



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

Appeal Number: VA/19231/2013

THE IMMIGRATION ACTS

Heard at Field House

On 27th January 2015

**Decision & Reasons
Promulgated**

On 3rd February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MRS ZAITOON BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, ABU DHABI

Respondent

Representation:

For the Appellant: Mr Stone, Counsel

For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Wellesley-Cole issued on 20th October 2014 allowing, under the Immigration Rules, the appeal of the Appellant against the decision of the Entry Clearance Officer in Abu Dhabi made on 28th October 2013 to refuse entry clearance as a visitor.
2. The Appellant is a citizen of Pakistan, born 1st March 1965.

3. On 5th December 2014 a First-tier Tribunal Judge granted permission to appeal. He said:
 - “2. The Respondent’s reasons for the refusal decision did not pick up on the fact that the application (as it then was in October 2013) could only succeed on restricted grounds. The ECM review did do so. Perusal of the determination however indicates no mention is made of the restricted rights of appeal prevailing arising from the Crime and Courts Act 2013.
 3. All the grounds are arguable.”
4. It is submitted in the grounds seeking permission that Judge Wellesley-Cole had no jurisdiction to consider the appeal under the Immigration Rules due to the amendment that was made to the law on 25th June 2013 by Section 52 of the Crime and Courts Act. This restricted the appeal rights for visitors coming to visit family members to two grounds, namely that the decision breached the Appellant’s rights under either the Human Rights Act or Race Relations Act. These restricted grounds are set out at Section 84(1)(b) and (c) of the Nationality, Immigration and Asylum Act 2002. Reliance is placed by the Respondent on the decision **Virk and Others v SSHD [2013] EWCA Civ 652** in which it was held that statutory jurisdiction cannot be conferred by waiver or agreement or the failure of the parties or the Tribunal to be alive to the point.
5. Judge Wellesley-Cole set out the evidence that she heard. She took into account the various documents before her. She concluded that both witnesses were credible and found herself to be satisfied that the requirements of paragraph 41 of HC 395 (as amended) were met. At no point did she refer to the fact that the Appellant only had an appeal on the two restricted grounds. She had no jurisdiction to deal with paragraph 41. I agree with what was said in the grounds seeking permission.
6. Mr Stone submitted that the only way forward in this case is for the appeal to be remitted to the First-tier Tribunal for a hearing de novo so that the Article 8 ECHR issues can be examined. Article 8 was raised in the original Grounds of Appeal but the family life element of the application has never been considered.
7. I accept that it would be difficult for this appeal to succeed on Article 8 grounds but in light of the fact that this application was wrongly dealt with by the ECO and the Tribunal and the fact that no evidence to support a claim under Article 8 has been put forward or considered, the correct approach is to remit it to the First-tier Tribunal.

Notice of Decision

The appeal is remitted to the First-tier Tribunal to be heard anew.

No anonymity direction is made.

Signed

Date: 2nd February 2015.

Deputy Upper Tribunal Judge Baird