



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

Appeal Number: VA/06340/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 May 2014**

**Determination
Promulgated
On 2 June 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MRS SHAHEEN AKHTAR

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr. A Raja, Counsel
For the Respondent: Mr T Melvin, HOPO

DETERMINATION AND REASONS

1. The respondent has been granted permission to appeal the decision of First-tier Tribunal Judge Cohen allowing the visit appeal of the appellant. The judge also allowed the appeal of the appellant's daughter, Miss Arzoo

Ibrar, who was born on 16 March 2008. Miss Ibrar's appeal number is VA/06338/2013.

2. The appellant is a citizen of Pakistan, born on 1 January 1987. On 1 February 2013 she made an application, with her daughter as her dependant, to visit the UK. At part 7, question 96 she named the relative she would be visiting as Mohammed Azam and said in answer to question 101 that he was her uncle. In part 7 - other close family members in the UK, at question 115 she named a number of relatives including Muhammad "Nazir" Khan as her grandfather. Counsel said "Nazir" should read "Wazir".
3. The ECO refused the applications on 17 February 2013. In respect of the appellant, the respondent stated that because the person she is visiting is her uncle, he is not a qualified family member as defined by the Immigration Appeals (Family Visitor) Regulations 2012. Therefore the refusal of her entry clearance application attracts a limited right of appeal. This was not repeated in the respondent's refusal of Arzoo Ibrar's application. I note that in Arzoo Ibrar's application, it said that she would stay with Mohammed Azam, who is her grandparent. Mohammed Azam is the uncle Shaheen Akhtar said in her application that she would be staying with. The appellants appealed and their appeals were heard on 17 February 2014 by FtTJ Cohen and, as already stated, he allowed both appeals. He found that the respondent's decision was not in accordance with the law and Immigration Rules applicable.
4. The respondent was not granted permission to appeal the decision in respect of Arzoo Ibrar because "The UK sponsor was her grandfather and the judge made no arguable error of law in allowing the appeal on the ground that the decision was not in accordance with the rules". As to whether this was correct was another matter, given that Mohammed Azam could not be her grandfather, if he is the uncle of her mother.
5. The respondent argued in respect of this appellant, that the judge erred in law by making a material misdirection of law on a material matter. The appellant had only a limited right of appeal by reason of the effect of the Immigration Appeals (Family Visitor) Regulations 2012 and that the judge failed to make any findings on these grounds. Permission was granted by First-tier Judge Pooler who stated that the UK sponsor was the appellant's uncle. The judge arguably erred in law since the appellant arguably had a right of appeal on limited grounds which did not include the ground that the decision was not in accordance with the rules.
6. The Entry Clearance Manager reviewed the decision in respect of Shaheen Akhtar on 16 September 2013. He said as follows as paragraph 3:

... I note that under the Immigration Appeals (Family Visitor) Regulations 2012, the appellant's uncle is not considered a qualified family member. The sponsorship declaration and documents

provided and passport copy provided states that they are related at uncle/niece, and the grandfather in which the appellant refers has never been demonstrated and his settled status has never been evidenced. The appellant was correctly afforded a Limited Right of Appeal.

7. In a letter sent to the Tribunal on behalf of the appellant on 5 May 2014, it was said that on behalf of the Secretary of State, no representations were made as to jurisdiction at the hearing and there were no documents before the Tribunal (apart from the initial refusal letter) suggesting it initially was. The Tribunal was asked to accept the letter as an application to adduce evidence of the grandfather's status. The evidence was a copy of the grandfather's British passport. It was said that this evidence was in the possession of the sponsor at the hearing and that he would have produced it had he been asked for it. In any event it was not before the ECO or the judge and did not feature in the respondent's appeal. It was therefore evidence that I could take into account in deciding whether the judge erred in law.
8. I find that jurisdiction was material in this appellant's appeal. The appellant was granted a limited right of appeal because Mohammed Azam Khan was her uncle and therefore not a qualified family member. In his undated witness statement, which was before me, Mr Khan confirmed that he is the appellant's uncle as he and the appellant's mother are brother and sister. He said his father, Mohammed Wazir Khan is the appellant's grandfather. I note that Wazir Khan was one of the "other" family members named in the appellant's visa application.
9. I find that the judge did not make any findings on the grounds in relation to the appellant's limited appeal rights. It follows that the judge's decision was materially flawed and should be set aside. I do not, for the avoidance of doubt, uphold any of the findings made by the judge.
10. Rather than dismissing the appeal, I have decided to remit the case back to the ECO for reconsideration of the appellant's application. This is because the Entry Clearance Manager's decision at paragraph 3 seemed to imply that had there been evidence of the settled status of the appellant's grandfather, the appellant's application might have been considered differently.
11. The appellant's case is remitted to the ECO.

Signed
Upper Tribunal Judge Eshun

Date