



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

Appeal Number: OA/14073/2013

THE IMMIGRATION ACTS

Heard at Field House

On 7th August 2014

Determination

Promulgated

On 11th August 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SAQIB SALEEM

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr A Seelhoff (A. Seelhoff Solicitors)

For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Cameron) promulgated on 24th February 2014. For the sake of clarity and continuity I shall continue to refer to the Entry Clearance Officer as the Respondent and Mr Saleem as the Appellant.
2. The Appellant is a citizen of Pakistan born on 14th May 1982. He made an application for leave to enter the UK as a special visitor as a prospective student. The application fell to be decided under paragraphs 245ZX and 245ZZ of the Immigration Rules and was refused. The refusal notice

clearly indicates that there is a limited right of appeal in this case. Although not specified in the refusal, the appeal rights are restricted by section 88A of the Nationality, Immigration and Asylum Act 2002.

3. Notwithstanding it being clearly stated in the refusal that there was no full right of appeal, the Appellant nevertheless appealed arguing that he was able to show that he did meet the requirements of the Rules.
4. The determination reveals that it escaped the notice of all present at the First-tier Tribunal hearing that that was the case and that there was no full right of appeal. The Judge therefore listened to the arguments and concluded that the Appellant met the Rules and allowed the appeal.
5. The Secretary of State points out in her grounds seeking permission to appeal that in entertaining an appeal under the Rules as opposed to limited to human rights grounds or discrimination grounds, the Judge made a material error of law.
6. Mr Seelhoff accepted that it was an error for the Judge to hear the substantive appeal under the Rules when there was no such right. He also accepted there was no evidence before the First-tier Tribunal that the decision breached the Appellant's Article 8 rights or was discriminatory. He did seek to argue however that it was a breach of Article 6 to refuse an application which in fact met the Rules. I disagree. The Appellant can only succeed where there is a restricted right of appeal if he can show that the decision is incompatible with his Convention rights namely his right to family and private life. Refusing a prospective student entry to the UK cannot possibly engage Article 8. I therefore find that this Appellant could not possibly succeed in his appeal on the basis of the restricted grounds available to him. That the decision was "not in accordance with the Immigration Rules" was not open to him.
7. For the reasons I have indicated above I find that the First-tier Tribunal made a material error of law. I set aside the determination and I redecide it by dismissing the Appellant's appeal against the Entry Clearance Officer's decision.
8. Accordingly, the Respondent's appeal to the Upper Tribunal is allowed with the result that the Appellant's appeal against the Entry Clearance Officer's decision is dismissed.

Signed

Date 7th August 2014

Upper Tribunal Judge Martin