Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/08747/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2nd July 2014	**On 9 July 2014**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

NASEEM AKHTAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Hussain, Counsel instructed on behalf of Mitchell & Co
For the Respondent: Mr Lawrence Tarlow, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on 1st January 1956. She appeals, with permission, against the decision of the First-tier Tribunal (Judge T Jones) who in a determination promulgated on 7th February 2014 dismissed her appeal against the

© CROWN COPYRIGHT 2014

decision of the Respondent to refuse entry clearance as a visitor under paragraph 41 of the Statement of Changes in Immigration Rules HC 395 (as amended).

2. The background to the application is as follows. On 11th March 2013 the Appellant applied for a visit visa in order to undertake a family visit to Mr Muhammad Anser who is her son. She proposed to visit for a month and in her application form she set out her circumstances that she received income from her son and that was set out in the bank statements provided. Furthermore, it is plain from the matters set out in the application form and the documents produced that she had been a regular visitor to the United Kingdom since 2002 and there had been a number of visits made by the applicant to the United Kingdom where she subsequently returned to Pakistan.

3. The Respondent refused that application in a notice of immigration decision made on 2nd April 2013. The reasons given were that the Respondent was not satisfied that the application met the requirements of the relevant Immigration Rule with particular reference to sub-paragraphs (i), (ii), (vi) and (vii). Furthermore, the Respondent in light of an answer given in the application form considered that Rule 320(7A) applied on the basis that it was asserted that she had not declared a material fact on her application form. The reasons given were that at question 73 the Appellant was asked whether she had made an application for leave to remain in the United Kingdom in the last ten years and she had replied "no"; whereas she had made an unsuccessful application to remain as a dependant of her son in March 2011.

4. The reasons given for refusal are set out in the notice of immigration decision and the Entry Clearance Officer noted that she had previously travelled to the United Kingdom and earlier applications had provided full details to satisfy the Entry Clearance Officer that she had met the requirements as a visitor but that each case must be decided on its own individual merits. In respect of her wish to visit her son and whether he could maintain and accommodate her, he did not consider that the documents showed that he could fund the stay and furthermore, in relation to her personal and financial circumstances, she had provided limited information about her circumstances and he was not satisfied that she was living in settled circumstances in Pakistan. She had no employment and had no income or assets of her own and she was supported financially by her son. She did not appear to have any dependent relatives. Thus the Respondent was not satisfied that she had shown sufficiently strong ties to Pakistan and that there would be little to encourage her to leave the UK on completion of a visit.

5. The Appellant issued Grounds of Appeal and the matter came before the First-tier Tribunal (Judge Jones) sitting at Taylor House on 16th January 2014. At that stage of the proceedings the Appellant was not represented and the Sponsor attended to give evidence. The Appellant's case was set out at paragraphs 8-11 of the determination.

6. Dealing with the conclusions of the judge at paragraph [14] he quite rightly considered the refusal under paragraph 320(7A) as the first issue. However having considered the documentation before him and applying the appropriate standard and burden of proof, he did not find there was any deliberate intention to deceive by

applying the decision of **<u>AA</u> (Nigeria) [2010] EWHC Civ 773** and thus he did not find that the Respondent had discharged the burden to demonstrate that paragraph 320(7A) was met.

7. He went on then to consider the case under paragraph 41 and it is further plain from his findings at [14], which are not challenged by the Respondent before this Tribunal, that there was evidence of her settled circumstances and her documented means at the time of application and thus he found she could meet paragraph 41(i), (ii) and (vii). Thus the only issue remaining related to (vi) as to whether or not the Appellant had demonstrated that she would be able to maintain and accommodate herself adequately out of resources available to her without recourse to public funds or taking employment.

8. In this respect the judge considered the Sponsor's evidence and that whilst he had provided evidence before that had satisfied the Entry Clearance Officer that his circumstances were such that he could maintain and accommodate her, he had not brought the necessary documents for this application and as the judge was not persuaded to adjourn the hearing or allow time for them to be sent, he did not find that paragraph 41(vi) had been satisfied. Thus he dismissed it under that paragraph.

9. The Appellant sought permission to appeal that decision putting in substantial grounds and whilst the First-tier Tribunal Judge refused permission, Upper Tribunal Judge Gill granted permission. The reasons given are as follows:-

> "It is arguable that judge T Jones may have erred in law by failing to engage with the evidence of the Appellant's financial circumstances that was before him and his failure to give any, or any adequate, reasons for his conclusion that the Appellant did not satisfy the requirements of paragraph 41(vii)."

(This should have been (vi)). The notice that went out to the parties also contained the following:-

> "Proposal to set aside and remake the decision.
>
> The Respondent to take notice.
>
> For the reasons given above, the Upper Tribunal is of the preliminary view that the decision of the First-tier Tribunal to dismiss the appeal does involve the making of an error of law such that it falls to be set aside. The Upper Tribunal is therefore minded to set aside the decision of the First-tier Tribunal to dismiss the appeal and to proceed to remake that decision, unless the Respondent gives good reasons for objecting to that course of action in a response submitted under Rule 24 within fourteen days of the date on which this decision is dispatched to the parties.
>
> The Respondent is on notice that, if no such response is received within the specified period, the Upper Tribunal may proceed to decide this appeal in the manner proposed and to assume that the Respondent has no case to advance against the proposal described above."

10. There is a further notice to the Appellant and the Respondent that

> "if the Upper Tribunal sets aside the decision of the First-tier Tribunal, it is minded to remit the case to the First-tier Tribunal to be heard afresh by a Judge of the First-tier Tribunal other than Judge T Jones. If the parties object to this proposal, they must notify the Upper Tribunal of their objection and their reasons, within fourteen days of the date on which the decision was dispatched to the parties."

11. Despite the notices set out by Judge Gill on 15th May 2014 and served upon both parties, there has been no compliance with that notice. In respect of the Respondent, the Upper Tribunal made it plain that having taken the view that the decision of the First-tier Tribunal did involve the making of an error of law such that it fell to be set aside and therefore intended to remake that decision unless the Respondent gave good reason for objecting to that course of action, no such reply was received either within the fourteen days of 15th May 2014 or indeed at any time up until this case was listed before the Upper Tribunal. There is no Rule 24 response either. In respect of the Appellant, the notice made it clear that it was minded to remit the case unless that proposal was objected to by either the Respondent or the Appellant. Again, no communication was received on behalf of the Appellant or the Respondent.

12. Thus the appeal came before the Upper Tribunal. Mr Tarlow on behalf of the Secretary of State submitted that he could not argue with the direction given by Ms Gill that the appeal did involve the making of an error of law and that the appeal should proceed to remake that decision. Mr Hussain, Counsel who appeared on behalf of the Appellant submitted that it was not necessary for the appeal to be remitted to the First-tier Tribunal and that there was sufficient information before the Upper Tribunal to remake the decision itself. There had not been any further evidence provided by the appellant prior to the hearing in accordance with the directions and the sponsor was not in attendance. However Mr Hussain was content to proceed as the case was advanced on the basis of the documents submitted on behalf of the appellant. In those circumstances, I heard submissions from each of the parties.

13. Mr Hussain submitted that the basis of the error of law related only to paragraph 41(vi) and in effect only to the issue of maintenance. As to accommodation, the refusal decision did not deal specifically with the issue of accommodation but in any event at paragraph 11 of the determination, it was recorded that the Appellant owned a four bedroomed house occupied by him and his wife and two children and thus there was room for his mother to visit. Indeed, she has stayed at his property for the visits that have taken place over the years and by all intents and purposes it is the same property.

14. Then he referred the Tribunal to the documentation relating to her financial circumstances. He submitted that the judge, whilst acknowledging at [14] that there was evidence of the Appellant's financial standing before him failed to give regard to it. However looking at it now, the Appellant had adduced evidence of her financial means having provided statements from two bank accounts in her name showing that at the date of decision there was a balance of 936,911.72 rupees equating to £6,246 [see 23 and 24] and also a second account showing a smaller balance of

30,613.58 rupees which Mr Hussain calculated to be approximately £204. He also pointed to the history of that account which had been disclosed showing substantial balances in excess of this amount. The application form in addition indicated that the Appellant was supported by her son and husband and that had been explained by the evidence adduced. In those circumstances he submitted that she had demonstrated that based on her finances that she did have sufficient money, irrespective of the Sponsor's means to satisfy the Rules.

15. Mr Tarlow made no submissions save that he relied on the refusal letter.

16. In those circumstances I reserved my determination.

17. It is plain from the determination of the First-tier Tribunal that the judge resolved the issue concerning paragraph 320(7A) in favour of the Appellant in that he did not find that the Respondent could demonstrate that that paragraph should be upheld for the reasons that he gave at [14]. There is no appeal against that decision. Furthermore, he found that there was evidence of her settled circumstances and her documented means at the time of the application and therefore found that paragraph 41(i) which dealt with the Appellant genuinely seeking entry as a visitor for a limited period was satisfied and also (ii) that she intended to leave the United Kingdom at the end of the period of the visit as stated by her. Presumably the judge was satisfied as to her immigration history and the number of visits that she had made to the United Kingdom. He also found that she could meet the cost of her return and outward journey and thus the only paragraph that he found she could not meet related to paragraph 41(vi) concerning maintenance and accommodation.

18. I consider that Mr Hussain is right that the issue of accommodation as such was not raised factually within the refusal letter and even if it were, it is plain from the determination of the judge that the Appellant would be staying with her son in his four bedroom property occupied by him and his two children. This is the property that she had stayed at before and therefore it could not be said that that property would not be available for her nor would it be suitable to house her for a short family visit.

19. Where the judge fell in error was his failure to consider the evidence that had been provided concerning the financial circumstances of the Appellant as to her own financial means rather than those of the Sponsor. In this respect, the judge was in error as the Appellant had adduced evidence of her financial means available for her stay in the United Kingdom. In this respect there were copies of bank statements for two accounts which had been referred to in the application form. She clearly stated that she was bringing £1,200 with her to cover her maintenance but in any event the two account numbers disclosed showed at the date of decision a substantial balance equating to £6,246 [see 23-24] and a smaller amount of 30,613 rupees which is approximately £204. The account and its history was also produced showing the history of that account showing substantial balances in the past.

20. Therefore in remaking the decision, I am satisfied on the balance of probabilities that the Appellant has demonstrated that she had the financial means of her own to demonstrate that she would be maintained and accommodated adequately out of resources available to her as at the date of decision without recourse to public funds or taking employment.

Decision

21. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The decision is remade as follows. The appeal is allowed.

Signed Date 7/7/2014

Upper Tribunal Judge Reeds