

**Upper Tribunal
(Immigration and Asylum
Chamber)**
VA/00052/2014



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 7th November 2014**

**Decision & Reasons
Promulgated
On 10th November 2014**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS MARYAM KOUSAR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer
For the Respondent: Mr S Ahmed, the Sponsor

DECISION AND REASONS

1. This is an appeal by the Secretary of State on behalf of the Entry Clearance Officer Abu Dhabi, against the decision of a First-tier Tribunal allowing Maryam Kousar's appeal against the Entry Clearance Officer's decision to refuse to grant her entry clearance to the United Kingdom as a visitor. For the purposes of this decision I shall hereinafter refer to the Secretary of State as the Respondent and Maryam Kousar as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Pakistan born 1st January 1969. She applied for entry clearance as a visitor with the intention of visiting close family

relatives in the United Kingdom, including siblings. The date of the Appellant's application to visit is 29th October 2013.

3. The Entry Clearance Officer refused the application under the provisions of paragraph 41 of the current Immigration Rules because he was not satisfied that the Appellant was a genuine visitor who intended to leave the United Kingdom at the end of her visit nor was he satisfied that she could afford to pay for a return ticket to Pakistan.
4. The original grounds of appeal set out various reasons why the Appellant disagreed with the Entry Clearance Officer's decision but did not specifically identify an appeal based on human rights or race relations grounds.
5. Judge Ince heard the appeal; took oral evidence from the Sponsor and went on to allow the appeal in the following terms.

"I have the advantage over the ECO in that I have heard credible evidence from the sponsor who has some knowledge of the Appellant's personal and financial circumstances, whereas the ECO only dealt with the matter on the documentation provided to him.

In relation to her intentions, I take account of the unlikely scenario that the Appellant, a mother of five children, would abandon her family and remain in the UK, especially when she has shown little interest in the past in visiting the UK (the VAF shows no applications for visas to any country being made in the previous 10 years). I bear in mind the evidence of the sponsor on this point. Accordingly, taking all these factors into account I conclude that there is no reason not to doubt that the Appellant has the appropriate intentions to honour her immigration obligations and that she will return to Pakistan at the end of her visit.

As for the payment of the return air fare, I note that the Appellant has more than enough money in her Post Office account to pay for this. The ECO considers that such a financial outlay was not justified but I disagree - saving up for a foreign holiday is precisely the sort of thing people save for and she is only spending about half of her savings. I therefore consider that she can afford to pay for the return air fare."

6. There is no mention in Judge Ince's determination of the changes made by the Crime and Courts Act which amended Section 88A of the Nationality Immigration and Asylum Act 2002 removing previous rights of appeal in family visit visa cases. Those provisions came into force on 25th June 2013 and because the date of the Appellant's application to visit is 29th October 2013, her appeal is governed by them.
7. Accordingly I am satisfied that the determination of Judge Ince must be set aside for legal error and as there is no challenge to the factual matrix in this appeal I find I am in a position to decide the matter on the evidence before me.

Upper Tribunal Hearing

8. I am satisfied on the evidence before me that Judge Ince did not in fact have jurisdiction to hear and determine this appeal when there was not before him grounds for concluding that the Appellant had an arguable human rights and/or race relations case. It was an error of law for him to proceed as he did.
9. As I explained to the Sponsor who attended before me I have sympathy with his position as at no stage was it either made clear to him or by inference that there was no right of appeal in respect of his relative Maryam Kousar. I am also bound to observe that in reality the Entry Clearance Officer seems to have treated the application as if the Appellant did have a right of appeal under the past Family Visitor Regulations.
10. However an error of law was made by the First-tier Tribunal in this case in that it did not have jurisdiction in the first instance to hear the appeal of Maryam Kousar.

Decision

11. An error of law was made by the First-tier Tribunal in this case which was material in that the First-tier Tribunal had no jurisdiction to hear the appeal of this Appellant against the decision reached by the Entry Clearance Officer Abu Dhabi. I therefore set aside the decision of the First-tier Tribunal and find that the Tribunal has no jurisdiction to hear the appeal of this Appellant. The Secretary of State's appeal is allowed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

7th November 2014