



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

THE IMMIGRATION ACTS

**Heard at Field House
On 24 June 2013**

**Determination
Promulgated
On 26 June 2013**

Before

UPPER TRIBUNAL JUDGE WARR

Between

AHMAD FAISAL QURESHI

and

ENTRY CLEARANCE OFFICER

Appellant

Respondent

Representation:

For the Appellant: Mr P Richardson, of counsel
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 20 October, 1977. On 6 August, 2012 he was refused an entry clearance as a visitor. He wanted to visit his uncle in the United Kingdom. It was said that the appellant

was not seeking to visit a qualified family member as defined in the Family Visitor Regulations. It was also said that he had only produced limited evidence of his financial circumstances and his passport did not show any previous travel outside Pakistan and there was little to encourage the appellant to leave the United Kingdom on completion of his visit. He had not accurately presented his circumstances or intentions and the Entry Clearance Officer was not satisfied that he was genuinely seeking entry as a visitor or that he intended to leave the UK on completion of his visit.

2. The appellant's appeal was heard together with the appeal of his father before a First-tier Judge on 7 March, 2013. The appellant's father's appeal was allowed. He was visiting his brother.
3. However it was found by the First-tier Judge that the appellant had no right of appeal under the rules as he was not visiting a family member as defined in the Immigration Appeals (Family Visitor) Regulations 2012. However he did have a right of appeal on human rights grounds. The appeal was dismissed.
4. Grounds of appeal were settled by Mr Richardson (who did not appear below). He pointed out that the application had been made on 4th July 2012 and the 2012 Regulations came into force after that date, on 9 July 2012. The regulations only applied to an application for entry clearance made on or after the day on which they came into force-see paragraph 4 of the regulations.
5. In the premises the applicable regulations were the Immigration Appeals (Family Visitor) Regulations 2003 (SI 518/2003). Under these regulations the appellant would qualify as a nephew visiting his uncle.
6. The respondent filed a response on 29 May 2013 and accepted that the decision of the respondent in respect of the appeal right was flawed. However it was not accepted that the appellant must succeed in his appeal and an oral hearing was considered to be appropriate.
7. Mr Deller noted that the First-tier Judge had made favourable findings in relation to the appellant's father and it was very difficult to see that had the judge properly directed himself on the issue of jurisdiction that he would have found anything of concern in respect of the appellant. It was likely that he would have decided the appeal of the appellant in the same way as his father and allowed it.
8. Mr Richardson submitted that the appellant had strong ties to his home country and his father was affluent. He had his wife and three children in Pakistan. There was a strong incentive to return. Doubts had been raised because of the lack of documentary material. These had been addressed. There had been a visit in 2004 when the sponsor had attended the wedding of the appellant and it was desired to repay the hospitality.

9. I note that the judge found that the appellant's father was proposing to visit his brother and accordingly he considered the appeal under the rules. While limited documentation had been provided with his application, material had now been adduced which the judge was able to take into account as well as the oral evidence given by the sponsor who was a GP in Kent. The judge found the sponsor was a credible witness. The judge found that the evidence confirmed the family circumstances of the first appellant who had two adult sons and three grandchildren. The appellant's father worked on a commission basis in a private medical centre in Lahore. He accepted that the appellant's father had strong ties with Pakistan and that he was genuinely seeking entry as a visitor to the UK. He intended to leave the UK on completion of his visit.
10. While the judge dismissed the appeal of this appellant on human rights grounds there were no concerns raised about his credibility and no indication that his appeal would have been dismissed under the immigration rules had the judge appreciated that in fact that the appellant was a qualified family member.

I remake the decision

The appeal is allowed under the immigration rules

Fee Award:

It is appropriate to make a full fee award.

Signed

24 June 2013

Upper Tribunal Judge Warr