



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/00622/2013
OA/00633/2013
OA/00639/2013

THE IMMIGRATION ACTS

Heard at Field House
On 27 January 2016

Decision & Reasons Promulgated
On 11 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

ZARYAB TASADDIQ
KHASHAM MAHMOOD
ALISHBA TASADDIQ
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel, instructed by Rashid and Rashid
Solicitors

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the parties as they were before the First-tier Tribunal. Thus, the Entry Clearance Officer is once more the Respondent and the

three claimants (all of whom are siblings and Pakistani nationals) revert to being the Appellants.

2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Seifert (the judge), promulgated on 6 May 2015, in which she allowed the Appellants' appeals. These appeals had been against the Respondent's decisions of 21 November 2012, refusing entry clearance to join their father (the sponsor) in the United Kingdom under paragraph 301 of the Immigration Rules (the Rules).
3. In essence, the Appellants' application was based upon the following claimed circumstances. Their parents divorced in 2008. Thereafter, they continued to live with their mother until early 2012. At this point the sponsor left Pakistan for the United Kingdom. The Appellants were moved to the sponsor's brother's household. They have lived with him ever since.

Procedural history

4. These appeals were first heard before the First-tier Tribunal in January 2014. By a decision promulgated on 17 March that year, First-tier Tribunal Judge Hussein allowed the appeals on the basis of paragraph 301(i)(c) of the Rules. The Respondent obtained permission to appeal to the Upper Tribunal. By a decision promulgated on 21 May 2014 Upper Tribunal Roberts set aside the First-tier Tribunal's decision on the grounds of procedural unfairness, namely that consideration of paragraph 301(i)(c) had not been brought to the Respondent's attention at any time. The appeals were duly remitted to the First-tier Tribunal for a complete rehearing.

The hearing before the judge

5. The two issues under consideration on remittal were paragraph 301(i)(b) and (c). The judge heard evidence from the sponsor, his wife (the Appellants' step-mother), and the sponsor's landlord. She sets out the evidence and submissions of the representatives. The actual findings on the relevant issues are contained in paragraphs 62-65 of her decision.
6. The judge finds that paragraph 301(i)(b) was satisfied. I set out paragraph 63 of her decision in full:

"In reaching this conclusion I have had regard to the decision in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 and the other authorities referred to in the skeleton arguments. What appears to have occurred on the facts the current case is that following his divorce from the appellants' mother in 2008, the children lived with his former wife until events in 2012 shortly before he came to the UK, when they went to live with his brother pending making applications to join Mr Tasaddiq in the UK. The 'affidavit' of his former wife was not completed and not dated. This indicated that after the divorce the children lived with Mr Tasaddiq. I have given this document very little weight. That the children lived with their mother following the divorce is also supported by the evidence in the witness statement of the first appellant. I accept Mr Tasaddiq's evidence that his wife and since early 2012 his brother have had day to day care of the appellants but that he has made all the important decisions in respect of the children as referred to in his evidence. He has provided maintenance for the appellants, including school fees. Leaving the children

temporarily in the care of his brother whilst he joined Mrs Khan [the sponsor's second wife] as her husband in the UK pending the children joining him, does not in my view, undermine the credibility of his evidence regarding his involvement in and responsibility in connection with his children's upbringing."

7. In paragraph 64 the judge finds that paragraph 301(i)(c) of the Rules was also met. She accepts that the attitude of the mother changed following the sponsor's remarriage, and that she no longer wanted to care for the Appellants.
8. The judge was satisfied that all other elements of paragraph 301 were met, in particular those relating to accommodation and maintenance.
9. The appeals were all allowed under the Rules.

The grounds of appeal and grant of permission

10. The grounds of appeal make specific reference to several elements of the judge's decision. Rather than setting them out here, I will address each when giving my reasons on the error of law issue, below.
11. Permission to appeal was granted by First-tier Tribunal Judge Reid on 2 November 2015.

The hearing before me

12. There was an initial discussion as to whether the Respondent's application for permission to appeal had been out of time. However, upon close inspection of the Tribunal's file, it transpired that the IAFT-4 email inbox had been out of action during the period in which the Respondent's application was made (by email). In light of this, Ms Radford quite rightly accepted that the application should be regarded as having been made in-time.
13. As regards the grounds themselves, Mr Kotas submitted that there was a lack of reasoning and a failure to resolve conflicts in the evidence. There had been unresolved contradictory evidence on the accommodation issue and in respect of the sponsor's witness statements. In terms of sole responsibility, it was irrational to conclude that this element of paragraph 301 had been met. Mr Kotas suggested that irrationality was something different from perversity. The genuine Guardianship Order was post-decision.
14. Paragraph 8 of the grounds of appeal was specifically withdrawn by Mr Kotas and he did not seek to pursue the Child Benefit point in relation to the sponsor's wife.
15. Ms Radford submitted that there was no contradiction in the evidence on the landlord. In any event, this was immaterial in light of the property report. The judge dealt with the Guardianship Order properly. The genuine document was an indication of the sponsor's intentions all along. It was open to the judge to find as she did on paragraph 301(i)(b). The grounds relating to the Child Benefit point were wrong. In respect of paragraph 301(i)(c), given that children should be with one or both of their parents, it was open to the judge to conclude in the Appellants' favour on this issue. There was no irrationality in the decision at all.

16. In reply, Mr Kotas submitted that it could not be right that sole responsibility could have arisen from the point at which the Appellants went to live with their uncle. In addition, the judge had not provided sufficient reasons.

Decision on error of law

Paragraph 301(i)(b)

17. I find that there are no material errors of law in respect of paragraph 301(i)(b) of the Rules.
18. In so finding, I will deal with the various aspects of the Respondent's challenge in turn.
19. First, the alleged error in respect of Child Benefit and the sponsor's wife in the United Kingdom has quite rightly been disavowed by Mr Kotas. Paragraphs 8 and 9 of the grounds are misconceived.
20. Second, contrary to what is said in paragraph 12 of the grounds, the judge has not "clearly given considerable weight" to the affidavit evidence. Indeed, she expressly states at paragraph 63 that she was attributing "very little weight" to this evidence, and rightly so. There is nothing else to suggest that she then did in fact use the affidavit to support her conclusions. In addition, paragraphs 12 and 13 of the grounds overlook the fact that there was other evidence before the judge, namely that of the sponsor and first Appellant.
21. Third, it is right that there appeared to be unidentified differences between two witness statements of the sponsor (see paragraph 11). However, neither the grounds nor Mr Kotas has indicated what these were or how they might have been material to the issues before the judge.
22. Fourth, it was open to the judge to find that the false Guardianship Order did not count against the sponsor's overall credibility (paragraph 64). This conclusion must be read in the context of the argument put forward by the Appellants' representative at the hearing (paragraph 61) and the fact that neither the Respondent's original refusal notice nor the Presenting Officer relied upon paragraph 320(7A) of the Rules. Paragraph 10 of the grounds seeks to mount a perversity challenge without having considered the nature of the evidence and submissions before the judge.
23. Fifth, the evidence relating to the landlord's living arrangements did appear to be problematic. However, in my view it was immaterial to the issues under paragraph 301(i)(b) and (c). Further, it was immaterial to the issue of accommodation as well, given that the property report of 4 April 2012 stated there was sufficient room for seven persons to occupy the address and that no overcrowding would result from the Appellants' arrival whether not the landlord resided there. Paragraph 15 of the grounds is inaccurate in this regard.
24. Sixth, the judge clearly had the relevant decision of TD (Yemen) in mind when reaching her findings and conclusions (see paragraph 63). The Respondent asserts that it was irrational (or perverse, there being in reality no difference between the

two) for the judge to conclude that the sponsor could ever have had sole responsibility in light of the living arrangements prior to the applications for entry clearance (see paragraph 14 of the grounds and Mr Kotas' oral submissions).

25. With respect to the Respondent, her position in these appeals has paid no regard to the contents of TD (Yemen) itself. As is clear from paragraphs 35-42 and 45-48 of that decision, sole responsibility can exist (albeit unusually) in cases where the appellants have resided with one parent in the country of origin.
26. Given the above and the fact that there was evidence from the sponsor as to the claimed sole responsibility covering the period when the Appellants were with their mother and uncle (see paragraphs 33-34), the judge was entitled to reach the conclusion she did in paragraph 63. There is nothing irrational here.
27. Mr Kotas' reliance on a reasons challenge to the judge's conclusions on the sole responsibility issue is at odds with the wording of the grounds; he was in reality straying outwith them. In any event, when the misconceived challenges I have dealt with already are taken into account, and the actual contents of paragraph 63 are considered (in particular the final sentence thereof), the judge gave adequate reasons for accepting the sponsor's evidence.

Paragraph 301(i)(c)

28. I find that there are no material errors of law here either.
29. It would be right to say there was insufficient evidence upon which to base a conclusion that serious and compelling "other considerations" existed as at the date of the Respondent's decision. However, as with my assessment of the first issue, above, when one strips away the misconceived elements of challenge, the judge was entitled to conclude that at least serious and compelling "family" considerations existed; and that is sufficient to have allowed the appeal under paragraph 301(i)(c).
30. It was open to the judge to find that the Appellant's mother effectively wanted nothing more to do with their care. It was also open to her to find that the arrangements with the uncle were of a temporary nature only. Given this and the importance of the children being with one or other of their parents in a suitable home environment, it was open to the judge to ultimately conclude as she did.

Other elements of paragraph 301

31. In light of what I have said about certain elements of the Respondent's challenges, above, the judge was perfectly entitled to conclude that all other aspects of the paragraph 301 were met.
32. There are no material errors of law in the judge's decision and it therefore stands.

Anonymity

33. No direction was made by the First-tier Tribunal, and none has been sought from me. I make no direction.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The Entry Clearance Officer's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

Signed

Date: 7 February 2016

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeals and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a limited fee award of £40.00 in each appeal. This is because material evidence was not submitted until the appeal stage.

Signed

Date: 7 February 2016

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal