



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001799
UI-2022-001808
First-tier Tribunal No:
HU/18147/2019
HU/18150/2019

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 19 July 2023**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AQSA TANVIR
MUHAMMAD HASSAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Ms Timson
For the Respondent: Mr Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 24 February 2023

DECISION AND REASONS

1. The background to these linked appeals to the Upper Tribunal is summarised by the First-tier Tribunal judge at [1-2]:

1. The 1st appellant's date of birth is 25 December 2002 and the 2nd appellant's date of birth is 24 November 2004. They are citizens of Pakistan. The appellants' father is Mr Tanvir Akhtar (DoB 1 January 1971). He is married to Mrs Nasreen Askhtar (DoB 10 March 1962) who is the sponsor in this case. She is a British citizen and they living at an address in Accrington owned by Mrs Akhtar. Mrs Nasreen is the appellants' step-mother. Mr Tanvir Akhtar is a Pakistan national who has leave to remain in the UK until 28 June 2023 [residence permit 241 A's bundle].

2. On 11 April 2019, the appellants had applied for entry clearance into the UK as the children of Mr Tanvir Akhtar with Mrs Nasreen Akhtar as step-mother and on the basis of: "you and your parent's family with your step-mother Nasreen Akhtar"1. The applications

were refused under appendix FM of the Immigration Rules because the appellants' father did not meet the gross income requirement of at least £22,400 per annum. His income was £20,654.52 gross. Mrs Akhtar was said to have earned £9,114 gross pa, but the respondent was not satisfied by the documents relating to her employment. Further, the respondent found that there were no exceptional circumstances in this case that warranted allowing the applications on the basis that the appellants would experience "unjustifiably harsh consequences" as a result of the refusal. Full reasons are set out in the Notices of Refusal dated 11 and 9 September 2019 respectively. The present Appeals are against that refusal.

2. By a decision promulgated on 31 January 2022, the First-tier Tribunal dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.
3. Mr Timson, who appeared before both the First-tier Tribunal and the Upper Tribunal, submitted at the Upper Tribunal initial hearing that, as he had argued before the First-tier Tribunal, the appellants' applications for entry clearance had been considered under the incorrect paragraph of HC 395 (as amended). He submitted that the judge (and the respondent) should have considered paragraph 301 and not paragraph 297. It is, in the light of what I say below, unnecessary to set out both provisions although I note that Mr Timson submits that, had paragraph 301 been applied, the appellants would have succeeded. The judge gave her reasons for concluding that the paragraph 297, and not paragraph 301, applies at [16-18]:

16. To [try to untangle which provision I should apply], I have considered the Immigration Rules Part 8 (which deals with family members) at paragraphs A277 to 319Y):

a. Rule A277 says that, from 9 July 2012, Appendix FM will apply to all applications to which Part 8 of these rules applied on or before 8 July 2012 except where the provisions of part 8 are preserved and continue to apply, as set out in paragraphs A280 to A 280B.

b. The next issue, therefore, is whether 301 is preserved; and

c. Paragraph A280(f) says that "paragraphs 301-303F continue to apply to applications made under this route on after 9 July 2012, and are not subject to additional requirement listed in (b) above, **by a child of a person to whom those paragraphs relate who has been granted limited leave to enter or remain or an extension of stay following an application made before 9 July 2012. [the First-tier Tribunal's emphasis]**

17. I do not know when Mr Akhtar applied for leave to enter or remain in the UK. I do not even know when he married Nasreen Akhtar. (I find that it is striking that this information is not in any of the witness statements). I have not seen a local/Punjabi marriage certificate in which I would have been able to read dates, and only have an English language one which says that it is "certified" from the original record. There are two stamps on it from the "commissioner" where the date of the stamp appears to have been amended from September to July 2012 - from "09" to "07" (although it is also claimed at box 24 that the registration of the marriage was on 01.04.2012). Overall, I find that (i) I do not know when Mr Akhtar applied to enter the UK and (ii) I am not satisfied that he was even married to Nasreen Akhtar on 9 July 2012. In so finding, I apply the law in the case of *Tanveer Ahmed* [2002] UKAIT 004393.

18. Therefore, I am satisfied that paragraph 301 of the Immigration Rules does not apply.

4. There is no dispute that the judge was correct to apply paragraph A280(f) as she does at [16]. The provision is clear; if the appellants could provide evidence sufficient to discharge the burden of proof that their father had been 'granted

limited leave to enter or remain or an extension of stay following an application made before 9 July 2012' then paragraph 301 would apply to them. However, the judge's clear finding is that the burden of proof had not been discharged. At the Upper Tribunal initial hearing, Mr Bates, for the Secretary of State, was able to use the Home Office database to determine that the father had been granted entry clearance following an appeal in 2013. The problem for the appellants is that even that limited information had not been available before the First-tier Tribunal. If the appellants' representatives had intended to raise paragraph 301 at the First-tier Tribunal hearing, then they should have made sure that there was adequate evidence to prove to the judge that the paragraph applied. The judge's approach to the question posed to her by Mr Timson is, in my opinion, unimpeachable whilst the grounds of appeal are, on this issue, weak; at [4], the grounds refer to paragraph 301 but offer nothing more than disagreement with the judge's findings ('the judge could have given reasonable weight to the fact that the father ... has been in the United Kingdom since 2013 and living with his wife who is a British citizen.') The fact is that, faced with unsatisfactory documentary evidence from Pakistan and in the absence of clear evidence of the sponsor's husband's immigration history which could easily have been provided, the judge chose not to give much weight to the claim by the sponsor and her husband that he had been living together in the United Kingdom since 2013. The judge did not err in law as asserted in the grounds or at all.

5. The remaining grounds are without merit. Ground 1 complains that the judge failed to give weight to evidence of the sponsor's self-employed income. However, as Mr Bates pointed out, the documentary evidence provided from the Halifax did not clearly show the claimed income being paid into the sponsor's account. Moreover, the judge was entitled to take account, in this Article 8 ECHR appeal, of the fact that the evidence produced by the sponsor did not meet the requirements of the relevant immigration rule. Ground 2 raises the matter of the best interests of the appellants and whether these had been considered by the judge. It is the case that the judge does not make specific reference to best interests but again the judge drew attention to the paucity of evidence regarding the appellants. At [25], the judge notes that the father's reasons for bring two children with him to the United Kingdom whilst leaving the appellants in Pakistan were never made clear whilst at [25] the judge observes that the had 'scant information about the recent living arrangements of the appellants in Pakistan'; other than being aware that the appellants were soon to reach adulthood, the judge had no material upon which to base a best interests assessment. I agree with Mr Bates that the absence of a detailed best interests analysis does not vitiate the judge's decision as such an analysis would, on the evidence available, have made no difference to the outcome.
6. Ground 6 asserts that the judge's reasoning is irrational. This challenge has no merit. It was open to the judge to take all relevant circumstances into account. These circumstances included gaps in the evidence which may have explained the nature and depth of the relationship between the father and the appellants, such as an explanation as to why the appellants had been left in Pakistan for years before an application had been made for their entry clearance. Mr Timson sought at the initial hearing to expand this ground to include criticism of the judge's reference to the demeanour of the sponsor and the father at the First-tier Tribunal hearing. At [28], addressing the sponsor's relationship with the appellants, the judge wrote at [28] that, 'I was left with the overall impression

that the business of bringing the appellants to the UK was very much the “business” of Mr Akhtar, and that Mrs Akhtar was being presented to the court as window dressing. I am not satisfied that she was consenting, not least because she was very reluctant to answer questions from Mr Timson and I found her body language hostile to the appeal. At the same time, I was firmly of the view that she was not suffering any mental problem that undermined her ability to engage with the Tribunal or her capacity to make decisions.’ In my opinion, those were observations which were entirely available to the judge given the sponsor’s evident detachment from the proceedings and, indeed, the appellants themselves. I do not accept that the judge acted unfairly or unacceptably.

7. In the circumstances, I dismiss the appeals.

Notice of Decision

The appeals are dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 24 February 2023