



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

Appeal Number: VA/35767/2012

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 2<sup>nd</sup> May, 2014  
Signed 15<sup>th</sup> May, 2014**

**Determination  
Promulgated  
On 15<sup>th</sup> May, 2014**

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**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**ENTRY CLEARANCE OFFICER - ABU DHABI**

**and**

**RUKHSANA SIRAJ**

Appellant

Respondent

**Representation:**

For the Appellant: Mr Diwyncz, a Senior Home Office Presenting Officer  
For the Respondent: No appearance

**DETERMINATION AND REASONS**

1. The appellant is the Entry Clearance Officer and in this determination I refer to her as "the claimant". The respondent is female, a citizen of Pakistan and was born on 10<sup>th</sup> September, 1975.
2. The claimant appeals against the determination of First-tier Tribunal Judge JDL Edwards, promulgated on 20<sup>th</sup> November, 2013, allowing the appeal of

the respondent against the decision of the claimant, taken on 16<sup>th</sup> September, 2012, to refuse to grant a visa to the respondent who made application under paragraph 41 of Statement of Changes in Immigration Rules, HC 395 as amended (“the Immigration Rules”).

3. One of the issues for the First-tier Tribunal Judge to resolve was whether or not the First-tier Tribunal had jurisdiction. At paragraph 2 of the judge’s determination he said this:

“The [respondent], who is a female citizen of Pakistan, resident in Faisalabad, now aged 38 years, on the date of application applied to the [claimant] for leave to enter the United Kingdom for a period of five weeks, for the purpose of a family visit to visit the sponsor. There is some confusion as to the exact relationship. In the notice of appeal, he is referred to as a brother-in-law, and that is the case in a statement made by him. However, in the same statement, it is suggested that the appellant is the widow of the sponsor’s nephew. In the VAF, they are described as cousins. The sponsor’s evidence on this issue did not help, but I decided to give the benefit of the doubt to the appellant to allow the appeal to proceed.”

5. The claimant sought to challenge the decision on the basis that the judge failed to apply the Immigration Appeals (Family Visitor) Regulations, 2012 (“the Regulations”) an extract of which are set out below:

**“Citation and commencement**

1. These Regulations may be cited as the Immigration Appeals (Family Visitor) Regulations 2012 and shall come into force on 9<sup>th</sup> July 2012.

**Class or description of person to be visited**

- 2.-(1) A person (“P”) is of a class or description prescribed for the purposes of section 88A(1)(a) of the Nationality, Immigration and Asylum Act 2002 (entry clearance), if –
  - (a) the applicant for entry clearance (“A”) is a member of the family of P; and
  - (b) P’s circumstances match those specified in regulation 3.
- (2) For the purposes of paragraph (1), A is a member of the family or P if A is the –
  - (a) spouse, civil partner, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother or sister;
  - (b) father-in-law, mother-in-law, brother-in-law or sister-in-law;
  - (c) son-in-law or daughter-in-law; or
  - (d) stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister;

of P.
- (3) For the purposes of paragraph (1), A is also a member of the family of P if A is the partner of P.
- (4) In this Regulation, A is the partner of P if –
  - (a) A and P have been in a relationship that is akin to a marriage or civil partnership for at least the two years before the day on which A’s application for entry clearance was made; and

- (b) such relationship is genuine and subsisting.
- (5) In this regulation –
- (a) ‘father-in-law of P’ includes the father of P’s civil partner;
  - (b) ‘mother-in-law of P’ includes the mother of P’s civil partner;
  - (c) ‘brother-in-law of P’ includes the brother of P’s civil partner;
  - (d) ‘sister-in-law of P’ includes the sister of P’s civil partner;
  - (e) ‘son-in-law of P’ includes the son of P’s civil partner.
  - (f) ‘daughter-in-law of P’ includes the daughter of P’s civil partner;
  - (g) ‘stepfather of P’ includes the person who is the civil partner of A’s father (but is not A’s parent);
  - (h) ‘stepmother of P’ includes the person who is the civil partner of A’s mother (but is not A’s parent);
  - (i) ‘stepson of P’ includes the person who is the son of A’s civil partner (but is not A’s son);
  - (j) ‘stepdaughter of P’ includes the person who is the daughter of A’s civil partner (but is not A’s daughter);
  - (k) ‘stepbrother of P’ includes the person who is the son of the civil parent of A’s parent (but is not the son of either A’s parents); and
  - (l) ‘stepsister of P’ includes the person who is the daughter of the civil partner of A’s parent (but is not the daughter of either of A’s parents).

**Circumstances of the person to be visited**

3. The circumstances of P mentioned in regulation 2(1)(b) are that P –
- (a) is settled in the United Kingdom as defined in paragraph 6(2) of the immigration rules;
  - (b) has been granted asylum in the United Kingdom under paragraph 334(3) of the immigration rules; or
  - (c) has been granted humanitarian protection in the United Kingdom under paragraph 339C(4) of the immigration rules.

**Transitional provision**

4. These Regulations apply only to an application for entry clearance made on or after the day on which they come into force.”

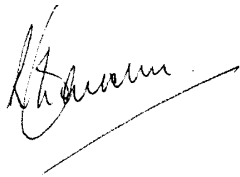
6. The claimant’s challenge pointed out that as a cousin of the sponsor, the respondent has no right of appeal against the claimant’s decision.
7. When the appeal was called on for hearing before me today, the sponsor did not appear. I waited until 10.30 am and then considered Rule 19(2). I was satisfied that the respondent and sponsor have both been served by Notice, giving the date, time and place fixed for the hearing and had

offered no explanation for their absence. I proceeded in the absence of the sponsor or a representative employed by the respondent.

8. I am satisfied that the First-tier Tribunal Judge did err in law. He had no business giving “the benefit of the doubt” to the respondent in deciding what her relationship to the sponsor was. The respondent was required to *prove* the relationship on the balance of probability. She was required to demonstrate that she was related to the sponsor in one of the ways permitted in Regulation 2 or 3 of the Regulations. She failed to do so. There was no jurisdiction for the First-tier Tribunal Judge to hear the appeal.
9. I set aside the decision of First-tier Tribunal Judge JDL Edwards. It contains an error on a point of law. I remake the decision myself. The appeal by the claimant is allowed. The First-tier Tribunal did not have jurisdiction to hear the appeal because the respondent had failed to establish her relationship with the sponsor.

### **Decision**

**The decision of First-tier Tribunal JDL Edwards is set aside.  
This appeal by the Entry Clearance Officer is allowed.**



Upper Tribunal Judge Chalkley