



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

Appeal Numbers: VA/19597/2013  
VA/19598/2013  
VA/19599/2013  
VA/19600/2013  
VA/19601/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 December 2014**

**Decision & Reasons Promulgated  
On 16 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ZUHAIR AL DULAIMI  
MASTER ABDULLAH AL DULAIMI  
MISS REEMAS AL DULAIMI  
MRS THANAA AL DULAIMI  
MASTER SAJJAD AL DULAIMI  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Ms Everett, a Home Office Presenting Officer

For the Respondents: Mr Salfiti, the Sponsor

**DECISION AND REASONS**

1. There is before me an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow the appeal under the Immigration Rules.
2. The application in this case was made on 27 October 2013 and it was made on the basis of a family visit whereby the Dulaimi family could visit Mr Salfiti and his wife in the UK, I was told, for a period of three weeks. On the face of it that application was a straightforward one and there is no reason why it should not have been successful but unfortunately, based on the documents that were submitted, the Entry Clearance Officer was not satisfied as to the financial requirements of paragraph 41 of the Immigration Rules being met.
3. The way that this matter came before me for hearing followed an adverse decision for the ECO before the First-tier Tribunal. The Secretary of State appealed the matter to the Upper Tribunal and Judge Osborne identified that Section 52 of the Crime and Courts Act 2013 had come into force on 25 June 2013. That point had been taken by the Entry Clearance Manager and by the Entry Clearance Officer. In particular, the Entry Clearance Manager's review makes clear that the right of appeal has been severely curtailed by that legislation so that you can only appeal on one of two bases and the two bases that are relevant or potentially relevant are that of human rights and that of discrimination on grounds of racial or other discrimination.
4. The appeal by the respondent is therefore on the basis that there is no jurisdiction to entertain an appeal on the substantive merits; i.e. to ascertain whether or not the requirements of paragraph 41 of the Immigration Rules were met.
5. The ECM's review states that the two grounds of appeal that can be advanced in the light of Section 52 of the 2013 Act, are under Section 19B of the Race Relations Act 1976 or under Section 6 of the Human Rights Act 1998.
6. Mr Salfiti makes the valid point that in the appellant's grounds of appeal reference was made to the Human Rights Act (on page 4, paragraph 1). Unfortunately that was not referred to or dealt with by the Immigration Judge before the First-tier Tribunal and there is no cross-appeal by the appellant against the decision of the Tribunal below against that failure.
7. I have to say, it appears that a properly directed tribunal would take some persuasion that a visit visa application could succeed on human rights grounds where it would fail under the Immigration Rules but in any event the appeal before me does not raise that question. It seems that the appeal has been properly brought by the respondent, who has correctly identified that the Immigration Judge simply did not have jurisdiction to entertain the substantive merits of the appeal. Therefore I have no alternative but to find a material error of law in the decision of the First-

tier Tribunal such that that decision must be set aside. I would be forced to substitute the decision that the appeal under the Immigration Rules be dismissed.

8. As a postscript, however, I would say that I have got considerable sympathy with the appellants' position given that they had raised human rights in their grounds of appeal and given that there was an apparent failure by the respondent to point out to the First-tier Tribunal that there was a potential jurisdictional issue. With respect, the lack of jurisdiction should have been brought to the Immigration Judge's attention.
9. I would also encourage Mr Salfiti to make a fresh application supporting his application with appropriate evidence because it would seem to me that on the face of it this is a proper family visit visa application in absence of anything adverse known about the appellants . It ought to succeed but that is entirely a matter for the respondent to deal with in due course.
10. For those reasons I conclude that the appeal today is allowed. Following the hearing I have revised slightly the reasons given for my decision at the hearing as set out above.

### **Notice of Decision**

The respondent's appeal is allowed. The decision of the ECO to refuse entry clearance stands.

No anonymity direction is made.

Signed

Date **16 December 2014**

Deputy Upper Tribunal Judge Hanbury

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date **16 December 2014**

Deputy Upper Tribunal Judge Hanbury