



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/32256/2012

THE IMMIGRATION ACTS

Heard at Bradford
on 21st August 2013

Determination Promulgated
On 21st August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ENTRY CLEARANCE OFFICER (ABU DHABI)

Appellant

and

MOHAMMAD FAYYAZ

Respondent

Representation:

For the Appellant: Mr Spence – Home Office Presenting Officer.

For the Respondent: Mr Saleem of RKS Solicitors.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Mensah promulgated on 11th April 2013 in which she allowed Mr Fayyaz's appeal against the refusal of entry clearance for a family visit. The application was made on 10th July 2012 and the date of decision is the 2nd August 2012.
2. Permission to appeal was granted on the basis the Judge had misdirected herself in law in failing to consider whether there was a valid appeal against the immigration decision.
3. Although this point does not appear to have been raised previously I have jurisdiction to consider it as confirmed in Virk v Secretary of State for the Home Department [2013] EWCA Civ 652 in which it was held that although the SSHD had failed to raise before the First-tier Tribunal the issue of that Tribunal's

jurisdiction to entertain a family's application for leave to remain, the Upper Tribunal was entitled to dismiss the family's subsequent appeal against the First-tier Tribunal's decision on the basis that the First-tier Tribunal had not had jurisdiction, notwithstanding that the point had not been raised below. It was said "Statutory jurisdiction cannot be conferred by waiver or agreement; or by the failure of the parties or the tribunal to be alive to the point".

4. The jurisdictional point arises because the application was made on 10th July 2012 a day after the changes to the Immigration Rules which had effect from 9th July 2012 and which applied to all applications made after that date. For applications submitted from 9th July 2012, but before 25th June 2103, the applicable regulations are the Immigration Appeals (Family Visitor) Regulations 2012. These essentially define the family relationship of the person the applicant must be visiting in order to have a right of appeal under the Immigration Rules. In relation to uncles, nephews or nieces, there is no longer a right of appeal for those visiting this category.
5. Although the law set out in the application seeking permission to appeal is technically correct it appears to take no account of the fact that in the application form the appellant stated he was visiting not only his uncle but also other relatives in the United Kingdom including his grandparents. In paragraph 15 of her determination Judge Mensah states:
 15. Taking all the evidence together including the evidence from the sponsor who is clearly very familiar with his responsibilities to only sponsor genuine visitors to the United Kingdom who abide by the conditions of entry and return, I am satisfied the appellant has shown in the balance of probabilities that he is a genuine visitor who has the sponsor and his grandparents in the United Kingdom and who wants to visit family and will return at the end of the trip.
6. Although the sponsor falls within a class of relatives in relation to whom full appeal rights are excluded by the amendments that came into force on 9th July 2012, grandparents are not. As a result of the fact the Immigration Appeals (Family Visitor) Regulations 2012 confers a full right of appeal to those visiting grandfathers or grandmother's there is no merit in the ECO's challenge to this determination. The First-tier Tribunal Judge had jurisdiction to consider the appeal on its merits and there is no challenge to her findings on the facts.

Decision

7. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

8. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order as no application for anonymity was made and the need for one is not established on the facts.

Signed.....
Upper Tribunal Judge Hanson

Dated the 21st August 2013