance Officer was not satisfied that only a short visit was intended.
4. The judge concluded that, whilst the claimants had omitted to mention their son, the omission was not deliberate. He allowed the appeal in relation to paragraph 320(7B). He went on to find that they had sufficient ties which would give them an incentive to return to Pakistan.
5. Finally he said that it was not disputed that the sponsor was a member of the British Army and it was not appropriate for him to visit Pakistan to see his parents, and he allowed the immigration appeal.

Grounds of Application

6. The Secretary of State sought permission to appeal on the grounds that the appeal was restricted to residual grounds contained in Sections 84(1) (b) and (c) of the 2002 Nationality, Immigration and Asylum Act which restricted the appeal rights for visitors coming to visit family members in the UK. Since the claimants were independent of their children and had their own income family life was not established; there was no presumption of family life between adult children and their parents unless something exists more than normal emotional ties. Furthermore there was no finding that the visit could not take place in a third country.

The hearing

7. Mr Diwnycz sought guidance from another Senior Presenting Officer and accepted that the judge was correct to deal with the refusal under paragraph 320(7B). The judge's findings had not been challenged by the Secretary of State. He did however submit that the judge had erred in allowing the appeal under paragraph 41 and otherwise relied on his grounds.

Findings and Conclusions

8. The judge was entitled to deal with the paragraph 320(7B) ground for refusal and to conclude that no deception was employed by the claimants. That aspect of his decision shall stand.
9. However his decision under paragraph 41 is set aside because he had no jurisdiction to deal with the matter following the implementation of Section 52 of the Crime and Courts Act from 25th June 2013.
10. In order to allow the appeal on human rights grounds the judge had to ask himself whether there was family life between the claimant and the adult child. In failing to address himself to the right question he erred in law. Furthermore on the evidence there was nothing to establish that family life

could exist in this case. Accordingly there can be no breach of the appellant's rights under Article 8 by this refusal.

Decision

The judge's decision is set aside. It is remade as follows.

The decision under Section 320(7B) stands. However the decision in relation to paragraph 41 is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor