



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

Appeal Number: VA/01178/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 October 2013**

**Determination Promulgated
On 26 November 2013**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**MASTER RB
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER ABU DHABI

Respondent

Representation:

For the Appellant: No representation but Mr SA appeared
For the Respondent: Ms A Holmes, Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born in 2011. His mother JS applied for entry clearance to the United Kingdom as a visitor. That application was refused but on appeal was allowed by a First-tier Tribunal Judge under appeal number VA/01074/2013. A separate application was made in relation to RB which was also refused but allowed upon appeal in the same determination as that of his mother.

2. The respondent sought permission to appeal the allowed appeal of RB. The grounds seeking permission are that with effect from 9 July 2012 (upon the coming into force of the Family Visitor Regulations 2012) although the appellant's mother was applying to visit her sister RB was applying to visit his aunt and the relationship of aunt and nephew was no longer one falling within the definition of "family member". Any refusal of a family visit entry clearance application by someone falling within such a relationship no longer attracts a right of appeal under the Immigration Rules. Permission to appeal the decision of the judge was granted. At the hearing I allowed Mr SA, the brother-in-law of Mrs JS, to address me.
3. It is clear upon a reading of the determination that the judge proceeded on the basis that RB had a full right of appeal. The Immigration Appeals (Family Visitor) Regulations 2012 at 2(1) and (2) sets out those who may appeal against an adverse decision refusing entry clearance. This does not include the relationship of aunt and nephew. Mr SA said that this would mean that although his sister-in-law would be able to visit in theory, in practice she would not be able to do so because she could not leave her infant son behind. However, as I explained to him that is the unfortunate consequence of those Regulations being brought into force. There is only a very limited right of appeal against an adverse decision in such circumstances.

Decision

4. The judge erred in law in allowing the appeal of RB when in fact he had no right of appeal except upon the limited ground referred to in Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002. That limited ground is that the decision is unlawful under Section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights. No appeal under that ground has been made. In consequence, RB does not have and did not have any valid right of appeal. I therefore set aside the decision of the First-tier Tribunal Judge and substitute for that decision one that there is no valid appeal.
5. In case there should be any doubt about the matter the allowed appeal of RB's mother JS still stands and is entirely unaffected by my decision.

Anonymity

6. I decided to make an anonymity direction in respect of RB because of his age. Even now he is only approximately 21 months old.

Signed:

Date:

Upper Tribunal Judge Pinkerton