



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

Appeal Number: OA/01705/2013

THE IMMIGRATION ACTS

**Heard at : Field House
On : 7 May 2014**

**Determination
Promulgated
On : 8 May 2014**

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Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ENTRY CLEARANCE OFFICER

Appellant

and

VARSHABEN VANRAJBHAI SISODIYA

Respondent

Representation:

For the Appellant: Mr G Saunders, Senior Home Office Presenting Officer

For the Respondent: Ms E Greenwood, instructed by Boghal Partners Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Entry Clearance Officer (ECO). However, for the purposes of this decision, I shall refer to the ECO as the respondent and Ms Sisodiya as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

2. The appellant is a citizen of India, born on 5 June 1988. In September 2012 she applied for entry clearance to the United Kingdom as a Tier 4 (General) Student Migrant. Her application was refused on 8 October 2012 on the grounds that she could not meet the maintenance requirements in paragraph 245ZV(c) of the Immigration Rules. She lodged an appeal against that decision and, following an administrative review by an entry clearance manager, the decision was maintained.

3. The appellant's appeal came before the First-tier Tribunal on 21 January 2014. Both the appellant and the respondent were represented. First-tier Tribunal Judge Callender Smith allowed the appeal under the Immigration Rules.

4. Permission to appeal to the Upper Tribunal was sought by the respondent and granted on 2 April 2014 with regard to the issue of the judge's jurisdiction in the appeal.

Appeal hearing and submissions

5. Ms Greenwood, in her submissions, conceded that the judge did not have jurisdiction to allow the appeal under the Immigration Rules. She also acknowledged that she was unable to argue that the judge had considered any human rights grounds. However she submitted that any error of law in that respect was not material, given that he could have allowed the appeal under the third stage of R (Razgar) v SSHD (2004) UKHL 27 on the basis of the findings of fact made under the rules. In response to my enquiry as to the appellant's ability to meet the first two stages of Razgar, she submitted that the respondent's decision to refuse her entry clearance affected her private life. I indicated to Ms Greenwood that it did not appear to me that the appellant had even raised human rights grounds in her appeal and she submitted that the fact that the judge referred to Razgar suggested that such grounds were raised at the hearing, although she was unable to confirm that that was the case.

6. Mr Saunders submitted that the appellant had not appealed on human rights grounds, as was evident from the grounds specified in the Notice of Appeal, and accordingly there was no appeal before the judge.

7. I advised the parties that in my view Judge Callender Smith had erred in law in his decision and that his decision had to be set aside and dismissed for lack of jurisdiction.

Consideration and findings

8. Following the detailed grounds for refusal of the appellant's application under the Immigration Rules, the Refusal of Entry Clearance dated 8 October 2012 went on to provide details of the Administrative Review process and to advise the appellant of her limited right of appeal under section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002.

9. The appellant, in response, lodged a Notice of Appeal on 19 December 2012 enclosing grounds which sought to challenge the respondent's decision in regard to maintenance, alleging confusion and error on the part of the respondent, but clearly making no mention of Article 8 or human rights. The ECM, in his review, referred to the grounds as raising human rights on the basis of the allegation of confusion, but plainly that was incorrect. Indeed, as Mr Saunders submitted, the appellant specifically set out in her grounds that they were brought only under section 84(1)(a) and (e) of the 2002 Act.

10. Ms Greenwood submitted that it could have been the case that human rights grounds were raised at the hearing, given the judge's reference to Razgar, but there is no suggestion in the determination, a skeleton argument, a statement or anywhere else that that was the case. She was not able to state that such grounds were actually raised and I do not accept that they were.

11. Accordingly, the appeal should never have come before the judge in the first place. However, once it had done so, he ought to have recognised that the appellant had no right to appeal on the grounds that she did and that he had no jurisdiction to consider the grounds being raised. He clearly erred in law by considering the grounds raised in regard to the Immigration Rules and by allowing the appeal on that basis.

12. Even if the judge had engaged in a consideration of human rights grounds, which it is clear that he did not, there was plainly nothing in the evidence before him that could have led to a successful decision in that regard. I find no merit in Ms Greenwood's submission that he could have allowed the appeal under the third stage of Razgar, when there was clearly no evidence before him to suggest that the appellant had established a private or family life in the United Kingdom such that Article 8 was engaged.

13. In all the circumstances, I find that the judge's decision has to be set aside and re-made by dismissing the appeal for lack of jurisdiction.

DECISION

14. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside and to that extent the appeal made by the ECO is allowed. I re-make the decision and substitute a decision dismissing the appellant's appeal for lack of jurisdiction.

Signed
Date

Upper Tribunal Judge Kebede