



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08405/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 13 April 2018

Decision & Reasons Promulgated
On 3 May 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MISS UME AMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain (Counsel)
For the Respondent: Ms R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (hereinafter "the tribunal") which it sent to the parties on 3 May 2017, whereupon it dismissed her appeal against a decision of an entry clearance officer refusing to grant her leave to enter the United Kingdom with a view to settlement. In a decision of 12 February 2018 I set aside the tribunal's decision. Put simply, that is because I had concluded that it had erred in law through failing to ask itself whether the claimant was able to bring herself within the requirements of the relevant Immigration Rules prior to deciding she was not able to succeed under Article 8 of the European Convention on Human Rights (ECHR) on family life grounds. I accepted a submission to the effect that in order to properly and fully consider the Article 8 argument it was necessary for the tribunal to, first of all, decide whether the requirements of the rules were met because, if they were, that would, whilst not being determinative of itself, inform the Article 8 assessment.

2. By way of background, the circumstances as told to me, are as follows: The claimant was born on 30 April 2002 and is a national of Pakistan. Given her age it is right to say that, at all

material times, she has been a minor. Her mother who is also her sponsor is present and settled in the United Kingdom and is married to a British citizen. That is the sponsor's second marriage. Her first husband, whose whereabouts she says she does not know, is the father of the claimant. That marriage was dissolved and the sponsor and her second husband married in 2010. The sponsor applied, successfully, to join her second husband in the United Kingdom but no application was made on behalf of the claimant at that time. Indeed the claimant was, it is said, looked after, once the sponsor had left Pakistan, by the sponsor's mother and father. It is said that the claimant's father (the sponsor's first husband) has had no involvement in her upbringing and has not shown any interest in playing such a role.

3. Eventually, an application for entry clearance was made on behalf of the claimant. However, that was refused by the entry clearance officer on 12 September 2015 because it was thought that it had not been shown that the sponsor had sole responsibility for the claimant's upbringing nor had it been shown (as an alternative under the Immigration Rules) that there were serious and compelling circumstances which would result in the exclusion of the claimant from the United Kingdom being undesirable. Those requirements are contained within paragraph 297(1)(e) and (f) of the Immigration Rules.

4. It was the claimant's appeal against the decision of 12 September 2015 which led to the appeal to the tribunal which, as already stated, was unsuccessful albeit that that decision of the tribunal has since been set aside.

5. My having set aside the tribunal's decision there was a hearing before me to enable the decision to be remade in the Upper Tribunal. Representation at that hearing was as stated above and I am grateful to each representative. I heard oral evidence from the sponsor and also from her current husband Mr Jason Zahoor Ahmed.

6. Putting together her witness statements of 30 March 2017 and 5 April 2018, along with her oral evidence to me, the sponsor's evidence may be summarised as follows: the sponsor's full name is Raffeeda Zahoor. She has obtained British nationality. She has obtained a Guardianship Order in relation to the claimant in Pakistan. Her application for that Order had not been contested and, whilst she does not know the whereabouts of her first husband, her lawyer in Pakistan had managed to serve some papers upon him and he had, in response, expressed disinterest in the proceedings. The sponsor regularly sends money to Pakistan for the benefit of the claimant. The sponsor's parents are elderly and infirm. Her father is blind and has a heart problem. Her mother has arthritis and high blood pressure. The claimant had obtained her "spouse visa" in 2010. She had wanted to settle down in the United Kingdom first prior to trying to bring the claimant here. She had obtained her grant of indefinite leave to remain in the United Kingdom some three years after her arrival. She and her second husband had spoken about matters at the time of the marriage or before and had agreed that the claimant would come to the UK later.

7. The sponsor had chosen the school the claimant would attend and the Mosque she would attend but those decisions had been made whilst the sponsor was still living in Pakistan. The sponsor had advised the claimant as to what subjects she should choose to study at school and, in particular, had told her that physics and chemistry would be good subjects to study. That was after the sponsor had come to live in the UK. The sponsor has returned to Pakistan for a visit only once. She thought it would be better to spend any spare money on the claimant's education in Pakistan rather than on the financing of visits. The sponsor and her second husband have two children of their own who are in the UK.

8. Putting together witness statements and oral evidence, Jason Zahoor Ahmed's evidence may be summarised as follows: there had been a discussion between him and the sponsor regarding the claimant, around the time the two had married. The couple had wanted to establish themselves in the UK before sponsoring her. They send money for the benefit of the claimant. He had been employed as a warehouse worker in 2010. He had been made redundant in 2011. He had found work again after a period of about six months.

9. After hearing the evidence I received oral submissions from the two representatives. Mrs Pattersen pointed out that the appeal could only succeed under Article 8 of the ECHR because the right of appeal was on human rights grounds only. However, I do not think she was seeking to argue that the question of compliance with the Immigration Rules was not a relevant consideration. Whilst there is evidence of monies being sent to Pakistan it is entirely possible that those funds were intended for the benefit of others instead of or in addition to the claimant. Whilst it is said that the grandparents are not now sufficiently well to look after the claimant she is no longer of an age where she would require very much looking after. The evidence that the sponsor takes decisions in respect of the claimant's upbringing is sparse. So, it has not been shown that the claimant meets the requirements of the Immigration Rules. So, the appeal should fail under article 8. Mr Hussain, for the claimant, argued that the requirements of rule 295(e) and (f) were both met though only one of those has to be satisfied for the claimant to succeed. There was good reason why entry clearance had not been sought in respect of the claimant earlier. The sponsor and her second husband had had two children since the sponsor came to the UK and her husband had been unemployed for a period. Their evidence as to relevant matters is clear and consistent.

10. As I indicated to the parties at the end of the hearing, I have concluded that this appeal should succeed. That is for the reasons which I now set out below.

11. I had the opportunity of hearing oral evidence from the sponsor. I have decided that, to a balance of probabilities, I am able to accept that evidence as being truthful. That is because, in general terms, I found her evidence to be straightforward. She sought to answer the questions put to her before me as directly as she could. She was not, in any sense, evasive. Her oral evidence is, to my mind, consistent with the written evidence which she has given in the two witness statements which she adopted.

12. As to possible difficulties with her evidence, it was suggested that it seemed odd that whilst she asserts she knows nothing about her first husband's whereabouts, he was apparently served with court papers relating to the application for the Guardianship Order. However, it may well be the case that the lawyer whom she had instructed had been able to take steps to trace the sponsor's first husband for the purpose of serving documents even if the sponsor herself remains ignorant of his whereabouts. So I do not regard that as a matter which causes any substantial damage to her credibility. A point arose about the school the claimant had been attending. The sponsor's evidence was to the effect that the claimant attends the Grand Knowledge Girls High School prior to the sponsor's departure from Pakistan and had not attended any other school at all. Whilst there was documentary evidence to show that she was indeed attending that school there was also documentary evidence suggesting that she had attended a school of a different name at an earlier stage. However, the matter was not put to the sponsor in cross-examination so she was not afforded the opportunity to explain. Further and in any event, it may be that she regarded the two schools as being the same perhaps because they might be located within the same grounds or might be linked to each other in some way. I am not speculating here I am merely seeking to illustrate that explanations for the apparent inconsistency are possible. I have decided that this is not a matter which offsets the various favourable points I have identified with respect to the sponsor's

credibility. So, I have concluded that I am able to accept the sponsor's written and oral evidence as being truthful.

13. As to the evidence of Jason Zahoor Ahmed, it is fair to say that he found the process of giving evidence obviously difficult. That may be attributable to extreme nervousness or to other characteristics of his. But I did not form the view that his quite long silences before being able to answer questions was an attempt to be evasive. He presented as a very straightforward individual who would not have been obviously capable of seeking to mislead a tribunal. Further, the evidence he did give at the hearing was consistent with his written evidence. In short, I see no reason at all to disbelieve him.

14. So it is necessary for me to consider where my favourable credibility assessments leave matters. I accept that the sponsor has been sending money along with her second husband and that that money is for the benefit of the claimant. Indeed it is entirely plausible that a mother geographically separated from her child would wish to send money for that child's benefit if in a position to do so. I accept that the claimant's father has not played a role in her upbringing at all. I accept that the sponsor, in contrast, has continued to play a role in her upbringing by maintaining contact with her and by involving herself in decisions taken in relation to the child. I accept, for example, that the sponsor played a significant role in the claimant's choice of subjects to study at the school she has been attending. It is right to say that the sponsor was not able to give any additional specific examples of decisions she had taken or participated in taking in relation to the claimant since coming to the UK. However, that may simply be because there has not been a requirement for many major decisions to be made.

15. Putting everything together then I conclude that the claimant meets the requirements of paragraph 297(i)(e) of the Immigration Rules because the sponsor has had sole responsibility for her upbringing. The Secretary of State has never placed the maintenance or accommodation requirements in issue. I am able to conclude, therefore, that the claimant does satisfy the Rules she is required to satisfy. Mrs Pettersen did not argue before me that in such circumstances the appeal, which has been brought under Article 8 of the ECHR, should not succeed. I conclude that it does succeed under Article 8.

Decision

The decision of the First-tier Tribunal has already been set aside.

In remaking the decision I allow the claimant's appeal against the entry clearance officer's decision of 12 September 2015 refusing to grant her entry clearance.

No anonymity direction is made.

Signed:

Dated: 2 May 2018

Upper Tribunal Judge M R Hemingway

TO THE RESPONDENT

FEE ORDER

I make no fee order in this case.

Signed:

Dated: 2 May 2018

Upper Tribunal Judge M R Hemingway