

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/13710/2012

THE IMMIGRATION ACTS

Heard at Field House
On 23 July 2013

Determination Promulgated
On 23 July 2013

Before

Upper Tribunal Judge PITT

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

SHIMA KHOSRONIA

Respondent

Representation:

For the Appellant: Mr Parkinson, Senior Home Office Presenting Officer

For the Respondents: Not present

DETERMINATION AND REASONS

1. The Appellant (the Entry Clearance Officer) appealed against the determination of First-tier Tribunal Judge Hubball who had allowed the Respondent's appeal in determination promulgated on 31 January 2013. The Respondent had applied for entry clearance as a student visitor for a short course under paragraph 56K of HC 395 (the Immigration Rules).
2. The refusal letter dated 9 July 2012 stated that the right of appeal was limited to race relations and human rights following section 84 (1) (b) and (c) of Nationality, Immigration and Asylum Act 2002. This was so from 9 July 2012 onwards following changes to the Immigration Rules. This limit on the grounds of appeal was noted when the appeal was lodged and found by the duty judge to be a matter that should be considered by the judge determining the appeal. However, Judge

Hubball did not consider the limit on the grounds of appeal but went on to make findings on the substantive application, allowing the appeal.

3. It is indisputable that Judge Hubball erred in finding that he had jurisdiction to consider an appeal on the ground that the decision was not in accordance with the Immigration Rules and allowing the appeal on the basis that the substantive requirements of paragraph 56K were met. The only matters that fell to be considered were whether the decision discriminated against the appellant on the grounds of race or whether it breached her human rights. Her grounds of appeal did not refer to either of these matters overtly. I found it difficult to infer any challenge on these grounds, certainly one that could possibly have succeeded.
4. I therefore found that the First-tier Tribunal determination disclosed a material error on a point of law such that it had to be set aside and re-made. I re-made the appeal, considering only the grounds contained in section 84 (1) (b) and (c) of Nationality, Immigration and Asylum Act 2002, namely race discrimination and human rights. I did not find that the appellant had shown that either ground was made out. I therefore refused the appeal.
5. Mr Parkinson and I were in agreement, however, that Judge Hubball's consideration of the substantive application was sound, albeit he had no jurisdiction in that regard. It appeared to us that the appellant was a genuine student seeking limited leave and had an intention to return to Iran and wished only and understandably to improve her spoken English and that she could meet the costs of her course. Those are matters that can only relevant if she applies again, however.

DECISION

The First-tier Tribunal made an error on a point of law. I set aside that decision and re-make the appeal as refused.

Signed

Dated: 23 July 2013

Upper Tribunal Judge Pitt