



Qazi Law Associates
#3 Block 14-E, Najam Arcade
F-8 Markaz, Ayub Market,
Islamabad
44000
PAKISTAN

Date : 17 March 2009

THE IMMIGRATION ACTS

Appeal No: VA 52940/2008
Appellant: Ms. Kanwal, Sadia
Respondent: Visa Officer

HO Ref:
Port Ref:
FCNumber: 1545774
Reps Ref:

To the Appellant and Respondent

Enclosed is the Tribunal's determination of the above appeal.

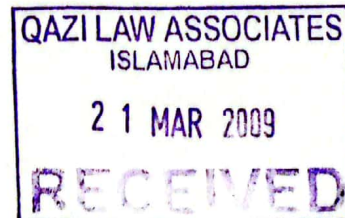
Either party may apply to the appropriate court (*the High Court or, where the Appeal was decided in Scotland, the Court of Session*) for a review of the Tribunal's decision on the ground of an error of law.

Any application must be made in accordance with the relevant Rules of Court and must be made within 5 days of receipt (or deemed receipt) of this determination, except where the Appellant is outside the United Kingdom, in which case any application by the Appellant must be made within 28 days of receipt (or deemed receipt) of this determination.

All applications must be sent to:

Secretary to the Asylum and Immigration Tribunal:

Arnhem House Review Applications, Arnhem Support Centre (Tribunal), P O Box 6987, Leicester, LE1 6ZX.
Fax: 0116 249 4214



Clerk to the Tribunal

Copy issued to Appellant: Ms. Kanwal, Sadia,
Copy issued to Home Office: Presenting Officers Unit, Springfield House, LS1 2



ALL CORRESPONDENCE SHOULD BE SENT TO THE ADDRESS AT THE TOP OF THIS NOTICE QUOTING THE APPEAL NUMBER AND ANY HEARING DATE

THE IMMIGRATION ACTS

Heard at Bradford
On 12 February 2009

Determination Promulgated

17/03/09.....

Before

IMMIGRATION JUDGE C N LANE

Between

KANWAL SADIA (FIRST APPELLANT)
FATIMA MIR KIANI (SECOND APPELLANT)

Appellants

and

ENTRY CLEARANCE OFFICER – ISLAMABAD

Respondent

Representation:

For the Appellants: Mr Majed Hussain (Sponsor)
For the Respondent: Mr Parmore, a Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Kanwal Sadia and Fatima Mir Kiani, are citizens of Pakistan. By decisions taken by the Entry Clearance Officer (ECO), Islamabad on 16th July 2008, the appellants were refused entry clearance to the United Kingdom as visitors. The appellants have appealed against those decisions. The burden of proof in the appeals is on the appellants and the standard of proof is the balance of probabilities.
2. At the appeal hearing at Bradford on 12th February 2009, Mr Parmore, a Home Office Presenting Officer, appeared for the respondent. Mr Majed Hussain, the sponsor of the appellants' applications, gave evidence in English.

QAZI LAW ASSOCIATES
ISLAMABAD
21 MAR 2009
RECEIVED

3. The reasons for the refusal of the appellants' applications are contained in the notices of refusal. The ECO was not satisfied the first appellant met the requirements of paragraph 41 of HC 395. Paragraph 41 provides as follows:

41. The requirements to be met by a person seeking leave to enter the United Kingdom as a general visitor are that he:

- (i) is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months; and
- (ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and
- (iii) does not intend to take employment in the United Kingdom; and
- (iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
- (v) does not intend to undertake a course of study; and
- (vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and
- (vii) can meet the cost of the return or onward journey; and
- (viii) is not a child under the age of 18.
- (ix) does not intend to do any of the activities provided for in paragraphs 46G(iii), 46M(iii) or 46S (iii); and
- (x) does not, during his visit, intend to marry or form a civil partnership, or to give notice of marriage or civil partnership; and
- (xi) does not intend to receive private medical treatment during his visit; and
- (xii) is not in transit to a country outside the common travel area.

4. The ECO was not satisfied that the second appellant met the requirements of paragraph 46A of HC 395. Paragraph 46A provides as follows:

46A The requirements to be met by a person seeking leave to enter the United Kingdom as a child visitor are that he:

- (i) meets the requirements of paragraph 41 (i)-(iv) and (vi)-(vii);
- (ii) is under the age of 18; and
- (iii) can demonstrate that suitable arrangements have been made for his travel to, and reception and care in the United Kingdom; and

- (iv) has a parent or guardian in his home country or country of habitual residence who is responsible for his care; and
- (v) if a visa national:
 - (a) holds a valid United Kingdom entry clearance for entry as an accompanied child visitor and is travelling in the company of the adult identified on his entry clearance, who is on the same occasion being admitted to the United Kingdom; or
 - (b) holds a valid United Kingdom entry clearance for entry as an unaccompanied child visitor; and
- (vi) if he has been accepted for a course of study, this is to be provided by an organisation which is included on the "Register of Education and Training Providers, and which is outside the maintained sector.

5. In particular, the ECO noted that the first appellant's husband had previously travelled to the United Kingdom and that his application to the ECO had "met the requirements of the Immigration Rules as a visitor." The first appellant, however, had failed to provide sufficient evidence that the proposed sponsor in the United Kingdom would be able to accommodate and maintain the appellants during their visit. The refusal notice recorded that:

"Your husband [of the first appellant] applied for a two year multiple entry clearance as a visitor in June 2008. This was given to him partly on the basis that in previous visits he had not stayed in the UK beyond the term of the validity of the visa."

However, the first appellant's husband had failed to state that he was intending to travel with his wife and child (the appellants). Had the first appellant's husband applied "as a family unit" his own application may have been considered differently. The ECO therefore "had doubts regarding the circumstances surrounding the timing of your applications and your intentions in visiting the UK." The applications were refused under paragraph 41(i), (ii), (vi) and, in the case of the second appellant, paragraph 46A(iii).

- 6. Evidence on behalf of the respondent was contained in documentary form. In addition to the refusal notices to which I have referred I had a copy of the appellants' applications and notices of appeal in both cases with documents submitted in support.
- 7. Evidence on behalf of the appellants was contained in oral form. I briefly heard the evidence of the sponsor.
- 8. Tribunal reserved its determination.
- 9. I find that these appeals should be allowed. I have reached this decision for the following reasons. Of course it is vital that applicants for entry clearance should supply documents in every case when applying for a visa, I find that it is understandable in the present case why the appellants have failed to supply comprehensive documentary evidence of their financial circumstances and those of

the sponsor. It is noted in the refusal notice, the first appellant's husband has already been granted a visa and it appears to have been assumed by the first appellant that she need not supply again the same evidence which had supported her husband's application. The evidence has now been produced to accompany the notice of appeal. I am told (and I accept this to be true) that the evidence is substantially the same as that which led the ECO to grant the first appellant's husband a visit visa. Although the evidence had been produced following the date of refusal, the evidence was clearly relevant to the circumstances existing as at the date of refusal (see **Section 85(5) of the Nationality, Immigration and Asylum Act 2002**). I found the sponsor to be a helpful and truthful witness and I accept that he will support the appellants during their visits and also be in a position to accommodate them in his home. The first appellant's appeal is allowed on my finding that the first appellant satisfies each of the sub-paragraphs of paragraph 41. I find that the second appellant satisfies each of the requirements of paragraph 46A.

DECISION

10. These appeals in respect of the Immigration Rules are allowed.



Signed

Immigration Judge C N Lane

Date 15 March 2009