



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2023-000709
UI-2023-000711
UI-2023-000712
First-tier Tribunal Nos: HU/51383/2022
HU/51382/2022
HU/51384/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**(1) Umer Khan Stanikzai
(2) Sulaiman Khan Stanikzai
(3) Luqman Khan Stanikzai
(ANONYMITY ORDER NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr R Roberts, Counsel, Cromwell Wilkes

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 31 August 2023

Introduction

1. This is my judgment on the question of how the decision on the human rights appeals of the appellants should be remade, the appellants having been successful in their error of law challenge to the decision of First-Tier Judge Sweet promulgated on 5 February 2023. This decision has been set

aside as containing material errors of law, for the reasons given in my error of law decision promulgated on 28 June 2026.

2. As set out in that error of law decision, the First-tier Tribunal materially erred in law in failing to resolve the disputed issue of whether the first appellant was a minor at the date of application, in failing to give reasons for the finding that there were not serious family or other considerations which made the appellants' exclusion from the UK undesirable, and in failing to consider the appeals through the lens of a claim under Article 8 ECHR outside the Rules, and hence whether, having regard to the respects in which the appellants did or not meet the criteria for a grant of entry clearance under the Rules, the maintenance of the refusal decisions was proportionate.

The Resumed Hearing

3. Under the directions made in the error of law decision, the appellants were permitted to rely on up-to-date evidence about their current circumstances in Pakistan, provided that such evidence was filed in accordance with a set timetable.
4. In the event, Mr Roberts, on behalf of the appellants, only sought to file an additional bundle of evidence on 23 August 2023. In a statement dated 23 August 2023, he apologised for the late service. He said that considerable delay had been caused by the need for the sponsor to receive evidence from Pakistan, as well as further delays incurred in obtaining up-to-date evidence of the sponsor's employment and earnings. He acknowledged that the Upper Tribunal had the right to exclude the new material, but he submitted that the new material contained updated evidence central to the issues under appeal. He submitted that the admission of the new material was crucial to the fair and just disposal of the case.
5. At the outset of the hearing, I addressed the question of the admissibility of the new evidence as a preliminary issue. I explored with Mr Roberts the scope of the new evidence, and what the new evidence was intended to show.
6. Mr Roberts submitted that although the new evidence relating to the sponsor's financial circumstances showed that he was in a better financial position than previously, he accepted that the appellants still did not meet the accommodation requirement. What was principally relied on was the background evidence showing that the appellants, as undocumented Afghan refugees, were liable to refoulement by the Pakistani authorities.
7. I asked Mr Walker to state his position. He said that although he had only recently received the additional bundle, he was content for the bundle to be admitted in evidence.

8. As Mr Walker did not object to the late filing of the additional bundle, I exercised discretion in the appellants' favour to allow it to be admitted in evidence. I then adjourned the hearing in order to deal with another case on my list.
9. On the resumption of the hearing, the sponsor was called as a witness, and he adopted as his evidence in chief his supplementary statement in the additional bundle signed by him on 23 August 2023.
10. In this statement, he said that he had spoken to his old friend Ahmed, who told him that the authorities in Pakistan were sick of Afghans living in the country and that life was getting harder for them. Ahmed had tried his best a long time ago to get some sort of identity papers for the boys so that they could do their TB Tests, but this was refused. There was no way that he could get the boys Afghan passports while they were in Pakistan. They would have to go to Kabul, and that would mean going to the Taliban, and they could never do that.
11. On the issue of Umer and how old he was, there was no need for a tazkira until the time they got one in order to try and get him out of Pakistan. He admitted that he could not be certain how old Umer was. He was not certain about his own date of birth. But he believed that Umer was under the age of 18 at the time they applied and that his tazkira was true.
12. He was very much worried that the boys would come to harm in Pakistan, and that they would become involved in local crime. They were hardly able to leave the street where they were living, and every day he worried that something bad would happen to them or that they would be taken by the Pakistani police and put back on the Afghan side of the border.
13. In cross-examination, the sponsor said that his financial situation was getting better, but the boys' situation was getting worse as they had no rights. They had no ID apart from their tazkiras. In the past, they could have been registered in Pakistan as refugees, but it was now too late for them to be registered. I asked the sponsor to clarify whether it was his evidence that it was too late to register the appellants with the UNHCR or with the Pakistani authorities. He answered that it was not possible for them to get a card from either source.
14. In answer to further questions for clarification purposes from me, the sponsor said that the only tazkiras that had been obtained were those in the First-tier Tribunal bundle, which he agreed had been issued in March and September 2020 respectively. The boys had not entered the country from Afghanistan with tazkiras. They had obtained the tazkiras in 2020 by going to an Afghan Embassy in Pakistan.
15. I asked the sponsor about the invitation letter from Ahmed Ali Khan dated 2 June 2022, in which he had invited the sponsor to visit him and his family. The sponsor explained that although the original plan had been for him to

use this invitation letter to obtain another visit visa, he had not followed through with this plan. He had only visited the boys once in Pakistan, and this was in 2019. He was residing at Ahmed's address at the time when the application was made for a Guardianship Order. (The petition for the Guardianship Order was issued on 16 November 2019, and the Guardianship Order was made on 15 January 2020).

16. In his closing submissions on remaking, Mr Walker submitted that the background evidence showed that the problem of refoulement of Afghan nationals related specifically to those who had recently arrived, whereas the boys had been in Pakistan since at least 2019. There was nothing to show that refoulement was imminent in their particular case. Although their situation in Pakistan was difficult, they were being supported there.
17. On behalf of the appellants, Mr Roberts submitted that the background evidence showed that there were between 1.5 and 3 million Afghan refugees in Pakistan, and 600,000 Afghans had fled to Pakistan since the Taliban came to power. He questioned how likely it would be that the authorities would distinguish between recent refugees and those who had come before 2021. In any event, he submitted that police mistreatment of Afghan refugees had not started with the influx in 2021 after the Taliban seized power, but went back at least as far as 2015, as shown by the article of 18 November 2015 at page 93. He submitted that the boys might in the future be caught up in the melee so as to be required to return to Afghanistan. This was not certain to happen. It was not probably going to happen. But it was a real possibility. This was highlighted by the Voice of America ("VOA") article.

Discussion and Findings

18. The first disputed issue which requires to be resolved is the age of the first appellant, Umer. The reasoning of the respondent in the refusal letter dated 3 February 2022 was that in support of his application made on 9 October 2020 he had provided a tazkira registered "*16 years after your birth*". Moreover, when his sponsor entered the UK, he was interviewed on 11 June 2013 and later on 24 October 2013. His sponsor had declared the existence of a sibling named Umer as being aged between 11 or 12, and then in the later interview to be aged between 12 and 13. The respondent said that this would make Umer to be aged between 18 and 20 at the date of application. Also, as the tazkira was non-contemporaneous with his birth, the respondent was not satisfied that the document in isolation established Umer's birth, identity or parentage as claimed.
19. The respondent's bundle for the hearing in the First-tier Tribunal did not contain any of the supporting documents provided with the application. Thus, the only tazkiras that have been produced in the appeal are those contained in the appellants' bundle filed for the hearing in the First-tier Tribunal. None of these were issued or registered in 2018 as alleged in

the refusal decision. All of them were issued in 2020: in the case of the second and third appellants their tazkiras were issued on 3 March 2020, and in the case of the first appellant, Umer, his tazkira was issued on 14 September 2020, and it said he had been born on 6 May 2004.

20. The sponsor's case before the First-tier Tribunal was that he was born on 1 October 1996 and he obtained refugee status in the UK on 23 January 2017. In the witness statement he made in support of his asylum claim, the sponsor said that the date of birth that he initially gave to the authorities in the UK was 3 May 1999 which, he indicated, reflected what was said in the tazkira he had left behind in Afghanistan. In addition, he had asked his father one year ago (in 2012) how old he was, and his father had told him he was 13 years old.
21. Mr Walker did not challenge the sponsor about the sincerity of his asserted belief that his brother Umer was aged under 18 at the date of application in October 2020. But the issue does not turn on the sponsor's honesty, but upon whether there is evidence of sufficient credibility to establish that the first appellant was aged 16 in the year 2020 and/or that he was born on 6 May 2004, as stated in his tazkira.
22. I find that the first appellant has not discharged the burden of proving, on the balance of probabilities, that he was born on 6 May 2004 and/or that he was under the age of 18 at the date of application.
23. My reasoning is firstly that, aside from the tazkira, the evidence about the first appellant's age comes from the sponsor, who has not been reliable on the issue of his own age. Whereas he initially claimed to have been born in 1999, this was not accepted by the UK authorities and the sponsor was assigned, and has accepted, a date of birth in 1996, which is three years earlier. Secondly, there has been no challenge to the assertions made in the refusal letter that the information given about the first appellant by the sponsor in his interviews in 2013 pointed to the first appellant being between the ages of 18 and 20 at the date of application.
24. Thirdly, although the Judge making the Guardianship Order accepted that all three boys were minors, it is wholly unclear on what basis he accepted this, as - according to the sponsor - there was in existence at the time no identification evidence of any kind which established the age of the appellants, let alone any other biographical detail relating to them. Fourthly, there is no information as to how the Afghanistan Central Civil Registration Authority was able to certify in 2020 that the first appellant had been born on a specific date in 2004.
25. The sponsor's general reliability as a witness is also called into question by a clear contradiction between his oral evidence and the documentary evidence. His oral evidence is that he has only visited the appellants once, and that this visit took place at the end of 2019 to coincide with the Guardianship application. However, the documentary evidence shows that

the sponsor applied for a visit visa to Pakistan on 23 February 2021, and was issued with a family visit visa that was valid from 16 March 2021 to 15 September 2021. Although I accept that the grant of a visa does not in itself show that the sponsor made use of the visa, the invitation letter of 2 June 2020 and the subsequent visit visa were put forward in the application as evidence of the sponsor visiting the appellants in Pakistan, and Mr Roberts relied on the fact that the sponsor had visited the appellants in Pakistan in 2021 in his statement of case for the First-tier Tribunal dated 10 May 2022.

26. Another anomaly which emerged from the sponsor's oral evidence before me is that, according to his oral evidence, the appellants were able to obtain tazkiras issued by the Afghanistan Central Civil Registration Authority by making an application to an Afghan Embassy in Pakistan. They did not need to travel to Kabul in order to obtain them. If so, it is difficult to see why the appellants would not be able to obtain Afghan passports by the same route, rather than – as asserted by the sponsor – having to go back to Kabul.
27. The second extant disputed issue is whether there are serious and compelling family or other considerations which make the appellants' exclusion from the UK undesirable. Judge Sweet found against the appellants on this issue, but he did not explain why.
28. The background evidence in the additional bundle paints a complex picture. The article of 12 July 2023 (at page 50) reports that about 250,000 Afghan asylum seekers have arrived in Pakistan since August 2021, but a migrant crackdown has left many of them in fear of being jailed or deported. The article of 11 June 2023 (at page 55) reports that Pakistan is continuing a month-long crackdown on Afghan refugees living in the country, detaining hundreds of people accused of lacking proper documentation. It says that Taliban Leaders have asked Pakistan to stop the process immediately. An Afghan refugee told VOA that security forces arrested even those refugees who had UNHCR documents. The article states that the Government of Pakistan, with the support of the United Nations, began issuing Smart Cards to Afghan refugees in Pakistan in April 2021. UNHCR reports that more than 1.3 million registered Afghan refugees are in Pakistan, and that altogether there are 3.7 million Afghans living in Pakistan. Of about 1.6 million Afghans who fled Afghanistan to neighbouring countries after the Taliban seized power in August 2021, about 600,000 went to Pakistan. A Senior Advocate told VOA that Afghans who arrived in Pakistan after the fall of Afghanistan into the hands of the Taliban had limited opportunities. The newly-arrived Afghan refugees were running out of money. Most of them had sold all their belongings in Afghanistan, and almost two years later they ran out of money and their visas had expired. They could not work in the labour market, and they could not access public education. In addition, they had the mental stress and trauma of having had to flee Afghanistan, and not being able to go back.

29. An extensive summary, at page 61, provides similar information. Even though the border between Afghanistan and Pakistan is fenced and guarded, the Pakistani authorities often turn a blind eye to Afghans entering Pakistan undocumented, or with visas purchased on the black market. The Pakistani authorities are unwilling to record even basic information about these hundreds of thousands of recent Afghan arrivals. This neglect and lack of official recognition leaves these unacknowledged refugees insecure. The situation is particularly frustrating and precarious for Afghans who are at risk of reprisals from the Taliban.
30. In a report at page 74 of the bundle, it is said that in January 2022 more than 600 Afghans were expelled back to Afghanistan from Sindh Province, and there are also reports that the Pakistani authorities have expelled more than 1,400 Afghans from Karachi and Hyderabad since October 2022. It is observed that as a proportion of the total number of Afghans in the country, these numbers are not very high. But the expulsions function as a 'fear tactic', and the threat of detention and deportation keeps Afghans in constant stress.
31. The case that was put before the First-tier Tribunal was that the appellants' situation in Pakistan was so precarious that they faced an appreciable risk of suffering serious harm in Pakistan at the hands of non-state agents. Although the sponsor has not resiled from this fear - and in particular his professed fear that the appellants will be kidnapped and held to ransom if it becomes known that they are being funded by a relative in the UK - the primary focus of the case put before me is a future threat of serious harm on account of the appellants being forcibly returned to Afghanistan.
32. I accept that the appellants' situation is inherently precarious, as the evidence shows that they were brought to Pakistan in 2016 on visit visas, and that they have overstayed. Accordingly, they are present in Pakistan without any form of leave and they have also not applied to the UNHCR for registration as refugees. I do not accept that the appellants are unable to do this, as they have tazkiras that they can produce as a form of ID. However, I appreciate that those responsible for their care may think that it is better for the appellants not to draw attention to themselves by seeking a formal registration of their presence in Pakistan. Nonetheless, I do not consider that the background evidence relied on establishes that there is an imminent threat of deportation to Afghanistan in the appellants' particular case, as they are not recent arrivals living in conditions which make them vulnerable to expulsion, and anyway in quantitative terms the number of recorded expulsions is very small.
33. In addition, a key consideration is that the appellants are not in fact refugees from Afghanistan, and it is not made out that there is a real risk of them suffering persecution or serious harm in the event of them being required to return there at some point in the future. Mr Roberts acknowledged in his closing submissions that the appellants did not flee Afghanistan. The fact that the sponsor has successfully claimed asylum

on the grounds that he has a well-founded fear of persecution by the Taliban does not entail that the appellants are also at risk of persecution by the Taliban, and there is nothing in the evidence which suggests that they would be at risk of persecution if they had to return to Afghanistan.

34. As the first appellant is an adult, there is no risk of the second and third appellants being expelled on their own, without having the protection and support of an accompanying adult family member.
35. Looking at the matter through the lens of an Article 8 claim, it is reasonable to question whether there is subsisting family life between the appellants and the sponsor. The evidence is that, after a long period of separation beginning in 2013, the sponsor has only visited the appellants once, which he says was in 2019, and in respect of which there is no documentary evidence showing the duration of the visit. In addition, there is only limited evidence of contact before and after this visit. Although the sponsor's evidence before the First-tier Tribunal was that he spoke to the boys nearly every day, this is not borne out by the evidence of communications contained in the appellant's bundle before the First-tier Tribunal at pages 24-37. The communications featured in those pages cover a period running from October 2015 to late 2021, and there are significant gaps in the documentary record. While the sponsor has displayed a high level of commitment in his efforts to bring the appellants to the UK, in order for family life between him and the appellants to subsist there has to be ongoing emotional support as well as ongoing financial support.
36. If it is assumed in the appellants' favour that family life continues to subsist such that Questions 1 and 2 of the *Razgar* test should be answered in the appellants' favour, Questions 3 and 4 of the *Razgar* test must be answered in favour of the respondent.
37. On the fifth question in the *Razgar* test, the potential impact of the refusal decisions on the welfare and well-being of the second and third appellants must be taken into account, as the evidence establishes that they are minors, albeit that their precise ages are not known. Their tazkiras do not impute a specific date of birth to either of them. It appears that the second appellant was assessed to be aged 11, and the third appellant was assessed to be aged 9, based on their physical presentation on an unspecified date in 2019.
38. I accept that their situation is far from ideal, but having regard to the photographic evidence of their domestic circumstances and of them wearing a jacket and tie in their tazkira photographs, and having regard to the sponsor's continued willingness and ability to provide significant funding for their maintenance in Pakistan, I consider that they are leading a reasonably comfortable lifestyle in comparison to the majority of undocumented Afghan nationals in Pakistan, and that they are not at risk of destitution.

39. The photographs that have been produced do not show the presence of other people in Mr Khan's household and it is thus not shown that the appellants, together with Abdullah (the youngest brother of the second and third appellants), do not continue to comprise the entirety of the family unit which was formed with Mr Khan after the death of the sponsor's sister-in-law in 2019. Having considered the evidence in the round, I am not persuaded that Mr Khan is unwilling or unable to continue to look after the second and third appellants, and I do not consider there is any appreciable risk in the foreseeable future of them, or the other members of the family unit (being the first appellant and Abdullah), being ejected from Mr Khan's household and forced to fend for themselves. I consider that the support provided on the ground by Mr Khan, coupled with the funding provided by the sponsor, and taking into account that the first appellant is an adult who can thereby assume some shared responsibility for the children's care and upbringing, means that the second and third appellants' welfare and well-being is not imperilled by the maintenance of the refusal decisions.

40. In conclusion, I find that the maintenance of the refusal decisions will not have unjustifiably harsh consequences for any of the appellants so as to make their exclusion from the UK disproportionate to the legitimate public aim of the maintenance of firm and effective immigration controls and the protection of the country's economic well-being.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law, and accordingly the decision is set aside and the following decision is substituted: these appeals are dismissed on human rights (Article 8 ECHR) grounds.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
12 September 2023