



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

Appeal Number: VA/12457/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 31 July 2014

Determination

Promulgated

On 8 August 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FARHAM ALI

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr Z Hussain (Sponsor)

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 17 February 2009. He applied for entry clearance to the United Kingdom as a visitor together with his mother (Naveed Sajida). Both he and his mother were refused entry clearance by the Entry Clearance Officer (ECO) Abu Dhabi in decisions dated 9 June

2013. Both appellants appealed to the First-tier Tribunal (Judge Hindson) which, in a determination promulgated on 16 April 2014, allowed the appeal of the mother (Naveed Sajida) but dismissed the appellant's appeal on human rights grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grant of permission by Judge Pirotta is based on a misapprehension. Judge Lawrence (presumably sitting as a duty judge at Leicester) had found that there was no valid appeal as the appellant proposed to visit a person not classified by the Immigration Appeals (Family Visitor) Regulations 2012. Upper Tribunal Judge Renton (exercising his powers as a member of the First-tier Tribunal with oversight of the registry at Leicester) on 23 October 2013 set aside the decision of Judge Lawrence and directed a hearing (on 9 April 2014) of the appellant's appeal together with that of his mother. However, following the decision of Judge Lawrence, the appellant (or rather, his litigation friend) had applied for judicial review of the decision. No decision was taken on the application for a permission for judicial review. Instead, the respondent had, in the light of Judge Renton's decision, invited the appellant to withdraw the application for judicial review. I have a draft consent order (which does not bear the signature of the appellant's solicitors) which provides for the claimant (the appellant) to have leave to withdraw the application for judicial review with no order as to costs. The sponsor (the uncle of the appellant and brother of Naveed Sajida) told me at the hearing that the judicial review proceedings had been compromised in accordance with the terms of the draft consent order.
3. In the light of those matters, Judge Pirotta was not correct [3] where she recorded that "the refusal letter did not give the appellant a full right of appeal whereas the decision of the administrative court [on judicial review] restored his rights to a full appeal." There was no such restoration of "rights to a full appeal" as the terms of the consent order made clear. Rather, Judge Lawrence's decision that there was no valid appeal at all was replaced by an appeal on limited grounds (human rights) under the provisions of Section 88A(3)(a) of the Nationality, Immigration and Asylum Act 2002.
4. I find that Judge Hindson, who heard the appeal in the First-tier Tribunal at Bradford, properly understood the position of the appellant. At [19-20], he wrote as follows:
 19. I now consider the position of the second appellant. His appeal is limited to Article 8 grounds. The effect of the decision in the case of *Gulshan* is that the Immigration Rules are the starting point in the decision making process. Only if there are arguably good grounds for granting leave outside the Rules will it be necessary to go on to consider the position under Article 8.
 20. In the instant case I can find no such grounds. This is a straightforward case in which the appellant is precluded from the right of appeal by

virtue of the Regulations. He is at liberty to make a further application and it seems to me that is the correct approach. I would, however invite the Entry Clearance Officer to deal sympathetically with the position of the second appellant given that I have allowed the appeal of his mother.

5. That assessment was clearly open to the judge on the evidence before him. The grounds of appeal to the First-tier Tribunal make no direct reference to human rights although at [10] the grounds do refer to the “importance of family visits ... the appellants and their sponsors being family members emotionally dependent upon each other and wanting to see each other on a frequent basis.” There was nothing at all in the evidence or the grounds of appeal before Judge Hindson which might have justified allowing the appellant’s appeal on human rights grounds. I agree with Judge Hindson that the result is rather harsh, the appellant’s mother acquiring entry clearance but (as the sponsor told me at the hearing) not being able or willing to take up her visa she could not also travel with her child. Whilst, in the circumstances and in the light of this determination, one might expect an Entry Clearance Officer to look favourably on any future application by the appellant for a visit visa, this appeal must, for the reasons I outline above, be dismissed.

DECISION

This appeal is dismissed.

Signed

Date 8 August 2014

Upper Tribunal Judge Clive Lane