



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at: Birmingham
Promulgated
On: 7 July 2014

Determination

On: 8 July 2014

Before

Upper Tribunal Judge Pitt

Between

Zarina Bibi

Appellant

and

Entry Clearance Officer - Abu Dhabi

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan and she was born on 1 January 1967.
2. This is an appeal against the decision promulgated on 19 March 2014 of First-tier Tribunal Judge Hawden-Beale which dismissed the appellant's appeal against the respondent's decision of 14 August 2013 refusing entry clearance as a visitor.
3. The sponsor, Mrs Rabila Akther, attended the hearing.

4. The background to this matter is that the appellant applied for entry clearance to visit close family members in the UK, in particular her sister, the sponsor's mother, who is unwell and was widowed relatively recently. The appellant also has sons and a number of other relatives in the UK whom she intended to visit.
5. The application was refused by the respondent under the Immigration Rules. It was not found that the appellant was a genuine visitor seeking limited leave who would return to Pakistan at the end of her visit.
6. The decision stated correctly that the appellant had a limited right of appeal under section 84 (1) (c) of the Nationality, Immigration and Asylum Act 2002. That was a reference to the change in statute which meant that as of the date of the decision, the grounds of appeal that the appellant could raise in a visit visa appeal were limited to human rights or race relations.
7. It was common ground before me that at the hearing the First-tier Tribunal and the respondent's representative proceeded on the incorrect basis that the limited right of appeal arose because the sponsor was not coming to the UK to visit a sufficiently close relative. The error in that regard is conceded by the Judge at [15].
8. A further error arose from the first one, however, as, having found that the sponsor was visiting sufficiently close relatives, the Judge proceeded with the hearing as if a full right of appeal arose and heard evidence as to whether the substantive Immigration Rules were met. It is worth pointing out that she found that they were; see [16]. The appellant will obviously want to rely on those positive findings in any future entry clearance application.
9. The materiality of the error in addressing whether the Immigration Rules are met is that the Judge did not afford the sponsor the opportunity to address the human rights aspect of the appeal and whether there were exceptional circumstances such that the decision should be found disproportionate.
10. Mr Mills conceded that the appellant did not have a fair hearing before the First-tier Tribunal where it had proceeded on an incorrect basis and the appellant been unable to have proper evidence and argument made on her human rights claim. He accepted, as in the grant of permission to appeal, that it would not be an easy task for the appellant to show that her appeal should be allowed on Article 8 grounds but given that there were issues of the health of the sponsor's mother (the appellant's sister) and other family issues, he

accepted that the failure to address human rights could be said to be material.

11. Mr Mills also conceded that where there was a procedural error such that the decision should be set aside, it should be remitted to the First-tier Tribunal to be re-made, following paragraph 7.2 of Part 3 of the Senior President's Practice Statement dated 25 September 2012.

DECISION

12. The decision of the First-tier Tribunal discloses an error on a point of law.
13. It is remitted to the First-tier Tribunal to be re-made following a hearing on 9 August 2014.

Signed: 
Upper Tribunal Judge Pitt

Date: 7 July 2014