



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

Appeal Number: VA/17734/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14th January 2015**

**Decision & Reasons Promulgated
On 27th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

**SARDAR BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr A Ghafur, Sponsor

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 5th November 1920. She appealed against a decision of the Respondent dated 21st July 2013 to refuse her entry clearance as a family visitor. That decision stated that her right of appeal was limited by section 84(1) (c) of the Nationality, Immigration and Asylum Act 2002. First-tier Tribunal Judge Oscar Del Fabbro sitting at Taylor House on 27th August 2014 allowed the Appellant's appeal. The matter comes before me as an appeal by the Respondent, who is the Entry Clearance Officer in Abu Dhabi, against the first instance decision to

allow the appeal. However for the sake of convenience I shall continue to refer to the parties as they were known at first instance.

2. The facts of the case are relatively straightforward and not in dispute. The Appellant made her application for entry clearance to come and see her extended family in the United Kingdom on 5th July 2013. The Judge refers at paragraph 8 of his determination to there being a large extended family in the United Kingdom (I was told that there were some 25 relatives living in the United Kingdom). The Appellant first came to the United Kingdom in 1976 with her husband, the Sponsor's father, with the intention of settling in the United Kingdom. The Appellant found it difficult to settle in this country and chose to return to the family home. She returned to live in Pakistan in 1979 having lived in the United Kingdom for some three years.
3. She has since returned on family visits to the UK. This visit was planned by her family in the UK because the Sponsor and the extended family in the United Kingdom find it difficult to coordinate family trips to Pakistan which I can well appreciate as did the Judge. The Appellant was described as being in full health and sprightly for her age and self-sufficient. Her brother would be accompanying her on the visit and would return with her to Pakistan. He was also a regular visitor to the United Kingdom and there was ample financial support.
4. Given that history it is not surprising that the Judge found that paragraph 41 of the Immigration Rules was satisfied. Paragraph 41 sets out the requirements to be met by any person seeking entry clearance to the United Kingdom as a visitor and there are various relevant requirements such as that there is an intention to return to the country of origin at the end of the visit and that there are sufficient financial means to support the visitor during the period of the visit. The Judge found as a fact that paragraph 41 would be satisfied and I see no reason to doubt that finding.
5. Up to 25th June 2013 that would have been the end of the matter. The appeal would have been allowed, there would have been no error of law and the first instance decision would stand. No doubt the Appellant would have her visit, see her family and return to Pakistan at the end of the visit. However, the situation is not quite that simple because on 25th June Section 52 of the Crime and Courts Act 2013 was brought into force and this restricted the rights of appeal for visitors. Section 52 provides that there is only a right of appeal against a decision to refuse a family visit visa in one of two circumstances, 1) that that decision would breach this country's obligations under the European Convention on Human Rights or 2) the decision is unlawful by virtue of Section 29 of the Equality Act 2010 so far as it relates to race as defined by Section 9(1) of that Act.. Where Article 8 of the Human Rights Convention (the right to respect for private and family life) is argued the burden of proof of establishing that rests on the Appellant and the standard of proof is the usual civil standard of the balance of probabilities. The Appellant would need to show that the refusal of their visit visa application would disproportionately interfere with their rights under Article 8.

- 6. Very fairly the Sponsor, Mr Ghafur, accepts that this is not a case where Article 8 or the Race Relations Act can properly be raised. They have not been raised up to now, they were not raised in front of the Judge and this appeal does not engage either the convention or the statute. There is no doubt that the Appellant has a family life with her relatives in this country but that is a relationship of adults. There is no dependency between the parties and it is difficult to see how Article 8 can be engaged in this case. There is no issue as to the Equality Act. That being the case, the fact is that the Judge did not have a valid appeal in front of him and he made a material error of law in dealing with the case on the basis of paragraph 41 and completely ignoring the 2013 Act. I therefore set his decision aside on the ground of a material error of law and I proceed to remake the decision.
- 7. It follows from what I have said that just as there was no valid appeal before Judge Del Fabbro so there can be no valid appeal before me by the Appellant, and in those circumstances I must dismiss the Appellant’s appeal against the Entry Clearance Officer’s decision.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I remake the decision in this case by dismissing the Appellant’s appeal against the Respondent’s decision to refuse entry clearance.

Appellant’s appeal dismissed

I make no anonymity direction as there is no public policy reason for so doing.

Signed this 26th day of January 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

The Judge made a full fee award in this case in the sum of £140 stating that in the light of his decision to allow the appeal he would make such an award. It follows that as he had no valid appeal before him that decision too cannot stand and I therefore set aside the fee award decision.

Signed this 26th day of January 2015

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Deputy Upper Tribunal Judge Woodcraft