



**Upper Tribunal  
(Immigration and Asylum Chamber)  
VA/19227/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**Determination  
Promulgated**

**On: 13<sup>th</sup> November 2014**

**On 5<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Ghulam Gadir Qureshi  
(no anonymity direction made)**

Appellant

**and**

**Entry Clearance Officer, Abu Dhabi**

Respondent

For the Appellant: Ms Rafiq, Bellamy & Co Solicitors  
For the Respondent: Mr Smart, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan date of birth 1<sup>st</sup> January 1954. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Herwald)<sup>2</sup> to dismiss his appeal against the Respondent's decision to refuse to grant him entry clearance as a family visitor.
2. The Appellant had applied for entry clearance stating that he wished to come to the UK to visit his adult son and daughter who both live here. He wished to come for 6 weeks. The Respondent had refused to grant a visa on the grounds that the Appellant had not demonstrated

<sup>1</sup> Permission granted on the 23<sup>rd</sup> June 2014 by Designated First-tier Tribunal Judge Appleyard

<sup>2</sup> Determination prepared on the 19<sup>th</sup> May 2014

that he is a genuine visitor who intends to leave the UK at the end of the period stated by him, or that he would be maintained and accommodated without recourse to public funds, or that he could afford the cost of his onward journey. It was further stated that the grounds of appeal to the First-tier Tribunal were limited to those referred to in section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002.

3. When the matter came before the First-tier Tribunal no-one appears to have noticed that the grounds of appeal were limited to race discrimination and/or human rights; at least neither representative brought this to the Judge's attention. Judge Herwald heard oral evidence from the Appellant's son, said to be an Imam at a mosque, and the Appellant's daughter. The determination notes significant discrepancies in their evidence about their father's circumstances in Pakistan. Notably the Appellant's son claimed that he was the owner of two shops, his daughter did not know how many he owned, whilst he himself had not mentioned owning any at all. The Judge was further troubled by the evidence about the circumstances of the sponsors. Both claimed to be working in the UK and to only be entitled to two weeks paid holiday per year. When it was put to them that such contractual terms are actually prohibited by UK law both witnesses sought to change their evidence. Overall the Tribunal was not satisfied as to any of the matters in issue and the appeal was dismissed.
4. The grounds of appeal are that the determination was flawed because the Tribunal did not take into account all of the evidence, and because the negative credibility findings were based on misunderstandings arising from "cultural factors". The First-tier Tribunal Judge is also accused of "simply bullying" the witness when he enquired about his contract of employment and of applying the wrong standard of proof of 'beyond reasonable doubt'. Lastly it is said that the Tribunal failed to address human rights, an argument raised on appeal.

### **Error of Law**

5. It is extremely unfortunate that the Appellant's representatives have advised him to pursue an appeal that has absolutely no hope of success. As Judge Appleyard observes in granting permission "the first two grounds disclose no arguable error of law. The judge has given cogent and sustainable reasons which were fully open to him on the evidence for concluding that the evidence before him was not credible". The Judge was entitled to draw adverse inferences from the fact that neither witness before him could give a straight answer about whether their father owned any shops and if so how many. He was further entitled to be confused about why the Appellant's son,

who has lived in the UK for 16 years and is a British national, gave evidence that “we” (ie including himself) all live together with his father in a joint family system. It is not “bullying” for the Judge to clarify with a witness his evidence that he works full time for below the minimum wage and only gets two weeks off a year. In the context of clear legislation to the contrary the Judge was entitled to understand whether the witness was in fact working in unlawful conditions or whether, for instance, he was lying about his employment. There is nothing in any of the challenged in respect of the evidence.

6. That said all of those challenges were in fact irrelevant since there was no appeal ‘under the rules’ before the First-tier Tribunal. Since the 25<sup>th</sup> June 2013 there has been no unfettered right of appeal to the Tribunal against refusal of entry clearance as a visitor. On that day s52 of the Crime and Courts Act 2013 came into effect, which amended s88A of the Nationality Immigration and Asylum Act 2002. The effect of those changes is that appeals against a refusal of a visit visa can now only be brought on two grounds: race discrimination and human rights.
7. The only ground upon which this appeal was brought was on human rights grounds. It is correct to say that the determination does not address this matter. Failure to deal with a ground of appeal is, ordinarily, an error of law.
8. I am not however satisfied that this is an error such that the decision should be set aside. No evidence was given as to why neither of the Sponsors could visit their father in Pakistan, nor maintain their relationship through methods of communication such as telephone or Skype. There was no evidence presented to the Tribunal to indicate that Article 8 was even engaged, since the decision did not interfere with the family life as it has been enjoyed hitherto. Even if the Appellant had managed to show that he did enjoy a family life with his adult children that could only reasonably be enjoyed through the medium of temporary visits to the UK, he could not have shown any interference to be disproportionate. He had not shown that he met the requirements of the Rules and there was nothing in the evidence to show that the decision had unjustifiably harsh consequences for the individuals involved.

## **Decisions**

9. The determination of the First-tier Tribunal contains an error of law in that the appeal should not have been considered under the immigration rules. Paragraph 14 of the determination is replaced with the following: “there is no appeal before me under the Rules. The appeal is dismissed on human rights grounds”.

Deputy Upper Tribunal Judge Bruce  
29<sup>th</sup> November  
2014