



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

Appeal Numbers: VA/01293/2014  
VA/01294/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> February 2015**

**Decision & Reasons  
Promulgated  
On 9<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS SADAF QAMAR  
MUHAMMAD AWAIS AMEER (A MINOR)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Sheikh - Sponsor

For the Respondent: Miss Fujiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are citizens of Pakistan born respectively on 5<sup>th</sup> February 1978 and 20<sup>th</sup> August 2010. The second Appellant is the minor son of the first Appellant and his appeal rises and falls on that of the first Appellant. Unless specifically stated all references made herein are to the first Appellant.

2. The first Appellant made application for a visit visa. The length of the visit proposed was merely ten days and the Appellant's application was refused by the Entry Clearance Officer on 11<sup>th</sup> February 2014 on the grounds that the Entry Clearance Officer was not satisfied that the Appellant met the requirements of paragraph 41 of the Immigration Rules.
3. The second Appellant's application was dismissed on the same date on the grounds that he did not meet the requirements of paragraph 46A of the Immigration Rules.
4. Grounds of Appeal were lodged to the First-tier Tribunal. The appeal came before Judge of the First-tier Tribunal Keane sitting at Taylor House on 11<sup>th</sup> November 2014 on the papers. In a detailed determination the Appellants' appeals were allowed under the Immigration Rules.
5. The Secretary of State on 1<sup>st</sup> December 2014 lodged Grounds of Appeal to the Upper Tribunal stating that the First-tier Tribunal had no jurisdiction to hear the appeal. On 12<sup>th</sup> January 2015 First-tier Tribunal Judge Shimmin granted permission to appeal noting at paragraph 2 of his reasons for decision that it appeared that the judge had acted without jurisdiction in allowing the appeals and pointing out that the available Grounds of Appeal are in respect of race and human rights only and that no such findings were made by the judge.
6. It is on that basis that the appeal comes before me in the Upper Tribunal. The Appellants appear by their Sponsor Mr Sheikh. Mr Sheikh is a family member, the Secretary of State appears by her Home Office Presenting Officer Miss Fujiwala.
7. The Rules for family visitor appeals are now governed by the Immigration Appeals (Family Visitor) Regulations 2012. These Rules now stipulate that unless allegations are made of breaches of human rights or race under the Equality Act 2010 then there is no right of appeal from the Entry Clearance Officer to the First-tier Tribunal Judge. I am satisfied having looked in considerable detail at the decision of the First-tier Tribunal Judge that he erred in hearing this appeal and consequently as I have advised to Mr Sheikh I have no alternative but to set aside the decision of the First-tier Tribunal and to allow the Secretary of State's appeal.
8. This matter is however worthy of a further paragraph. I have had the benefit of hearing from Mr Sheikh who is a local businessman and a man of some substance. I have no reason to doubt his credibility. I have also briefly heard from his daughter who has just completed the LPC course as a law student. Mrs Qamar is the sister of Mr Sheikh's wife. I understand that she is resident in Spain and that she is a habitual traveller to the United Kingdom. As far as I am aware this is the only occasion where she has ever been refused entry clearance. The correct approach now is for a fresh application for a visit visa to be made. It would seem to me that there may be merit when such application is made in drawing to the attention of the Entry Clearance Officer by way of attaching the decision of

First-tier Tribunal Judge Keane and my decision herein. It is not the role nor wish of the Secretary of State to prevent genuine visits to the United Kingdom. It is of course difficult for an Entry Clearance Officer who is faced with numerous applications exclusively on the papers to sometimes determine the wheat from the chaff. It is not for this Tribunal to predetermine the outcome of any future application but bearing in mind the credibility of the Sponsor, the Appellant's previous excellent immigration history and the findings of Judge Keane it is to be hoped that these factors will be given further due consideration by any future Entry Clearance Officer in the event that a further application is submitted.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law in that there was no jurisdiction for the First-tier Tribunal Judge to hear the appeal. In such circumstances the decision of the First-tier Tribunal Judge is set aside and the Respondent's appeal is allowed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris