



**(IMMIGRATION AND ASYLUM CHAMBER)
VA/16885/2013**

**UPPER TRIBUNAL
APPEAL NUMBER:
VA/16891/2013**

THE IMMIGRATION ACTS

**Heard at: Field House
On: 3 November 2014
Prepared: 19 November 2014**

**Determination
Promulgated
On: 20 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: DHAKA

Appellant

and

**MRS MAHMUDA AKANJEE (1)
MR KAWSAR ALAHI (2)
NO ANONYMITY DIRECTION MADE**

Respondents

Representation

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondents: Mr Fozilot Ali (Sponsor)

DETERMINATION AND REASONS

1. For the sake of convenience I refer to the appellant as “the entry clearance officer” and to the respondents as “the claimants.”

2. The claimants are mother and son, nationals of Bangladesh, born on 8 January 1970 and 3 March 1993 respectively.
3. Their appeals against the decision of the entry clearance officer, recorded as having been made on 24 July 2013, to refuse to grant them entry clearance to come to the UK as family visitors was allowed by the First-tier Tribunal Judge Cohen in a determination promulgated on 8 August 2014.
4. The entry clearance officer was not satisfied that the family income was as claimed. There was insufficient evidence of rental income or earnings from land. Accordingly, the applications were refused.
5. The sponsor, Mr Ali, attended the hearing on behalf of the appellants. However, there was no appearance for the entry clearance officer.
6. The evidence before the First-tier Tribunal was given by Mr Ali. His wife had left one of the young twins in the bath when she answered the door. The child tragically died. She then became depressed and lost confidence. The first-claimant, her mother, wanted to come to provide support to her.
7. The sponsor provided evidence relating to his property as well as the claimant's business and business interests in Bangladesh.
8. The Judge considered the documentation produced and proceeded to consider their appeals on the merits and found that the appellant came from a reasonably affluent family with business interests and had good cause to return.
9. The judge had regard to the tragedy that had occurred. There were highly exceptional compassionate circumstances involved. The entry clearance officer did not exercise discretion appropriately, apparently having overlooked the compassionate circumstances.
10. Having regard to the close family members remaining in Bangladesh, they would have good cause to return there at the end of the proposed visit.
11. On 23 September 2014, First-tier Tribunal Judge Frankish granted the entry clearance officer permission to appeal on the basis that since 25 June 2013, s.84(1) of the Nationality, Immigration and Asylum Act 2002 limited the right of appeal in a case such as the present to human rights and race relations grounds. These had not been considered.
12. Judge Frankish stated that it was apparent from paragraphs 14-21 of the determination that the claimants had been found to qualify under the rules applicable up to 25 June 2013. However, the application had been made after 25 June 2013, namely on 29 June 2013. That accordingly arguably amounted to an error of law.
13. Mr Whitwell accordingly submitted that their appeal rights had been restricted in this case.

14. The changes made by the Crime and Courts Act (s.52) amended s.88A of the 2002 Act as inserted by the 2006 Act (entry clearance) to remove the right of appeal for persons visiting specified family members. They are still able to bring an appeal on the residual grounds in s.84(1)(b) and (c) of the 2002 Act, namely on human rights and race relations grounds, which thus restricted these claimants to those grounds.
15. Further, the finding by the First-tier Tribunal Judge that the entry clearance officer should have exercised discretion differently in the light of the tragic family events, also constituted an error as there is no discretion available to the entry clearance officer within paragraph 41 of the immigration rules. Accordingly, the Judge had exercised discretion which was not available.
16. I explained the nature of the entry clearance officer's grounds of appeal. Mr Ali stated that he had read the documents and understood the position. He did not make any submission.

Assessment

17. I find that the claimants' appeals were restricted to human rights and race relations grounds.
18. I have had regard to the grounds of appeal before the First-tier Tribunal. It is contended that the entry clearance officer had not considered the European Convention on Human Rights. It is further asserted at paragraph 7 of the grounds that "the ECO stated that our right of appeal is limited, but it is not true." It is asserted that the sponsors are her sister and her sister's husband.
19. It is noted in the reasons for refusal that the claimants' right of appeal are limited under the 2006 Act.
20. However, the First-tier Judge did not determine the appeals on that basis but examined them on the merits and found that the financial and social circumstances indicated that the claimants would return. Regard was had to the tragedy which occurred in the claimants' family. It was found that the entry clearance officer overlooked those circumstances and failed to exercise discretion appropriately [16].
21. The Judge found that the entry clearance officer failed to attach any weight to the documentation ".....for reasons of me(re) suspicion or speculation". Those conclusions were erroneous (15). The claimants did put forward an accurate description of their financial circumstances in Bangladesh and they come from a reasonably affluent family with business interests.
22. However, the appeal was confined to human rights and race relations grounds. There was no discretion available to the entry clearance officer pursuant to paragraph 41 of the Immigration Rules. The appeals were not advanced on that basis.

23. I accordingly find that the decision of the First-tier Tribunal Judge involved the making of a material error of law. I accordingly set aside the decision and re-make it.
24. The claimants have not provided any evidence that the entry clearance officer's decision was unlawful on the basis of any discrimination in the exercise of public function so far as relating to race as defined in the Equality Act 2010. Nor has any evidence been produced that the decision was unlawful pursuant to s.6 of the Human Rights Act 1998, namely that the entry clearance officer acted contrary to the Human Rights Convention, rendering the decision incompatible with their Article 8 rights.
25. I accordingly find that the claimants have not shown on the balance of probabilities that their right to respect for family and private life has been breached, or that they have in any way been discriminated against.

Decision

Having found that the determination of the First-tier Tribunal Judge involved the making of errors of law, I set aside the decision and substitute it with the following decision:

The claimants' appeals are dismissed.

I set aside the fee award made.

Signed

Date: 19/11/2014

C R Mailer
Deputy Upper Tribunal Judge