



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

Appeal Number: OA/00271/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2015**

**Determination Promulgated
On 2 March 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DRABU CBE

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

MS MARIA SHAHID BINTE MEHMOOD MIRZA

Respondent

ANONYMITY DIRECTION NOT MADE

Representation:

For the Appellant: Mr S Whitwell, Senior Presenting Officer

For the Respondent: Ms H Price of Counsel instructed by Addison & Khan,
Solicitors.

DETERMINATION AND REASONS

1. This appeal has been brought by the Entry Clearance Officer (hereinafter called the appellant) against the decision of First Tier Tribunal Judge James allowing the appeal of the respondent against his decision refusing her entry clearance as an adult dependent. The respondent is a citizen of Pakistan born on 20 July 1995. Her application for grant of entry clearance was made on 23 August 2013 and it was refused on 18 November 2013.

2. The appellant was granted permission to appeal to the Upper Tribunal by Judge Fisher, a Judge of the First Tier Tribunal in his decision dated 30 December 2014. In granting permission Judge Fisher *inter alia* said, "In paragraph 12 of her decision, the Judge noted there was no issue about the nature of the relationship between the Appellant and her sponsor. Under Paragraph E-ECDR 2.1 the applicant must be a parent aged 18 years or older, a grandparent, a brother or sister aged 18 or older or a son or daughter aged 18 or older. It would appear that the Judge disregarded this provision in allowing the appeal." He went on to say". As a result it is arguable that the Judge made an error of law, and so I grant permission to appeal. All grounds are arguable." The grounds of appeal as Judge Fisher commented in the decision granting permission are "rather lengthy". Judge correctly summarised these as in finding that the respondent is the niece of the sponsor the Judge erred in allowing the appeal and in finding that she met the eligibility requirements of the Rules.
3. At the hearing before me Mr Stillwell representing the respondent relied on the grounds submitted in support of the application and argued that the decision of Judge James was unsustainable as the respondent being niece of the sponsor did not meet the requirements of the Rules. He argued that guardianship has no relevance to the issue of relationship as defined in the relevant Rules, asking that I look at the relevant pages such as pages 830 and 831 of the Immigration Law Handbook Ninth Edition.
4. Ms Price of counsel argued that the decision of Judge James was correct in law as in this case the transitional provisions applied and that the application for entry clearance was required to be decided under the old Rules and under those Rules the respondent qualified for entry clearance. She asked that I look at her skeleton argument and find that the decision does not suffer from a material error of law. In her skeleton argument, as I understand it, Counsel argues that the respondent met the requirements of paragraph 318 of the Rules as it was at the time of the decision as the paragraph included relationship of uncle or aunt. This document was tendered before the First Tier and has not come about as a response to the appellant's grounds of appeal. I asked the parties what they would like me to do if I were to find the decision contaminated by material error of law, both requested that depending on the nature and extent of the error in law found, the matter be remitted for a fresh hearing at the First Tier
5. I reserved my decision which I now give with the following reasons: I have considered the determination of Judge James, the relevant Rules in the context of the facts and evidence in this case and the submissions made to me orally and in writing. I have concluded that the determination of Judge James is in material error of law. In paragraph 12 of the determination Judge James states, "In assessing the evidence in the round, I find that the Respondent does not dispute that the Appellant is the dependent niece of the Appellant. Moreover the court documents confirm the guardianship arrangement between the sponsor and the Appellant, when the Appellant was a minor aged 17 years of age. Thus the Appellant meets the relevant relationship criteria under the applicable rules." The

Judge has failed to explain the relevance of the Guardianship arrangement to the issue of the eligibility of the respondent for entry clearance. He has taken an irrelevant consideration into account and has failed, if the case of the respondent fell to be decided under paragraph 317 (i) to (vi), the Judge has failed to address the requirement of “most exceptional circumstances” as set out in paragraph 317 (i) and the absence of close relatives to turn to as it appears in (vi). The Judge’s failure to address herself to the crucial requirements as is evident from the determination renders her decision unsustainable. The Judge has also failed to state which eligibility rules she has used to allow the appeal.

6. In the circumstances I allow this appeal and set aside the decision of Judge James. I direct that the appeal be heard afresh at the First Tier Tribunal by a Judge other than Judge James.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
25 February 2015

DIRECTIONS REGARDING ANONYMITY:

No such direction is necessary.

K Drabu CBE
Deputy Judge of the Upper Tribunal

To the Respondent
Fee Award

The decision of Judge Holder to make a fee award is vacated.

K Drabu CBE
Deputy Judge of the Upper Tribunal