



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: VA 33135-12

THE IMMIGRATION ACTS

At **Field House**
on **01.08.2013**

Decision signed: **30.09.2013**
sent out: **02.08.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

IRFAN ZAFAR

appellant

and

Entry Clearance Officer, ABU DHABI

respondent

Representation:

For the appellant: no appearance

For the respondent: Mr C Avery

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Mark Symes), sitting at Hatton Cross on 8 April, to allow a family visit appeal by a citizen of Pakistan, born 15 March 1992. The judge, who had no presenting officer before him, allowed the appeal on its merits under the Rules; but the appellant had applied on 12 July 2012 for a visa to come here and see his uncle Mr Khalid Khan (the sponsor). His application was refused on a date which the entry clearance officer has not bothered to fill in; but, even by the date of the application, the family visitor Rules had changed, on 9 July. So the Home Office, who had not pointed out the change at all clearly in their refusal notice, or bothered to do so to the judge, got permission to appeal.

2. On 9 July 2012, when the change took place, a Home Office Internet posting misled the sponsor into thinking that, because he is a British citizen, the appellant would have a full right of appeal. However, the new Rules (the Immigration Appeals (Family Visitor) Regulations 2012) re-defined the categories of sponsor whose relations will have a full right of appeal, without including uncles; so this appellant has a right of appeal on human rights grounds only.
3. Understandably, none of these were pleaded in the grounds of appeal; but, with the help of a family friend who speaks better English (Mr Khalid Sharif), the sponsor argued that
 - (a) the appellant is the only member of the family in Pakistan with enough understanding to discuss family business with the sponsor; but
 - (b) the sponsor is not fit to travel to Pakistan himself; and so
 - (c) the appellant needs to come here before September or October next, when he needs to start college in Pakistan.
4. So far as the medical evidence to support (b) goes, it consists in a letter from the sponsor's GP since 1997, saying he "... has confided in me his inability to travel abroad to visit close relatives on account of his ill-health. He suffers from chronic kidney disease and remains under regular consultant follow-up at the Royal London Hospital Whitechapel". The sponsor himself told me he has to see his consultant every two or three months; he also suffers from gout in his foot. The appellant has been here as a visitor before, with his father, and returned to Pakistan on time.
5. I do not doubt that the sponsor's conditions are likely to make long flights uncomfortable for him; but the GP does not express any opinion of his own that they would be impossible, and I do not think that is at all likely to be the case. Her Majesty's Government is under no obligation under the Human Rights Convention to make it easy for nephews to visit uncles, and this appellant is not excluded from doing so if he can meet the usual criteria under the Immigration Rules.
6. Those criteria represent a system which Her Majesty's Government is entitled to have in place and enforce: whatever might be thought of the merits of this application on those terms, its refusal does not represent a significant invasion of the appellant's or the sponsor's rights to family life; and, if it did, would not have been disproportionate to the legitimate purpose of immigration control.

Home Office appeal allowed
Appellant's appeal dismissed



(a judge of the Upper Tribunal)