



IAC-AH-DN-V1

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

Appeal Number: OA/13757/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 28 October 2015**

**Decision & Reasons  
Promulgated  
On 12 May 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**ENTRY CLEARANCE OFFICER - ISLAMABAD**

Appellant

**and**

**HA  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer  
For the Respondent: Mr Wheeler, instructed by Kirklees Law Centre

**DECISION AND REASONS**

- 1.** I shall refer in this decision to the appellant as the respondent and to the respondent as the appellant, as they appeared respectively before the First-tier Tribunal.

2. The appellant, HA was born in 2011 and is aged 4 years. The sponsor is the appellant's father and lives in Sheffield. The sponsor's wife (the appellant's mother) who has successfully obtained entry clearance to the United Kingdom has returned to Pakistan to look after the appellant. Before the First-tier Tribunal (Judge M Davies) the sponsor father accepted that the appellant could not meet the financial requirements of the Immigration Rules [14]. Judge Davies allowed the appeal on Article 8 grounds. The respondent now appeals, with permission, to the Upper Tribunal.
3. Judge Davies recorded at [13] the reasons why the sponsor had not applied for the appellant to enter the United Kingdom at the same time as his wife. It appears that the sponsor erroneously believed that the appellant was entitled to British nationality. The judge noted that it appeared that the Appellant could now (as at the date of the First-tier Tribunal hearing) meet the financial requirements of the Immigration Rules. He rejected the Presenting Officer's submission that a new application should be made.
4. I find that the decision of the First-tier Tribunal should be set aside. I have reached that conclusion for the following reasons. There is an inadequacy of reasoning on the part of the First-tier Tribunal. At [15], the judge wrote:

"However I find that the circumstances of this appeal are both compelling and exceptional which justifies me in considering whether the appeal should be allowed on Article 8 grounds. I found that they are exceptional as set out in the sponsor's witness statement."
5. The judge has failed to make any attempt to specify what it was in the sponsor's witness statement which led him to find that there were exceptional circumstances in this instance; the judge has made an assertion, rather than a proper evidence-based finding. The judge goes on [17] to find that there would be "no purpose [to be served] by expecting the appellant to make a fresh application. He would simply be denied the comfort and security of living with both his mother and father." Mrs Pettersen, for the respondent, submitted that the judge had simply used Article 8 as a "general dispensing provision." I find that that is exactly what he has done. The judge made no attempt whatever to explain why he believes that the post-decision evidence as regards financial circumstances now submitted by the sponsor is such that the appellant satisfies the Immigration Rules. There was no concession by the Presenting Officer before the First-tier Tribunal that the Rules could now be met; at [9], the judge simply records that the Presenting Officer submitted that, *if* the Rules could now be met, a new application should be made. The judge has assumed the financial requirements could be met and has vaulted from that assumption to allowing the appeal without more ado under Article 8. He has failed properly to consider the public interest having made no proper and sustainable finding that the financial circumstances of the sponsor are now such that there would be no burden upon the public purse. The judge pays lip service to the public interest

but otherwise fails entirely to engage with it [18]. I find that the decision is flawed to the extent that I should set it aside.

6. The appellant cannot succeed under the Immigration Rules. In this instance, I find that Article 8 need only be invoked if the failure of the appellant to meet the requirements of the Immigration Rules is such as to cause unnecessary and significant hardship to this family but I have no evidence to indicate that it does so. If the sponsor believes that he can now meet the requirements of the Immigration Rules, the appellant should make a new application and a proper assessment by the Entry Clearance Officer of the sponsor's financial circumstances can be carried out in the normal way. I cannot find that this out of country application falls into that rare category of cases where the circumstances are such that Article 8 must be used to prevent significant injustice occurring. The appellant is very young and enjoys the daily care and attention of his mother. He may soon enjoy the company of his father also provided a prompt application is made for entry clearance.

### **Notice of Decision**

7. The decision of the First-tier Tribunal which is dated 2 June 2015 is set aside. I have remade the decision in the Upper Tribunal. The appeal of the appellant against the decision of the Entry Clearance Officer dated 8 October 2014 is dismissed under the Immigration Rules and on Article 8 ECHR grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 December 2015

Upper Tribunal Judge Clive Lane

### **TO THE RESPONDENT FEE AWARD**

I have dismissed the appeal against the immigration decision and therefore there can be no fee award.

Signed

Date 20 December 2105

Upper Tribunal Judge Clive Lane