



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/18847/2013

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 24<sup>th</sup> September 2014

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

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

SHAH BEGUM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Sarwar of Counsel instructed by Immigration Advisory Services  
(UK) Ltd  
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. Before the Upper Tribunal the Secretary of State now becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 8<sup>th</sup> July 2014 Judge of the First-tier Tribunal Omotosho gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal E M Smith in which he allowed the appeal against the decision of the respondent to refuse entry clearance as a family visitor in accordance with the provisions of paragraph 41 of the Immigration Rules.
3. In granting permission Judge Omotosho pointed out that the grounds of application contended that the judge failed to consider that the appeal rights of applicants proposing family visits had been restricted on 25<sup>th</sup> June 2013 by virtue of Section 52 of the Crime and Courts Act 2013. An appeal could only be brought on human rights or discrimination grounds. The determination showed that the judge had made no reference to either human rights or discrimination.
4. Ms Johnstone confirmed that the respondent relied upon the grounds of appeal. She pointed out that the Entry Clearance Manager who reviewed the decision on 22<sup>nd</sup> February 2014 had confirmed the limited rights of appeal and that the original grounds of appeal had raised Article 8 although this appeared to have been overlooked by the judge. Mr Sarwar also agreed that the judge had been in error in dealing with the appeal against the provisions set out in paragraph 41 of the Immigration Rules but in failing to deal with the eligible element of the appeal on human rights grounds. Both representatives agreed that the determination would have to be re-made on the eligible human rights grounds alone. He also pointed out that no interpreter had been requested and so he suggested that the appropriate mode of disposal would be to remit the matter back to the First-tier Tribunal sitting at Nottingham.
5. I announced that I was satisfied that the determination showed an error on a point of law because the judge had clearly failed to deal with the appeal on the limited grounds permitted by Section 52 of the 2013 Act. Having regard to the fact that the appeal would have to be reheard on all issues relating to human rights I was satisfied that application of paragraph 72(b) of the Practice Statement by the Senior President of 25<sup>th</sup> September 2012 made it appropriate to remit the case to the First-tier Tribunal.

## **DIRECTIONS**

1. The appeal is remitted to the First-tier Tribunal sitting at Nottingham for hearing on all issues related to the limited right of appeal.
2. The hearing will take place on 5<sup>th</sup> November 2014 and should not be before Judge of the First-tier Tribunal E. M. Smith.
3. Representatives should submit a consolidated bundle of all documents and other evidence to be relied upon at the hearing by filing the same with the Tribunal at least five days before the hearing date.

Signed

Date

Deputy Upper Tribunal Judge Garratt