



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000031
UI-2024-000032

On appeal from: HU/52409/2023
LH/05225/2023
HU/52413/2023
LH/05226/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th May 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMINA SAIF
MIRAAL ZAHID (A MINOR)
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Alex Everett, a Senior Home Office Presenting Officer
For the Respondent: Mr Jay Gajjar of Counsel, instructed by Morgan Hill Solicitors

Heard at Field House on 29 April 2024

DECISION AND REASONS

Introduction

1. The Secretary of State challenges the decision of the First-tier Tribunal allowing the claimants' appeals against the Entry Clearance Officer's decision on 16 and 27 January 2023 to refuse them entry clearance to join their sponsor in the UK.
2. The claimants are citizens of Pakistan. The sponsor, who is also a Pakistani citizen, is the first claimant's husband and the second claimant's father. The family relationship is not disputed by the Secretary of State.
3. **Mode of hearing.** The hearing today took place face to face.
4. For the reasons set out in this decision, I have come to the conclusion that the Secretary of State's appeal succeeds. The decision of the First-tier Tribunal cannot stand and is hereby set aside, for remaking in the First-tier Tribunal in due course.

Procedural matters

5. **Vulnerable appellant.** The second claimant was born on 12 January 2022. She is a two-year-old child and therefore a vulnerable person. She is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.
6. The second claimant's appeal stands or falls with that of her mother, the principal claimant. No adjustment is required for her at the Upper Tribunal hearing or before the First-tier Tribunal as she will not be required to give evidence or attend the hearing.

Background

7. The sponsor is not settled in the UK. On 8 January 2021, the sponsor was granted limited leave to remain on long residence grounds, until 7 July 2023. His application for settlement was refused on 7 March 2022. The earliest he will qualify for indefinite leave to remain is January 2031.
8. By January 2021, the sponsor had been living in the UK for over 20 years, having arrived when he was just 20 years old. He worked as a tailor, six days a week, and had made a successful life and business in the UK.
9. On 13 March 2021, the sponsor travelled to Pakistan. He married the principal claimant ('the claimant') two weeks later, on 27 March 2021. He stayed in Pakistan until 24 May 2021 on that occasion, then returned on 12 November 2021, remaining until 3 December 2021. He visited again from 28 March 2022 to 7 May 2022, and the second claimant was born on 12 January 2022.
10. On 26 March 2023, the sponsor returned to Pakistan once more. He was still in Pakistan on 20 April 2023, when Mr Gajjar drafted his skeleton argument for the First-tier Tribunal hearing.

First-tier Tribunal hearing

11. The claimants accepted at the First-tier Tribunal hearing that they could not meet the relationship requirement of Appendix FM because the sponsor was neither a British citizen or settled in the UK.
12. The First-tier Judge allowed the appeal on Article 8 ECHR grounds, by reference to paragraph GEN.3.2 of Appendix FM, on the basis of exceptional circumstances giving rise to unjustifiably harsh consequences for the applicant, their partner or a 'relevant child'. The claim was advanced on the basis of the claimant's mental and physical ill health, which was said to be having a profound impact on her ability to care for the second claimant, her two year old son.
13. The First-tier Judge found the sponsor to be a credible witness, accepting that the claimant was receiving medical treatment in Pakistan, and that the sponsor's father and brother lived only 1.5 km away from her home. The Secretary of State did not challenge the credibility of the claimants' evidence, either in the refusal letters or at the hearing.
14. The First-tier Judge declined to make a finding on whether the sponsor knew, when he married, that because of his own status, he would be unable to sponsor his partner and any future children to join him in the UK.
15. Dr Zaki ul-Din of Ibn-e-Sina Hospital in Sargodha, Pakistan provided a letter in support of the appeal: he had been treating the claimant since January 2022 for depression, and was aware of previous treatment for depression by another doctor. There was evidence of prescriptions and pharmacy receipts in 2022 and 2023.
16. At [20]-[25], the Judge reminded himself of the provisions of section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) and of the particular considerations regarding children. At [36]-[37], the Judge made apparently contradictory findings:

"36. I find that it would be possible for the family to reunite in Pakistan. The sponsor is a citizen of Pakistan and has visited his wife four times since he was granted leave to remain. He does not claim that he has lost ties with his family in Pakistan: his wife was previously living with both his parents, and his father and his brother's family live only 1.5 km away. I place no weight on the sponsor's concern about not having savings to support his return to Pakistan, because on his evidence he is at present able to work six days a week as a tailor and there is nothing to suggest that he would be unable to work to support his family in Pakistan.

37. However, I accept the sponsor's claim that that it is likely to be "very difficult" for him to reintegrate in Pakistan. He arrived in the UK at the age of 20 and has spent more than half his life here. It is more likely than not that he did not return for a single visit during that period, as this is normally a condition of obtaining leave on the basis of 20 years' long residence. "
[Emphasis added]

17. At [42], the Judge found that:

“42. Given the mother’s health, and its link to being a single parent, it is clearly not in the second appellant’s best interests for her parents to continue to live apart until her father qualifies for settlement. Given that I have accepted that it would be “very difficult” for her father to reintegrate in Pakistan, moreover, I find it would be in her best interests for the family to reunite in the UK, where he is settled. He is more likely to be able to give the first appellant the support she needs with her significant mental ill health if he himself is settled, rather than embarking on rebuilding his life in a country he has not lived in since the age of 20.”

18. The First-tier Judge’s conclusions are at [47]-[49]:

“47. Weighing in favour of the appellants is the sponsor’s private life in the UK. The sponsor has lived in the UK for almost 24 years and the respondent has granted him leave to remain in recognition of the private life that he has established here during that time. Although I am required by Section 117B(4) and (5) to put little weight on that private life because of his immigration status, “little weight” does not mean “no weight”, and the Immigration Rules themselves reflect that already three years ago, his private life had accumulated sufficient weight for him to be entitled to a grant of leave to remain for that reason alone. I therefore find, taking the assessment reflected in the Immigration Rules into account, that the weight to be given to the sponsor’s private life in the UK falls on the “moderate” end of the spectrum and can be given some weight. See *Kaur* [25].

48. Also weighing in favour of the appellants is that I have found that the sponsor would face significant difficulties in reintegrating in Pakistan, given that he arrived as a young adult, did not visit Pakistan for 20 years, and has now spent over half his life in this country.

49. It has been difficult to strike the right balance between the public interest immigration control and the interests of this particular family. On careful reflection, I find that the balance tips in favour of the appellants. This is due to the combined effect of the first appellant’s mental health needs, its effects on the second appellant, given her young age and dependence on her mother’s care, and the sponsor’s likely difficulties in reintegrating in Pakistan. None of these would, alone, tip the scale in the appellants’ favour, but I find that, in combination, the effect on the second appellant of denying the appellants entry clearance would be unjustifiably harsh. ”

19. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

20. The grounds of appeal challenged the adequacy of the First-tier Judge’s reasoning, arguing that the sponsor was able to make a number of lengthy visits to Pakistan, to meet and marry the claimant and then to visit her and, later, his daughter there. The Secretary of State argued that the First-tier Tribunal’s decision ‘provided inadequate reasoning to justify allowing the appeal on an outside the Rules Article 8 basis and amounts to a material error of law’.

21. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Owens:

“1. It is arguable that the judge has failed to give adequate reasons at [42] as to why it would be “very difficult” for the sponsor to relocate to Pakistan to reside with his family when he has been spending extended periods with them in Pakistan since 2021. At [36] the judge acknowledges that it would be possible for the family to reunite in Pakistan. It is also arguable that the judge has not adequately explained why the status quo should not be maintained.”

Rule 24 details

22. There was no Rule 24 Reply on behalf of the claimants.

23. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

24. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.

25. For the Secretary of State, Ms Everett argued that the First-tier Judge’s reasoning was internally contradictory and gave no proper reason why the sponsor would be unable to resume living in Pakistan if that was the couple’s choice. Alternatively, the status quo could continue: the claimants lived alone but had family just 1.5 km away and the principal claimant was receiving treatment for her depression.

26. There was no reasoning in the First-tier Judge’s decision for the finding that it would be ‘very difficult’ for the sponsor to return and live in Pakistan. He had lived in Pakistan until he was 20 years old and had not lost his connection with family. He visited Pakistan regularly and had returned home to find and marry his wife, the claimant.

27. For the claimants, Mr Gajjar said that the decision was flawless, if generous. The Upper Tribunal should be slow to interfere with findings of fact and credibility unless they were ‘plainly wrong’ or ‘rationally insupportable’: see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed.

28. The Secretary of State’s grounds of appeal were no more than a disagreement and there had been very little challenge to the evidence by the Presenting Officer at the First-tier Tribunal hearing.

29. I reserved my decision, which I now give.

Conclusions

30. The sponsor is not settled in the UK and it is common ground that the claimants could not succeed under the Immigration Rules. The First-tier Judge's findings about whether the sponsor had returned home while living in the UK are speculative. There was no evidence before him about that. The First-tier Judge found at [36] that the family could reunite in Pakistan and that the sponsor had not lost ties there. I refer to the italicised passages in [36]-[37] above.
31. The Judge's reasoning is plainly inadequate and there is no alternative but to set aside his decision and remake it.
32. It will be necessary for the decision to be remade afresh, with no findings of fact or credibility preserved. The appeal will therefore be remitted to the First-tier Tribunal for the remaking hearing.

Notice of Decision

33. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal.

Judith Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 30 April 2024