



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-000021 & UI-2022-  
000032  
First-tier Tribunal Nos: HU/51728/2021  
& HU/51733/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 14 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Muhammad Ibrahim Asif Rai  
Nor UI Emaan Asif  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellants: Not represented, except by the sponsors Mr MA Khan and Mr NA Khan

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard by Remote Video at Field House on 11 April 2023**

**DECISION AND REASONS**

1. Although notice of the remote hearing was provided to the nominated legal representatives, there was no legal representation on behalf of the appellants at the remote hearing on 11.4.23. Mr MA Khan explained that he was not expecting legal representation and was content for the hearing to proceed. I was satisfied that adequate notice of the hearing had been provided and that it would be in the interests of justice and consistent with the Tribunal's overriding duty to deal with cases fairly and justly to continue.

Background

2. In March 2021, the then minor appellants, siblings and nationals of Pakistan, sought entry clearance to the UK as relatives of their sponsoring paternal uncle Mr MA Khan, a British citizen, on the basis that their parents were deceased and that there were serious and compelling family or other considerations which

made their exclusion undesirable and suitable arrangements have been made for their care, pursuant to paragraph 297(i)(f) of the Immigration Rules.

3. The applications were refused in the respondent's decisions of 7.4.21. The respondent was not satisfied that the appellants were related to their sponsoring uncle. The respondent was also not satisfied that the appellants could not be adequately cared for in Pakistan. They lived with their grandmother and a maternal uncle and his family. Two paternal uncles were also in Pakistan and another in Saudi Arabia. In October 2020, one of their uncles residing in the UK travelled to Pakistan to assist in providing care for the appellants. It was pointed out that this person was only a temporary resident of the UK with limited leave to remain until 3.12.23 and cannot be considered as resident and settled in the UK. It was suggested that he could remain in Pakistan to continue to care for the appellants.
4. Their linked appeals to the First-tier Tribunal against the refusal decisions were dismissed in the decision of Judge Frantzis promulgated 22.12.21. The issue of relationship had been resolved by the date of the First-tier Tribunal appeal hearing, and there was no issue as to accommodation or maintenance, so that the sole issue was the "serious and compelling family or other considerations," and in the alternative article 8 ECHR grounds outside the Rules, taking account of the best interests of the children and the public interest considerations under s117B of the 2002 Act. However, as the appellants' representative accepted at the appeal hearing, if the appellants could not succeed under the Rules, it is difficult to see how they could succeed under article 8 ECHR.
5. The First-tier Tribunal (Judge Gibbs) granted permission to appeal to the Upper Tribunal on 16.1.22. The matter has now been listed for an error of law consideration in the Upper Tribunal. No reasoning was provided for the grant of permission, other than the judge's view that the grounds disclosed an arguable error of law.
6. In summary, the grounds assert that the First-tier Tribunal Judge failed to properly consider whether the appellants are being neglected in Pakistan and the finding that they were not was perverse when considered in the context of the evidence before the First-tier Tribunal.
7. The appellants are now 18 and 17 years of age, though they were both minors at the date of application, refusal and the First-tier Tribunal appeal hearing. I have proceeded on the basis of they being minors.
8. I heard detailed submissions from both sponsors, both of whom spoke eloquently and passionately about their concerns for the appellants, their nephew and niece. Mr NA Khan participated in the hearing from Pakistan, where he has been since 23 March and will not be returning to the UK until about 26 May. He explained that he had also visited in November and again in December 2022. Both sponsors have visited the appellants several times over the past few years, at least 3-4 times each. As Ms Everett conceded, no one could doubt the sincerity of the sponsors and their genuine desires for the welfare of their nephew and niece. They both spoke of the emotional disturbance they had experienced since the death of their parents in 2022. I heard that the nephew now 18 has left school but did not do well in his A level exams and is resitting exams as a private candidate. It was said that he attended school but skipped classes and had lost focus. The niece also had some educational issues, having changed course a number of times. I also heard of the difficulties that lie on the shoulders of their maternal uncle, the male head of the family in Pakistan. Mr MA Khan said that it is not the case that they cannot survive in Pakistan but the people there cannot

look after them properly as they have their own problems. It was submitted to me that the decision was perverse and irrational. However, in reality, both sponsors were pleading for a review of the decision, a second opportunity for their applications to be considered. It was pointed out that there were errors in the respondent's decision, namely about the familial relationship, and it was suggested that but for those errors the applications would probably have succeeded.

9. For her part, Ms Everett agreed that there were no credibility issues on the facts alleged. Nevertheless, no matter how sympathetic one might be to their predicament and circumstances in Pakistan, no error of law in the making of the decision of the First-tier Tribunal had been identified. The issue of neglect was a nuanced one that the judge carefully considered. Ms Everett submitted that even if a different judge might have made a different decision, that did not mean that there was any error of law in the decision in question.
10. I explained to both sponsors that the Upper Tribunal cannot intervene at this stage unless and until it is demonstrated that there was a material error of law in the making of the decision of the First-tier Tribunal. This hearing, I explained, was not an opportunity for a re-hearing of the appeal on its merits.
11. It is clear from [14] onwards of the decision that the First-tier Tribunal had the issue of the appellants' needs in mind, including whether there was evidence of neglect or abuse and reference was made to the independent social work report, to which weight was given. The judge concluded that the appellants lived in a close-knit family and that they had adequate accommodation with all necessary amenities. It was agreed by the appellants' representative that the issue was not one of finance, as sufficient money could be sent from the UK for their support. The primary argument was that their living arrangements were unsuitable and that they had particularly acute emotional needs, given the bereavement in 2000, and that they had an emotional bond with their uncles in the UK. As also advanced to me at the Upper Tribunal hearing, it was claimed that the maternal uncle with whom they lived was too overburdened with his care responsibilities for his mother with dementia, a son with special needs, a wife with back pain, and his own health issues. It was noted by the First-tier Tribunal that the expert was unaware that a maid was employed in the appellants' household to look after the grandmother and that the appellants accepted that their maternal uncle loved and cared for them.
12. Applying Mundeba (s55 and para 2979i)(f) Democratic Republic of Congo [2013] UKUT 88 (IAC), the First-tier Tribunal accepted that the focus needed to be on the circumstances of the children, in light of age, social background and developmental history, including whether there is evidence of neglect. The Tribunal noted that 'serious and compelling' required more than the parties desiring a state of affairs to obtain. To succeed, the considerations must be persuasive and powerful; which is a relatively high threshold.
13. Unarguably, the First-tier Tribunal made a careful and thorough assessment of all the relevant material put before the First-tier Tribunal and addressed the correct issues and applied the correct law to the facts as found. The judge considered but was not satisfied that the children were being neglected. The appellants rely on a incident when one of the appellants broke his ankle and was confined to bed for weeks, needing help to go to the toilet and to attend medical appointments.

14. The First-tier Tribunal concluded that it was not persuaded that there was on the facts of this case a strong or compelling case that made the appellants' exclusion from the UK undesirable.
15. I am satisfied that, despite what is said about the ankle injury and the demands on their maternal uncle, it was open to the First-tier Tribunal to reach the conclusion that the appellants were not being neglected in Pakistan but looked after by a loving and caring uncle. It is also noted that the children are not young children; one is now an adult but even at the date of application both will be attending to much of their own care needs as teenagers. The emphasis in the submissions made to me was on the emotional needs of the two appellants and the guidance they particularly needed for their education. However, I am satisfied that the judge was entitled to conclude that those circumstances do not amount to serious and compelling family or other circumstances making refusal of entry undesirable. That their care could be better addressed in the UK or that their welfare would be better managed by being in the UK in the immediate presence of the obvious care and love of their sponsoring uncles is not the real issue and is insufficient to meet the requirements of the Rules or even to demonstrate compelling circumstances such that to refuse entry would be unjustifiably harsh and in breach of their article 8 ECHR rights.
16. I am satisfied that the judge gave clear and cogent reasoning for the findings made and was entitled to depart from the expert opinion for the adequate reasons set out in the decision. The judge was also entitled to conclude that the bond with the uncles in the UK could not be as significant as asserted, given the lack of contact and presence over several years that they have been in the UK. However, I do acknowledge the evident strength of the sponsors' concern for their nephew and niece. The judge was also entitled to take into account that entry to the UK would itself be a disturbance and upheaval. Whilst another judge might have reached a different conclusion, it cannot be said that the findings made in the First-tier Tribunal were not open to the judge carefully considering all the circumstances in the round.
17. I am reminded that in Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, see Green (Article 8 -new rules) [2013] UKUT 254. Having carefully considered the grounds, I do not accept the assertion that the First-tier Tribunal mischaracterised the requirements of the Rules or failed to take sufficient account of the evidence or failed to give sufficient reasoning to support the findings. In reality, the grounds even though well-intended are little more than a passionate disagreement with the findings and a concerted attempt to reargue the appeal.
18. In the circumstances and for the reasons outlined above, I am driven to conclude that no material error of law is disclosed by the grounds or to be otherwise found within the decision of the First-tier Tribunal. The findings were entirely open to the First-tier Tribunal who had the benefit of considering the evidence in detail and hearing competent argument from both representatives. It cannot be said that the findings and conclusion were irrational or perverse or otherwise in error of law.

### **Notice of Decision**

The appeal of each appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal of each appellant against the decision of the respondent remains dismissed.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

11 April 2023