



IAC-FH-NL-V1

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

Appeal Numbers: VA/15000/2013
VA/14991/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 11th September 2015**

**Decision & Reasons Promulgated
On 17th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

**MR MD MURAKIB ALI
MRS ATIA BEGUM
(ANONYMITY ORDER NOT MADE)**

Respondents

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondents: No representative but Sponsor, Mr Kaysor Ali attended

DECISION AND REASONS

1. MD Murakib Ali and Atia Begum are nationals of Bangladesh. They are husband and wife born on 31st December 1955 and 26th March 1962 respectively. On or about 20th May 2013 they and each of them made application for entry clearance for the purpose of a family visit. The named relatives which appear at page 7 of the applications are Md. K. Ali as niece (though that was in fact an error because he attended before me and was plainly a nephew) and Rabia Begum Zad, sister. On 5th June 2013

decisions were made to refuse the applications. An appeal was lodged with the First-tier Tribunal.

2. On 11th November 2014 the matter came before Judge of the First-tier Tribunal Lester sitting at Taylor House in London. Having heard the evidence she allowed the appeals.
3. Not content with those decisions, by Notice dated 15th December 2014 the Secretary of State made application for permission to appeal. The basis upon which application was made challenged the jurisdiction of the First-tier Tribunal to entertain the appeal at all. That was because the Immigration Appeals (Family Visitor) Regulations 2012 which took effect on 9th July 2012 and therefore were material and in effect at the date of the application provided that it was only where there was an intention to visit a certain category of persons that an appeal might be brought and that did not include a nephew.
4. The focus of the decision of Judge Lester was only on the nephew, Mr Kaysor Ali. Not surprisingly therefore when the Secretary of State looked to the decision it appeared on the face of it that there had been an error of law because the only Sponsor named in that determination was the nephew.
5. On 28th January 2015 Judge of the First-tier Tribunal Osborne refused the Secretary of State permission to appeal but subsequently Deputy Upper Tribunal Judge Saini, on 6th May 2015 granted permission though not without some criticism of the Secretary of State which in the circumstances may be unfair.
6. The matter thus comes before me. Mr Wilding, with his usual fairness immediately pointed out that although the grounds as drafted, based as they were on the basis that the sole Sponsor was a nephew was correct in principle, accepted also that the judge, though wrong to entertain the appeal on the basis of the nephew, had not materially erred because absent any challenge to the findings the application was also in respect of the sister of one of the Respondents and therefore the sister-in-law of the other.
7. Mr Wilding reminded me of the guidance in the case of **Ajakaiye (visitor appeals - right so appeal) Nigeria [2011] UKUT 00375** which is authority for the proposition that the Tribunal should look to the purpose of the visit and that in determining if the person is a qualified relative regard may be had to extraneous evidence. In this case clearly there was evidence in the application form which had been overlooked by the judge. I am informed by Mr Wilding that the appeal in the First-tier Tribunal was in a float list and therefore it would be unfair to make further or any real criticism of the judge other than to observe that it would be wise in cases such as this to look at the application form. Be that as it may Mr Wilding rightly conceded that he was in difficulties in pursuing this appeal because he could not demonstrate any material error of law. I entirely agree. In

those circumstances the appeal to the Upper Tribunal is dismissed and for the avoidance of doubt the decisions of the First-tier Tribunal are affirmed.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Zucker