



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/33121/2012

THE IMMIGRATION ACTS

Heard at Bradford
on 20th August 2013

Determination Promulgated
On 22nd August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ENTRY CLEARANCE OFFICER (ABU DHABI)

Appellant

and

MRS ZAHIR BEGUM

Respondent

Representation:

For the Appellant: Mrs Pettersen – Senior Home Office Presenting Officer.

For the Respondent: Mrs Ahmed – Sponsor in person.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Turnock promulgated on 10th April 2013 in which he allowed Mrs Begum's appeal against the refusal of entry clearance for a family visit. The application was made on 11th July 2012 and the date of decision is the 2nd August 2012.
2. Permission to appeal was granted on the basis the Judge had misdirected himself in law in failing to consider whether there was a valid appeal against the immigration decision.
3. Although this point does not appear to have been raised previously I have jurisdiction to consider it as confirmed in Virk v Secretary of State for the Home Department [2013] EWCA Civ 652 in which it was held that although the SSHD had failed to raise before the First-tier Tribunal the issue of that Tribunal's

jurisdiction to entertain a family's application for leave to remain, the Upper Tribunal was entitled to dismiss the family's subsequent appeal against the First-tier Tribunal's decision on the basis that the First-tier Tribunal had not had jurisdiction, notwithstanding that the point had not been raised below. It was said "Statutory jurisdiction cannot be conferred by waiver or agreement; or by the failure of the parties or the tribunal to be alive to the point".

4. The jurisdictional point arises because the application was made on 11th July 2012 two days after the changes to the Immigration Rules which had effect from 9th July 2012 and which applied to all applications made after that date. For applications submitted from 9th July 2012, but before 25th June 2103, the applicable regulations are the Immigration Appeals (Family Visitor) Regulations 2012. These essentially define the family relationship of the person the applicant must be visiting in order to have a right of appeal under the Immigration Rules. In relation to nephews or nieces there is no longer a right of appeal for those visiting this category.
5. The Judge makes reference to the fact the sponsor, who Mrs Begum intended to visit, is her niece in paragraph 11 of the determination and so the relationship was clearly known. There is however no indication in the determination that the Judge considered the date of application, the changes to the Rules limiting the rights of appeal, or the fact that as the proposed visit was to a prohibited class the only grounds of appeal available to the appellant are those found in section 84 (1) (b) and (c) of the Nationality, Immigration and Asylum Act 2002.
6. I find Judge Turnock erred in law in proceeding to allow the appeal under the Immigration Rules when he fails to say why he had jurisdiction to do so in a determination drafted solely on the basis of a proposed visit by Mrs Begum to her niece.
7. I note that the grounds of appeal challenging the decision alleges the decision is unlawful as it is incompatible with Mrs Begum's rights under the ECHR indicating that human rights grounds were raised although there is nothing in the documentary evidence or before the Judge to show there is in any merit in this ground. Having reviewed the papers there is insufficient evidence to allow Mrs Begum to succeed as it is clearly a proportionate decision in light of the nature of the relationship and limited evidence to the contrary.
8. In considering whether the Judge's error is material I have had regard to the application form in its entirety. Although I assume Judge Turnock also read this document there is no reference in the determination to Part 7 of the application headed, family visitors - relatives details, in which in addition into mentioning her niece as a person she proposed to visit, Mrs Begum also refers to two other named individuals, Maqbool Jan and Nazir Begum who live in Derby, and who are stated to be sisters. The sponsor confirmed they are Mrs Begum's sisters as they share a common mother and father with her. As Mrs Begum is proposing

to visit her sisters in addition to her niece, and sisters do come within the definition of a qualifying family member in the 2012 Regulations, Mrs Begum did have a right of appeal under the Rules. I make this finding as the contents of the application are indicative of the visitor’s intention and such relatives are clearly mentioned as individual she proposes to visit.

- 9. I therefore find that had all the evidence been considered properly and the existence of the sisters noticed, it would have been found that Mrs Begum did have a valid right of appeal. On that basis my finding is that the determination contains an error of law as identified in the application for and grant of permission to appeal, but that because a full investigation shows there are people Mrs Begum proposed to visit which confers a right of appeal, any error is not material to the decision to allow the appeal.

Decision

- 10. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

- 11. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order as no application for anonymity was made and the need for one is not established on the facts.

Signed.....
Upper Tribunal Judge Hanson

Dated the 20th August 2013