



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

Appeal Number: VA/08987/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 28th May 2014

**Determination
Promulgated
4th June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MISS ASMA SAYYED SHABBIR QADRI
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr McVeety

DETERMINATION AND REASONS

Introduction

1. The Appellant born on 16th June 2004 is a citizen of India. The Appellant together with her mother had applied to come to the United Kingdom as visitors under the terms of paragraph 41 of the Immigration Rules and those applications had been refused by the Respondent on 30th April 2013. Both Appellants had appealed that decision and their appeal was heard at Bradford before Judge of the First-tier Tribunal Dickson on 14th February 2014. He had allowed their appeals.
2. The Respondent had appealed solely against the decision relating to Miss Qadri and the grounds seeking permission to appeal indicated that the original decision of the Respondent did not attract a right of appeal in respect of this Appellant as her application had been made after the

introduction of the Immigration Appeals (Family Visitor) Regulations of 2012.

3. Permission to appeal was granted by First-tier Tribunal Judge Landes who found that the grounds disclosed an arguable error of law. Directions were issued and the matter comes before me in accordance with those directions.

The Proceedings - Introduction

4. The Sponsor in this case Mr Basharat was present. The Respondent was represented by Mr McVeety a Home Office Presenting Officer. I explained to the Sponsor the nature of the proceedings.
5. It was unnecessary to hear any specific submissions from the Respondent who brought this appeal as it is clear from the agreed background and evidence that the second Appellant as she was in the original appeal before the First-tier Tribunal namely Miss Qadri did not have a right of appeal against the Respondent's refusal in that her intention was to visit a relative in the UK who fell outside the family parameters outlined in the Immigration Appeals (Family Visitor) Regulations of 2012. It is also clear that the date of such application was after such Regulations had taken effect. It was also clear from the Grounds of Appeal, which appear to have been placed in by the Sponsor, did not include any submissions that the Respondent's decision was unlawful under the terms of the Race Relations Act or the Human Rights Act of 1998.
6. I explained the matters with some care to the Sponsor and have provided below a decision with my reasons.

Decision and Reasons

7. The applications of Miss Qadri and her mother had been made together and considered together by the Entry Clearance Officer. It is clear from the decision of the Entry Clearance Officer that he had not been satisfied that the mother fulfilled the requirements of paragraph 41 of the Immigration Rules with particular regard to her financial and personal circumstances within India. Having refused her application the refusal of Miss Qadri's application had essentially flowed from that decision on the basis that if the mother was refused entry there was no satisfactory evidence that suitable arrangements had been made for her travel, reception and care in the UK. The case had been reviewed by the Entry Clearance Manager who had been provided with further documentary evidence on behalf of the Appellants. He had however maintained that refusal.
8. Regrettably within both the Entry Clearance Officer and Entry Clearance Manager's letters there is no reference to the second Appellant having no onward right of appeal although the first Appellant did have such a right of appeal as it was her intent to visit a sister in the UK.

9. When the matter came before the First-tier Tribunal it would appear from the determination that the judge and the Presenting Office may well have had in mind the legislation passed in 2013 that removed entirely rights of appeal in respect of family visitor applications. However it does not appear that the Presenting Officer or the judge had in their mind the statutory provisions referred to above which prior to this application had limited rights of appeal to a narrower definition of family than had hitherto applied.
10. The judge's decision to hear the appeal of the first Appellant was correct and the determination discloses that he gave clear and proper reasons for reaching the decision that he would allow that appeal. Indeed the Respondent does not seek permission to appeal against that decision reached in respect of the mother.
11. However the judge did not in fact have jurisdiction to hear the appeal of the second Appellant Miss Qadri as he had no jurisdiction and it was an error of law for him to hear that appeal in the first instance.
12. As I indicated at the hearing before myself I have sympathy with the Sponsor's 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 the second Appellant. I am also bound to observe that in reality the initial basis for refusing the second Appellant's application was intrinsically linked to the decision to refuse her mother's application which has now been allowed on appeal. It may be, that in those somewhat unusual circumstances, the Entry Clearance Officer may seek to reconsider the position of the second Appellant given the decision reached in respect of the first Appellant based on the totality of the documentary and oral evidence that was presented.
13. However an error of law was made by the First-tier Tribunal in this case in that the Tribunal did not have jurisdiction in the first instance to hear the appeal of the second Appellant.

Decision

14. 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 Manager. 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.
15. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Lever