



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

Appeal Number: VA/13083/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham, Sheldon Court  
On 15<sup>th</sup> August 2014**

**Determination  
Promulgated  
On 8<sup>th</sup> September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR GHALIB YASIR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, ABU DHABI**

Respondent

**Representation:**

For the Appellant: Mr S Saini (Solicitor)  
For the Respondent: Mr N Smart (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Page promulgated on 1<sup>st</sup> May 2014, following a hearing at Newport on 23<sup>rd</sup> April 2014, in which the judge allowed the appeal of Mr Ghalib Yasir. The Respondent Entry Clearance Officer, applied for, and was subsequently

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 14<sup>th</sup> December 1991. He appealed against the decision of the Respondent dated 9<sup>th</sup> June 2013 refusing his application for entry clearance as a family visitor in order to visit his brother with his mother, who had already been granted entry clearance. The Appellant's mother did travel to the United Kingdom to visit the Appellant's brother subsequently and did return to Pakistan.

### **The Judge's Findings**

3. The judge had regard to the fact that evidence was given by the Appellant's sponsoring brother, Nazakat Hussain, "who has sponsored a number of members of his family to visit the United Kingdom, all of whom returned to Pakistan" (paragraph 3). The judge held that

"The evidence of the Appellant's brother satisfied me that the Appellant's family are law abiding people who respect the immigration laws of the United Kingdom. This Sponsor would not countenance the Appellant or any member of his family remaining in the United Kingdom unlawfully" (paragraph 4).

4. In particular, consideration was given to the fact that the Appellant's brother had sponsored his father who had also returned back to Pakistan. There was evidence before the judge that, "Mr Hussain was adamant that his brother would have returned with his mother if he had been allowed to visit. He guaranteed that the Appellant would not overstay..." (paragraph 4).
5. The judge also heard how the Appellant's father had visited the UK regularly since 1992 every year and had returned back to Pakistan. Finally, consideration was given to the fact that the Appellant himself was a student at Jinnah Model Science College where he had completed the first year (paragraph 5).
6. The appeal was allowed.

### **The Grounds of Application**

7. The grounds of application state that the judge had wrongly allowed the appeal on the basis there had been past compliance with the Immigration Rules by other family members of the Sponsor, rather than by the Appellant himself, because this had the effect of overlooking the Appellant's true intentions, which the judge had to judge independently himself.
8. On 6<sup>th</sup> June 2014, permission to appeal was granted.

## **Submissions**

9. At the hearing before me on 15<sup>th</sup> August 2014, Mr Smart, appearing on behalf of the Entry Clearance Officer, stated that he would rely upon the Grounds of Appeal. The crucial question here for the judge's determination was the intention of the Appellant himself. This question could not be answered by looking at the intentions of other family members. The fact that other family members had returned was relevant to their circumstances. The circumstances of the Appellant himself may well be different. The judge had erred in not focusing on the Appellant's own circumstances and his own true intention.
10. For his part, Mr Saini submitted that this had been a late application for appeal by the Respondent, and that the late application should not have been overlooked or condoned in any way. He also submitted that the fact that the Appellant was studying at Jinnah Model Science College was relevant.
11. In reply, Mr Smart submitted that the fact that this was a late application was not a matter for this Tribunal. This question had been considered by the judge granting permission, he had applied Rule 21 of the Procedure Rules and concluded that the reason why this application should be heard was because the determination had been sent to the wrong address. Any delay was not a matter for this Tribunal.

## **No Error of Law**

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision and remake the decision. My reasons are as follows. The judge in this case had regard to the circumstances of this family and to the history of visits made at the sponsorship of Mr Nazakat Hussain, to the UK. He was entitled to assess a matter such as "intention" which is a subjective assessment, rather than an objective one, on the basis of evidence, that came directly not from the Appellant himself, but from Mr Nazakat Hussain.
13. Just as it would be relevant if a family member had overstayed, upon the sponsorship of Mr Nazakat Hussain, it was equally relevant if nobody had overstayed. The judge was impressed by what Mr Nazakat Hussain stated. Moreover, the Appellant himself was to accompany his mother. She was granted a visit visa. She came and she returned back to Pakistan. The Appellant's father had been coming since 1992. He has come and he has returned back to Pakistan. The standard of proof is on a balance of probabilities. It is not beyond all reasonable doubt.

14. The judge applying that standard, was entitled to conclude on the evidence as he did. He is entitled to say as he did (at paragraph 7) that “if the Appellant had overstayed in the United Kingdom it would have damaged his brother’s credibility as a Sponsor, damaging the prospect of future applications for entry clearance to visit by his parents” (paragraph 7).
15. In these circumstances, given that the prospects of the Sponsor’s parents of re-entering the UK again as visitors at some time in the future are at stake, and given that the Sponsor, Mr Nazakat Hussain, had given a firm assurance to the judge that his relatives do not overstay and would return, the judge was entitled to come to the conclusions that he did.
16. Another judge may well have made findings of fact that were different to this. However, this judge was entitled to decide as he did. It would be wrong for this Tribunal to intervene in that decision. There is no error of law.

**Decision**

17. There is no material error of law in the original judge’s decision. The determination shall stand.
18. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> September 2014