



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2023-003257
UI-2023-003258

First-tier Tribunal Nos:
HU/53991/2022
IA/06070/2022
HU/53992/2022
IA/06072/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18 December 2023**

Before

**UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE CHANA**

Between

**KARIMA GULASTANI
TAJALLA GULASTANI
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Bazini, counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 4 September 2023

DECISION AND REASONS

1. The appellants appeal with permission against a decision of First-tier Tribunal Judge Mace, promulgated on 15 June 2023, dismissing their appeals against the decisions of an Entry Clearance Officer made on 14 June 2022 to refuse their applications for leave to enter the United Kingdom.
2. The appellants are mother and daughter. They applied for Entry Clearance to join Hamedulah Golstani ("the sponsor") who is the son of

the first appellant and brother of the second appellant. The appellants' case as put to the First-tier Tribunal is that the respondent should have assessed the application under paragraph 319V of the Immigration Rules given that the sponsor had limited leave to remain in the United Kingdom as a refugee and not under the provisions relating to adult dependent relatives. It was submitted also that, contrary to the conclusions of the respondent, the appellants could be maintained and accommodated by the sponsor and that the family reunion policy applied to them.

3. The judge identified three issues at paragraph 6 of her decision:
 - (a) whether the appellants can demonstrate that they are dependent relatives under the Immigration Rules;
 - (b) whether the appellants can meet the financial and accommodation requirements of the Immigration Rules;
 - (c) whether there are exceptional circumstances present which would render refusal of the applications a breach of Article 8.
4. The judge accepted that the appellants are living alone in Pakistan and that their other family members are Christians. She also accepted that they are of Hazara ethnicity. She was satisfied also that the sponsor had adequate accommodation where the appellants could live and that there were sufficient funds to maintain them.
5. The judge noted [13] that paragraph 319V of the Immigration Rules was no longer an option and that since July 2012 applications by family members other than the children or partners to join the sponsor holding refugee status in the United Kingdom had been considered under the adult dependent relative provisions.
6. The judge did not accept the appellants' lives were in danger or that they were unable to leave their accommodation in Quetta, nor did she accept that their living conditions were as portrayed. She found the accounts of the appellants in which they said that they cannot go out was inconsistent with them being able to leave their accommodation to undertake DNA testing, tuberculosis testing and to have documents prepared by an advocate. She did not accept either that, given the sponsor had access to over £100,000, that adequate support would not be available in Pakistan so that they would be able to live in better accommodation than claimed. The judge concluded that the appellants did not meet the requirements of the adult dependent relative provisions, nor was she satisfied that Article 8(1) of the Human Rights Convention was engaged as she was not satisfied that family life existed between the sponsor and either of the appellants.
7. The appellants sought permission to appeal the decision on the basis that the judge had erred in making adverse credibility findings and in doing so had failed to take into account the background evidence. It was submitted also that the judge had erred in finding the appellants' account of not being able to leave the house and being able to undertake various

appointments was inconsistent and the fact that they live in fear and in hiding does not mean that they do not go out from time to time and this was not a sufficient basis on which to base credibility findings.

8. It was noted also that the judge did not make a finding whether they were living in Pakistan unlawfully which would expose them to prison or deportation to Afghanistan which is a material error and the judge had erred also in failing to make findings as to whether the second appellant was a famous women's footballer in the Women's Premier League in Afghanistan which put her at additional risk.
9. On 8 August 2023 First-tier Tribunal Judge Pickering granted permission, stating that it was arguable the judge did not take into account the background information about the position of Afghans living in Pakistan when coming to their credibility conclusions and particularly the position of the second appellant as a female footballer.

The Hearing

10. At the outset of the hearing we indicated to Mr Bazini that there was some difficulty in that there was no direct challenge in the grounds to the finding that there was no family life between the appellants and the sponsor for the purposes of Article 8 and that in the circumstances the challenges to the circumstances of the appellants in Pakistan was incapable of identifying a material error. We heard submissions from Mr Bazini but were not satisfied that the grounds as drafted could be construed in such a way as to permit a challenge to the finding that no protected family life existed between the appellants and the sponsor.
11. Mr Bazini applied for permission to amend the grounds. Having heard his submissions and those of Ms Isherwood resisting that application, we indicated that it was our view that we should not entertain such an application at this time.
12. The application was made at the last minute. It was not made in writing and not made on notice. This is not a new issue which had arisen; it had been evident from the time that Judge Mace handed down her decision. As the appellants are not within the jurisdiction, whether or not a family life for the purposes of article 8 exists, is a central issue as, if not, the appeal cannot succeed - see SSHD v Abbas [2017] EWCA Civ 1393.
13. We considered also whether such a ground of appeal could succeed. We concluded that it could not given the very limited evidence from the appellants. In neither case do the very thin witness statements from the appellants make any mention of family life with the sponsor. Similarly, the witness statements from the sponsor and a witness make little or no mention of any emotional dependency.
14. We have significant concerns about how the applications and the appeal to the FtT were prepared. The application was on any view a difficult one, and needed significant evidence of dependency, both emotional and physical, yet no attempt appears to have been made to establish that

family life exists. A clearly relevant issue had not been raised (and indeed the appellants' skeleton argument makes no mention of family life existing for the purposes of Article 8), we are not satisfied that on the poorly presented evidence before Judge Mace, even had she accepted it, was capable of demonstrating that family life existed. Accordingly, we refused permission to amend the grounds on the basis that it simply could not succeed.

15. For these reasons given that there is no proper challenge to the finding that a family life did not exist between the appellants and sponsor, accordingly, the errors identified in the grounds of appeal cannot be material.
16. That said, we find that there are significant and serious problems with Judge Mace's decision. We consider that Judge Mace's findings on credibility were irrational. All that Miss Tajalla Gulastani said was that they are two women living alone who cannot go out. That is not a rational basis on which to draw the conclusions reached that there is an inconsistency from the fact that they go out. Any rational reading of the witness statement, which we accept is inadequate, is that they are unable to go out in a generic sense; it is simply perverse to treat it as a statement that they do not go out at all. On that basis, had we needed to do so, we would have found that the findings on credibility were unsafe and to be set aside. The judge's approach to the evidence appears to have been almost seeking to find inconsistencies when there were none.
17. Similarly, the findings at paragraph 20 to 21 are based on speculation and supposition and the finding that it was inconsistent that the sponsor's funds were so large yet the accommodation was so poor does not take account of the evidence provided, that a registration system exists in Pakistan, that the appellants are not registered. Accordingly, were it not for the fact that these errors are immaterial, we would have set them aside on the basis that the credibility findings are unsustainable, irrational and that none of the findings of fact can be sustained.
18. With regret, and as noted above, this appeal appears to have been poorly prepared by the previous representatives. The witness statements are, frankly, inadequate and it may well be that the appellants' case was prejudiced as a result. An attempt to rely on provisions of the Immigration Rules which had not applied for some ten years is also indicative that the appellants were poorly served by those representing them. That, we understand, has now changed.
19. As a final postscript, we note that the Pakistani authorities appear to be seeking now to remove large numbers of Afghans back to Afghanistan and this may be a case in which a fresh application could and should be made given the change in circumstances.
20. For these reasons, we find that the decision of the First-tier Tribunal did not involve the making of any material error of law and we uphold it.

Notice of Decision

- (1) The decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

Signed
Jeremy K H Rintoul
Judge of the Upper Tribunal

Date: 13 December 2023