



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/03836/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 8<sup>th</sup> May 2015

Decision & Reasons Promulgated  
On 18<sup>th</sup> May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR DANIAL DANIAL  
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Karnik of Counsel  
For the Respondent: Miss Johnstone

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 1<sup>st</sup> January 1946 is a citizen of Pakistan. The Appellant was represented by Mr Karnik of Counsel. The Respondent was represented by Miss Johnstone, a Home Office Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellant had made application to visit the United Kingdom to see his son, the Sponsor. That application had been refused on 10<sup>th</sup> June 2014. The basis of refusal was that the Respondent was not satisfied the Appellant was genuinely seeking entry as a visitor or that he intended to leave the United Kingdom at the end of that visit.
3. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Levin sitting at Manchester on 2<sup>nd</sup> January 2015. The appeal was statutorily restricted on the basis of either being unlawful on race relations grounds or in breach of Article 8 of the ECHR. Race relations was not raised at any stage. The judge dismissed the appeal on human rights grounds.
4. Application for permission to appeal was made on behalf of the Appellant and permission to appeal was granted by First-tier Tribunal Judge Grimmett on 17<sup>th</sup> March 2015. That was on the basis that the judge may have erred in giving weight to the fact the Appellant was a Christian an issue which had not been raised either by the Respondent nor the Sponsor having an opportunity to deal with at the hearing.
5. Directions have been issued for the Upper Tribunal to firstly decide whether or not an error of law was made in this case and the matter comes before me in accordance with those directions.

### **Submissions on behalf of the Appellant**

6. Mr Karnik submitted in line with the Grounds of Appeal that the judge had relied on the country guidance case of **AK [2014] UKUT 00569**. It was submitted that firstly the judge should not have taken account of potential difficulties with the Appellant being a Christian because that was not a matter ever raised either by the Respondent or at the hearing and in any event it did not properly reflect circumstances for Christians in Pakistan as related in the case of **AK**.

### **Submissions on behalf of the Respondent**

7. It was submitted the judge had given a number of reasons for his finding on credibility in terms of the Appellant returning to Pakistan or not and no error of law was made.
8. At the conclusion of the hearing I reserved my decision to consider the submissions and documents. I now provide that decision with my reasons.

### **Decision and Reasons**

9. The Respondent had refused the Appellant's application to come to the United Kingdom on a visit visa on the basis that the Respondent did not find the Appellant was a genuine visitor or that he would leave the United Kingdom at the end of any alleged visit. The right of appeal against that decision is restricted by statute so that an appeal may only be brought if it is said that the decision breaches either the Race

Relations Act or the European Convention on Human Rights. The judge had correctly noted that at no stage was it suggested that the decision breached or was unlawful under the Race Relations Act and the appeal was brought on the sole ground that a refusal to grant the visa would be a disproportionate breach of the Appellant's right to family and private life under Article 8 of the ECHR.

10. The judge had set out in detail the facts of this case and had assessed as part of his findings whether or not, on balance this was a genuine application to come to the United Kingdom for a visit and the Appellant would leave at the conclusion of that visit.
11. The judge had found on balance for a number of reasons that this was not a genuine visitor. Firstly the judge had noted at paragraph 27 discrepancies in the period of time and reason for the proposed visit. The judge had also found that the Appellant was a widower, was 69 years of age, and was financially dependent upon the Sponsor in the UK. The judge had also noted and accepted the Sponsor's evidence that the Appellant was a Christian. In that respect the judge had looked at the country guidance case of AK and had concluded at paragraph 29 that Christians in Pakistan suffer some discrimination, Evangelical Christians risk becoming a victim of a blasphemy allegation and that as the Appellant was a member of a minority religion that did face discrimination that was an additional factor the judge found against the Appellant being likely to return to Pakistan.
12. The Appellant's own evidence as supported by the Sponsor was that he was a Christian and was involved socially in the church in Pakistan. There was no evidence provided to suggest the Appellant was suffering discrimination or difficulties in Pakistan because of his membership of the Christian community. That factor was not explored at the hearing in cross-examination of the Sponsor. To that extent it was speculative and potentially an error for the judge to have assumed the Appellant may be less likely to return to Pakistan because of discrimination generally against minority religions including Christianity. However that was simply one feature of the reasons provided by the judge for his finding that on balance this was not a genuine visitor nor that the Appellant would return at the conclusion of any visit. Central to his finding on that matter was the fact that the Appellant was a 69 year old widower with little family ties in Pakistan and financially dependent upon the Sponsor in the UK. The judge was entirely correct to look at those features and to find on balance and for the reasons that he gave that this was not a genuine visit nor did the Appellant intend to leave the United Kingdom at the end of that visit. Accordingly whilst there may well have been an error or speculation in the judge's approach to the Appellant's religion that would have had no different effect to the outcome of the judge's decision on whether or not this was a genuine visit and accordingly it was not a material error.
13. In any event the issue in this case was not whether the Respondent was right or wrong on the question of the genuineness of the visit but the single issue of whether the Respondent's refusal of this application was a disproportionate breach of the Appellant's rights under Article 8 of the ECHR.

14. The Grounds of Appeal and permission granting appeal appear to have missed that factor. Further it is frankly extremely difficult to see how the refusal of a visit visa could be a disproportionate breach of Article 8 of the ECHR. In particular in this case the judge had correctly identified that the Sponsor, namely the adult son of the Appellant had voluntarily separated himself from his father in Pakistan several years ago to work in Kuwait and thereafter to live and work in the UK. The judge had also identified the fact that the Sponsor and his family had in the past and were able to visit the Appellant in Pakistan. It is also not clear but entirely likely that both the Sponsor and his wife who came to the UK as a work permit holder retained Pakistani nationality even if he has British nationality.
15. The judge correctly identified the fact that in all the circumstances of this case the refusal of the visit visa by the Entry Clearance Officer was not a disproportionate breach of the Appellant's rights under Article 8 of the ECHR.
16. There was therefore no error of law made by the judge in this case and the point of the appeal is misconceived.

**Notice of Decision**

There was no error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever