



Upper Tribunal
(Immigration and Asylum Chamber)

HU/05110/2017
HU/05007/2017
HU/05008/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 12 September 2019

Decision & Reasons Promulgated
On 17 September 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

BUSHRA [R] + 2

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Caskie, Advocate, instructed by MBS, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Gillespie dismissed the appellants' appeals by a decision promulgated on 6 June 2018.
2. The FtT and the UT refused permission to appeal. The appellant petitioned the Court for judicial review. In a joint minute parties agreed that the UT erred in law

“in proceeding on the basis that the existence of a valid marriage had been a live issue for the FtT ... where the [respondent] had accepted that the only issue ... was whether there was a genuine and subsisting marital relationship (as opposed to the validity of the marriage as a matter of law) ...”. On 12 August 2019 the Vice President of the UT granted permission in light of the Court’s interlocutor and the joint minute.

3. Mr Govan accepted that the ground was not only arguable, but of merit, given the concession made by the presenting officer in the FtT. He said that the decision should be set aside, and the case should be remitted to the FtT.
4. Mr Caskie submitted that the decision should be re-made by the UT, and that the outcome should be reversed.
5. There is a presumption that on setting aside a decision of the FtT, re-making will take place at the same hearing in the UT, based on the evidence which was before the FtT, and on submissions. Directions issued with the grant of permission required parties to prepare accordingly. Neither party applied for admission of any further evidence.
6. I saw no basis for remitting the case to the FtT.
7. The reasons offered by the respondent for holding that there are no ongoing genuine and subsisting relationships among the four family members are (a) the family registration certificate issued by the government of Pakistan was not valid in a court for inheritance or property issues, and so of little evidential value, particularly as the sponsor was not present at the time of issue; (b) the sponsor had not visited Pakistan for 6 years; and (c) lack of evidence of regular communications.
8. The sponsor explained that he chose to spend money on the support of his family, including the education of his children, rather than on travel; and that communications were regular, but by telephone, which does not leave a written record.
9. Reason (a) conveys nothing against the existence of genuine and subsisting relationships. It seems to search for reasons to refuse. Reason (b) is sensible enough, but hardly unanswerable. Reason (c) is weak, as many separated family members communicate for the most part by telephone.
10. The evidence about the legal validity of the marriage is imperfect and open to doubt, but it is not disputed that the first appellant and the sponsor have been in a relationship of which the second and third appellants are the children. That is a strong starting point. Why do they seek to enter the UK, and why does the sponsor wish them to be here?
11. I find it much more likely than not, on all the evidence, that the present proceedings reflect the existence and not the absence of genuine and subsisting family relationships.

12. The decision of the FtT is set aside, and the following decision is substituted: the three appeals, as first brought to the FtT, are allowed.
13. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

13 September 2019
UT Judge Macleman