



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003301
UI-2023-003302
UI-2023-003303
UI-2023-003304

First-tier Tribunal No: HU/54065/2023
HU/54066/2023
HU/54067/2023
HU/54069/2023

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

8th January 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MARJAN HAKIMI - 1st Appellant
SANA HAKIMI - 2nd Appellant
ZAHRA HAKIMI - 3rd Appellant
OMID HAKIMI - 4th Appellant
(Anonymity orders not made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Heard at Field House on 28 November 2023

Representation:

For the Appellant: Mr D Lemer, counsel

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

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DETERMINATION AND REASONS

The Appellants

1. The appellants are all citizens of Afghanistan and are siblings. They appeal against decisions of the respondent dated 14 March 2023. Those decisions were to refuse the appellants' applications for leave to enter the United Kingdom under paragraph 297(v) of the Immigration Rules as the relatives of a person who is present and settled in the United Kingdom. The applications were made on 24 May 2022 when all four appellants were under the age of 18. The appellants argued that there were serious and compelling family or other considerations which made their exclusion undesirable and that suitable arrangements had been made for their care. The appellants wish to join their older brother Mustafa Hakimi born 1 January 1987, who was naturalised as a British citizen in 2010 ("the sponsor").

The Appellants' Case

2. The appellants' case is that they are presently living in Pakistan having moved there in April 2022 but fear they would be returned to Afghanistan by the Pakistani authorities. They are without their parents, their mother is in hiding in a town called Ghazni in Afghanistan and their father's whereabouts are unknown. The appellants say he was arrested after the Taliban came to power in August 2021. Once in the United Kingdom they propose to live with an uncle. The respondent accepts that the sponsor is able to maintain the appellants adequately and suitable accommodation is available for them. The appellants also argue that the respondent's decision breaches their rights under Article 8, the right to respect for private and family life. They argue that in the event that they are unable to satisfy the requirements of the Immigration Rules their continued exclusion from the United Kingdom will lead to unjustifiably harsh consequences.
3. The respondent gave as the reason for refusing the appellants' application: "Given that you have provided no evidence in regards to your parents whereabouts and why they cannot adequately care for you, I am not satisfied that special consideration should be given to you joining [the sponsor] in the UK."

The Proceedings

4. The appellants' appeal against the respondent's decisions were dismissed by Judge of the First-tier Tribunal Raymond in a decision promulgated on 19

June 2023. The appellant's onward appeal against the First-tier decision was heard by us on 4 October 2023 and by a decision dated 6 October 2023 we set the decision of the First-tier Tribunal aside and ordered that the appeal be re-heard before us in the Upper Tribunal. Attached to this determination is a copy of our decision setting the First-tier decision aside and giving reasons therefor.

The Hearing Before Us

5. The sponsor attended to give oral testimony and was cross examined by the Ms Ahmed. He adopted the five statements he has made in this case in which he confirmed that his siblings were currently in Pakistan on temporary visit visas. Describing the risk the appellants faced he said that on 15 August 2021, the Taliban came to the family home in Kabul to arrest their mother because she was a civil society member of the Afghan Women's Network and a women's right activist. The Taliban were unable to find her, so they arrested and took the appellants' father away.
6. The appellant's father had been the driver of Colonel Ghullam Sakhi Ayub who was Kabul's District 13 Police Chief. Colonel Ayub had also previously worked at the Afghan National Directorate of Security (NDS) as Kabul's 18th District National Security Chief. The NDS was Afghanistan's main intelligence agency. The sponsor produced a partial colour photocopy said to be of Mr Sakhi's NDS identity card and other photographs of the appellants' father with this gentleman. The sponsor was also concerned that if his sisters were returned to Afghanistan the Taliban might manage to find them and seek to marry them by force to their fighters.
7. In his first statement dated 28th of June 2022 the sponsor stated that his mother was in hiding in Kabul. It was too dangerous for him to return to Afghanistan although he had spent some months there in 2021. He sent money to his siblings in Pakistan when friends travelled from the United Kingdom to visit that country. The appellants initially entered Pakistan on temporary tourist visas which were extended once. The Pakistan authorities refused to extend their visas which meant that the appellants now faced removal or deportation to Afghanistan. They had received an eviction letter from their landlord in Islamabad.
8. The appellants' mother was not in a position to look after the appellants as she was still at risk herself. She had been unable to travel to Pakistan as she feared that she could be identified on the way to Pakistan. By the time of the second statement dated 15 May 2023 the sponsor had discovered the whereabouts of his mother. He had received a telephone call in November 2022 from her and had had three telephone calls with her, last speaking to her a few weeks before the date of the second statement. She was currently living in Ghazni province where there was no Internet or proper mobile phone coverage. Most of the second statement was taken up with financial and accommodation details which are no longer in issue in this case.
9. In his third statement dated 19 October 2023 the sponsor talked about the precarious existence in Pakistan of the appellants. On 2 October 2023, Pakistan's Interior Minister stated that all undocumented Afghans must leave the country by 1 November. A severe crackdown against undocumented Afghans had begun and all Afghan refugees (estimated to be 1.7 million people) were ordered to leave the country by 1 November 2023

or face forced deportation or detention. The third appellant Zahra was extremely ill and was hospitalized on 14 July 2023. The fourth appellant Omid had also developed anxiety and depression. He was taking medication for his depression and was under the care of a psychiatrist who had prepared a medical report.

10. The sponsor's fourth statement dated 20 October 2023 gave more information about the movement of the appellants between Afghanistan and Pakistan and the care available to the appellants. The appellants' aunt Aziza Hakimi had accompanied them as their guardian to help them to settle in Pakistan. They rented a flat in Islamabad but moved from there, moving to the most recent place in June 2023 in Islamabad in a different block. The aunt went back to Afghanistan in February 2023 after her Pakistan visa expired. She returned to Pakistan in March/April 2023 staying for a few months but leaving again in June 2023. Since her departure back to Afghanistan, the appellants were living alone. They were unable to visit the doctor or go to school. On 13 November 2023 the sponsor made a fifth statement in which he said that he had asked his cousin Noorullah Shams who was living in Afghanistan to travel to and stay with his siblings. Mr Shams travelled to Pakistan on 07 November 2023 to do this.
11. In cross-examination, the sponsor said that his mother had not appeared on television and he did not have any evidence of her activities on social media for safety reasons. He did have her National Union of Journalists membership card but had made no mention in his fourth and fifth witness statements of her being a journalist because he had not been asked about that. In his fourth statement he had said that when the family went into hiding they did not take any documents with them. In oral testimony he amended this to say that they had in fact taken their documents with them. He himself arrived in Afghanistan nine days after the family went into hiding. He only took his mother's documents because there was nothing else to take.
12. When the aunt took the family to Pakistan she had faced no travel problems because there was a male in the group namely his younger brother. His mother had travelled to Ghazni from Kabul driven by her brothers, the drive took about two hours. When he spoke to his mother over the telephone she was not willing to talk about her situation. She refused to accept money from the sponsor in any event she had nowhere to collect the money as there was no money transfer facilities where she was living.
13. The sponsor had met the intelligence agent, Colonel Ayub who his father worked for a couple of times before the Taliban took over. Beyond colour photographs of his father and the Colonel it was put to the sponsor that there was no other evidence about the sponsor's father or what he did in Afghanistan. In the fifth witness statement the sponsor had said that the appellants were temporarily staying in Islamabad as guests of his friend Amir. By contrast in oral testimony the sponsor said that the cousin Mr Shams was still there in Pakistan living in a flat with the appellants. We asked the sponsor to clarify this and he replied that the situation had changed over the weekend but he had not altered his witness statement before signing it. Mr Shams was not staying with Amir.
14. The appellants needed someone else to collect the money for them as they were all under 18. There were no other females in his family of marriageable age. We asked the sponsor to clarify why his mother was refusing to accept

money from the sponsor to maintain herself in Afghanistan. The sponsor replied "I don't know maybe she lives with someone". The sponsor clarified this by adding that he did not know who his mother was living with at the moment.

15. In re-examination he said that he had never wanted to ask his mother about her activist work for his own safety. He did not know that she was on Facebook. He only found that out after the collapse. It was not possible for his sisters to live with relatives in Kabul or with his mother in Ghazni because of the risk of forcible marriage. It was too risky for family members in Kabul to take the appellants because of the arrest of the appellants' father.
16. We also heard evidence from the sponsor's wife Mrs Zainab Hakimi who adopted her witness statement. She confirmed that the sponsor was in contact with his mother but did not know exactly when the last time was, it could be July 2023. She had no female relatives in the age group of 13 to 25 living in Afghanistan. In the consolidated bundle of evidence there were statements from a number of individuals principally concerning the question of maintenance and accommodation for the appellants were they to be admitted to the United Kingdom. Since those matters are conceded by the respondent we do not deal further with them in this determination. We deal with the correspondence from Mr Seyyed Sirajuddin below, see [20].

Closing submissions

17. For the respondent reliance was placed on the refusal letter. It was understandable that the family would want the appellants to come to the United Kingdom and that the sponsor was a responsible brother to them who had not left them to their own devices. The issue was whether there were serious and compelling reasons why the appellant should come to the United Kingdom. Reliance was placed (by both parties) on the authority of **Mundeba (s.55 and para 297(i) (f)) DRC [2013] UKUT 88 (IAC)**: where the court considered what would amount to serious and compelling reasons. It was open to a judge to conclude that the threshold of serious and compelling reasons had not been reached. There was no cogent independent evidence in this case that the appellant's mother was a women's rights activist. Nor was there evidence that the appellant's father was a chauffeur to a member of the intelligence agency. There was no witness statement from the appellant's mother even though she was living safely in Ghazni and there had been contact between her and the sponsor. It was not credible that she could travel from Kabul to Ghazni if she was being watched by the authorities.
18. The respondent did not accept the appellant's father had been arrested nor that their mother was in hiding. The sponsor contradicted himself over whether his friend Amir or the cousin Mr Shams was living with the appellants. The medical evidence submitted in this case was not clear either. The psychiatrist stepped outside his role in saying that the appellants should come to the United Kingdom. It was not clear from the documentation what if anything was wrong with the appellants. Taking it at its highest there were payments for medical care which the appellants were able to obtain. The fear of being forced to marry members of the Taliban was only speculation on the sponsor's part. It was not in the background evidence. Little weight should be given to that submission.

19. This was not a protection claim and the Refugee Convention did not offer protection from societal conservatism. In so far as the best interests of the children were concerned they were currently living in Pakistan in a flat with a relative. If they were required to leave Pakistan they could live with their mother in Afghanistan and possibly the father too.
20. In submissions for the appellants, counsel relied on his skeleton argument and on a previous skeleton argument prepared by another counsel in relation to the legal framework relevant to this case. In support of the contention that the appellant's father was arrested and the mother forced into hiding reliance was placed on a letter from Mr Seyyed Sirajuddin the representative of the fourth district of Kululapushta who had met with the sponsor and the sponsor's mother when the sponsor had visited Afghanistan in 2021. He had confirmed that the appellants' father had been arrested, that the Taliban were still going to the family home searching for the appellants' mother and he advised the family to leave Afghanistan.
21. Counsel's skeleton argument argued that the risk to the appellants' parents was consistent with the respondent's assessment of the situation in Afghanistan now that the Taliban had returned to power. The appellants' aunt had not been able to remain with the appellants in Afghanistan to care for them. Various friends and family members have been able to make short trips to visit the appellants in Pakistan, such visits were by definition only temporary and insufficient to provide a proper level of support. The appellants remained dependent on the support they received from the sponsor. They had moved temporarily into the house of Amir a family friend. The appellants were suffering from ill health and had been unable to secure further leave to remain in Pakistan. The Pakistani authorities required landlords to evict Afghan tenants and were engaged in mass deportations to Afghanistan. On return the three female appellants would face very significant discriminatory measures including limits on their freedom of movement and education. The remainder of the skeleton argument dealt with maintenance and accommodation.
22. In the earlier skeleton argument prepared by different counsel, it was argued that family life existed between the appellants and the sponsor. The exclusion of each appellant would be a disproportionate breach of article 8 ECHR. The test at paragraph 297(i) (f) of the Immigration Rules: "serious and compelling family or other considerations which make exclusion of the child undesirable" 297(i)(f) was addressed in **Mundeba**. Serious meant that there needed to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' indicated considerations that were persuasive and powerful. Such an interpretation set a high threshold that excluded cases where, without more, it was simply the wish of the parties to be together however natural that ambition may be. The case inevitably involved an assessment of what the child's welfare and best interests require. As a starting point the best interests of the child were usually best served by being with both or at least one of their parents. The Respondent was imposing an artificial and unfair requirement for corroboration where it was wholly understandable that this was not possible.
23. In oral submissions counsel argued that the appellant's father was a chauffeur, the sponsor had produced part of a card which showed that the gentleman in question was a Colonel and that he was in the Afghan security service. The sponsor had made clear that the appellants were living with the sponsor's friend. His explanation as to a supposed inconsistency was

understandable. The situation of the appellants had changed over the course of a weekend. He could have just not mentioned what was happening. The first and second appellants both had mental health problems. The medical evidence did not just consist of handwritten notes and the evidence was consistent with that of the sponsor.

24. The sponsor had taken great efforts to get people to support his siblings. This was not a permanent feature of their lives. They did not have stable support in Pakistan. They had arrived in Pakistan without permanent adult support. They were at risk from developments in Pakistan as steps were being taken to evict Afghans from their accommodation and there were problems accessing finance because they did not have identification documents. There was a real danger they could be rounded up and returned to Afghanistan. The position they would then find themselves in would satisfy the test under the rules. They would have nowhere to live in Afghanistan and their family would not be able to support them. They could not go to their parents as their father been arrested.
25. There were three marriageable females who could find themselves pushed into a forced marriage. If the claim succeeded it did not mean that any child could take advantage of the rules but there were particular circumstances in this case that meant the rules should be satisfied.

Discussion and Reasons

26. This is an application by four citizens of Afghanistan who were all under the age of 18 when they made an application for entry clearance to the United Kingdom pursuant to paragraph 297 of the Immigration Rules. They wish to join their sponsor, their relative who is their brother who is present and settled in the United Kingdom, being a British citizen. They argue that there are serious and compelling family or other considerations which make their exclusion undesirable and that suitable arrangements have been made for their care. This latter point (as to arrangements) is conceded by the respondent. We are therefore concerned with the first limb of the test under the rules, "serious and compelling reasons".
27. There is also a claim outside the Immigration Rules under the general provisions of article 8, the right to respect for private and family life. In respect of the Immigration Rules, the burden of proof of establishing that the requirements of the paragraph are met rests upon the appellants and the standard of proof is the usual civil standard of balance of probabilities. In respect of the residual Article 8 ECHR case, it is for the appellants to show on the civil standard that the article is engaged and, if it is, the respondent must then establish that their ongoing exclusion is proportionate.
28. The appellants are presently living in Pakistan, their mother is living in Afghanistan and they say through the sponsor that the whereabouts of their father are unknown but they would all like to join their brother in the United Kingdom. There are therefore three distinct options where the appellants could live. We must bear in mind the duty under section 55 of the Borders and Citizenship Act to consider the best interests of the children in assessing where they could live.
29. The advantage for the appellants in coming to the United Kingdom is that the maintenance and accommodation conditions are met and they could be adequately cared for by their brother and other relatives here. They point to

difficulties if they were to remain in Pakistan where they say they would face a very uncertain future. Some care arrangements have been made for them in Pakistan and they are apparently being cared for by a friend of the family alternatively a cousin. These arrangements, however, are complicated, require a lot of work to put them together and are variable. It is an integral part of their claim that they cannot simply remain in Pakistan in accommodation in Islamabad being looked after by friends and/or family members because of the prospective actions of the Pakistani authorities. The Pakistan government have publicly indicated that they wish to expel Afghan refugees/citizens in Pakistan blaming the whole community for what is said to be the criminal actions of a few members.

30. The third alternative is for the appellants to return to Afghanistan. There is a sharp difference between the parties in this case concerning the viability or safety of that option. The appellants say their mother is in hiding and cannot look after them, their father's whereabouts are unknown and if returned to Afghanistan the three female appellants would be at risk of forcible marriage to Taliban fighters. In coming to our decision we must consider the best interests of the children which is a primary concern of ours although not necessarily the paramount concern. Citing the authority of **Mundeba**, see [22] above, it is generally in the best interests of the child to be looked after by both parents or at least one of them.
31. The issue in this case therefore is whether there are serious and compelling reasons why the appellants cannot be looked after by a parent or parents such as to displace the normal position as to what would constitute the best interests of the children. If we were to find that remaining in Pakistan is not a viable alternative for these appellants in the long run (given what we say in [29] above) the choice would come down to between joining their brother, the sponsor in the United Kingdom or returning to Afghanistan. That choice would depend on the evidence and in particular the assessment of the credibility of the threat of risk to the appellants were they to return to Afghanistan.
32. To support their claim that they would be at risk and cannot return to Afghanistan the appellants rely on some background information, a letter from a counsellor which we referred to above, see [20], and some medical evidence indicating that the stress of the appellants' lives in Pakistan is having a deleterious effect on their mental health. They also say that their circumstances in Afghanistan prior to travel to Pakistan have contributed thereto. The sponsor accepts that his mother is in the province of Ghazni which is relatively close to Kabul being approximately two hours or so drive from the capital.
33. However when it came to anything further about his mother we found the sponsor's evidence to be distinctly vague. The sponsor was unable to say clearly how his mother had managed to get to Ghazni if she was living in Kabul and being watched by the Taliban. The sponsor indicated that his mother had been helped by two of her brothers who had transported her there. Nor was he able to explain why they were able to transport her without apparent risk from the Taliban. The sponsor has been sending money to the appellants in Pakistan usually through friends or family visiting them but he has not sent money to his mother. He says he cannot send money to her because she lives in a remote area and there are no facilities for collecting transfers from abroad. However he also says that she has refused offers of help, which is a different and somewhat contradictory

reason to being unable to collect money.

34. Even if the appellant's mother lives in a village with no transfer facilities it was not explained to us why she would be unable to go to a larger town and collect money from there. It appears that she does not want to receive money. When the sponsor was probed as to his mother's living conditions, he appeared to suggest that she might be living with someone else, he could not rule that out. At the very least the sponsor's own evidence suggests that his mother is being supported by members of her family and it is difficult to see why the sponsor did not find out more information from his mother when he spoke to her over the telephone about what conditions she was living under. It might not necessarily have been appropriate for her to make a statement but at the very least she could have told her son how she was managing. We were not satisfied with the sponsor's answers as to why he had not asked her. It was difficult to avoid the conclusion that she does not want the money because she does not need it.
35. The sponsor's case is that he fears that if his sisters were to go to Afghanistan they might be forcibly married to Taliban fighters and in any event they would not receive a proper education. The respondent dismisses the sponsor's concerns about forced marriage saying that this is speculation on the sponsor's part. We note a lack of specific background information produced to support the likelihood of the sponsor's concerns becoming a reality. Whilst there is reference in the background material to an increase in the incidence of forced marriage, we note that the Taleban issued an edict against the practice in 2021 and there seems to be little evidence to suggest that women and girls are married without the consent of their guardians. The burden of proof rests on the appellants and if they seek to assert that there is a risk they are obliged to prove it, to the lower standard if it is a claim for international protection (which does not apply here) or on the balance of probabilities if as in the instant case before us it is a claim under the Immigration Rules. Insufficient evidence has been forthcoming.
36. In relation to the concern over education, the difficulties placed in the way of females by the Taleban authorities preventing them from getting an education is well known and documented in the background material and the country guidance authorities of the Tribunal. Having said that it is difficult to say that the inability of females in Afghanistan to obtain an education would amount in itself to a serious and compelling reason bringing such persons within the Immigration Rules. As the Court of Appeal reminded judges in the leading authority of **EV Philippines**, there is no obligation on the United Kingdom to educate the citizenry of the world. It has been said that even the Refugee Convention does not protect individuals from societal conservatism.
37. The appellants also complain that whilst in Pakistan they had to be treated for medical problems particularly mental health issues. Although the evidence on this is fairly scant, such evidence as there is indicates that the appellants have been able to access medicine on prescriptions in Pakistan. The issue then falls to be considered whether they can access the same medicines which they need once back in Afghanistan. We were not shown any specific background information that the medicines supplied to the appellants in Pakistan would be completely unavailable in Afghanistan and that there would be no reasonable alternatives. Whilst therefore we understand the sponsor's concerns that the uncertain conditions the appellants are in in Pakistan might be undermining their general health, that

again would not amount to a serious and compelling reason why that should be admitted.

38. If the stress which they are undergoing is in large part because of their travel to Pakistan and the conditions they are living in, this would be alleviated presumably upon return to Afghanistan by living with their family there in particular with their mother. The sponsor argues that his mother is unable to assist in the care of the appellants upon return to Afghanistan because she is in hiding due to her past activities as a women's rights activist. Again there was very little information to support that claim. The sponsor was unable to point to any social media illustrating the claimed activities of his mother. His explanation was that it was for his own safety that he had not got such information. In our view it is more likely that this information has not been produced because it does not exist.
39. We come to that conclusion because the sponsor has been inconsistent in his evidence about what material he was able to take from Afghanistan to support this appeal. On the one hand in his fourth statement he said that his family took no documents from the family home. He changed this in oral evidence to say some documents were taken. In particular a copy of his mother's National Union of Journalists membership card was produced. He had not mentioned in his fourth or fifth statement that his mother was claimed to be a journalist. If his mother was indeed a women's rights activist it would be reasonable to expect the sponsor to have been able to obtain some information in support of that contention.
40. It is not necessarily to be expected that the appellant's mother should make a statement but social media on the Internet can be accessed from any part of the world and we find no good reason why this has not been done if the claims about the appellants' mother are true. Generally speaking, the appellants rely on a letter from the counsellor that he advised the family to leave Afghanistan but instead of taking that advice the appellant's mother went with her brothers to a province not far from the capital Kabul. We do not accept the argument she did that because it was too risky to leave the country. A number of members of this family have travelled to and fro between Afghanistan and Pakistan and the appellants' mother herself appears to have been able to travel within Afghanistan without coming to the adverse attention of anyone.
41. There were other inconsistencies in the evidence that was presented to us. For example, whether the appellants were living in Pakistan in Islamabad either with a friend of the family called Amir or with a cousin Mr Shams. Given that the sponsor claimed that he had made these arrangements for the care of his siblings it was not credible that he would muddle who was meant to be looking after the appellants. We also had concerns as to the claim that the father was at risk because he had been a chauffeur for a man called Col Ayub. It was not clear what had happened to the Colonel, nor indeed why he should be receiving the hostile attention of the Taliban or why the evidence of the father's association with the Colonel was so patchy.
42. The sponsor produced a colour photocopy of half of what was said to be the Colonel's identity card. It is not at all clear from that, what significance could be attached to this gentleman. Once again we were in a position where there was no other evidence than the sponsor's to explain why the appellant's father could not be located. Given the concerns we have expressed about the sponsor's credibility on a number of points, we did not

find that we could simply accept this partial evidence as establishing risk.

43. We understand the anxiety of the sponsor about the conditions in which his siblings are living in Pakistan particularly given the insecure future and possible actions of the Pakistani authorities towards the large Afghan community there. It does not appear to be in the best interests of the children that they remain there. We also understand that the sponsor was sent to the United Kingdom as a minor seemingly without any other support from his family and he has done extremely well for himself to the point where he can look after the physical needs of the appellants.
44. However the appellants must still show that they can satisfy the Immigration Rules which means that they must show serious and compelling reasons why they should be admitted to the United Kingdom. In our view an alternative exists, that they can return to Afghanistan and be looked after by their mother which would be in their best interests. They are able to speak the language, they would be familiar with the culture and would be able to settle back into life in their country of nationality. We do not accept for the reasons we have given above that the appellants would be at risk in Afghanistan. Whilst we accept that the Taleban regime in Afghanistan imposes limitations on freedom of movement and education for young women, that is the country of their nationality and the country in which they can be cared for, safely, by a parent. There is no reason that they cannot be supported by the sponsor on return to Afghanistan. Given that we find there is a viable alternative for the appellants namely to be looked after by their mother, the argument that there are serious and compelling reasons why they must nevertheless come to the United Kingdom falls away.
45. This is an article 8 human rights appeal and the appellants also argue whether or not they can satisfy the Immigration Rules that it would be unduly harsh to refuse the application. There is a low threshold to establish family life and the sponsor has indicated that he has travelled to Pakistan and maintains contact with his siblings. The respondent's decision interferes with the family life of the appellants and sponsor as it is at present because the appellants will be unable to come to the United Kingdom and develop their family life with the sponsor here. That interference arises from a legitimate objective namely the maintenance of immigration control and the refusal is in their best interests to go back to Afghanistan rather than come to the United Kingdom. Assessing the proportionality of the interference against the legitimate aim of immigration control, we find that the public interest in maintaining immigration control outweighs the respect for family life between the sponsor and the appellants. They do not have the right to choose where to exercise their family life.
46. We bear in mind that we must give weight to the best interests of the children in the proportionality exercise. Since we find their best interests are served by not coming to the United Kingdom but by going back to Afghanistan, their best interests adds weight to the public interest side of the scales. For all these reasons we do not find that there are serious and compelling reasons why the appellants should be admitted to the United Kingdom and we do not find that the appeal should succeed outside the rules under the provisions of article 8. We therefore dismiss the appeal.
47. No anonymity order was made at first instance and no request was made to us to make such an order. We therefore make no anonymity order as there is no public policy reason for so doing.

Notice of Decision

We dismiss the Appellants' appeals.

27th December 2023



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: UI-2023-003301/
003302/003303/003304

THE IMMIGRATION ACTS

**Heard at Field House
Heard on 4 October 2023**

Decision & Reasons Promulgated

Prepared on 6 October 2023

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Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

Between

**MARJAN HAKIMI - 1st Appellant
SANA HAKIMI - 2nd Appellant
ZAHRA HAKIMI - 3rd Appellant
OMID HAKIMI - 4th Appellant
(Anonymity orders not made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, counsel

For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS FOR FINDING AN ERROR OF LAW

The Appellants

1. The appellants are all citizens of Afghanistan and are siblings. They appeal against a decision of the First-tier Tribunal dated 19 June 2023 which dismissed their appeals against decisions of the respondent dated 14 March 2023. Those decisions were to refuse the appellants' applications for leave to enter the United Kingdom under paragraph 297(v) of the Immigration Rules as the relatives of a person who is present and settled in the United Kingdom. The applications were made on 24 May 2022 when all four appellants were under the age of 18. The appellants argued that there were serious and compelling family or other considerations which made their exclusion undesirable and that suitable arrangements had been made for their care. The appellants wish to join their brother Mustafa Hakimi born 1 January 1987, who was naturalised as a British citizen in 2010 ("the sponsor").

The Appellants' Case

2. The appellants' case is that they are presently living in Pakistan but fear they would be returned to Afghanistan by the Pakistan authorities. They are without their parents, their mother is in hiding and their father's whereabouts are unknown. Once in the United Kingdom they propose to live with an uncle. The respondent's decision breached their rights under Article 8, right to respect for private and family life.

The Decision at First Instance

3. In dismissing the appeal, the First-tier Tribunal did not accept that the appellants could have left Afghanistan without assistance from their parents as it was held that they would not have been able to travel alone. It was not accepted therefore that the appellants were living alone whether in Pakistan or elsewhere.

The Onward Appeal

4. The appellants appealed against this decision arguing that the judge had speculated as to how the appellants had crossed the border from Afghanistan into Pakistan. That issue had not been raised at the hearing and therefore there was unfairness in the proceedings. There had been no separate consideration of the best interests of the children. Permission to appeal was granted by the First-tier following which the respondent filed a rule 24 response accepting the criticisms of the determination made by the appellants and indicating that she had no objection to the determination being set aside and the matter remitted back to the First-tier to be heard afresh.

The Hearing Before Us

5. We agree with the parties position that the determination should be set aside and the matter re heard for the reasons given at [4] above. We invited submissions about where the rehearing should take place. Where an allegation is established that there had been a procedural error in the first instance hearing (such that there had been no adequate hearing) and/or where there was likely to be significant fact finding at the rehearing, the normal position would be that the matter should be remitted to be heard de novo in the First-tier. However we were advised by counsel for the appellants that the sponsor was concerned that the rehearing should take place as soon as possible in view of potential delays in listing if the matter were remitted back to the First-tier.
6. The concern about delay was partly because of the vulnerability and best interests of the appellants including the risk they might be expelled from Pakistan but also because of the sponsor’s own health concerns. He is required to commence medical treatment which once started would make it difficult for him to attend a further hearing. The presenting officer indicated that the respondent was neutral on the question of venue.
7. In view of these submissions we agreed that the appeal should remain in the Upper Tribunal and the rehearing would take place on the first available date. The first such date convenient to the tribunal and all parties was 2 November 2023 and we therefore indicated that that the rehearing would be relisted then before us. We were invited by counsel for the appellants to make directions relating to the filing of further evidence before the rehearing to assist the Tribunal, which we now do.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and we set it aside

The rehearing of this appeal will take place in the Upper Tribunal on 2 November 2023 before a panel of Upper Tribunal Judge Blundell and Deputy Upper Tribunal Judge Woodcraft when the sponsor should attend to give evidence.

Leave to the appellants to file and serve updating statements by 4.00pm on 19 October 2023, and skeleton arguments by 4.00pm on 26 October 2023 (if so advised)

No anonymity order was made at first instance and no request was made to us to make such an order. We therefore make no anonymity order as there is no public policy reason for so doing.

Signed this 6th day of October 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT

FEE AWARD

As we have set aside the decision of the First-tier, the question of a fee award will be reviewed at the re-hearing.

Signed this 6th day of October 2023

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Judge Woodcraft

Deputy Upper Tribunal Judge