



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/00886/2014**

THE IMMIGRATION ACTS

**Heard at Bradford
On 23 July 2015**

**Decision & Reasons
Promulgated
On 22 September 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**SHIZA JAMIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER (ISLAMABAD)

Respondent

Representation:

For the Appellant: Mr Muhammad Ula (Sponsor)
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The application, Shiza Jamil, was born on 23 November 1995 and is a female citizen of Pakistan. On 5 December 2013, a decision was made by the Entry Clearance Officer (ECO) Islamabad to refuse the appellant entry clearance to the United Kingdom as a dependent child of a Tier 4 (General)

Student Migrant. The appellant appealed to the First-tier Tribunal (Judge Henderson) which, in a determination promulgated without a hearing but following a consideration of the papers on 9 July 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. A single issue arises in this appeal. It would appear that the appellant meets the requirements of the Immigration Rules save for paragraph 319H(f):

Both of the applicant's parents must either be lawfully present in the UK or been granted entry clearance or leave to remain at the same time as the applicant or one parent must be lawfully present in the UK and the other has been granted entry clearance or leave to remain at the same time as the applicant...

3. At [10], Judge Henderson wrote:

The Appellant's father is currently remaining in the United Kingdom as a Tier 1 (General) migrant. Her mother is in Pakistan and resides with the Appellant. These facts are accepted. It is also accepted by both parties that the Appellant's mother has a five year multiple entry visitor's visa. The Appellant cannot satisfy the requirements of paragraph 319H given these facts. Both of her parents are not lawfully present in the United Kingdom or being granted entry clearance or leave to remain at the same time as the Appellant.

4. The Immigration (Leave to Enter and Remain) Order 2000, paragraph 2 provides:

Subject to Article 6(3) the entry clearance which complies with the requirements of Article 3 shall have effect as leave to enter the United Kingdom to the extent specified in Article 4, subject to the conditions referred to in article 5.

5. Paragraph 3 of the same order provides:

Subject to paragraph 4 an entry clearance shall only have effect as leave to enter if it complies with the requirements of this Article.

6. There was no evidence to suggest that the mother's multiple visit visa does not comply with the requirements of paragraph 3. Paragraph 4 of the same Order provides:

A visit visa... during its period of validity shall have effect as leave to enter the United Kingdom on an unlimited number of occasions in accordance with paragraph (2).

...

On each occasion the holder arrives in the United Kingdom, he shall be treated for the purposes of the Immigration Acts as having been granted,

before arrival, leave to enter the United Kingdom for a limited period beginning on the date of arrival, being:

- (a) six months if six months or more remain of the visa's period of validity; or
- (b) the visa's remaining period of validity, if less than six months.

7. I hold that the effect of paragraph 4(2) is that the appellant's mother shall, when she arrives in the United Kingdom with the appellant, be treated as having been granted, before arrival, leave to enter. As noted above, entry clearance shall have the same effect as leave to enter by virtue of paragraph 2 of the Order. Mr Diwnycz, for the respondent, argued that the entry clearance granted to the mother in this case should be in the same status or category as that of the appellant. However, paragraph 319 does not indicate expressly or by implication that that is necessary but provides only that the "other [parent] is being granted entry clearance or leave to remain at the same time as the applicant". The fact that the mother's multiple entry visa was granted before any visa which may be issued to the appellant is irrelevant given the provisions of paragraph 4 of the 2000 Order. I am satisfied, therefore, that the appellant is able to meet the requirements of paragraph 319H(f) provided her mother utilises her multiple entry visit visa to enter the United Kingdom with the appellant. Paragraph 4 of the 2000 Order applies both to visit visas and "any other form of entry clearance" and the provisions which I have cited above as regards entry clearance taking effect as leave to enter applies both to the use by the mother of her multiple visit visa and any visa under paragraph 319 granted to the appellant. In consequence, I find that the appellant and her mother are being "granted entry clearance... at the same time..."
8. In the circumstances, this appeal is allowed. The decision of the First-tier Tribunal is set aside. I re-make the decision allowing the appellant's appeal against the decision of the Entry Clearance Officer.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 9 July 2014 is set aside. I re-make the decision. The appellant's appeal under the Immigration Rules against the decision of the Entry Clearance Officer, Islamabad dated 5 December 2013 is allowed.

No anonymity direction is made.

Signed

Date 20 September 2015

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Signed

Date 20 September 2015

Upper Tribunal Judge Clive Lane