



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

Appeal Number: VA/01003/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 12 December 2014**

**Decision & Reason Promulgated
On 29 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**MUHAMMAD DAUD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-

tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Thorne promulgated on 14 August 2014 which allowed the Appellant's appeal under the Immigration Rules.

Background

3. The Appellant was born on 15 April 1971 and is a citizen of Pakistan. On 12 December 2013 the Appellant applied for entry clearance to the United Kingdom as a family visitor.
4. On 13 January 2014 the Secretary of State refused the Appellant's application and because the application was made after 25 June 2013 the refusal notice made clear that an appeal against refusal could only be brought under section 84 (1) (c) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) on grounds relating to (i) human rights and (ii) race relations grounds.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thorne ("the Judge") allowed the appeal under the Immigration Rules. He found that there was a right of appeal because the Appellant was applying to visit a family member and he found that the Appellant had sufficient links with Pakistan to establish a motive to return; he found that the documents he produced were genuine and reliable; that the sponsor had sponsored other family members who had complied with their conditions of stay.
6. Grounds of appeal were lodged and on 25 September 2013 First-tier Tribunal Judge Parkes gave permission to appeal on the basis that the Judge had failed to recognise that there was a limited right of appeal.
7. The Appellant did not attend the appeal but his sponsor Samiyah Zahid attended court on his behalf. I explained the nature of the proceedings to her. She understood the position.
8. At the hearing I heard submissions from Mr McVitie on behalf of the Respondent that he relied on the grounds of appeal.

Finding on Material Error

9. Having heard those submissions I/we reached the conclusion that the Tribunal made material errors of law.
10. This was an appeal against a refusal of entry clearance made by the Appellant on 12 December 2013.
11. Section 52 of the Crime and Courts Act 2013 amended s88A of the 2002 Act so as to remove the right of appeal for persons visiting specified family members. Although they are still able to bring an appeal on the residual

grounds in s 84(1) (b) and (c) of the 2002 Act, namely on human rights and race relations grounds.

12. The failure of the First-tier Tribunal to address and determine whether the Appellant could succeed on the basis of the limited grounds of appeal that were open to him rather than on the merits under the Rules constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
13. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. I indicated to both parties that I was able to re hear the case and they both indicated that they were content to proceed.
14. The sponsor gave evidence that the Appellant was her uncle and it had been 10 years since she had last seen him. Her mother, his sister, had last seen him 4 years ago when she travelled to Pakistan and stayed at her family home. Ms Zahid had been unable to travel to see her uncle because she was studying then working. She confirmed that there was nothing stopping her from travelling to Pakistan just that the majority of their relations were in the United Kingdom and it would be cheaper and more convenient for him to come to the United Kingdom than for family members to visit him.
15. In final submissions Mr McVitie submitted that while he had sympathy for the Appellant and his sponsor there was no breach of Article 8 in the decision to refuse entry clearance.

Findings

16. The Appellant is a Pakistani national who sought entry clearance to the United Kingdom as a family visitor to see his sister and his niece, the sponsor who appeared before me.
17. I have considered this appeal by reference to the limited grounds that are available to the Appellant. I am satisfied that there was no evidence that the decision was unlawful on the basis of any discrimination in the exercise of a public function in relation to race as defined in the Equality Act 2010. There is no suggestion that any of the parties to the proceedings are disabled.
18. Having heard the evidence of Ms Zahid that there is nothing to stop any family member from visiting the Appellant in Pakistan and enjoying family and private life with him there I am satisfied that there is no evidence that the decision is contrary to the Human rights Convention rendering the decision incompatible with the parties Article 8 rights.

DECISION

19. **I find that the decision of the First-tier Tribunal involved the making of an error of law and I set aside the decision and remade it.**
20. **The appeal is dismissed.**

Signed

Date 24.12.2014

Deputy Upper Tribunal Judge Birrell