



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

Appeal Number: VA/03567/2014

THE IMMIGRATION ACTS

**Heard at Stoke
on 21st July 2015**

**Decision and Reasons
Promulgated
On 22nd July 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ZAFAR MEHMOOD
(Anonymity order not made)**

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: no attendance.

For the Respondent: Miss Johnstone – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

- 1.** This is an appeal against a determination of First-tier Tribunal Judge Shergill, promulgated on the 17th February 2015, in which the appeal against the refusal of a grant of entry as a visitor was dismissed.
- 2.** Permission to appeal was granted as it was said to be arguable that the Judge made inconsistent findings.

Discussion

- 3.** There was no attendance on behalf of the Appellant. I am satisfied notice of the hearing has been served upon the Appellant and his UK based sponsor by first class post and there is no evidence of such notice being returned as not having been served. I am satisfied there has been valid service in accordance with the Rules and the fact no explanation has been provided for the lack of attendance, and no application made for an adjournment, means no basis for not proceeding in absence has been made out. I find to do so to be in the interests of justice and fairness.
- 4.** The grounds of appeal are limited by virtue of section 84(1)(c) of the 2002 Act but do permit a human rights challenge. The Judge records in the determination at paragraph 7 that no human rights grounds were advanced before the First-tier Tribunal.
- 5.** There is no arguable contradiction in the findings. It is true the sponsor who attended was found to be credible but that is not determinative. The sponsor's mother is ill but the Judge specifically noted in paragraph 15 that the sponsor did not definitively say that her mother could not fly. It was noted the relationship between the sponsor's mother in the UK and her brother, the Appellant, had been maintained at a distance and the purpose of the visit was for the brother to provide moral support to the sponsor's mother who has medical issues.
- 6.** This may be so but it was not shown such support is crucial or critical or that it could not be provided by other family in the UK or that the nature of the sibling relationship would change.
- 7.** The Judge noted the lack of evidence provided at the hearing and that in the visa application form nothing had been set out regarding the Appellant's sister's health which it was said would need to be supported by documentary evidence which had not been provided to the decision maker.
- 8.** The Judge specifically notes the acceptance of credibility in paragraph 19 but finds the Entry Clearance Officer was entitled to refuse entry clearance.
- 9.** The Judge makes two arguably incorrect statements which are to express surprise at overstaying being held against an applicant for entry clearance as a visitor when that person returned within the six month period of the earlier visa, which ignores the specific wording of paragraph 41(ii) [para 17] and that the human rights issue is being considered at the date of the hearing [para 19] when human rights claims against the decision of an Entry Clearance Officer are to be considered at the date of decision, although neither is a material error in this case.

10. In paragraph 21 the Judge concludes:

“I am not satisfied that there are sufficiently strong human rights grounds in the evidence I had before me. If there are more than normal emotional ties or some form of dependency I was not satisfied that there was a disproportionate interference with such rights based upon the evidence before me.”

11. This accurately set out the only sustainable finding available to the Judge on the evidence. No arguable material error has been made out. The determination shall stand.

Decision

12. There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.

Anonymity.

13. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 21st July 2015