



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/15215/2018**

**Appeal Number:**

**HU/1**

**5217/2018**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 5 December 2019**

**Decision & Reasons  
Promulgated  
On 9 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MISS RABIA  
ABDULLAH JAVED**

**Appellants**

**and**

**ENTRY CLEARANCE OFFICER, PAKISTAN**

**Respondent**

**Representation:**

For the Appellant: Mr K Forrest, Advocate, instructed by RH & Co, Solicitors  
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are citizens of Pakistan, born on 18 June 2001 and 20 December 2002. The sponsor is their mother. She moved to the UK in 2009, leaving the appellants and their older brother (now adult) with their father (and other family members) in Pakistan. On 12 March 2018, the appellants applied for clearance to enter the UK to settle with their mother. Their father was said to have left the family home on 23 December 2017, with no contact since then.

2. The ECO considered the applications firstly under paragraph 297 of the immigration rules, which provides as follows:

The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

(a) both parents are present and settled in the United Kingdom; or

(b) both parents are being admitted on the same occasion for settlement; or

(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or

(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or

(e) 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; or

(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal.

3. In decisions dated 18 June 2018, the ECO was not satisfied that the sponsor had sole responsibility for the children's upbringing, and found no exceptional circumstances to justify a grant of leave outside the rules on human rights grounds, under reference to the appellants' best interests (although section 55 of the 2009 Act does not apply directly, as the appellants are outside the UK).
4. An Entry Clearance Manager maintained the decisions following a review on 19 January 2019.

5. The appellants appealed to the FtT on the grounds the decisions resulted in “a flagrant breach of family life” of the appellants and the sponsor; that the circumstances of the departure of the appellants’ father from the family home, and of their mother’s sole responsibility since 2009, had been supported by evidence; and that the ECO did not have “due consideration” to the best interests of the appellants.
6. F-tT Judge Debra H Clapham heard the appellants’ appeals on 20 February and dismissed them by a decision promulgated on 28 June 2019.
7. The appellants’ grounds of appeal to the UT, in summary, are as follows:
  - (1) inadequate reasoning; at [69] the judge was not sure she had been given a full picture of the family circumstances; that indicated that she looked for a higher level of certainty than the balance of probabilities; that incorrect standard infected the rest of the decision;
  - (2) at [71] the judge said that much of the evidence had been before the ECO and ECM, and asked, “If it was not sufficient then why is it now?”; her function was to assess all the evidence herself and not to adopt findings of the decision maker below; this misconstrued the appeals process and indicated “a degree of prejudice that undermines a conclusion that the appellant[s] had a fair hearing”;
  - (3) at the end of [71] the judge approached the evidence “with western eyes”, failing to understand, in respect of whether the appellants were privately educated, that it was not unusual in the subcontinent for a public sector school to require additional financial support for pupils;
  - (4) at [72], failure to recognise that communication with the children and with their grandparents as day to day carers was effectively one and the same; and
  - (5) the conclusion at [73] of no evidence of sole responsibility left out of account the sponsor’s evidence.
8. The F-tT granted permission on 17 September 2019.
9. Having heard submissions, I indicated my decision, along the following lines.
10. Ground 1 is not well taken. There is nothing wrong with a judge observing that she has not been given the full picture. There is nothing in the decision to suggest that the judge applied anything but the correct standard of proof.
11. Ground 2 identifies an apparent error of approach. The F-tT does not ask if the decision appealed against is within the range of law and reason, and does not assume it is a good starting point; it carries out a “full merits” appeal. However, there was force in Mr Clark’s argument that this ground takes a carelessly worded phrase out of context, and that the decision is based on the judge’s own appraisal of the evidence.
12. Ground 3 makes a reasonable point. Although Mr Clark argued that the appellants could have clarified the matter in evidence and submissions, it is not one which their representative could be expected to foresee, and

once raised, it is one which has a clear answer. However, this is a relatively minor matter.

13. Ground 4 goes wrong, and Mr Forrest withdrew it. The evidence was that the appellants and their father lived in a house which had belonged to his parents, but they both died years ago. The evidence did not mention the maternal grandparents.
14. Ground 5 was not on its face a promising one, but it was a sufficient basis for the best point advanced for the appellants. The crucial alleged event which led to the applications being made was the abandonment of the appellants by their father on 23 December 2017, leading to the sponsor having sole responsibility from then on; but the judge did not deal with that aspect of the case, and treated it as if the appellant sought to prove, and had to prove, sole responsibility throughout the period from 29 June 2009, when she left Pakistan.
15. The F-tT's delay from hearing to decision is longer than is desirable, which may have contributed to a loss of focus, and to the principal allegation being left unresolved.
16. Grounds 2 and 3 might not have been sufficient but when they are taken with ground 5, as it was developed, and with the unexplained delay, the decision of the F-tT falls to be **set aside**. It stands only as a record of what was said at the hearing. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to **remit to the F-tT for an entirely fresh hearing**. The member(s) of the F-tT chosen to consider the case are not to include Judge Clapham.
17. No anonymity direction has been requested or made.



5 December 2019  
UT Judge Macleman