



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

Appeal Number: HU/13545/2015
HU/14262/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 12th December 2017**

**Determination Promulgated
On 14th December 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

BATOOL NAEEM

And

BEENISH NAEEM

Appellants

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr K Thathall of UK Immigration Law Chambers
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The two appellants are the daughters of Naseem Akhtar, who arrived in the UK in 2010 as the spouse of a British Citizen. Both daughters sought entry

clearance as the minor dependants of the sponsor, their applications being refused on 2nd November 2015. The ECM maintained the decision.

2. Their appeals were heard on 5th September 2017 before First-tier Tribunal Judge S C Clarke and dismissed by her for the reasons set out in the determination promulgated on 15 September 2017. Permission to appeal was granted on the grounds it was arguable:
 - (a) The First-tier Tribunal judge had incorrectly cited the relevant immigration rules;
 - (b) That describing the sponsor as “an open witness” was a finding that her evidence was credible and thus the findings that the sponsor did not have sole responsibility and there were no serious and compelling circumstances were not reliable;
 - (c) The judge failed to have regard to all available evidence when determining adequacy of maintenance;
 - (d) The judge failed to give adequate reasons for the finding of lack of sole responsibility/proportionality of the decision.
3. Mr Thathall submitted that the only interpretation of the use of the phrase ‘open witness’ was that the sponsor’s evidence was credible; it followed that the First-tier Tribunal judge’s findings adverse to the appellants were unsustainable and it seemed the judge was applying too high a standard of proof in requiring “persuasive” evidence. Mr Bates submitted that, as a specialist tribunal and judge, if the judge had meant “credible” she would have said so. Her use of the word ‘open’ was a description of the sponsor’s manner of giving evidence and no more. This submission was supported, he submitted, in that findings made by the judge were not made in isolation but in the context of the whole of the evidence that was before her. As an example, he referred to the finding by the First-tier Tribunal judge that the sponsor was the mother of the two appellants, such a finding being made having considered not only the sponsor’s evidence but the evidence of financial support, birth certificates, passports and a Guardianship Order from the Pakistan family court.
4. The judge did not find the sponsor credible; nor did she find her not credible. The judge acknowledged that the sponsor gave her evidence in an open way and that she was genuine in her wish to have her two daughters join her. As submitted by Mr Bates, that is not enough; the appellants must meet the Immigration Rules or, if they do not meet the requirements of the Rules, there must be some other issue which results in a finding that the decision to refuse entry clearance is disproportionate. The judge considered the evidence before him in the round, including the sponsor’s evidence in reaching her decision.
5. The First-tier Tribunal judge sets out the evidence before her. She refers to evidence of financial support between 2014 and 2017, to an earlier refused application for entry clearance (which was not appealed), to the evidence (in the sponsor’s witness statement) that her mother i.e. the appellants’ maternal grandmother, had removed the children from school without consulting her, that the sponsor had gone to Pakistan after the children had been removed from school but there was no evidence of what she had done about the removal of

the children from school, the lack of medical or other evidence to support the submission that the sponsor's mother is mentally unwell, that at the date of decision the appellants did not meet the financial criteria and the lack of evidence to support the contention that the appellants could not continue to live with their maternal grandmother.

6. Although Mr Thathall submitted that the use of the word 'persuasive' indicated the judge had applied a higher standard of proof than the civil standard, this is not so. The evidence relied upon has to persuade the judge that the appellants meet the Rules; a failure to produce such evidence can only result in a finding that the relevant requirements of the Rules is not met.
7. Considerable submissions were made before me about the removal of the children from school. The judge found 'scant evidence' about who chose the school, why they left the school or that the sponsor was responsible for decisions relating to the appellants' education prior to them attending the school. In her witness statement the decision was taken by the maternal grandmother. In submission before me Mr Thathall said that the sponsor was unhappy with the decision to remove them from the school but had to reluctantly accept the decision. Those are not the actions of a person with sole responsibility. There was no significant evidence before the judge that in relation to schooling she retained sole responsibility – the evidence points the other way. This does not in any way diminish the finding of the judge that the sponsor has a genuine desire to bring her children to the UK to be with her. But they do not meet the requirements of the Immigration Rules.
8. Mr Thathall submitted that the reference by the judge to the appellants not meeting the requirements of "paragraphs 297(i)(e) and (f)" in paragraph 30 was an error of law in that the judge had elided the two subsections rather than considering them as two separate requirements. That paragraph of the decision is a summing up of the earlier findings and the conclusion. It is plain when the decision is read as a whole that the judge has considered whether the appellants met the requirements of the Rules in connection with their mother's claimed sole responsibility and, given that they did not meet that requirement, the judge considered whether there were other compelling reasons for their entry to the UK.
9. The Judge considered Article 8. Mr Thathall submitted that the consideration was scant and inadequate. Whilst it is correct that the judge's consideration and conclusion covers only two paragraphs, there was no other evidence before the judge that did not fall for consideration within the parameters of the Immigration Rules. In his submissions, Mr Thathall did not refer to any evidence that had not already been considered. The judge undertook a brief, but considered, *Razgar* analysis. She found that there was family life between the appellants and the sponsor, that the decision was an interference with their ability to conduct that family life, that the decision was in accordance with the law and necessary in the interest of effective immigration control. She then applied her findings on the evidence and concluded that the decision was proportionate to the legitimate aim namely effective immigration control. As Mr Bates submitted, what else could the judge have considered which she had not already considered and

reached findings upon. Those findings could not have led to any other decision other than that the decision was proportionate and not a breach of the right to respect for the Article 8 rights of the appellants.

10. There is no error of law in the decision by the First-tier Tribunal. I do not set aside the decision; the decision of the First-tier Tribunal stands.

Conclusions:

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

The appeal is dismissed; the decision of the First-tier Tribunal stands.



Date 12th December 2017
Upper Tribunal Judge Coker