



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

Appeal Number: VA/14736/2013

THE IMMIGRATION ACTS

Heard at Birmingham

On 5th February 2015

**Decision & Reasons
Promulgated**

On 13th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ON BEHALF OF ECO ABU DHABI)**

Appellant

and

**ABDUL MANAN KAYANI
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: None

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge Pacey to allow the appeal of the Respondent (previously the Second Appellant) against refusal of entry clearance as a family visitor. On the same occasion (and in the same decision) the judge allowed the appeal of his mother. There is no appeal against that decision.

2. The appeal currently before me is founded on the grounds that the judge purported to allow the appeal under the Immigration Rules. However the application leading to the refusal decision had been made on 3rd June 2013. The application was for the Respondent to visit (with his mother) his mother's brother, that is to say his uncle. Following the introduction of the Immigration Appeals (Family Visitor) Regulations 2012 that relationship does not come within those permitting a right of appeal save on race relations and human rights grounds. It is said in the Grounds of Appeal to the Upper Tribunal that the judge misdirected herself in purporting to allow the appeal of the Respondent in line with that of his mother. Her decision is the more surprising as at paragraph 10 of her determination she in fact noted that the Respondent had only a limited right of appeal.
3. At the hearing before me there was no attendance by or on behalf of the Respondent when the appeal was called on for hearing at 11.40am. I noted from the file that notice of hearing had been sent both to the Respondent and to the Sponsor (who had given evidence at the hearing before the First-tier Tribunal) by letter dated 12th January 2015. I considered the matter in the light of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and decided that it was in the interests of justice to proceed with the hearing.
4. Mr Mills on behalf of the Appellant Secretary of State said that neither of the limited Grounds of Appeal which had been available to the Respondent had been pleaded in the Notice of Appeal. There had been a material error of law on the part of the judge as she had no jurisdiction to allow the appeal.
5. I noted that in her decision although the judge had expressly referred to the fact that the Respondent had only limited Grounds of Appeal she gave no basis for allowing the appeal having regard to those limited rights. There is nothing in the documents to indicate that human rights or racial discrimination grounds had been relied upon. In those circumstances I set aside the judge's decision and substitute a decision that the appeal by the Respondent stands dismissed. The fee award which was made by Judge Pacey in favour of the Respondent also necessarily falls away.

Notice of Decision

6. The decision of the First-tier Tribunal contained a material error on a point of law. I have set aside that decision. I have remade the decision and for the reasons stated above the appeal of the Appellant Secretary of State is successful and therefore the appeal by the Respondent against the refusal of entry clearance is dismissed.
7. No anonymity order was requested and none is made.

Signed

Date 12 February 2015

Deputy Upper Tribunal Judge French