



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

Appeal Number: HU/19866/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and  
Promulgated**

**Reasons**

**On Wednesday 9 May 2018**

**On 14 May 2018**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**ENTRY CLEARANCE OFFICER (UKVS SHEFFIELD)**

Appellant

**And**

**IFTIKHAR AHMED  
(anonymity direction not made)**

Respondent

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer  
For the Respondent: Mr J Fraczyk, Counsel instructed by MFI Law Limited,  
solicitors

**DECISION AND REASONS**

**Background**

1. This is an appeal by the Entry Clearance Officer. For ease of reference, I refer below to the parties as they were in the First-tier Tribunal albeit that the Entry Clearance Officer is technically the Appellant in this

particular appeal. The Respondent appeals against a decision of First-tier Tribunal Judge Rothwell promulgated on 6 September 2017 (“the Decision”) allowing the Appellant’s appeal against the Respondent’s decision dated 14 July 2016 refusing the Appellant’s human rights claim made as part of his application for entry clearance to come to the UK as a spouse of his British Citizen wife (“the Sponsor”).

2. The Appellant is a national of Pakistan. The Sponsor is a British Citizen. Of particular importance to the appeal before me is the fact that the Sponsor is self-employed as a foster carer. At the date of the application for entry clearance, she had living with her two unaccompanied, asylum seeking children, both aged sixteen years, one of West African nationality and the other Albanian.
3. The Judge accepted that the relationship between the Appellant and the Sponsor is a genuine one. The Judge accepted that, because of the nature of the Sponsor’s income, she is unable to meet the strict evidential requirements of the Immigration Rules (“the Rules”). Although the Respondent raised this as a ground of appeal before the First-tier Tribunal on the basis that the Judge had failed to factor this into her assessment when dealing with the public interest justification for refusal, that ground is not repeated before me. Permission to appeal was refused on those grounds by Resident Judge Appleyard on 13 October 2017.
4. The only ground now raised concerns the Appellant’s ability to satisfy the authorities in the UK of his suitability to live in the same house as the children fostered by the Sponsor. I emphasise that there is no suggestion that the Appellant is unsuitable. The Respondent says only that the Appellant has failed to produce the necessary documentation to satisfy the authorities of his suitability (namely the Pakistan equivalent of a Disclosure and Barring Service (“DBS”) certificate).
5. The way in which the Respondent argues this point in the renewed grounds of appeal is as follows:

“ ...

[2] The ECO reiterates the material failure of the FtJ to resolve a matter materially in dispute between the parties (as per Porter v South Bucks District Council HoL [2004]) – that being the public interest and the application of s.55 BCIA 2009 in respect of the Appellant (“A”) entering the household where there had been no equivalent DBS check in Pakistan.

[3] Whilst it is of course accepted that the learned FtJ referred to some of the evidence at [32] there is in fact no finding as to the effect on the public interest in Article 8(2) by the absence of such a check. The ECO asserts that it was unlawful to sideline the important issue of DBS equivalent checks thereby removing it from the assessment of proportionality and fettering the public interest. It appears from the judgment that the A and S had not produced the

relevant checks even though on notice that this was part of the ECO's case.

[4] The Resident Judge's response is to speculate about what might be done once the Sponsor arrives in the UK but that was unlawful for two reasons:

- 1) Because the FtJ did not express any finding on this (which is the ECO's point);
- 2) the public interest and s.55 issues about the absence of an equivalent DBS document from Pakistan is material to whether the A can enter at all - it is hardly a proper exposition of the public interest in an entry clearance case to say: if something goes wrong in the future the local authority can resolve it by removing the children from the S's care (as the Resident Judge does at para. 4). That plainly is not in the best interests of the children and is contrary to safeguarding those best interests where the matter could have been resolved by the A and S by production of the appropriate evidence from Pakistan."

6. Permission to appeal was granted by Upper Tribunal Judge Grubb on 19 December 2017 in the following terms (so far as relevant):

" ...

[2] The Judge allowed the appeal outside the Rules under Art 8, clearly having found at para 33 that the requirements of the Rules were not met. The sponsor is a foster carer and, as noted by the Judge, the social services require the appellant to have a Pakistani equivalent of a DBS check. The Grounds argue that the Judge failed to take this into account in assessing proportionality as part of the public interest as he does not have one. This is a novel point, so far as I am aware and merits consideration by the UT as to whether this is a relevant aspect of the public interest when it arises in entry clearance cases.

[3] For these reasons, permission is granted."

7. The matter comes before me to decide whether the Decision contains a material error of law. Both parties accepted that, if I found there to be an error of law in the Decision, given the basis of the challenge, the appeal could remain in this Tribunal for re-hearing. I agreed with the representatives that if I found a material error of law, I would give directions for further evidence, particularly from the local authority for whom the Sponsor provides services.

### **Decision and Reasons**

8. Mr Fraczyk very fairly accepted in his skeleton argument for the hearing that the absence of a DBS equivalent certificate is relevant to the Article 8 issue in the following ways:

- a) Section 55 Borders, Citizenship and Immigration Act 2009 provides that the Secretary of State "must make

arrangements” to ensure that the functions within that section are discharged “having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom”. Those functions include any function of the Secretary of State in relation to immigration. The need to safeguard and promote the welfare of the foster children for whom the Sponsor has responsibility is therefore a relevant consideration when looking at Article 8;

b) There is a requirement in the Rules that the Appellant and Sponsor “intend to live together permanently in the UK”. Although the Appellant cannot meet the strict requirement of the Rules in any event due to the inability of the Sponsor to meet the evidential requirements concerning her finances, the suitability of the Appellant to live in the same household as the Sponsor and foster children is relevant to whether the application otherwise meets the Rules. I would add in this regard that it seems to me also to be relevant to the financial requirements because, if the Appellant’s presence in the home were not acceptable to the local authority, the Sponsor would have to stop fostering and that is the sole source of her income;

c) Also outside the Rules, the Appellant accepts that whether he is able to meet the DBS requirements in the UK which are legal requirements for those working with children is relevant to the public interest.

9. I consider that those concessions are rightly made. The public interest is not restricted to the issues listed in Section 117 Nationality, Immigration and Asylum Act 2002 and is capable of encompassing wider considerations of this nature. For similar reasons, I reject Mr Fraczyk’s submission that, because there is no requirement in the Rules for a DBS certificate or similar documentation to be provided by an applicant in the Appellant’s situation, that is relevant to the weight to be given to the public interest. The evidential requirements in the Rules are designed to show that an applicant can meet the standard criteria laid down by the Rules. It is not possible to cover every eventuality which might arise. Even if I am wrong about that, it is not relevant in this case since it is accepted that the Appellant cannot meet the Rules and that Article 8 falls to be assessed outside the Rules.

10. I accept with some limitations the Appellant’s submission that it is for the Respondent to justify interference with the Appellant’s (and Sponsor’s) human rights (see Ghising and others (Ghurkhas/ BOCs: historic wrong; weight) [2013] UKUT 567 (IAC)). The limitation on that argument, however, concerns the best interests of the children affected by the Respondent’s decision. Particularly in a case such as this, the Appellant and more particularly the Sponsor are better placed to provide evidence to show that the best interests of the foster children are safeguarded. Although, as noted below, the Sponsor has had only

limited success in obtaining information from the local authority about the steps which need to be taken, she is clearly in a better position to obtain that information based on her relationship with that local authority.

11. The above is, however, largely irrelevant in this particular case because, for reasons which I now set out, I am satisfied that the Decision does not disclose an error of law and/or that any error is on the evidence immaterial.
12. The evidence on this issue is set out at [32] of the Decision as follows:

“[32]The ECM raised concerns about the position of the appellant in the household as the sponsor is a foster carer. In the bundle served on 3 August 2017 the appellant has provided emails to show that the sponsor has raised this issue with the Fostering Team, London Borough of Croydon in March 2016. She was advised that he needed to produce the Pakistani equivalent of a DBS check. They also state that they will need to do an updated panel check. I accept that the sponsor has advised the Fostering Team that the appellant is coming to the United Kingdom and needs to travel with a current equivalent of a DBS check. There are also emails from the sponsor in April 2017 chasing the inquiries made by the ECM, but there are no concluding e mails, save for an email where the appropriate person has stated that they had not received any correspondence.”

13. I accept that the Judge does not thereafter consider the relevance of this factor to the public interest save to take into account in the Appellant’s favour at [41] of the Decision that the Sponsor is a foster carer (and therefore presumably is providing a valuable service which favours the public interest in permitting the Appellant to join her rather than requiring her to join him in Pakistan).
14. It may be that this omission is however because the Judge considered it unnecessary having set out the evidence to factor this into the public interest assessment because the evidence showed a lack of impact. As Mr Walker fairly drew to my attention, there is in evidence before the Judge what appears on the face of it to be the required documentation ([AB/228]). That is a document which on its face appears to be issued by the Punjab Police, Rawalpindi District and is entitled “Character Certificate”. It is dated 5 March 2016. It bears a photograph of a man who I assume to be the Appellant and provides his name, parentage and address by way of identification. It confirms that the Appellant has lived in the district for thirty-five years. It confirms that “[t]here is nothing against him/her on the record of the Police station as reported by” the police station for his area. The notes provide that “[t]his character certificate is valid to submit in the foreign embassies for visa/immigration purpose and valid for six months (from the date of issue) only”.

15. I was informed that this certificate was before the Respondent with the application and before the First-tier Tribunal Judge. This may explain why no issue was taken about DBS checks by the Entry Clearance Officer.
16. I do not have any confirmation that the certificate is valid as a Pakistani equivalent of a DBS check but on the other hand, it does appear to provide the information that a DBS check would provide, namely the absence of a criminal record. It also appears to comply with what was requested by the local authority in an e-mail dated 8 December 2015 namely “the Pakistani equivalent of a completed DBS Police check”.
17. Mr Fraczyk also directed my attention to the e-mail chain passing between the Sponsor and the local authority at [AB/139-144]. That refers to a “full assessment” being carried out by the local authority in the UK ([AB/140]). With the exception of the requirement for the DBS certificate which is required prior to travel, therefore, the local authority appears satisfied that the Appellant can come to the UK to live with the Sponsor. Any further checks and assurances will be conducted in the UK.
18. The enquiries made by the Sponsor of the local authority about the Appellant’s position are set out in some depth in the Sponsor’s witness statement as follows:
- “[24] I confirm that I told my Supervising Social Worker, Ms Sheila Mahraj that I had gotten married in Pakistan and that I would be sponsoring my husband who is the Appellant to come and join me here in the UK as my spouse. This was in December 2015 when I had my first meeting with her. After this, Ms Sheila Mahraj had said that she would let her Manager know and I believe that she must have as further enquiries were being made about my marriage and about the Appellant. I got an email from Ms Sheila Mahraj dated 08/12/2015 asking to see a copy of my Marriage Certificate and she also asked that if he is coming to the UK then can he bring the Pakistani equivalent of a completed DBS Police check. She had said in this email that she had to update the Fostering Panel as to my change of circumstances. So, this email reveals clearly that Ms Sheila Mahraj and Croydon Council were aware that I had gotten married and that I was looking to sponsor him to join me here in the UK. I sent a reply to her email by email on the 08/12/2015 telling her that I did not have the Marriage Certificate because Pakistani law said that when a Nikkah ceremony has taken place then it has to be registered with the Union Council of the town in which the Nikkah took place. I said that the Appellant had submitted the Nikkah namah (Marriage Certificate) to the Union Council so that our marriage could be registered with them and this procedure would take up to “a month”. I also told her that the Appellant and I had not yet decided when he would be coming to the UK but I

would ask him to get the DBS Police check certificate for the Fostering Panel. I did send a copy of my Marriage Certificate and the Police Character Certificate to Croydon Council as they asked. I did also give this in support of the Appellant's visa application as well as when the visa application was submitted to the Respondent.

[25] I received further enquiries from Ms Sheila Mahraj. I received an email from her on the 11/02/2016 asking:-

- a. "Is he coming to live in the UK?"
- b. "a full assessment will need to be undertaken if he comes to this country" (only when he was physically inside the UK on a visa)"
- c. "Is he aware of her as a foster carer and will he want to be part of fostering"
- d. He would need to "travel with a DBS if he enters the UK and is residing at the marital home."

[26] I replied to all her enquiries. I sent her an email on the 11/02/2016 telling her that the Appellant will be coming to live in the UK. I confirmed that it would be fine with respect to the full assessment as the Appellant was happy to undergo any assessments that they would need to do once he was physically here in the UK. I confirmed to her that the Appellant was aware that I am a Foster Carer and that he "will be a part of fostering as a back up carer". I also told her that I was aware of the requirement that he would need to travel with a DBS when he comes to the UK and is living at my home address as that would be our marital home. It should be noteworthy that no issues about the welfare of the foster children had been raised by Ms Sheila Mahraj or Croydon Council at any point in time and I am sure that had there been any issues, then they would have raised these with me when I told them about my marriage, that the Appellant was coming to live with me at my home address and that he would be a back up Carer. I was told by Ms Sheila Mahraj that she would just need to update the Fostering Panel and that he would need a DBS when travelling to the UK and when he lives with me at my home address and that he would have to undergo an assessment which would only be done once he was physically here in the UK on his visa. The Appellant and I am happy to give any information that is needed to show the criteria with respect to foster caring is being fulfilled. I strongly believe that the welfare needs of the foster children will continue to be met adequately and that there are no adverse concerns. None have ever been raised in all this time by Croydon Council or Ms Sheila Mahraj.

...

[28] I cannot explain why Croydon Council or my Supervising Social Worker or the Manager did not respond to the enquiries that had been made by the Respondent which are revealed in the Entry Clearance Manager's Review decision dated 01/12/2016. Their lack

of response is beyond our control. It is unfair to hold me or the Appellant responsible in some way or to prejudice us because of their lack of response. I wish I knew why they did not respond, but I do not.

[29] I tried to contact Croydon Council to find out why they did not respond to the Respondent's enquiries as I sent emails to the Unit Manager Joan James-McGowan. The emails that I sent to her on the 04/04/2017 at 12:13 and 11:51 were given with the Supplementary Grounds as proof of this. I had a response from Joan James-McGowan which has not been very much help in getting closer to understanding or finding out why they did not respond to the Respondent's enquiries. She just confirms in her e mail that "Sheila has informed" her that "she had not" received any communication from the Respondent. She also has not been able to confirm who did receive the Respondent's communication and this was very telling from her email as she told me that she was asking around and that she would speak to "Ellen" who is the newly appointed Supervising Social Worker...I cannot answer the question why Croydon Council or the Supervising Social Worker or Manager did not respond. This is not one that I can possibly have the answer to. All I know and can confirm is that I did tell my Supervising Social Worker, Ms Sheila Mahraj, right from the outset when I had my first meeting with her back in December 2015 that I had gotten married, about the Appellant and that I was looking to sponsor him to join me here in the UK. A series of enquiries were made with me and I have given the emails that had been exchanged between me and Ms Sheila Mahraj to show this. No issues have ever been raised about there being any adverse concerns relating to the welfare of the foster children or of the Appellant joining me and living with me at my home address. I do not believe for this reason that there have been any issues and neither do I believe that there are any...."

19. What is said by the Judge at [32] of the Decision has to be read in the context of that evidence. Although the Judge does not expressly refer to the "Character Certificate" she does refer to the e-mails raising this issue. It may well be, as I have already noted, that the Judge was satisfied on the evidence that the Appellant and the Sponsor have shown that the necessary document has been provided. I accept that if this were so then it might have been better if she had said so expressly rather than leave it to inference.
20. Even if that is not the position, though, I am satisfied that any error by the Judge in not making a finding on the evidence or failing to mention the position when looking at the public interest is not material. I am satisfied on the evidence I was shown that the Appellant has produced a "Character Certificate" that on its face provides an equivalent to a DBS check. I am also satisfied by the Sponsor's evidence that this was produced both to the local authority and to the



Respondent with the visa application. There is no suggestion that the local authority has objected to that document as satisfying the requirement (although equally they have not expressly said that it does comply). There is no suggestion that the document is not genuine. Indeed, in reply, Mr Walker accepted that the witness statement from the Sponsor on this issue is “very comprehensive”. It is abundantly clear from that witness statement that the Sponsor is keeping the local authority informed about the Appellant’s arrival in the UK and that further checks will be carried out by that local authority once the Appellant is in the UK.

21. For those reasons, I am satisfied that the Decision does not disclose a material error of law and I uphold the Decision. The Appellant’s appeal against the refusal of his human rights claim therefore remains allowed.

### **DECISION**

**I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Rothwell promulgated on 6 September 2017 with the consequence that the Appellant’s appeal stands allowed**

Signed  
Upper Tribunal Judge Smith



Dated: 10 May 2018