



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/17863/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 5<sup>th</sup> November 2014

Determination Promulgated  
On 2<sup>nd</sup> December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

SAIRA YOUSAF  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr E Anyene, of Counsel instructed by Malik Law, Solicitors  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. In this appeal the Secretary of State becomes the respondent. However, for the avoidance of confusion I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 26<sup>th</sup> September 2014 Judge of the First-tier Tribunal De Haney gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal Cockrill who allowed the appeal on substantive grounds against the decision of the respondent to refuse leave to enter as a family visitor in accordance with the provisions of paragraph 41 of the Immigration Rules.

### **Error on a Point of Law**

3. When granting permission Judge De Haney noted that the grounds of application asserted that from 25<sup>th</sup> June 2013 the right of appeal for prospective family visitors was limited by Section 88A of the Nationality, Immigration and Asylum Act 2002. An appeal could only be brought on the grounds set out in Section 84(1)(b) and (c) of the 2002 Act namely on human rights and race relations grounds.
4. At the hearing in the Upper Tribunal before me Mr Anyene submitted that the judge was not wrong to apply himself to the substantive issues the respondent had got wrong in the refusal notice because that incorporated consideration of human rights matters.
5. Mr Tufan confirmed that the respondent relied on the grounds and submitted that the appeal could only proceed by consideration of Article 8 issues and not the issues which formed the basis for refusal relating to finances and the genuineness of the visit covered by the refusal decision of 22<sup>nd</sup> August 2013.
6. After considering the matter for a few moments I indicated that the determination showed an error on a point of law for the reasons which I now give.
7. Although the grounds of appeal before the First-tier judge raised human rights (paragraph 12) the determination does not show that the judge considered any such issues, particularly those which might have arisen under Article 8 of the 1950 Human Rights Convention. Section 88A of the 2002 Act removed the right of appeal for persons visiting specified family members save on human rights and race relations grounds. Such an appeal cannot be made against the substantive basis of the refusal. However, the judge gives reasons for allowing the appeal on the basis that the conclusions in the refusal about finance and intention to return were wrong. Thus, the judge was in error in considering the matters in relation to which he had no jurisdiction and in failing to deal with the human rights claim which had been raised in the grounds of appeal. The errors are such that the determination should be re-made.

### **Re-making the Determination**

8. Mr Anyene submitted that the appellant has three sisters left in Pakistan where she has a stable life but she was coming to see her other sister for the first time since the latter had come to the United Kingdom. He argued that they had more than mere emotional ties and the visit was to foster that relationship between the adult siblings. As the appellant's mother was elderly her sister in the United Kingdom had taken on a greater importance in the family.
9. Mr Tufan submitted that the Rules should be regarded as a complete code and there were no provisions in them which would meet the appellant's circumstances. There were no compelling circumstances to allow for consideration of human rights issues outside the Rules. In particular he argued that it had not been shown that there was

family life between the appellant and her sister on the basis set out in *Kugathas* [2003] INLR 170 which required that there had to be more than mere emotional ties between the parties. He also stated that a fresh application could be made for the visit in order to overcome the problems raised in the refusal.

10. In conclusion, Mr Anyene contended that the appellant may be deprived of seeing a relative who was important to her and the judge had found that the conclusions of the Entry Clearance Officer were wrong and so the decision should not have been refused in the first place.

### **Decision and Reasons**

11. In immigration appeals the burden of proof is on the appellant and the standard of proof is a balance of probabilities.
12. Apart from a brief reference in the determination to the circumstances of the appellant's sister in the United Kingdom and the fact that the appellant wished to visit her sister because she "simply wanted to see her family in this country", neither Mr Anyene's submissions nor information already put before the First-tier Tribunal leads me to conclude that the appellant and her sponsor have a relationship which goes beyond emotional ties.
13. There is nothing to suggest a relationship of dependency. Indeed, the appellant has been described as "financially secure in Pakistan". The grounds of appeal suggest that the appellant is supported financially by the sponsor on an "occasional basis" but this contradicts the suggestion that she is financially independent in Pakistan. I am not satisfied that the relationship between the appellant and her sponsor is anymore than that of adult siblings with emotional ties. Thus, I conclude there is no family life between appellant and sponsor and it follows that the human rights claim can get no further than the first stage of the five tests set out in *Razgar* [2004] UKHL 27. On this basis I dismiss the appeal.

### **DECISION**

The First-tier Tribunal made an error on a point of law such that the determination should be re-made. I re-make the determination by dismissing it on human rights grounds.

### **Anonymity**

Anonymity was not requested nor is it appropriate in this case.

Signed

Date

Deputy Upper Tribunal Judge Garratt

**TO THE RESPONDENT**  
**FEE AWARD**

As I have dismissed the appeal I am unable to make a fees award.

Signed

Date

Deputy Upper Tribunal Judge Garratt