



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
VA/19254/2013

Appeal Numbers:

**THE IMMIGRATION ACTS**

**Heard at Field House  
24 October 2014**

**Promulgated on  
7 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE LATTER**

**Between**

**ENTRY CLEARANCE OFFICER, MUSCAT**

Appellant

**And**

**KALEEM WASEEM HAYAT  
(No anonymity direction made)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: No appearance

**DETERMINATION AND REASONS**

1. This is an appeal by the Entry Clearance Officer, Muscat against a decision of the First-tier Tribunal allowing an appeal by the applicant against a decision made on 27 October 2013 refusing him entry clearance as a visitor. In this determination I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Entry Clearance Officer as the respondent.

Background

2. The appellant is a citizen of Pakistan born on 23 December 1976. He has lived in Muscat, Oman since 11 September 2011 where he was employed

as an electronic computer technician. On 5 August 2013 he applied for entry clearance to visit his parents who are resident in the UK and to attend a religious convention organised by the Ahmadiyya Muslim community.

3. The respondent was not satisfied that the appellant could meet the requirements of para 41 of HC395. He noted that he intended to travel to the UK for two weeks to visit family members and to attend a conference. He had submitted with his application a letter of invitation from his father who was currently residing in the UK, letters from his employer and a bank statement to confirm his personal circumstances in Oman. In his application he also indicated that he was the only member of his immediate family living there. He submitted a copy of his wife's Canadian refugee protection decision which showed that she had been granted refugee protection there and a receipt to show that he had applied to join her in Canada but no evidence had been shown that a decision had been made on that application.
4. The respondent also noted that both the appellant's parents in the UK had sought leave to remain in a long term category outside the Rules. The appellant did not appear to have any other immediate family in Oman and did not have property assets, savings or investments there or elsewhere. He was not satisfied that the applicant had demonstrated sufficient ties there and because he had not travelled to the UK previously, he had no record which allowed him to compare or confirm that his circumstances were as he described. On the evidence before him, on the balance of probabilities, he was not satisfied that the appellant was genuinely seeking entry as a visitor for a limited period as stated by him nor that he intended to leave at the end of his proposed visit. Following a review by the Entry Clearance Manager the decision was maintained.

#### The Grounds of Appeal

5. In his grounds of appeal the appellant repeated his wish to pay a brief two week visit to the UK to see his parents and to attend the Ahmadiyya Muslim Association annual convention. He argued that the respondent was not proportionate in his decision, which was unfair, irrational and in breach of articles 8 and 9 of the ECHR. He wished to visit his parents who had valid refugee status in the UK and it was further argued that the refusal breached article 8. The grounds argue further that the issue of whether his future intention was to join his wife in Canada was irrelevant but that this possibility increased the likelihood that he would in fact leave the UK to be with his wife. It was not necessary to stop the appellant from visiting the UK when it was obvious, so it is asserted, that he was planning to reunite with his wife in Canada and had an income in Oman.

#### The Decision of the First-tier Tribunal

6. The appeal was decided without a hearing on 14 July 2014. The judge noted the grounds on which the application was refused and the reasons given. After directing himself on the burden and standard proof he said:

“7. I am provided with a bundle of documents on behalf of the appellant. They appear to show that he is from an Ahmadi family. His parents have leave to remain in the UK as refugees and he has made an application to join his wife in Canada as a dependant on her refugee status. He is employed in Oman as an electronic computer technician. The grounds of appeal argue that the appellant has not seen his parents since 2005 when they came to the UK and that their finances and health do not permit them to travel to Oman to see him and still less would they be able to travel to Canada once he settles there.

8. Although the appellant is not securely settled in Oman the marked appearance is that he has realistic expectations of joining his family in Canada. He would therefore have a strong incentive to comply with the Immigration Rules and to return to Oman. I find on the balance of probabilities that all the requirements of para 41 will be satisfied and I allow the appeal.”

7. The respondent sought permission to appeal against this decision arguing in the grounds that the judge had overlooked the fact that there were restricted appeal rights for visitors and that the only grounds of appeal were the residual grounds in S.84 (1)(b) and (c) of the Nationality and Immigration and Asylum Act 2002, namely human rights and race relations grounds. It was therefore not open to the First-tier Tribunal to consider whether the decision was in accordance with the immigration rules or otherwise not in accordance with the law. The judge failed to make any findings on human rights grounds as required and had therefore erred in law.
8. When granting permission to appeal in the First-tier Tribunal Judge Page said:

“The judge allowed the appeal under paragraph 41 of the immigration rules upon finding the appellant would have a strong incentive to comply with the immigration rules by returning to Oman. The grounds of appeal assert that the judge had no jurisdiction to hear this appeal and determined the appeal under the immigration rules. On 25 June 2013 section 52 of the Crime and Courts Act was commenced. This amended section 88A of the 2002 Act to restrict the appeal rights of those refused visit visas to grounds of appeal on human rights and race relation grounds only. The restrictions apply to any applications made on or after 25 June 2013. In this case the appellant made his case on 5 August 2013 so was only able to appeal on human rights and race relations grounds. The judge did not make any findings on human rights grounds as required and the determination did not record that the appellant appealed on human rights grounds. The grounds of appeal raise an arguable error of law so permission to appeal is granted.”

### Assessment of the issues

9. There has been no appearance by or on behalf of the appellant. I am satisfied that the notice of hearing has been properly served on nominated

solicitors in the UK. In the absence of any explanation for their failure to attend I am satisfied that the proper course is to proceed with this hearing.

10. The first issue is whether the First-tier Tribunal erred in law such that its decision should be set aside. There is a clear error of law in that the judge dealt with the appeal on the basis that it was an appeal under the immigration rules. However, in the light of the date of application and the provisions of s.52 of the Crime and Courts Act 2013 the right of appeal was limited to human rights grounds and this restriction is noted at the foot of the decision refusing entry clearance. In the grounds of appeal to the First-tier Tribunal the appellant relied on articles 8 and 9 of the ECHR. Instead of dealing with those articles the judge erred by dealing with the appeal as if it was an appeal being pursued under the immigration rules. By doing so he erred in law and the error is such that the decision must be set aside.
11. I now move on to re-making the decision. I am not satisfied that the respondent's decision would lead to a breach of article 8 or article 9. Article 8 deals with the right to respect for private and family life and the appellant's argument in substance is that the refusal of entry clearance to visit his parents in this country is an interference to the right to respect for his family life so engaging article 8(1) which is not proportionate to a legitimate aim within article 8(2). However, an appeal on human rights grounds cannot be used as a vehicle for a merits appeal under the rules. The respondent is entitled to set out requirements in the rules which must be met before entry clearance is granted. It is not argued that the rules the applicant had to meet were either unreasonable or irrational and the respondent's decision was clearly within the range of decisions reasonably open to him. The fact of the matter is that the evidence put before the respondent did not persuade him on a balance of probabilities that the rules could be met.
12. In these circumstances even assuming the refusal of a two week family visit engages the right to respect for the appellant's family life, it cannot be argued that the respondent's decision can be categorised as disproportionate to a legitimate aim set out in article 8(2) in circumstances where he was unable to satisfy the respondent that the requirements of the rules were met.
13. The appellant also raises article 9 which provides that everyone has the right to freedom of thought, conscience and religion and that the freedom to manifest one's religion or beliefs shall be subject only to such limitations as prescribed by law, necessary in a democratic society for the interest of public safety, for the protection of public order, health or morals or for the protection of the rights of freedoms of others. I am not satisfied that the refusal of permission to visit to attend a conference engages article 9 or that the inability to attend a two week conference is any inhibition on the appellant's rights to freedom of thought, conscience and religion. For these reasons, I am not satisfied that the decision to refuse entry clearance amounted to a breach of either article 8 or 9.

## Decision

14. The First-tier Tribunal erred in law and the decision is set aside. I re-make the decision by dismissing the appellant's appeal on human rights grounds.

Signed  
Upper Tribunal Judge Latta

Date 20 November 2014