



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

Appeal Numbers: VA/00074/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 February 2015**

**Determination
Promulgated
On 18 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**ENTRY CLEARANCE OFFICER,
ABU DHABI**

Appellant

and

**MR MUHAMMAD SHABIR
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr S Hayat (Sponsor)

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Keane promulgated on 17 November 2014 allowing the appeal of Mr Muhammad Shabir against a decision of the Entry Clearance Officer at Abu Dhabi dated 18 November 2013 to refuse entry clearance as a visitor.
2. Although before me the Entry Clearance Officer is the appellant and Mr Shabir is the respondent, for the sake of consistency with the proceedings

before the First-tier Tribunal I shall hereafter refer to Mr Shabir as the Appellant and the Entry Clearance Officer as the Respondent.

Decision and Background

3. The Appellant is a national of Pakistan born on 1 May 1970. On 23 October 2013 he applied for entry clearance to visit his cousin Mr Sikander Hayat, ('the sponsor'). The application was refused with reference to paragraphs 41(i) and (ii) of the Immigration Rules. Essentially the Respondent was not satisfied in respect of the Appellant's claimed employment and financial circumstances for reasons set out in the Notice of Immigration Decision dated 18 November 2013.
4. The Appellant appealed to the IAC. The First-tier Tribunal Judge heard evidence from the sponsor and allowed the appeal under the Rules for reasons set out in his decision.
5. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Davidge on 7 January 2013.

Consideration

6. The Respondent challenges the decision of the First-tier Tribunal on the basis that the First-tier Tribunal judge failed to recognise that the scope of the Appellant's appeal was limited to grounds under section 84(1)(b) and (c) of the Nationality, Immigration and Asylum Act 2002 by reason of the general restriction in respect of visitor appeals brought into effect from 25 June 2013 by section 52 of the Crime and Courts Act 2013.
7. I pause to note, as observed in the Respondent's grounds in support of the application for permission to appeal, there was in any event, even preceding this restriction, a restriction by virtue of the Immigration Appeals (Family Visitor) Regulations 2012 such that the Appellant's appeal would not have attracted a full right of appeal because he proposed a visit to a cousin.
8. It is clear that the First-tier Tribunal Judge has had no regard to the restriction on the grounds of appeal. The Judge states at paragraph 2 of the determination: "The following Immigration Rules applied to the appeal:", and then set out the text of paragraph 41 of the Immigration Rules. At paragraph 10 of the decision the Judge expressed himself satisfied that the Appellant had discharged the burden of proving to the balance of probabilities the requirements of paragraph 41 of the Rules. Further, under the heading 'Decision' the Judge stated "The appeal in respect of the Immigration Rules is allowed".
9. The Judge does not address the grounds that were available to the Appellant.

10. In the circumstances I find that the decision of the First-tier Tribunal Judge was flawed for material error of law and must be set aside. The decision in the appeal accordingly needs to be re-made.
11. I note that in the Appellant's Grounds of Appeal before the First-tier Tribunal, whilst it is pleaded in a generalised assertion that the decision was unlawful because it was incompatible with the Appellant's rights under the European Convention on Human Rights, there is no particularisation of any such breach notwithstanding otherwise detailed grounds of appeal addressing the case under the Rules. There is also passing reference to the decision being "discriminatory in nature", but again no particularisation of that allegation is made.
12. The sponsor who has attended before me today has indicated that he last saw the Appellant three years ago, and usually visits Pakistan every two or three years. When he does so he will see the Appellant who lives close to the sponsor's home in Pakistan. The sponsor confirmed that there was no underlying purpose to the proposed visit other than to see the sponsor and his wife and also to visit the country. When asked if it would be a problem for either the Appellant or the sponsor if the Appellant were unable to visit him in the United Kingdom, the sponsor said "not really".
13. In all of the circumstances it seems to me that the Appellant's case does not get past the first two **Razgar** questions, and therefore any issue as to the lawfulness of the decision that might arise under the third **Razgar** question - which might be a live issue in light of the favourable findings of the First-tier Tribunal Judge in respect of the Rules - is not reached.
14. The appeal must fail on the basis that the restricted grounds of appeal are not made out on the particular facts.
15. Notwithstanding that the appeal must be dismissed, Mr Bramble acknowledges that the setting aside of the decision of First-tier Tribunal Judge Keane does not in itself deprive the Appellant of the benefit of the favourable factual findings therein. It is clear that Judge Keane was very impressed with the evidence of the sponsor and reached a conclusion for cogent and detailed reasons that the Appellant was a genuine visitor who intended to return to Pakistan after a short visit to see the sponsor. The Judge was also clear and cogent in his findings as to the relevant financial requirements and the availability of suitable accommodation. It follows therefore that it is open to the Appellant to re-present himself for entry clearance with a new application and to direct the Entry Clearance Officer's attention to the favourable findings of Judge Keane. This does not mean to say that the application must therefore be allowed: if the Appellant makes any further application it will have to be assessed on all of the circumstances at the relevant time and the Entry Clearance Officer may wish to have regard to any relevant change of circumstances and the nature of the supporting evidence presented at that time - but nonetheless it may be of some assistance to the Appellant that he now has the benefit of Judge Keane's favourable findings.

16. Be that as it may, the decision in the appeal today is unfavourable to the Appellant.

Notice of Decision

17. There was a material error of law in the decision of the First-tier Tribunal. The decision of the First-tier Tribunal is therefore set aside.

18. I re-make the decision in the appeal. The appeal is dismissed.

The above represents a corrected transcript of an ex-tempore decision given at the hearing on 17 February 2015.

Signed

Date: **17 February 2015**

Deputy Upper Tribunal Judge I A Lewis