



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

Appeal Number: VA/00506/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> February 2015**

**Decision & Reasons  
Promulgated  
On 6<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MS SHAHNAZ JAVED  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Avery, Home Office Presenting Officer

For the Respondent: Ms Cooke, Counsel, for Haq Hamilton Solicitors London

**DECISION AND REASONS**

1. The Appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Pakistan born on 8<sup>th</sup> September 1962. She appealed against the decision of the Respondent dated 8<sup>th</sup> December 2013 refusing her entry clearance to the United Kingdom for the purpose of a family visit lasting three months. The Entry Clearance Officer's decision

was upheld by the Entry Clearance Manager. The appeal was heard by Judge of the First-tier Tribunal S Taylor on 6<sup>th</sup> November 2014. He allowed the appeal under the Immigration Rules in a determination promulgated on 19<sup>th</sup> November 2014.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Colyer on 9<sup>th</sup> January 2015. The grounds are that the judge had no jurisdiction to deal with the appeal under the Immigration Rules, which is what he did, as Section 52 of the Crime and Courts Act has restricted the appeal rights for visitors coming to visit family members in the UK and the restrictions apply to any applications made on or after 25<sup>th</sup> June 2013 which is the case here. The Appellant is however still able to bring an appeal on the residual grounds in Section 84(1)(b) and (c) of the 2002 Act, namely on human rights and race relations grounds. The grounds therefore state that the judge has gone beyond his jurisdiction and has erred in law by allowing the appeal under the Immigration Rules and the judge has failed to make any findings about human rights or race relations.
4. The application for entry clearance was also refused by the Respondent under paragraph 320(7A) of the Immigration Rules as it was found that a false document was submitted by the Appellant when making her application, being a property valuation report undertaken by Khan Engineers and Evaluators. There was a verification report before the judge.

### **The Hearing**

5. The Respondent submitted that the judge failed to grasp the jurisdictional point in this appeal and because of this he considered what he was unable to consider. He submitted that the application was made after the change in the Rules which removed a right of appeal for family visitors. He submitted that there is clearly an error of law in the determination.
6. The Appellant's representative submitted that she accepts that there is an error of law. She submitted that the appellant is objecting to the finding under paragraph 320(7A) and she asked that a new appeal hearing be set before the First-tier Tribunal with the findings of Judge S Taylor at paragraphs 9 and 10 of his determination being preserved. In these paragraphs the judge found that the verification report was not sufficient to show that a false document had been lodged with the application and that the Respondent had not discharged the burden of proof relating to this. She submitted that if it is found that paragraph 320(7) applies the Appellant faces a long-term ban from making further applications to visit her son, daughter and siblings in the United Kingdom. She submitted that this is relevant to the Appellant's human rights and the proportionality assessment. She submitted that the Appellant has visited the United Kingdom before and will wish to visit again so paragraph 320(7A) will have grave consequences for the Appellant if it is found to apply.

7. The Presenting Officer submitted that the judge had no jurisdiction relating to the Rules. He submitted that if the case is remitted to the First-tier the judge will then make his decision on all relevant issues and these two paragraphs of the determination should not be preserved. He submitted that any further hearing should be before the Upper Tribunal and not the First-tier.
8. The Appellant's representative submitted that there has been no challenge to the judge's reasoning in paragraphs 9 and 10 and that if I agree to preserve these two paragraphs perhaps the claim should be heard before the Upper Tribunal.

### **Determination**

9. There is a material error of law in the First-tier Judge's determination. He had no jurisdiction to deal with the appeal under the Immigration Rules. He did not consider the appeal on the basis of race relations or human rights which are the only two matters over which he had jurisdiction.
10. Because of this I find that the Appellant did not have a fair hearing before the First-tier Tribunal. I direct that the appeal should be heard before the First-tier Tribunal on the two applicable Grounds of Appeal which are set out at Section 84(1)(b) and (c) of the Nationality, Immigration and Asylum Act 2002.
11. The First-tier Tribunal will be dealing with the appeal. I am not prepared to preserve paragraphs 9 and 10 of the determination which was promulgated on 19<sup>th</sup> November 2014.

### **Notice of Decision**

12. I find that there is a material error of law in the judge's determination.
13. I set aside the decision.
14. I remit this appeal back to the First-tier Tribunal to be determined on all relevant issues within its jurisdiction.

No anonymity direction is made.

Signed

Date **6<sup>th</sup> March 2015**

Deputy Upper Tribunal Judge Murray