



Upper Tribunal
(Immigration and Asylum Chamber)
VA/18260/2013

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

**Determination
Promulgated**

On: 13th November 2014

On: 5th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Abu Dhabi

Appellant

and

**Naghina Faiz
(no anonymity direction made)**

Respondent

For the Appellant:
For the Respondent:

Mr Smart, Senior Home Office Presenting Officer
unrepresented

DECISION AND REASONS

1. The Respondent Ms Faiz is a national of Pakistan date of birth 4th October 1985. On the 12th June 2014 the First-tier Tribunal (Judge Smith MBE TD) allowed her appeal against a refusal to grant her entry clearance as a visitor to the UK. The Entry Clearance Officer now has permission to appeal that decision on the grounds that there was no jurisdiction to allow the appeal under the immigration rules and there was a paucity of reasoning in respect of the human rights grounds.
2. Anyone can apply to come to the UK as a visitor. It was the case for a long time that appeals against refusals of such applications could only be brought by 'close family members' of sponsors in the UK. Since the

25th June 2013 this has no longer been the case. On that day s52 of the Crime and Courts Act 2013 came into effect, which amended s88A of the Nationality Immigration and Asylum Act 2002. The effect of those changes is that appeals against a refusal of a visit visa can now only be brought on two grounds: race discrimination and human rights.

3. Ms Faiz made her application for entry clearance on the 17th August 2013. It was refused on the 9th September 2014 and the Notice of Refusal indicated that the right of appeal was “limited to the grounds referred to in section 84(1)(c) of the NIAA 2002”. An entry clearance officer reviewed the refusal on the 5th February 2014 and upheld it: he reiterated that there were only limited grounds upon which this decision could be appealed to the First-tier Tribunal.
4. The grounds of appeal to the First-tier Tribunal were detailed and appear to have been drafted by a ‘legal advisor’ in Pakistan. They dispute the matters set forth in the reasons for refusal letter and conclude by asserting “not granting a family visitor visa to the appellant is wide violation of human right act 1998 article 8”. The grounds do not expand on why refusal of this visa might be a “violation” of the UK’s human rights obligations.
5. When the matter came before the First-tier Tribunal the Presenting Officer did not, apparently, pursue the point that the grounds of appeal were limited: this is recorded at paragraph 11 of the determination. The hearing appears to have proceeded on the basis that this was an ‘old style’ appeal under the rules. Having heard the credible evidence of the sponsor, Ms Faiz’s brother Mr Ahmed, the Tribunal found that Ms Faiz met all of the requirements of paragraph 41 of the Rules at the date of decision and therefore allowed the appeal outright. At paragraph 11 the determination also says this:

“In any event in the particular circumstances of this appeal and particularly given the inability of the sponsor to travel to Pakistan because of his serious illness I take the view that a refusal to allow the appellant to visit the United Kingdom would be a disproportionate interference with his right to family life with his sister”

This was a reference to the evidence that Mr Ahmed had been suffering from oral cancer and had undergone a number of operations. On this basis the appeal was also allowed on human rights grounds.

Error of Law

6. I am satisfied that it was an error of law to allow the appeal under the Rules. For the reasons set out above there was no jurisdiction to do

so. That decision must be set aside.

7. In respect of the human rights ground of appeal I am satisfied that this was a matter before the First-tier Tribunal, since 'article 8' is expressly raised in the grounds of appeal, albeit it in a vague and rather unhelpful way.
8. It would seem likely that the class of visitors who will succeed on human rights grounds in such appeals is going to be small. It is difficult to see how 'human rights' grounds can avail the average visitor, since family relationships with relatives in other countries will generally be, by definition, quite distant, and would in the normal course of events be maintained by contact through telephone, skype etc. It seems likely that the class who will succeed will be limited to applicants who are seeking to visit a very close family member who would for some reason be unable to visit them. This appeal might be such a case. It could be inferred that the relationship between a brother and sister would be very close, and that if the sponsor were unable to travel to Pakistan due to his serious illness, it could arguably be a breach of Article 8 to refuse to allow the applicant who meets all of the requirements of the rules entry. It would appear from paragraph 11 of the determination that this was the reasoning employed here. I cannot however be satisfied that the evidence did in fact show that Mr Ahmed was unable to continue his family life with his sister in the same way that he has always done. He himself told the Tribunal that he has been in Pakistan as recently as 18 months ago and that he has plans to go again in the future. Presumably they maintain their relationship by 'modern means of communication'. There was no medical evidence to indicate that he was unable to travel at present nor at some point in the future. There was not, therefore, the evidential basis for concluding that the refusal would be a breach of Article 8 and this decision too must be set aside.
9. That said the Entry Clearance Officer will no doubt wish to review this decision in light of the unchallenged positive findings of fact made by the First-tier Tribunal. This young lady wishes to visit her brother who has been seriously ill with cancer and the First-tier Tribunal has accepted that she meets all of the requirements of the Rules. At the very least any future application should be assessed in light of these findings.

Decisions

10. The determination of the First-tier Tribunal contains errors of law and it is set aside.
11. The decision in the appeal is remade as follows: "the appeal is dismissed on human rights grounds".

Deputy Upper Tribunal Judge Bruce
19th December
2014