



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

Appeal Number: VA/01443/2013

THE IMMIGRATION ACTS

Heard at: Manchester

On: 21st October 2014

Determination

Promulgated

On 23rd January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Abu Dhabi

Appellant

and

**Rashid Razzaq
(no anonymity order made)**

Respondent

Representation:

For the Appellant: -

For the Respondent: Mr Ghaffar, Sponsor

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan date of birth 18th December 1986. On the 29th May 2014 the First-tier Tribunal (Judge Coates) allowed his appeal against a decision to refuse to grant him entry clearance as a visitor. The Entry Clearance Officer now has permission to appeal against that decision¹.

¹ Granted by Designated First-tier Tribunal Judge McCarthy on the 19th June 2014

2. The Respondent had applied for entry clearance with his mother. They wished to visit relatives in the UK. Those relatives were his mother's sister and her husband. The applications were refused on the grounds that the ECO was not satisfied that the Respondent and his mother would be adequately maintained during their trip to the UK; nor was he satisfied that they were genuine visitors who intended to return to Pakistan, thereby leaving the UK. All of these matters were resolved in their favour by the First-tier Tribunal, which made positive findings of fact about the *bona fides* of both appellants before it and their sponsor. None of those findings are now challenged. The appeals were both allowed.
3. This appeal to the Upper Tribunal is brought on the grounds that the Respondent did not have a full right of appeal before the First-tier Tribunal. The relatives that he seeks to visit are his aunt, uncle (Mr Ghaffar) and cousins. This refusal was dated 29th December 2012, after the commencement of the Immigration Appeals (Family Visitor) Regulations 2012 which provide for a full right of appeal where the applicant seeks to visit a close family member as defined at 2(2)(a)-(d) of those Regulations. The relatives listed at Regulation 2 do not include an aunt, uncle or cousins. The right of appeal of the Respondent was therefore limited to those grounds set out in s84(1) (b) and (c) of the Immigration and Asylum Act 2002. An appeal could only be brought on human rights or race discrimination grounds.
4. It does not appear that the Home Office Presenting Officer who represented the ECO made this point before Judge Coates. It is however clear from the refusal notice which does state that the appeal grounds are limited.
5. I am satisfied that the determination does contain an error of law in that the First-tier Tribunal has not addressed human rights or race discrimination grounds, and purports to allow the appeal outright when there was no power to do so. I therefore set the decision aside to that extent. All the findings of fact made by Judge Coates were properly reasoned and available to him on the evidence. They are unchallenged and preserved.
6. As I explained to Mr Ghaffar the grounds of appeal upon which the appeal is to be re-made are limited. He agreed that there was no evidence of any racial discrimination on the part of the ECO. In respect of human rights he pointed out that the Respondent in essence wished to travel to the UK in order to accompany his mother, since it is not considered culturally acceptable for her to be travelling alone. Whilst I accept this is true, I am not satisfied that this is a matter which engages the UK's obligations under the ECHR. If his mother wishes to have a male companion as she travels, she could of course ask someone who has a visa or who is not subject to

UK immigration control to accompany her.

7. The appeal is dismissed. The ECO will however no doubt wish to have regard to the fact that a very experienced First-tier Tribunal Judge made positive findings of fact to the effect that the Respondent is a genuine visitor who met all of the requirements of paragraph 41 at the date of decision. The ECO will also no doubt wish to have regard to the matters mentioned above, and in doing so I hope that he or she exercises discretion in the Respondent's favour and grants him his visit visa.

Decisions

8. The decision of the First-tier Tribunal contains an error of law and it is set aside.
9. I re-make the decision in the appeal by dismissing it.
10. I make no direction as to anonymity. No such direction was requested and I see no reason to make one.

Deputy Upper Tribunal Judge Bruce
21st October 2014