



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

Appeal Number: OA/07348/2013

THE IMMIGRATION ACTS

Heard at Field House

On 27 May 2014

Determination

Promulgated

On 07th July 2014

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MR AMMAN URFAN

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Ms L Mair, instructed by Prolegis Solicitors LLP

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

DETERMINATION AND REASONS

1. This is an appeal against the decision of the Entry Clearance Officer of 22 January 2013 refusing entry clearance to the appellant who sought leave to enter the United Kingdom and remain as a dependent relative. He is a child of 9 who wants to join his mother and brother in the United Kingdom.

2. The judge set out under the heading “Paragraph 297” under paragraph 2 of the determination the basis upon which the appeal was made, three particular provisions of paragraph 297 of HC 395, subparagraphs (a), (e) and (f), and also Article 8, and he heard oral evidence from the sponsor and, as I think is common ground between Ms Mair and Mr McVeety, essentially concentrated too much on earlier DNA reports concerning the parentage of the appellant, and as Mr McVeety says, this was a matter that had been determined previously by Judge Edwards in July 2011. The evidence was clear. It was accepted that the appellant’s claimed mother is his mother. About his claimed father the evidence was somewhat ambiguous and the judge found that neither did it show that he was his father nor did it show that he was not.
3. He rather thereafter glossed over the key issues in this case. The 297A point is effectively determined by the conclusion about the father. It had not been shown that both parents were present and settled in the United Kingdom because it had not been shown that his purported father was his father but on the sole responsibility point the judge really said no more than as is set out at paragraph 22, noting that he was living with his grandmother and an uncle in Pakistan. Taking into account the contents of the DNA reports and all the other facts of this appeal he found that he could not conclude that the appellant had shown that both his parents were present and settled in the UK and that his mother had sole responsibility for his upbringing despite his acceptance of her evidence that she did take an active part in it and did send funds to her mother in Pakistan.
4. On that Ms Mair has helpfully set out effectively paraphrasing what is recorded pleasingly legibly in the judge’s Record of Proceedings, the oral evidence of the sponsor, the appellant’s mother, at the hearing. The witness statement which she had put in did not really address key matters which needed to be brought out in examination-in-chief and cross-examination, and as I say, these matters are helpfully and effectively summarised at paragraph 8 of Ms Mair’s grounds, including such matters as the sponsor remitting funds every month for his upkeep, calling him two or three times a day, always speaking to him after school, making all of the decisions regarding his upbringing, the relatives in Pakistan tell her what the issues are, she relates her decisions to them, these relate to everything to do with his education and physical wellbeing, medical care and discipline, they tell her what he has been up to and she speaks to him about his behaviour. And then the grounds also go on to set out the correct legal test for the issue of sole responsibility, particularly as set out by the AIT in TD and the detailed guidance set out there. This was not addressed at all at paragraph 22. That is a clear error of law.
5. Also, there was no addressing at all of the subparagraph (f) point where, as was accepted here, one parent is present and settled in the United Kingdom, whether there were serious and compelling family or other considerations making the exclusion of the child undesirable and suitable

arrangements had been made for his care. That was not addressed at all and is a matter that clearly requires to be addressed.

6. Ms Mair has also challenged the findings in respect of Article 8 on the basis that the judge did not give proper consideration to the best interests of the appellant and effectively applied the wrong test. Rather than saying he has no family life in the United Kingdom she says, and I agree, that the question was whether he enjoyed family life with his mother and brother. That was not addressed and Mr McVeety takes some issue with the challenge in this regard but I think in the end it is a matter that is going to have to be assessed as part of the consideration of this appeal overall.
7. It is not a case where it would be appropriate for it to go back to the same judge clearly but it is a matter which falls within the Senior President's direction as to the appropriateness of venue of the case's progress when there has been a need for a rehearing and I am satisfied in this case that a sufficient degree of findings need to be made that it must be sent back for rehearing by a First-tier Judge in Bradford.

Signed

Date

Upper Tribunal Judge Allen