



IAC-FH-NL-VI

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

Appeal Number: OA/09755/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 February 2016**

**Decision & Reasons Promulgated  
On 15 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ENTRY CLEARANCE OFFICER - ABU DHABI**

**and**

**MUHAMMAD YAMEEN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr. C. Avery, Home Office Presenting Officer  
For the Respondent: Mr. S. Mustafa, Denning Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Wylie promulgated on 14 August 2015 in which he allowed Mr. Yameen's appeal to the extent of remitting it back to the Secretary of State to make a decision on the application still outstanding.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent, and to Mr. Yameen as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“It is arguable that the Judge erred in allowing the appeal to the extent that it was remitted to the Entry Clearance Officer on the basis that Appellant had only limited grounds of appeal open to him, none of which feature in the decision.”

4. At the hearing I heard submissions from both representatives. I reserved my decision which I now set out with reasons.

### Submissions

5. Mr. Avery submitted that there was a restricted right of appeal. The grounds of appeal before the First-tier Tribunal referred to section 84(1)(c), but it was not clear how the grounds related to this section. The appeal had been decided as if the 2014 Act did not exist. The judge was wrong, and it was not arguable that he was correct.

6. Mr. Mustafa accepted that it had not been submitted in the grounds of appeal before the First-tier Tribunal that the decision was not in accordance with the law. He submitted that section 84(1)(c) was a human rights ground. The main point was that this was not a PBS application, but was an entrepreneur visit visa application. Therefore section 85A did not apply. The decision was made on 9 July 2014, by which point there was a limited right of appeal for visit visa applications.

7. However, section 86(3)(a) applied to permit the judge to allow the appeal on the basis that it was not in accordance with the law. This subsection had been omitted from 20 October 2014 onwards, after the appeal had been lodged. In relation to section 85(2), the Appellant had provided a letter which the Respondent found not to be genuine but the Appellant had addressed this point in his statement. The judge was entitled to consider any matter raised in the statement. Under sections 85 and 86 the judge had jurisdiction to take on new points in order to determine the matter fairly.

8. Even if the appeal were limited under section 84(1)(c), this was a human rights ground and, if the Appellant was alleged to have deceived the Respondent, he was not being given a fair opportunity to appeal against the point that he had deceived the Respondent, which was a breach of his rights under Article 6 ECHR. The judge decided correctly that the Respondent's decision was not in accordance with the law under sections 85 and 86.

9. In response Mr. Avery submitted that the judge had not approached the appeal in the correct way. The grounds of appeal were limited and the Appellant should have written to the Respondent pointing out that the DVR provided did not relate to him.

Error of law

10. The Appellant appealed against the Respondent's decision to refuse leave to enter as an entrepreneur visitor. The right of appeal against this decision is set out in section 84(1)(c) of the 2002 Act.
11. Section 84(1)(c) provides that an appeal may be brought on the basis "that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the Appellant's Convention rights."
12. Therefore the only basis on which the Appellant could appeal against the decision was on the basis that it was a breach of his human rights or, as acknowledged by the Respondent in the grounds of appeal, on the basis that it was unlawful under section 19 of the Race Relations Act 1976.
13. The Respondent refused the application under the general grounds of refusal. The burden of proof lies on the Respondent to show that the application should have been refused on these grounds. The judge states that the burden is on the Appellant in immigration appeals, although a refusal under the general grounds burden of proof lies on the Respondent. However, this is not material as the judge found that there was no reliable evidence to suggest that the letter provided by the Appellant was not genuine, given that the DVR provided related to an application made by someone other than the Appellant.
14. However, having found that there was no reliable evidence to suggest that the decision should have been refused on one of the general grounds, under section 84(1)(c) the only option available to the judge was to consider whether or not the decision was a breach of the Appellant's human rights.
15. It was submitted by Mr. Mustafa that section 86(3)(a) applied as this subsection had only been omitted from 20 October 2014, after the date of appeal. This subsection provides:

"The Tribunal must allow the appeal in so far as it thinks that (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules)."
16. However, irrespective of when this subsection was repealed, it would not have applied to the Appellant's appeal in any event due to subsection 86(1) - "This section applies on an appeal under section 82(1), 83 or 83A." It was not disputed that the Appellant's right of appeal was under section 84(1)(c), which is not covered by section 86.
17. It was further submitted that the judge was entitled to take into account matters raised in the Appellant's witness statement by reference to section 85 in order to

enable him to determine the decision fairly. However, this applies to allow a Tribunal to “consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.” It does not operate to allow consideration of a ground of appeal which is not listed in section 84(1) as a ground on which the Appellant may appeal against the decision.

18. I therefore find that the judge was not entitled to find that the decision was not in accordance with the law, but that he was only entitled to allow it on the basis that it was contrary to the Appellant’s human rights or contrary to the Race Relations Act 1976. I find that this is a material error of law.

### Remaking

19. The grounds of appeal before the First-tier Tribunal state that the decision is against Article 6, and that the Appellant has not been provided with any opportunity to rebut the allegation against him. However, the Appellant had a right of appeal against the decision under section 84(1)(c) on human rights grounds, in which appeal he could rebut the allegation against him, as he did before the First-tier Tribunal. That the judge could not allow the appeal on this basis alone does not mean that the Appellant was denied a right to rebut the allegation against him. I find that the decision is not a breach of the Appellant’s rights as protected by Article 6.
20. There is no evidence to show that this decision is a breach of the Appellant’s human rights under Article 8, and it was not argued before me that the decision breached his rights to a family or private life. In his witness statement he says that he has a family and children in Pakistan and I find that the decision does not interfere with his right to family life. He intended to come to the United Kingdom as a business visitor. To the extent that the decision interferes with his private life by preventing him from making a short visit to the United Kingdom, I do not find that any interference would be significant, nor disproportionate. The Appellant can continue to enjoy his private life in Pakistan as he has been doing.
21. It has not been argued that the decision was unlawful by virtue of section 19B of the Race Relations Act 1976.
22. As pointed out by Mr. Avery at the hearing, it was open to the Appellant to contact the Respondent to inform him that the DVR provided related to a different applicant. There is no evidence that the Appellant did this. I note that the Appellant is legally represented. There is no mention in the grounds of appeal of the fact that the DVR was not in relation to the Appellant, or that the Appellant has contacted the Respondent in relation to any allegation of false documents. In the witness statement the Appellant states that the DVR does not relate to him, paragraph [4], but there is no indication that he has contacted the Respondent to point this out.

Notice of decision

23. The decision involves the making of a material error of law. I set it aside, except that the finding at paragraph [10] that the DVR provided by the Respondent did not relate to the Appellant is preserved.
24. I remake the decision dismissing it on human rights grounds.

Signed

Date 4 March 2016

Deputy Upper Tribunal Judge Chamberlain