



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

Appeal Number: HU/01054/2021  
HU/01168/2021  
HU/02649/2021

[UI-2021-001313; UI-2021-001312; UI-2021-001314]

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 26 April 2022**

**Decision & Reasons Promulgated  
on 24 June 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**NOOR FATIMA  
MUHAMMAD UMER DRAZ  
SHEERAZ ALI  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the appellant: Ms E Stuart King, Counsel, instructed by Rahman & Co Solicitors

For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. These are appeals against the decision of Judge of the First-tier Tribunal S J Clarke (the judge) who, in a decision promulgated on 10 November 2021, dismissed the appeals of Noor Fatima (1<sup>st</sup> appellant), Muhammad Umer Draz (2<sup>nd</sup> appellant), and Sheeraz Ali, (3<sup>rd</sup> appellant) against the decisions of the Entry Clearance Officer (respondent) dated 21 January 2021, refusing their entry clearance applications (which were considered as human rights claims).

## **Background**

2. The appellants are all nationals of Pakistan. At the date of the judge's decision they were 15, 13 and almost 10 years old respectively. On 9 November 2020 they applied for entry clearance to join their father, Zahid Iqbal (Sponsor), a Pakistani national lawfully settled in the UK following his entry on a spousal visa in 2013. They sought to join him on the basis that he was solely responsible for them under paragraph 297 of the Immigration Rules. It was claimed that the mother of the appellants left the family home owned by the sponsor (and in which the appellants and their paternal grandmother lived) in 2015. Their applications were refused and they appealed these decisions to the First-tier Tribunal under s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

## **The decision of the First-tier Tribunal**

3. The issue in contention before the First-tier Tribunal was whether the sponsor had sole responsibility for the appellants. Paragraph 297(i)(e) of the Immigration Rules requires, in the context of a minor child seeking to join a parent settled in the UK, that:

One parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing;

4. The judge had before her a bundle of documents prepared on behalf of the appellants running to 128 pages and which included, inter alia, a statement from the sponsor dated 20 October 2021, a copy of a Guardianship order issued by Senior Civil Judge Tahira Bano of the Judge Guardian Court, Sahiwal, a letter from Dr Muhammad Saeed of the Saeed Eye and General Clinic, and letters from the Majaddid Aldi-I-Sani High School and the 'The Educators' school. The judge heard oral evidence from the sponsor.
5. The judge was not satisfied that the sponsor had had sole responsibility for the appellants upbringing. At [7] the judge noted the sponsor's evidence that the appellants' mother left them in 2015 and that she wanted a separation from the sponsor, but found that it did not follow that the mother wanted to be separated from her children.

The judge did not consider that the explanation proffered by the sponsor (that this was “cultural”) was enough to explain why the mother would cease all contact with her children.

6. At [8] the judge attached less weight to the Guardianship order as this could only be considered in isolation as the documents used in support of it were not provided. The context of the making of the application and the order could not therefore be understood.
7. At [9] the judge noted the absence of any evidence from the appellants themselves and the absence of any evidence from their grandmother, and at [10] the judge noted the absence of any readily available evidence of the daily phone calls the sponsor claimed to make with the appellants. There was consequently said to be a lack of evidence of emotional support provided by the sponsor to appellants while they grew up.
8. At [11] the judge noted the evidence from Dr Saeed. This stated:

“This is to certify that the above named children are registered in our practice/clinic. Mr Zahid Iqbal is the father of the children and also registered as the emergency contact for them. Mr Iqbal is regularly remain in contact with us for the treatment and welfare of the children and paying our professional fees. The father is playing a key role in the upbringing and welfare of children.

As per our record, we do not have contact details of the mother of children because she has been separated from them.”
9. Although the sponsor claimed that Dr Saeed had been the family doctor for 15 years the judge found that the letter lacked detail and that there was also a lack of evidence to show visits by the family to the doctor or house visits that the doctor made to them. The letter was also silent about the grandmother’s ability to look after the children on account of her age.
10. At [12] the judge found that the letters from the appellants’ respective schools were also lacking in detail. The letter from the Majaddid Aldi-I-Sani High School stated, in material part:

“Mr Zahid Iqbal is the only responsible guardian of her daughter. She has not been availed any scholarship or financial relief from the Institute, and pays all her fees and other dues on time.

The certificate is merely issued on request of the student without taking any liability at our end.”
11. The letter from the ‘The Educators’ school stated, in material part:

“Mr Zahid Iqbal is the father of these two children and he is the only responsible and guardian.

...

The father takes a keen interest in his children study and other school affairs.”

12. The broad statement in the letters that the sponsor was the sole parent was not supported by school reports, or details of the contact with the sponsor who claimed that he had attended parents evenings. The judge would have expected that the schools would have a record of the appellants’ mother ceasing contact with them, but no such evidence was provided.
13. At [13] the judge accepted that there was supporting evidence that the sponsor paid the relevant school fees, but there was no other supporting evidence that he had sole responsibility for the children such as evidence from the teachers relating to how the appellants fared in circumstances where their father lived in the UK and their mother had allegedly ended contact with them. At [14] the judge accepted that the sponsor was a dedicated father but noted that he did not apply for a Guardian order until 2019, despite the claim that the mother left the family home in 2015. The judge speculated that the Guardian order may have been sought in anticipation of the entry clearance applications.
14. At [15] and [16] the judge reiterated that she had carefully considered the best interests of the children, but she found that the sponsor was not a reliable witness and that his account was not sufficiently supported by the evidence before the tribunal. The judge found “... given the absence of cogent and readily available evidence from reliable sources”, that less weight should be placed upon the sponsor’s evidence and the school and doctors letters because they were “... lacking in detail and explanation as to how it is they write what they write, and whether it is merely based upon what they were told by the sponsor or supported by contemporaneous evidence of school reports and medical records to show the true role of the mother.” The appeals were dismissed.

### **The challenge to the judge’s decision**

15. The written grounds of appeal, amplified by Ms Stuart King in her oral submissions, contend (i) that the judge failed to properly assess the documentary evidence; (ii) that the judge failed to properly assess the oral evidence; and (iii) that the judge failed to give due weight to the judgement of another court. It was Ms Stuart King’s overarching submission that the judge improperly focused on evidence that could

have been provided by was not, to the detriment of the evidence that was provided which was corroborative of the sponsor's claim to have sole responsibility.

16. Having set out the relevant extracts of the judge's decision at [11] to [13], Ms Stuart King submitted firstly that absence of evidence was not evidence of absence and that "whilst it is true that more detail could have been provided, this does not of itself render the evidence that is contained in the letters unreliable." The letters from the doctor and the schools were issued by appropriate sources and were corroborative of the appellants' case.
17. The judge failed to give adequate reasons to support her finding that the sponsor was not a reliable witness other than the absence of further, more detailed corroborative evidence. There was a failure by the judge to explain what she meant by "not reliable", and it was not open to the judge to find that the sponsor was not reliable on the basis that there was no sufficiently corroborative documentary evidence.
18. In relation to the third ground, Ms King submitted that the judge failed to take into account the fact that the order made was itself corroborative of the sponsor's claim. In reliance on an extract from LAB v KB (Abduction: Brussels II Revised) [2009] EWHC 2243 Ms Stuart King submitted that it was a material error of law for the judge not to have accepted the judgement of the court. In the absence of any basis to conclude that the decision of the Senior Civil Judge was manifestly contrary to the best interests of the children, the assessment by the Pakistani court should be recognised and accepted by the court in the UK. It was not open to the judge to have gone behind the decision of the Court.

## Discussion

19. In assessing whether the judge erred in law in her approach to the question of sole responsibility, I remind myself of the questions that a tribunal should consider, as set out in **TD (Paragraph 297(i)(e): 'sole responsibility') Yemen** [2006] UKAIT 00049
  - i. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.
  - ii. The term "responsibility" in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.

- iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.
- iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.
- v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.
- vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.
- vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.
- viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.
- ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".

20. I can detect no legal error in the judge's approach to the Guardianship order. The written grounds of appeal contend that it was not open for the judge to have gone behind the decision of the Pakistani court, but the judge did not go behind the Pakistani court's decision. This was not a case where the judge took any issue with the lawful status of the Guardianship order. The judge did not reject the validity of the Guardianship order, but properly noted that the order was provided in isolation which prevented any assessment being made of the context in which it was issued. The order itself did not contain any reasoning as to why it was applied for and why it was granted, and there was no mention at all of the appellants' mother. The judge was entitled to place less weight on the order on the basis that it stood in isolation in the absence of any of the documents that were prepared for the Senior Civil Judge, which prevented the First-tier Tribunal judge from understanding the context in which it was issued, including any

assessment that may have been made concerning the involvement or otherwise of the appellants' mother. It is relevant to note that the judge did not say she was attaching no weight to the Guardianship order, only that, in the absence of any supporting documents enabling the context of the order to be understood, it attracted 'less weight' in the overall assessment of the issue of sole responsibility.

21. Ms Stuart King submitted that the judge failed to consider that the act of applying for and obtaining the Guardianship order itself was a factor supportive of the issue of sole responsibility, and she relied on an extract from LAB v KB (Abduction: Brussels II Revised) [2009 EWHC 2243,

"Further, I would venture the comment that whilst Holman J. accepted that there might be circumstances where the "order of a foreign court is so strongly contrary to the welfare of the child that its recognition was manifestly contrary to the public policy of our state" I consider that such cases would be extremely rare, and that the consequences for the children of recognition and enforcement, though these are separate stages from each other, would have to be of the utmost seriousness. I do not consider it necessary, appropriate or wise to attempt to give examples."

22. This case however dealt with recognition and enforcement of family court orders between Member States pursuant to an EU Council Regulation. In any event, even approaching the Guardianship order on the basis that it would not have been made unless it was in the appellants' best interests, the absence of any reasons for the making of the order and the absence of any supporting documents filed in support of the order still entitled the judge to attach less weight to it in her assessment of whether the sponsor was solely responsible for the appellants. Ms Stuart King submitted that the judge failed to properly take into account the elements of the Guardianship order that did support the sponsor's claim to have sole responsibility, but I am not persuaded this criticism is made out. There is nothing in the decision, read as a whole, to indicate that the judge failed to consider what was, in any event, apparent from the face of the Guardianship order, which that the sponsor was appointed as the appellants' guardian. Nor has any challenge been levelled against the judge's comments relating to the delay in seeking the Guardianship order given that the mother left the appellants in 2015.
23. Whilst I was initially concerned that the judge may have erred in law by expecting further evidence from both the doctor and the appellants schools, I am satisfied, on the particular facts of this case and in light of the sponsor's evidence and the other, unchallenged findings by the judge, that her approach to both the evidence from the doctor and the schools is devoid of legal error. In relation to the letter from Dr Saeed, the judge was reasonably entitled to raise as an

issue the absence of any reference to the condition of the appellants' grandmother. Given that the appellants' case included an assertion that their grandmother was too elderly and unwell to look after the children, it is surprising that no reference to her state of health was included in the doctor's letter. The judge was additionally entitled to find that the letter from Dr Saeed was lacking in detail. Although the letter stated that the clinic had no contact details for the mother of the children because she was separated from them "as per our record", those records were not provided, and there were no other contemporaneous records in respect of earlier interactions between the sponsor and the doctor. Nor was there any information as to when the appellant's mother allegedly separated from the children. I note by way of observation that the letter is vague as to how the sponsor remains in contact with the clinic in respect of the treatment of the children and it is unclear as to how Dr Saeed was aware that the sponsor was playing a key role in the upbringing and welfare of the children. This was a point specifically made by the judge at [15].

24. The judge was entitled to find that the letters from the appellants' schools were also lacking in detail. The judge was rationally entitled to expect there to be some school record of the mother ceasing contact with her children, and she was entitled to rely on the absence of such evidence in determining whether the issue of sole responsibility had been made out. In his written statement the sponsor claimed to have been in contact with the appellants' teachers and to have regularly discussed their educational progress and their future careers, and that he met their teachers to discuss their education during his visits to Pakistan. In these circumstances the judge was again rationally entitled to have expected evidence of the details of such contact with the sponsor to have been provided. It was for the appellants to prove, on the balance of probabilities, that their sponsor had sole responsibility for their upbringing. The judge was not obliged to accept the relatively un-detailed assertions in the school letters when further evidence, such as contemporaneous school records, could reasonably be expected to have been provided.
25. The judge's assessment of the sponsor's evidence being unreliable was reasonably open to her. The judge was entitled to find the sponsor unreliable, in the sense that she could not place significant reliance on his assertions, in light of the deficiencies in the other evidence before her. No challenge was made to the judge's rejection of the explanation proffered for the mother's lack of contact with her children, as set out in [7]. Nor has any challenge been levelled against the concerns expressed by the judge at [9] and [10] relating to the absence of any direct evidence from the appellants themselves or their grandmother, or of the absence of evidence of the daily telephone calls the sponsor claimed he had with the appellants. Whilst there is no requirement for corroborative evidence in this



jurisdiction the judge was entitled to place limited weight on the sponsor's assertions in the absence of evidence that one would reasonably expect to be provided. Given the identified deficiencies in the evidence, it was open to the judge to find that the sponsor's assertions could not be relied on and to find that the appellants failed to discharge the burden of proving that their sponsor was solely responsible for the upbringing.

### **Notice of Decision**

**The First-tier Tribunal's decision did not involve the making of an error on a point of law requiring the decision to be set aside**

**The appeals are dismissed**

Signed D.Blum

Date: 27 April 2022

Upper Tribunal Judge Blum