Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/21681/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision promulgated**
on 13 September 2017	**on 06 November 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

CHIARA JAIMEE MACK
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Bhatti – Direct Access Counsel.
For the Respondent: Mrs Aboni Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Widdup promulgated on 16 May 2017 in which the Judge dismissed the appellant's appeal.

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Error of law

2. The Judge made no error of law in the analysis of the challenge to the TB certificate. The appellant applied for entry clearance as the child of a person present and settled in the United Kingdom which was assessed by the ECO pursuant to paragraph 297 and paragraph 320(8A) of the Immigration Rules.
3. The ECO noted that as the appellant intended to stay in the UK for more than six months, under paragraph 320(8A), the appellant was required to produce a certificate issued by an approved clinic showing that they were free of TB. The certificate provided by the appellant in support of the application was not from an approved clinic. The application therefore failed.
4. Permission to appeal was granted on the basis that a certificate had been provided. This point is not disputed as the ECO accepts a certificate was provided but the issue in the appeal is not whether a TB certificate was obtained and provided but whether it was a valid certificate from a recognised provider.
5. The appellant appears to accept that a certificate from a recognised provider was not provided with the application. Although such certificate was provided at a later date this is post decision evidence and does not establish that the appellant had a certificate which satisfied the requirements of the Immigration Rules at the date of application, which she was required to do.
6. Submissions were made regarding the nature of the evidence that had been sent in although it appears that material the appellant was seeking to be rely upon may not have been sent to the First-tier Tribunal. I am satisfied to Judge assessed the material that had been made available.
7. A second issue arose in relation to the basis of the appeal. It appears from the grounds of appeal that the appeal is a challenge to the decision under the Immigration Rules with no article 8 human rights grounds raised. It was raised at the hearing whether this gave rise to a jurisdictional point as following the Immigration Act 2014 a right of appeal against a refusal under the immigration rules no longer exists.
8. The decision refers to both the Rules and human rights elements but the grounds do not challenge the human rights aspect of the claim.
9. Ms Bhatti asked for additional time to consider this aspect as jurisdiction had not been raised previously. Directions were accordingly given for additional written submissions to be provided by the appellant within a specified time with Mrs Aboni being able to respond.
10. The submissions made on the appellant's behalf are set out at Annex A to this decision. In light of the appellant's concession that the First-tier Tribunal did not have jurisdiction and that the appeal could proceed no further this application is dismissed.
11. No arguable legal error material to the decision sufficient to warrant a grant permission to appeal has been made out.

Decision

12. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

13. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Signed…….
Judge of the Upper Tribunal Hanson

Dated the 3 November 2017

Annex A

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
BIRMINGHAM EMPLOYMENT TRIBUNAL

APPEAL NO:
HU/21681/2016

BETWEEN:

MISS CHIARA JAIMEE MACK Appellant

V

ENTRY CLEARANCE OFFICE Respondent

SUBMISSIONS ON POINT OF LAW RAISRED DURING THE HEARING

ON 13TH SEPTEMBER 2017

Right to appeal refusal of entry clearance

1. The application in this case was refused on 23rd August 2017.
2. The immigration Act 2014 can into force on 6th April 2015 and therefore applies to applications made on or after that date.
3. Accordingly the right to appeal against refusal of entry clearance has been removed.
4. Decisions received on or after 6 April 2015 on an application that is solely a human rights or protection claim are subject to the new regime.

Law

PART 3 Amendment of the Commencement Order and revocation of the Immigration Act 2014 (Transitional and Saving Provisions) Order 2014

Amendments coming into force on 6th April 2015

8.—(1) The Commencement Order is amended as follows.
(2) For article 9 substitute—

"**9.**—(1) Notwithstanding the commencement of the relevant provisions, the saved provisions continue to have effect and the relevant provisions do not have effect so far as they relate to

the following decisions of the Secretary of State—

(a) a decision made on or after 6th April 2015 to refuse an application to vary leave to enter or remain made before 20th October 2014 where the person was seeking leave to remain as a Tier 4 Migrant or as the family member of a Tier 4 Migrant and where the result of that decision is that the applicant has no leave to enter or remain;

(b) a decision made on or after 6th April 2015 to refuse an application to vary leave to enter or remain made before 2nd March 2015 where the person was seeking leave to remain as a Tier 1 Migrant or (as the case may be), Tier 2 Migrant or Tier 5 Migrant or as the family member of a Tier 1 Migrant, a Tier 2 Migrant or a Tier 5 Migrant and where the result of that decision is that the applicant has no leave to enter or remain;

(c) a decision made on or after 6th April 2015 (so far as that is not a decision mentioned in sub-paragraph (a) or (b)) to refuse an application made before 6th April 2015, where that decision is—

(i) to refuse leave to enter;
(ii) to refuse entry clearance;
(iii) to refuse a certificate of entitlement under section 10 of the 2002 Act(**1**);
(iv) to refuse to vary a person's leave to enter or remain and where the result of that decision is that the person has no leave to enter or remain; unless that decision is also a refusal of an asylum, protection or human rights claim.

(d) a decision made before 6th April 2015 in relation to which, immediately before 6th April 2015, an appeal could have been brought or was pending under the saved provisions.

2) In paragraph (1)—

a) an application as the family member of a Tier 4 Migrant means an application under paragraph 319C or 319H of the immigration rules;
(b)an application as the family member of a Tier 1 Migrant, a Tier 2 Migrant or a Tier 5 Migrant means an application under paragraph 319C, 319E, 319H or 319J of the immigration rules.

(3) In this article— "entry clearance" has the same meaning as in section 33(1) of the 1971 Act(**2**);

"human rights claim" has the same meaning as in section 113 of the 2002 Act(**3**);
"immigration rules" means the rules for the time being laid down by the Secretary of State as mentioned in section 3(2) of the 1971 Act;
"leave to enter" means leave to enter the United Kingdom given in accordance with the provisions of, or made under, the 1971 Act;
"leave to remain" means leave to remain in the United Kingdom given in accordance with the provisions of, or made under, the 1971 Act and any variation of leave to enter or remain by the Secretary of State;
"pending" has the same meaning as in section 104 of the 2002 Act(**4**);
"protection claim" has the same meaning as in section 82(2) of the 2002 Act;
"Tier 1 Migrant", "Tier 2 Migrant", "Tier 4 Migrant" and "Tier 5 Migrant" have the same meanings as in the immigration rules."
(3) Omit article 10.
(4) In article 11, omit paragraphs (1), (1A), (2), (3) and (5) (a) and (c) to (i).

(5) Omit article 13.

Revocation

1. **9.** The Immigration Act 2014 (Transitional and Saving Provisions) Order 2014(**5**) is revoked.

Jurisdiction

1. In the case of Virk **Neutral Citation Number: [2013] EWCA Civ 652** the issue of jurisdiction was considered by the court of appeal (civil division). In short it concludes that the court can raise the issue of whether or not it has jurisdiction of its own motion and importantly at any stage.

Submissions.

Dealing with the issues arising out of the hearing it is submitted:

1. There was no right of appeal against the refusal of entry clearance dated 23rd August 2016.
2. The court can raise the point of jurisdiction, even at this stage.
3. The appellant has not raised a Human Rights ground, which is an argument available to her under the applicable legislation.
4. I have been instructed that since the case was adjourned for the consideration of points of law the appellant has been admitted into hospital after she attempted to commit suicide and is now being treated for Bipolar Mood Disorder by Dr M Dube. Should the appellant make a fresh application this can be raised at that stage. It was made clear at the hearing that it was too late to raise a human rights argument at this late stage.
5. Accordingly I cannot oppose the arguments raised at the hearing nor object to the conclusion that this appeal can go no further.

Dated this: 20th September 2017

Balvinder Bhatti of Counsel
Citadel Chambers