



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

Appeal Numbers: HU/08651/2019  
HU/08653/2019  
HU/08656/2019  
HU/08658/2019

**THE IMMIGRATION ACTS**

**At: Civil Justice Centre (remote  
hearing)  
Heard on: 9<sup>th</sup> September 2020**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> September 2020**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**UM  
C1  
C2  
C3**

**(anonymity direction made)**

Appellant

**and**

**Entry Clearance Officer - Sheffield**

Respondent

**For the Appellant: Mr Bellara, Counsel instructed by Western  
Solicitors**

**For the Respondent: Mr McVeety, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellants are respectively a mother and her three children who are today aged 12,9 and 8. They are all nationals of Pakistan. They appeal with permission against the decision of the First-tier Tribunal (Judge AJM Baldwin) to dismiss their linked human rights appeals.
2. The subject of the Appellants' appeals is that they wish to come to the United Kingdom to settle with their Sponsor, Mr [SM]. It is said that Mr [M] and the first appellant UM are married and that he is stepfather to the three children. They all applied for entry clearance in that capacity. The Entry Clearance Officer considered the applications with reference to Appendix FM of the Immigration Rules, and having done so refused them for the following reasons:
  - i) There was no evidence to show that UM and her Sponsor had met in person [E-ECP.2.5].
  - ii) It had not been established that the relationship between UM and her Sponsor is genuine and subsisting. Although his passport showed that he had been to Pakistan, this did not establish any contact with UM. Call logs between the two had been produced but these only related to the three months prior to the application for entry clearance being made. Money transfers made from the Sponsor, allegedly to support his new family, were made direct to his own father. There was no evidence produced of any intervening devotion between the couple, nor was there any photographic evidence of the relationship produced [E-ECP.2.6, E-ECP.2.10]
  - iii) Court documents supplied in respect of the children show that following her divorce from her first husband UM was granted guardianship over her children but that she required the permission of the court to take them out of Pakistan

It should be noted that the Entry Clearance Officer expressly accepted that the financial requirements of the rules in respect of dependent family members were met; nor are there any issues as to 'suitability'.

3. Judge Baldwin heard oral evidence from Mr [M] who was cross examined by a Home Office Presenting Officer. He was told that the Sponsor was unable to show that he had been in regular contact with his wife prior to July 2018 because his mobile phone from that period had broken - he had taken it to the Apple Store but had been advised, in a report produced, that the data was unrecoverable. The Tribunal was shown other evidence relevant to the relationship with the Appellants, including money transfers, photographs and a copy of Mr [M]'s passport showing exit and entry stamps to Pakistan. As to the reason that the money was sent to his father rather than his wife, the Sponsor explained that this was a cultural norm as it was not considered safe or appropriate for a single woman to be collecting cash from the money transfer centre.

4. Of that evidence Judge Baldwin found that the burden of proof had not been discharged. He found the Sponsor's evidence wanting, in particular in the fact that he had not mentioned until prompted that the children had attended the wedding. The Tribunal noted that the wedding does not appear to have been celebrated with much vigour, and certainly that there was no photographs of it: "the failure of the Sponsor and the Appellants to obtain or try to obtain a single marriage photograph would suggest that the marriage may well not have been a meaningful event for either of them". The Sponsor's reluctance to send money directly to his wife suggests that "it is not really for her benefit". The remainder of the decision is focused on the evidence relating to the children's status in Pakistan and the terms of the custody agreement that UM has reached in the Pakistani courts. Judge Baldwin was not satisfied that their biological father, or the court, had given consent to them leaving the country. He expressed concern that upon reading the documents from the Pakistani court it was not apparent whether UM had informed that court that she had remarried. With that in mind Judge Baldwin was not satisfied that it would be in the best interest of these children to move to the United Kingdom.
5. The grounds seek to challenge the First-tier Tribunal's conclusions as follows:
- i) The Judge reached a number of adverse findings about the Sponsor's evidence without giving him notice of those concerns or an opportunity to respond;
  - ii) The Judge misunderstood the court documents from Pakistan which confirm that UM is the legal guardian and that there is no objection by their biological father to them leaving Pakistan;
  - iii) There was no logic in the Judge's commentary that UM does not appear to have informed the Pakistani court that she has remarried. That was irrelevant to the matter in hand;
  - iv) Failure to take material evidence into account/explain what weight should be attached to that evidence, viz photographs of the family together in Pakistan.

### **Error of Law: Discussion and Findings**

6. This is a strange case in that the attention of the parties, and indeed the First-tier Tribunal, appeared to have been largely focused on a matter that was not of immediate relevance under Appendix FM, namely the position in Pakistani law of the children and UM's legal guardianship over them. Much of the decision below is taken up with an examination of those matters, and with a 'best interests' assessment. That was all completely irrelevant if the primary matter in issue could not be resolved in the Appellants' favour.

7. That issue was whether this is a genuine and subsisting marriage, and by extension whether the Sponsor and UM intend to live permanently with one another in the United Kingdom. A related point, not expressly addressed by the First-tier Tribunal, was whether the parties to this marriage had ever actually met. The basis of the ECO's refusal was simply that insufficient evidence had been produced to discharge the burden of proof on those matters. No more needed to be said, and on the scant evidence produced with the applications, that was a perfectly reasonable decision.
8. Before the First-tier Tribunal the same questions fell to be addressed, this time through the prism of 'human rights' and the evidence latterly produced. The matter of whether the parties had ever actually met appears to have fallen by the wayside with the production of photographs of the family taken together during a post-refusal visit to Pakistan by the Sponsor. In respect of their intentions going forward the evidence was however singularly lacking. The statements made by UM and the Sponsor are, given the basis of the refusal, curiously silent on the matter of how they met, why they decided to get married or what they wanted in the future. The marriage is presented very much as a transaction. Whilst that would not render it legally invalid, nor sociologically unusual, in the circumstances where their intentions were specifically being challenged, it was imperative that these issues were addressed in the evidence. Mr Bellara pointed out that the Sponsor did appear to give oral evidence, and that he could have been asked about his personal history - why he decided to marry UM and so on - but that takes the case no further forward. The requirements of Appendix FM are there for all to see and it is for the applicant to discharge the burden of proof. That the evidence was not produced is fatal to these appeals.
9. I do however consider it appropriate to say something about the case overall.
10. Before me the parties were in agreement that the entire issue of the children's ability to leave Pakistan was something of a red herring, since it was expressly accepted that they met all of the 'suitability' requirements in Appendix FM and it can be assumed that had HM government wanted to include a public interest requirement concerning foreign law in the rules it would have done so. I suspect that if any such requirement was ever considered it was ruled out on the basis that it would be entirely impracticable. It is for instance arguable that an order by a court in Sweden banning a mother from travelling abroad with her children would be a matter that a British immigration officer would be entitled to take into account when considering whether to grant those children permission to enter the United Kingdom. That is because the Swedish system is similar, in terms of 'best interests' considerations, to our own. Whether the same could be said for children coming from a country where Islamic

rules of guardianship operate is rather more debatable. A family court in Pakistan might for instance routinely impose upon a *mother* an order preventing the removal of children from the jurisdiction, but make no such automatic order against a father. It would be highly inappropriate for decision-makers in this country to regard such an order as determinative, or even pertinent, to our assessment of a child's best interests. It seems to me that in those circumstances the question of whether UM can ever actually board a plane to the United Kingdom is a matter for her, the Pakistani courts and the airport authorities. If she does not get the appropriate order, she will not be able to leave. For the First-tier Tribunal to have treated the possibility that that might happen as relevant to these appeals was an error.

11. The second point I would like to make is this. There was absolutely nothing about this case which I regarded as suspicious. It is entirely in keeping with Pakistani cultural norms that the Sponsor sends money to his father rather than his wife. The evidence that it would be considered inappropriate and unsafe for her to collect a large amount of cash is wholly credible. Nor do I regard there as being anything peculiar in the low-key nature of this second marriage. Whilst first marriages are, where possible, celebrated with largesse, it is common for second marriages to consist of nothing more than a *nikah* being contracted with no guests, other than the obligatory adult witnesses. The applications, and appeals, have failed not because there is anything inherently problematic about them, but because the Appellants just did not provide the required evidence to meet the terms of Appendix FM. Should the Appellants wish to make applications in the future they may wish to consider my observations. If they cannot provide photographs or text messages from the Sponsor's phone, perhaps they can retrieve them from other people, or from UM's phone. The Sponsor and UM may wish to explain in written statements how they know each other or on what basis they were introduced, and why they decided to marry. Statements from other friends or family members about these matters might be helpful.

### **Anonymity Order**

12. Three of the Appellants are minors. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

"Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

**Decision and Directions**

13. The decision of the First-tier Tribunal is upheld and the appeals are dismissed.
14. There is an order for anonymity.

Upper Tribunal Judge Bruce  
9<sup>th</sup> September 2020