



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

Case No: UI-2022-003825

First-tier Tribunal No:
HU/00110/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd October 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**AHLA HAIDER
(NO ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel, instructed by Direct Access

For the Respondent: Ms S Lecoite, Senior Presenting Officer

Heard at Field House on 18 September 2023

DECISION AND REASONS

Introduction

1. This appeal is concerned with the appellant's entry clearance application for settlement as a child made under paragraph 297 of the Immigration Rules. Though the appellant is now an adult, she was a minor at the date of application.

2. The appellant's appeal was initially allowed on human rights (article 8 EHCR) grounds by a decision of Judge of the First-tier Tribunal Shergill sent to the parties on 12 July 2022. The respondent was granted permission to appeal and by a decision sent to the parties on 23 June 2023 I partially set aside the decision of the First-tier Tribunal and directed that the resumed hearing be undertaken in the Upper Tribunal.
3. By the terms of my decision, I preserved the findings that the sponsor enjoyed sole responsibility for the appellant, but directed that consideration be given to paragraph 297(i)(f) of the Immigration Rules, namely whether 'there are serious and compelling family or other considerations which make exclusion of the child undesirable'.

Brief Facts

4. The appellant is a national of Pakistan and is presently aged 20.
5. She seeks to join her father in this country by means of an application made under paragraph 297 of the Immigration Rules. The application was made in May 2021, two days before she turned 18.
6. By an Order of Ahsan Sajdar, Guardian Judge-IV, Lahore, Pakistan dated 17 July 2021, the appellant's father was appointed as her Guardian. The Order details, *inter alia*:
 5. Petitioner has produced oral as well as documentary evidence to corroborate contents of petition. Petitioner being real father of the minor has got no adverse interest to the minor. In view of the above, and in absence of any evidence in rebuttal, the petitioner is appointed as guardian of person and property of the minor namely **Ahla Haider** subject to furnish surety bond in the sum of Rs.10,00,000/- (Ten Lac) to the satisfaction of this court. **Guardian will neither remove the minor from the jurisdiction of this court nor alienate the property of minor without prior permission of the court.** Guardianship Certificate be issued accordingly.'
7. The accompanying Guardianship Certificate, also dated 17 July 2021, provides, *inter alia*:

'PROVIDED FURTHER that he/she will not take the minor(s) beyond the jurisdiction of this Court without prior permission except for occasional visits, and he/she will inform this Court about any change in the address of minor(s) promptly.'
8. The appellant was aged 18 at the date of the Order.
9. The respondent refused the appellant's application for settlement by a decision dated 17 November 2021.
10. Judge Shergill found that a family life existed between father and daughter. It was noted that the validity of the Guardianship Order was not

challenged by the respondent. It was further found that the appellant and her mother had experienced a clash of personalities, resulting in the appellant moving from her maternal home to live with an elderly aunt in Lahore. As no male resided in the new household, the appellant was accepted to be vulnerable consequent to her circumstances, being confined to a restrictive lifestyle with no male protector to accompany her outside of the home and suffering from loneliness. Judge Shergill further found that the appellant's mother wanted to move on with her life and was taking less interest in her children.

11. Judge Shergill concluded that the appellant met the requirements of paragraph 297(i)(e), (f) of the Rules, having accepted that her father had sole responsibility for her and there were serious compelling family or other considerations making her exclusion from the United Kingdom undesirable.
12. I set aside Judge Shergill's decision in respect of paragraph 297(i)(f) because there had been a failure to note that the Guardianship Certificate established the appellant could not be taken outside the jurisdiction of the Court until she reached her date of majority, namely her twenty-first birthday, which falls on 8 May 2024.

Discussion

13. The appellant made an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the admission of new documents, detailing that the documents could not be provided at the time of the First-tier Tribunal hearing. The application was not opposed by Ms Lecointe.
14. The documents relevant to this decision relate to an application made by the sponsor to a Guardian Judge sitting in Lahore requesting that the travel restriction imposed by the Guardianship Certificate be varied to permit the appellant to join him in the United Kingdom.
15. By means of an Order dated 24 June 2023, Judge Naveed Ahmad Malik, Guardian Judge-IV, Lahore considered the application and ordered:

'It is evident that the petitioner has already been appointed as guardian of minor vide order dated 17.07.2021. The petitioner wants to take the ward to abroad UK. Mother of the ward has raised no objection upon acceptance of Instant Application in favour of the petitioner. So, in these circumstances, application is accepted and petitioner is allowed to take the minor namely Ahla Haider to abroad/UK and minor can live with his (sic) father (petitioner) as minor dependant. The petitioner is also directed to furnish surety bond in the sum of Rs500,000/- (Five Lac) to the satisfaction of this court to the effect that he will be bound to produce the ward before the court whenever it is required. Instant Application be annexed with the main file'.

16. A further document confirms that the appellant's father has agreed to stand for the surety bond in the sum of Five Lac Rupees.

17. Observing the present circumstances of the appellant, who resides with an elderly aunt in a household that has no male resident, noting the preserved findings of fact as to the appellant's personal circumstances, and accepting that the facts in this matter are to be considered as at the date of hearing, Ms Lecointe accepted that the variation to the Guardianship Certificate as evidenced by the Order of Guardian Judge Malik meant that the appellant's appeal was to be allowed.
18. The respondent accepts that the appellant satisfies the requirement of paragraph 297(i)(f) of the Rules, namely that serious and compelling circumstances exist making the appellant's exclusion from the United Kingdom undesirable. The respondent further accepts that the appellant now meets the requirements of paragraph 297 of the Rules. In the circumstances I allow the appeal.

Decision and Reasons

19. By a decision dated 23 June 2023 the Upper Tribunal identified a material error of law in the decision of the First-tier Tribunal sent to the parties on 12 July 2022 and partially set it aside.
20. The decision is re-made. The appellant's appeal is allowed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2023