



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001688
First tier number: HU/54641/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

ZA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Sowerby
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 22 July 2024

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 3rd January 2013. The appellant appealed against a decision of the respondent who, on 7th March 2023 refused her application for entry clearance to the United Kingdom as the child of a parent who is present and settled in the UK. The First-tier Tribunal dismissed the appeal. The appellant now appeals to the Upper Tribunal, permission to appeal having been granted by Upper Tribunal Judge Perkins.
2. The First-tier Tribunal summarises the background of the appeal at [3-7]:

The appellant applied for entry clearance on 26th September 2022. In the application form the appellant explains that she is the daughter of Maryam Shahzad. Her mother has been granted settlement in the UK following her

marriage to a British Citizen, Mr Husnain. Her father is Qais Amir. Her parents married on 6th April 2012 and divorced in September 2014. She has never lived with her father, and he has not played any role in her upbringing. Family proceedings were brought in the Pakistan family court and a Guardianship Certificate was issued from the Lahore Family Court in 2019 which granted her mother sole custody and a second court order granted permission to take her abroad and for a passport to be issued in January 2020. Ms Shahzad now has two sons from her second marriage who are both British Citizens. ZA has always lived with her grandmother in Pakistan together with her adult siblings. However, she now wishes to live with her mother in the UK. The application was accompanied by money transfer slips, wage slips of the sponsor and her husband, bank statements of the sponsor, tenancy agreement, a letter from the school her daughter attends, a letter from the local GP and other documents.

3. There are five grounds of appeal. I find that Ground 1 is made out. The grounds of appeal set out the relevant legal test for 'sole responsibility' as articulated in *TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049*. notwithstanding that he states that he has followed the test, the judge writes at [21]: 'The key question before me is who has exercised responsibility for the appellant **since the child's birth**; whether it has been exercised solely by the sponsor or jointly by the sponsor and her parents. I accept that the child's father has not played any role in her life since at least the divorce in 2014.' [my emphasis]. As the grounds of appeal at [7] accurately state: 'the Sponsor does not have to demonstrate that she has had sole responsibility for her daughter from the day of her birth. Indeed, that responsibility may have been for a short duration in that the present arrangements may have begun quite recently.'
4. Ground 2 also has merit. At [4], the judge notes: '[The Appellant's] father is Qais Amir. Her parents married on the 6th April 2012 and divorced in September 2014. She has never lived with her father, and he has not played any role in her upbringing. Family proceedings were brought in the Pakistan family court and a Guardianship certificate was issued from the Lahore Family Court in 2019 which granted her mother sole custody and a second court order granted permission to take her abroad and for a passport to be issued in January 2020.' Notwithstanding recording the existence of the Pakistan court proceedings, the judge makes no further detailed reference to the child orders consequent upon the divorce and, in particular, gives no indication of the weight, if any, he has given the court documents in his analysis. That, in my opinion, is a error of law, given the probative value which the appellant, quite reasonably, submissions should be attached to the documents.
5. There is merit also in the remaining grounds, in particular Ground 3 which points to the judge's failure to assess correctly and in accordance with the principles of *TD (Yemen)* the evidence of shared care of the appellant by several adult family members. In any event, I find that the decision of

the First-tier Tribunal is seriously flawed and should be set aside. There will need to be a fresh fact finding exercise which is better conducted in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 November 2024