



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

Appeal Number: HU/06672/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 30 August 2023**

**Decision & Reasons
Promulgated
On 10 October 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MR MUSTAFA IMTIAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Broachawalla, Counsel instructed by ICS Legal
For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This decision is a remaking of an appeal brought on Article 8 ECHR grounds against the respondent's decision of 19 March 2019 refusing entry clearance under paragraph 297 of the Immigration Rules.

2. The remaking follows the error of law decision issued on 22 June 2023 which set aside the decision of First-tier Tribunal Judge J S Burns which refused the appeal.

Background

3. The appellant is a citizen of Pakistan. He was born on 12 November 2009. He is now 13 years old.
4. In 2011 the appellant applied for entry clearance to join his mother, Ms Madiha Imtiaz, under the provisions of paragraph 319H of the Immigration Rules. Ms Imtiaz was in the UK as a student at that time. It was maintained that she had sole responsibility for the appellant. The application was refused on 16 March 2011.
5. The appellant appealed against the refusal of entry clearance. In a decision dated 6 September 2011 First-tier Tribunal Judge Hague refused the appeal. Judge Hague did not accept that the sponsor had sole responsibility for the appellant or that there were serious or compelling family or other considerations which made refusal of entry clearance undesirable. Judge Hague found that the appellant was living with his father, maternal grandmother and other relatives. Judge Hague also found the sponsor "to be a witness whose evidence has to be treated with caution."
6. The appellant applied again for entry clearance on 13 February 2019. By that time, the sponsor had been granted indefinite leave to remain (ILR) and the appellant relied on paragraph 297 of the Immigration Rules. The application was refused on 19 March 2019. The Entry Clearance Officer (ECO) did not accept that the provisions of paragraph 297 were met as it had not been shown that the sponsor had sole responsibility for the appellant or that there were compelling family or other circumstances which made exclusion undesirable. The ECO also found that refusal of entry clearance did not amount to a disproportionate interference with the appellant's Article 8 ECHR rights. The ECO relied on the findings of Judge Hague in the 2011 appeal as to the appellant living with his father, grandmother and other relatives in Pakistan.
7. The appellant appealed against the refusal of entry clearance and the appeal came before Judge Burns on 15 November 2019. Judge Burns refused the appeal in a decision issued on 20 November 2019. He did not accept that the sponsor had sole responsibility, that there were serious and compelling family or other considerations which made exclusion of the child or that the refusal of entry clearance breached Article 8 ECHR
8. The appellant appealed against the decision of First-tier Tribunal Judge Burns. The First-tier Tribunal refused permission on 15 June 2020. The Upper Tribunal refused permission to appeal on 19 August 2020.

9. On 4 September 2020, the appellant lodged a judicial review application challenging the refusal of permission. On 13 November 2020, Mrs Justice Lieven granted permission to apply for judicial review. On 22 March 2022 the High Court ordered that the decision of the Upper Tribunal dated 19 August 2020 refusing permission to appeal should be quashed. On 15 December 2022 the Upper Tribunal granted permission to appeal against the decision of First-tier Tribunal Judge Burns.
10. The error of law hearing came before me on 8 June 2023. In a decision issued on 22 June 2023, I found an error of law in the decision of First-tier Tribunal Judge Burns and set the decision aside to be remade. The remaking of the appeal was listed for 1 August 2023 but was adjourned as the sponsor was unwell, eventually taking place on 30 August 2023. I heard oral evidence from the sponsor via an Urdu interpreter and heard submissions from Ms Nolan and Mr Broachawalla.

Decision of Judge Hague dated 6 September 2011

11. The parties were in agreement that although this was an Article 8 ECHR appeal, it turned on whether the provisions of paragraphs 297(i)(e) or 297(i)(f) were met. Paragraph 297(i)(e) requires the appellant to show that the sponsor has sole responsibility for him. Paragraph 297(i)(f) requires there to be serious and compelling family or other considerations which make exclusion of the appellant undesirable and for there to be suitable arrangements made for his care.
12. The decision of Judge Hague issued on 6 September 2011 is the starting point for my assessment of those matters following Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702.
13. At the time of the appeal before Judge Hague, the sponsor was still married to the appellant's father, Mohammed Imtiaz. They married on 22 January 2009. In 2011, the sponsor came to the UK to study. The appellant applied to come with her but his application was refused.
14. Before Judge Hague, the sponsor maintained that she had sole responsibility notwithstanding that the appellant's father was living in Pakistan and other relatives were also nearby. The sponsor's witness statement dated 29 August 2011 said this (verbatim):

“4. I am married to Muhammad Imtiaz who is currently living in Pakistan and who is self employed in the garment's business at civil lines in Pakistan. When I made application for entry clearance, I requested my husband to travel with me to the UK for the purposes of my studies. He confirmed that he could not leave his established business and that there was no one to look after his business in his absence and that he has other responsibilities to fulfil. However, he agreed to provide all financial support to me and my son.

5. My husband spends a lot of time travelling within the country due to his business and is unable to look after the Appellant.

6. My husband has to look after his parents as they are elderly and ill”

The sponsor also indicated in paragraph 8 of the statement that:

“8. My mother is also elderly and has health issues and is struggling to look after my son. There is no-one in Pakistan with whom I can leave my son nor can I trust anyone who could care for my son properly.”

15. The entry clearance application made in 2011 was also supported by an affidavit from the appellant’s father dated 2 March 2011. The affidavit was sworn at Jhelum in Pakistan. It stated that the appellant’s father was “a businessman in Jhelum working since 2006 at civil lines in Pakistan.” The affidavit indicated in paragraph (e):

“That I allow my wife to go to UK for studying ... along with our son Mr. Mustafa Imtiaz and for this, I have deposited her required living and studying expenses in her account”

The documents provided with the application showed that the appellant’s fees for studying in the UK were £4,900 in total.

16. The evidence before Judge Hague also included an affidavit from Ms Tasleem Kausar, the sponsor’s mother, (the appellant’s maternal grandmother) dated 29 August 2011. The affidavit stated that she could not look after the appellant because of her health problems. The sponsor’s mother indicated in paragraph 4 that:

“Mustafa’s father (*Muhammad Imtiaz*) is engaged in his business (cloth merchant) and is not willing to go to the UK nor could he look after his son due to his business involvement.”

The sponsor’s mother also stated in paragraph 8 of the affidavit that although “Mustafa’s father contacts him once a week, he cannot look after him properly.”

17. Judge Hague’s decision dated 6 September 2011 shows that the sponsor’s oral evidence was in line with the information in her witness statement and the affidavits of her ex-husband and her mother. Judge Hague summarised that evidence in paragraph 5 of his decision and also recorded:

“[The sponsor] said that she had one brother and one sister in Pakistan and her husband has five sisters and three brothers. [The sponsor’s] husband continues to live with her in-laws. Although no other relatives live with them she acknowledged that the brothers live nearby and their wives are constant visitors to the house looking after them.”

18. Judge Hague did not find the sponsor to be a reliable witness. In paragraph 6 he set out that she “was a witness whose evidence has to be treated with caution” and that she was “selective in the emphasis of her evidence.” He did not accept the sponsor’s evidence on difficulties with

childcare in Pakistan and the positive situation that would pertain if the appellant came to the UK; see paragraph 6 of Judge Hague's decision.

19. First-tier Tribunal Judge Hague found in paragraph 7 that it was "clearly not the case" that the sponsor had sole responsibility for the appellant. He went on:

"[The sponsor] and her husband lived together in a family unit with each fulfilling their roles. It is inevitably the case with younger children that mothers are more involved in their day to day care but where the family unit is intact it cannot be said that the father is excluded from the responsibility of the children. I do not accept that the arrangements for the Appellant's care, amongst so many relatives, are inadequate. I do not regard the Sponsor's desire to have her young child with her to be of serious and compelling family or other consideration making it undesirable to refuse the application. She and her husband have come to this arrangement in the knowledge that their scheme is subject to English immigration law. The Appellant is living near his father in the vicinity of a large family community and they cannot meet the requirements of the Rule. The appeal must be dismissed.

8. The Sponsor is only in the UK for temporary purposes and the Appellant living with his father, grandparents and other family members. The decision does not infringe his right to family life under Article 8 ECHR."

Evidence in support of the 2019 entry clearance application and appeal

20. The evidence put forward in support of the entry clearance application made in 2019 and this appeal is very different to that provided in 2011. The sponsor maintained that the evidence given in 2011 was not correct and this was because at that time she had been "badly advised". In a statement dated 6 February 2019, the sponsor set out in paragraph 7 (verbatim):

"i. The marriage between me and my son's biological father, Mohammad Imtiaz was arranged. The family at the time of marriage being organised where aware he lives and works in Portugal.

...

iii. Both I and my son's father lived together for about two months following our marriage, at which point, I did fall pregnant and he returned to Portugal, leaving me behind at my mother's home.

iv. The idea was that, once we were married, he was supposed to apply for a family visa, so that I can join him. After he left for Portugal, he used to contact me randomly and I could not at first understand the reasons, given that we recently got married.

v. I told him that I was pregnant but he did not seem to care to be honest. I was not really happy with the way things were working out.

vi. After about four months following his departure to Portugal, I spoke to some of his family members and came to know that he was married to someone in Portugal; however he never admitted this to me. I was quite upset and annoyed with this and everything then started to make sense as to why he was not interested.

vii. I gave birth to my son on 12 November 2009.

viii. My son's father took no interest in the pregnancy or following the birth, even though I told him but he did not really care.

ix. He took no interest in my son, has not paid any financial support towards his upbringing and simply does not care."

21. In paragraph 12 of the statement dated 6 February 2019, the sponsor stated (verbatim):

"i. An application was made by my son to join me but this was refused on 16 March 2011. The application raised issues on the sole parental rights but I was new to these dependents application. I did not provide the correct evidences or information.

ii. I then appealed the decision, taking some wrong advice and poor representation."

22. The sponsor set out almost identical evidence in a witness statement dated 28 October 2019 prepared for the hearing before Judge Burns and also in a witness statement dated 3 September 2020 which was prepared for the judicial review of the refusal of permission to appeal the decision of Judge Burns. This was also, in essence, her evidence before me.

23. The appellant commented further on 2011 the entry clearance in the witness statement dated 28 October 2019. She maintained in paragraph 15 that a visa agent was used to submit the application. She stated:

"[The agent] was affiliated to the College in the UK. He did prepare all the relevant documents including the visa form and trusted on him. It did transpire that I did not have any knowledge of the documents prepared and there were inaccuracies, which is the cause of the current situation."

24. There is, therefore, a stark difference between what was said in the entry clearance application and appeal in 2011 and what is said now. If what the sponsor says now is correct, the evidence in the entry clearance application and appeal in 2011 was false. A significant difficulty for the sponsor in making good her claim to be a witness of truth now when maintaining that she has sole responsibility for the appellant is that the evidence in 2011 did not only consist of documents that she should not be held responsible for but that she gave evidence before Judge Hague and maintained what she now says was an untrue version of the circumstances of the appellant in Pakistan. I did not find that the evidence showed that she was a reliable witness on the issue of who had responsibility for the appellant.

25. The sponsor was cross-examined about the difference in the evidence provided in 2011 and the evidence she has given from 2019 onwards. The sponsor's explanation for the difference in the evidence was that she was badly advised in the entry clearance application and appeal in 2011. She was unable to explain in what way she was badly advised, however, or provide any further details as to what happened in 2011, maintaining only that "I was badly advised". When I asked her to provide details of this bad advice, whether she had been told to give untruthful information in her statements, she said "It's been a long time. I don't think so". She provided no further detail at all as to why or in what way she was badly advised in 2011.
26. I found the sponsor's evidence perplexing. If she was badly advised in 2011, she could be expected to provide some sort of explanation as to why the visa agent would get her to write an incorrect statement and get her ex-husband and mother to do the same. If it was in some way intended to bolster the entry clearance application and appeal, she could be expected to say so now. If there was some other reason, if she was under duress, for example, she could be expected to say so. She did not.
27. Other aspects of the sponsor's evidence also caused me concern. As above, the sponsor maintained that a visa agent was used for the entry clearance applications in 2011. As Ms Nolan pointed out to her, the entry clearance application form from 2011 did not show that an agent was used. The sponsor did not know why the details of the visa agent were not on the 2011 entry clearance application. In my view, this undermined the sponsor's claim that a visa agent prepared the application in 2011 and that the visa agents had given the bad advice which led to untruthful evidence being submitted.
28. Further, if a visa agent or the firm of solicitors who conducted the appeal in 2011 advised the sponsor to give false evidence, that is a very serious matter. The sponsor accepted that she has never attempted to make a complaint about any of the legal advice she was given in 2011, however. I accept that there is evidence of the sponsor being in difficult circumstances because of entering into an abusive marriage in 2013 and experiencing mental health problems because of that mistreatment and because of her separation from her son. If the sponsor genuinely wished to distinguish the evidence put forward in support of the 2011 application and appeal, however, it was my view that, with the assistance of the legal advisers who have assisted with the 2019 entry clearance application, she could be expected to have taken some steps in that regard but she has not.
29. Also, the sponsor was asked in cross examination whether she knew about the affidavit from her ex-husband provided in support of the appeal in 2011. She said that she had known about this document being submitted with the entry clearance application. She was asked about the statement in her ex-husband's affidavit from 2011 that he paid for her to come to the UK to study. She stated that this was correct. She confirmed this again

when asked whether her ex-husband had paid for her studies in the UK. The sponsor was then asked why her statements made in 2019 and 2020 in support of the second application and appeal stated that her ex-husband never provided any financial support to her or the appellant. She stated that he definitely paid for her studies but not for her son. She was asked why he would pay £4,900 for her studies three years after her son was born when her evidence was that he had nothing to do with her or her son after her son was born in 2009. The sponsor stated that her ex-husband was a mysterious person and it was difficult to say why he did things.

30. I found the sponsor's evidence on the affidavit of her ex-husband also undermined her credibility. In paragraph 15 of her witness statement dated 28 October 2019 she stated that she did not have "any knowledge of the documents prepared" by the visa agent. She now says that she knew about the affidavit of her ex-husband. Her current evidence is that her ex-husband never provided any financial support to her or her son but she accepted, when the ex-husband's affidavit from 2011 was put to her, that he paid for her to come to the UK to study which included fees of £4,900.
31. Further, the entry clearance application in 2019 was accompanied by a guardianship document dated 18 March 2017 which stated that the sponsor was appointed as guardian for the appellant and that she had sole responsibility for him. The sponsor commented on this in her witness statement dated 28 October 2019:

"To confirm my sole parental rights, I have enclosed the Court judgement. It confirmed that the biological father has not made any contact or any maintenance payments and has not met his son. This is to provide legal confirmation that I am his sole parent."

The documents also included the application for the guardianship order. It stated that the sponsor had always supported the appellant and that his father had never supported him. The father's whereabouts had been unknown for six to seven years.

32. The sponsor was asked about the guardianship order in cross-examination. The order provides the names and addresses of the nearest relatives of the appellant. The nearest relatives are stated to be the sponsor's mother and his father, Muhammad Imtiaz. He is stated to be living in Pakistan. When asked why the father's details were included when it was six or seven years since he had had any contact with the appellant, she stated that this was the first time she had noticed her ex-husband's name on the guardianship order. She did not understand why his name was there. She thought that it might be in order to comply with the norm in Pakistan of including details of the father. She was asked how the father's information came to be in the guardianship documents if it was granted based on an application that she had made. The sponsor stated that her ex-husband's details should not have been there as her mother was the guardian in her

absence. I found that the sponsor's inability to explain why the father's details were included on the guardianship order made in 2017 on the basis of information provided by her undermined her claim that the appellant had never had any contact with his father.

33. The sponsor also relied on receipts for the appellant's school fees as evidence that she has always been the sole financial provider for the appellant. Three receipts from 2019 had the name of the appellant's father on them, however. The sponsor was asked about this in cross-examination. She stated that it might be because it was usual in Pakistan to include details of a child's father on documents. Further, the sponsor stated that she asked the school to change this but they refused. It was put to her that her response was not credible as, in fact, earlier receipts for school fees did not refer to the father. Rather than his name being taken off the receipts, it was included in 2019 when it had not been before. It was also not credible that the school would refer to the father when it was the sponsor's evidence that the father had never supported the appellant in any way or had any contact with him after he was born. The sponsor was not able to explain why later receipts had the father's name on them and earlier ones did not. I found that this part of the evidence also undermined the reliability of the sponsor as a witness and undermined the claim that the appellant had no contact with his father.
34. I accept that there is a large amount of evidence showing that the sponsor retains a close relationship with the appellant, that she provides financial support and that she is involved in decisions about his care. There are letters from the appellant's school stating that she pays his school fees and that she was kept in touch about his progress. The evidence included a very large number of WhatsApp messages showing daily contact with the appellant and indicating that the sponsor monitors his health and progress at school. The sponsor also provided a family registration document which showed only herself and the appellant with no reference to the appellant's father.
35. I accept that there is medical evidence showing that the sponsor has mental health problems that have arisen in part, because of her separation from the appellant. There are also statements from the appellant maintaining that his mother is responsible for him and that he is distressed at not being able to live with her. I did not place weight on the psychology report for the appellant dated 23 October 2019 where almost no details of the "detailed clinical interview" referred to on page 1 were included. It also appears to be based on evidence provided by the sponsor who, on her own evidence sees the appellant only every few years, rather than examination of the appellant or information from those with whom he lives.
36. The sponsor's current husband provided a statement maintaining that the sponsor had sole responsibility for the appellant. I did not find that this statement could be taken at its highest, however, where the writer did not attend to adopt his evidence. The sponsor's mother also provided a statement indicating that the sponsor had sole responsibility for the

appellant and that she could no longer care for him, albeit this could not be taken at its highest given that it does not address at all the difficulties with the evidence provided in her affidavit in 2011 which the sponsor now maintains was false. I accept that there is evidence showing that the sponsor's mother has health and mobility problems that would make it more difficult for her to provide all the care that the appellant needs.

37. I thought carefully about the evidence that was relied on as showing that the sponsor has sole responsibility for the appellant. I accepted that it was extensive and sufficiently cogent so as to show that the sponsor was involved in the appellant's upbringing and had some responsibility for him. That was so notwithstanding that, for the reasons, set out above, I considered the sponsor to be a significantly unreliable witness.
38. I did not find that the evidence could show that the sponsor had sole responsibility for the appellant, however. That is because of the significantly unreliable evidence regarding the involvement of the appellant's father in his upbringing. The evidence in 2011 was that he was involved in the appellant's life and Judge Hague found that he had responsibility for the appellant. The sponsor now seeks to distinguish the earlier evidence and the findings of Judge Hague. I have set out above why I did not find her evidence on what happened in 2011 to be credible. Some of the documents on which she seeks to rely, in particular the guardianship order and the school fee receipts, in my view, further undermined the claim that the appellant's father was not present in Pakistan and played no part in the appellant's life.
39. It was my conclusion that the evidence on the appellant's contact with his father and on whether his father or other relatives have some responsibility for him was not reliable. The truth of the appellant's circumstances in Pakistan and who has responsibility for him is unclear, even if it is accepted that the sponsor is one of the people responsible for him. I did not find that it had been shown that the sponsor had sole responsibility for the appellant.
40. On the same basis, I also found that it had not been shown that the appellant was living in serious or compelling family circumstances that made his exclusion undesirable. The evidence of his true circumstances in Pakistan and contact with his father and other relatives is unclear. The sponsor's prima facie evidence was that her mother, her sister in law and the appellant's cousins all live with him and that there are other relatives nearby. The evidence did not show that the appellant's circumstances were sufficient to meet the test in paragraph 297(f).
41. It was also my conclusion that these findings on the appellant's circumstances in Pakistan and the inability to meet the provisions of the Immigration Rules indicated that the decision did not amount to a disproportionate breach of Article 8 ECHR. Even if the sponsor and the appellant have a family life, the evidence about the appellant's life in Pakistan was not reliable. It could not, therefore, show that it was in the

appellant's best interests to come to the UK or that there were exceptional features that could outweigh the public interest where the Immigration Rules were not met.

Notice of Decision

42. The appeal under Article 8 ECHR is refused.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 6 September 2023