



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

Appeal Number: VA/16629/2013

THE IMMIGRATION ACTS

**Decided On The Papers at Field Decision & Reasons Promulgated
House
On 8 July 2015**

On 10 July 2013

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

NITINKUMAR RAMJI BHUDIYA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - MUMBAI

Respondent

DECISION AND REASONS

1. There is no need for and I do not make an order restricting publication.
2. This is an appeal against the respondent's decision on 19 July 2013 to refuse the appellant entry clearance as a family visitor. The appeal came before a First-tier Tribunal Judge on 27 May 2014 but the judge ruled that the appellant did not have a right of appeal and so there was nothing more for him to determine.
3. First-tier Tribunal Judge Fisher gave permission to appeal because, although the appellant had indicated a wish to visit his aunt, who for the purposes of the appeal is not a "family member", the grounds of appeal and the application made it plain that the appellant also wished to visit his mother. It followed that his appeal was a "family visitor appeal" and was, at that time at least, an appealable decision.

4. On 17 June 2015 the respondent served a Rule 24 notice stating in terms, "The respondent concedes that there was a right of appeal". The same notice made it clear that the respondent did not concede the appeal and intended to support the respondent's decision.
5. The case came before me as duty judge to consider and application for an interpreter. Given the wholly appropriate concession made by the respondent the Tribunal would clearly find there had been an error of law. The Tribunal would then have to set aside the First-tier Tribunal's decision and then decide whether it was best to correct the defect at that hearing or direct the case be decided again in the First-tier. Although a hearing before the Upper Tribunal would have the advantage of speed in what is becoming a rather stale case, it would be potentially unfair to the appellant for the Upper Tribunal to decide the appeal. The appellant not had a fair hearing before the First-tier Tribunal and his appeal rights from the decision of the Upper Tribunal are limited.
6. I caused my clerk to contact the parties. I am told that the respondent agrees to the appeal being decided in the way I have indicated. I have a letter from the appellant's nominated representative in the United Kingdom, a Mrs Siyani, in which she has signed a copy of the letter sent by the Tribunal service to her on 6 July 2015 and I take that as her consent.
7. I remind myself that pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Upper Tribunal may make a decision without a hearing although it must have regard to any view expressed by a party.
8. In the circumstances I set aside the decision of the First-tier Tribunal and allow the appeal to the extent that the appeal must be decided again in the First-tier Tribunal.

Decision

The appeal is allowed to the extent that the decision of the First-tier Tribunal is set aside. The appeal must be decided again in the First-tier Tribunal.

The order refunding his fee is set aside.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 8 July 2015