

# IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 24<sup>th</sup> May 2004

Date Determination notified:

7<sup>th</sup> June 2004

Before:

Mr C M G Ockelton (Deputy President)  
Mr S L Batiste (Vice President)  
Miss B Mensah (Vice President)

APPELLANT

and

Entry Clearance Officer, Bombay

RESPONDENT

## **DETERMINATION AND REASONS**

1. The Appellant, a citizen of India, appeals with permission against the determination of an Adjudicator, Mr D M Page, dismissing her appeal against the decision of the Respondent on 8<sup>th</sup> July 2003 refusing her entry clearance as a visitor. Before us today, she is represented by Mr Patel of Jasvir Jutla & Co and the Respondent is represented by Mr Saunders. Both of them agree with the substance of the decision which we make.
2. The Appellant made her application for a visit visa on 8<sup>th</sup> July 2003. She was, as we have said, refused: the base of the refusal being the same. She made no comment at the time of the refusal, but subsequently representatives lodged an appeal on her behalf. As a result of that, the Entry Clearance Manager completed a form. In the course of completing the form he ticked a box indicating that the "*type of appeal*" was to be "*paper*". We do not know the basis on which that

decision was made because the notice of appeal which she was considering did not indicate whether a paper or oral evidence hearing was sought.

3. When the following matter came before the Adjudicator there were representations of various sorts from Jasvir Jutla & Co, but the Adjudicator gives no indication of having considered the process by which she should determine the appeal.
4. It is common ground before us that an Adjudicator's power to determine an appeal without a hearing is contained in Rule 45, which we do not need to set out. It is clear in the present case that this was neither an appeal where all parties consented to a determination without a hearing, nor one where the party outside the United Kingdom was not represented. The Adjudicator needed to make a procedural decision. There is no trace of him having made that decision.
5. We are aware that there are in the system a number of cases in which, following the removal of the fees regime for visitors, introduced by the 1999 Act, out-of-date forms have been used, with the result that an applicant who does not pay a fee is treated as a person who also did not pay the higher fee and so is not entitled to an oral hearing. That is entirely incorrect. In all visit visas it is for the Adjudicator to decide on the material before him, including any indication by the parties as to how they wished the appeal to be determined, whether to determine the appeal with or without a hearing.
6. In the present case, it is said on the Appellant's behalf that it is essential for the sponsor's evidence to be heard. That evidence is not before us. In the circumstances, we must remit this appeal for a fresh consideration by an Adjudicator other than Mr Page. We emphasise that it will be for that Adjudicator to decide on the basis of all the material before him, and having regard to Rule 45, the process of determining the appeal. We would also wish to make it clear that the new Adjudicator is not to consider the conclusions of Mr Page, which were made without any regard to what might be said on the Appellant's side of the case.

C M G OCKELTON  
DEPUTY PRESIDENT