



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002356
UI-2024-002363

First-tier Tribunal Nos: HU/00350/2023
HU/00351/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**Masoumeh SAMIEIPOUR
Zahra MAHMOUDI
(ANONYMITY ORDERS NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondents: Mr H Kannangara of Counsel instructed by Maxlaw Solicitors

Heard at Field House on 12 August 2024

DECISION AND REASONS

Introduction

1. These are linked appeals against decisions of First Tier Tribunal Judge Shiner dated 8 April 2024 allowing on human rights grounds appeals against decisions dated 20 December 2022 refusing entry clearance.
2. Although before me the Entry Clearance Officer is the appellant and Ms Samieipour and Ms Mahoudi are the respondents, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the Entry Clearance Officer as the Respondent and Ms Samieipour and Ms Mahoudi as the Appellants.

3. The Appellants are citizens of Iran born on 23 July 1978, and 17 January 2008 respectively. On 15 July 2022 they made applications for entry clearance to join Ms Sogand Mahmodi (date of birth 7 May 2005) ('the Sponsor') in the UK. It was claimed that the Sponsor was the daughter of the First Appellant and the sister of the Second Appellant. The Sponsor has been recognised as a refugee in the UK.
4. The applications for entry clearance were refused for reasons set out in respective written decisions dated 20 December 2022. The Respondent did not accept that the Appellants were related to the Sponsor as claimed. Further, the Respondent considered that the First Appellant did not in any event satisfy the requirements of the Immigration Rules in respect of an Adult Dependent Relative. In respect of the Second Appellant the decision-maker also found that there were no relevant circumstances that made exclusion from the UK undesirable, or that suitable arrangements were in place for the care of the Second Appellant.
5. On appeal, the First-tier Tribunal Judge found that the Appellants were related to each other as claimed, and in turn related to the Sponsor as claimed: see paragraphs 41-43.
6. It was found that neither Appellant could satisfy the requirements of the Immigration Rules: see paragraphs 48-50.
7. Included in this brief analysis was the following in respect of the Second Appellant:

"... she has failed to show that she meets the requirement under paragraph 319X(vi) as to there being adequate accommodation (without recourse to public funds). There is an absence of evidence of accommodation for the Second Appellant in the UK. She therefore cannot meet the requirement of the Rules for that reason."
(paragraph 49)
8. However, both appeals were allowed with reference to Article 8 of the ECHR. The Judge found that mutual family life existed within the meaning of Article 8(1) at the time the Sponsor left Iran (paragraph 53). The Judge went on to consider whether family life had endured since, finding this to be the case: see paragraph 54. The Judge went on to give consideration to the five **Razgar** questions, finding that the Respondent's decisions constituted interference of such gravity as to engage the operation of Article 8 (paragraph 58), and ultimately concluding that the proportionality balance favoured the Appellants - see paragraphs 59-65. The appeals were allowed accordingly.
9. The Respondent applied for permission to appeal to the Upper Tribunal. Permission was refused in the first instance on 13 May 2024 by First-tier Tribunal Judge McMahon, but subsequently granted on 10 June 2024 by

Upper Tribunal Judge Macleman. The grant of permission to appeal was in these terms:

"1. Judge Shiner found at [47] that the appellants did not demonstrate "anything as to their domestic and personal circumstances" and at [50] that they did not meet the requirements of the immigration rules. However, he went on to find that they have family life with the sponsor and at [64] that although the considerations in section 117B(2) and (3) of the 2002 Act were against them, the public interest was "outweighed by the competing family life claims".

2. Judge McMahon refused permission, on the view that the grounds are only disagreement. However, I consider that ground 1, on the reasoning for the existence of family life, and ground 2, challenging the adequacy of reasoning on proportionality, both qualify for debate."

Consideration of the Challenge

10. The primary focus of the Respondent's challenge is in respect of the First-tier Tribunal's finding that family life existed between the Appellant and the Sponsor. Necessarily this was fundamental to the favourable outcome in the appeals. Indeed, any error in this regard would make it unnecessary to consider the second line of challenge in respect of proportionality.
11. As such the principal contentious issue is the Judge's analysis and finding at paragraph 54. Paragraph 54 is in these terms:

"I consider therefore whether family life between the Sponsor and the Appellants has endured from when the Sponsor settling in the UK. Upon the Sponsor's evidence she has had no direct or indirect contact with the Appellants for four years - thus since leaving. I strongly suspect that the Sponsor and the Appellants are having contact for the reasons set out above - I can see no real reason why they would not. The Sponsor is now an adult (at 18 years old) but I observe that family life does not automatically cease upon turning 18 years and I have regard to the Sponsor's anxiety in respect of the Appellants and her related mental health. Such factors strongly lead to the Sponsor having a continuing family life with the Appellants under article 8(1), and they with her."

12. The Judge's "reasons set out above" in respect of the Sponsor having contact with the Appellants are to be found at paragraphs 45 and 46.
13. In the premises it is to be noted that paragraphs 45 and 46 inform the findings at paragraph 47 which are in these terms:

"I consider the Appellants claims expressed through the Sponsor as to being at risk and in hiding from the Sponsor's paternal family I find that the Appellants have failed to establish that they are at risk or in hiding for the reasons that I have set out above. The Appellants have failed to show to me on, a balance of probabilities, anything as to their domestic and personal circumstances. They are not in hiding or at risk from anyone I conclude."

14. The relevant passages of paragraphs 45 and 46 are these:

"45. ... I found more troubling the Sponsor's evidence to me that she has not had direct contact, or it seems (it is not evidenced as such) indirect contact, with the Appellants for four years. I did not accept the Sponsor's evidence to me that she would be unable to have any contact with the Appellants without putting them at risk. Upon her evidence the Appellants were being assisted and moved from location to location every few months by Uncle Hamid, he or at least his wife was having contact with the Sponsor's family members in the UK. I could see no reason why the Sponsor could not have had a telephone call or other indirect contact in the same manner or even during the same call.

46. Moreover I find it extraordinary that having arranged a video call to enable the Appellants to give evidence at the Tribunal such an arrangement could not have been undertaken in the preceding four years to allow for the Appellants to have direct video communication with the Sponsor. Further I found it strange and thus implausible that having arranged for the video connection at the hearing that the Appellants and the Sponsor did not take that opportunity to speak to each other then. ..."

15. Taken together these passages in substance show that because a relative in Iran was seemingly in contact with other family members in the UK, and because the facility for the Sponsor to have contact with the Appellants existed, the Judge had a 'strong suspicion' that there was contact between the Sponsor and the Appellants.

16. This analysis is problematic for at least the following reasons:

(i) It runs contrary to the Appellants' own case and the Sponsor's evidence.

(ii) The standard of proof applied by the Judge is wholly unclear: "*strongly suspect*" does not readily reflect the standard of a balance of probabilities.

(iii) Even if the Judge was satisfied that there was some contact between the Sponsor and the Appellants, there is nothing in the Decision that amounts to an analysis of the nature, extent, frequency,

and quality of such contact such as would be necessary to make a finding of 'family life' as between the adult Sponsor and the Appellants consistent with the guidance in the jurisprudence identified at paragraphs 51 and 52 of the Decision - **Kugathas**, **Ghising, PT**, and **Rai**.

17. Contextually, I also note the following:

(i) Consistent with the Sponsor's position that she did not have ongoing contact with the Appellants, the Newham social services Independent Reviewing Officer ('IRO') - whose letter of 4 May 2023 was given "*great weight*" by the First-tier Tribunal in the context of evaluating the contested issue of whether the Sponsor and the Appellants were related as claimed (paragraph 42) on the basis that she would have "*a broad and balanced view of the Sponsor*", and that it was "*very unlikely*" that the Sponsor would have sustained a convincing rely over a period of time - stated "*Sogand has not even been able to speak or have any contact with her Mother and Sister fear they will be found and may suffer harm as a consequence*".

(ii) Similarly, the Judge also accorded "*significant weight*" to the supporting letter from the Sponsor's school (paragraph 41): however, such letter refers to the Sponsor's "*inability to have any communication with [the Appellants]*".

18. There is nothing identifiable in the Decision as to how the Judge may have reconciled the positive weight to be accorded to the evidence of the IRO and the school with the implicit rejection of the accuracy and/or reliability of the observations in such evidence as to the absence of contact between the Sponsor and the Appellants.

19. I pause to note further to paragraph 17(i) that the Judge's subsequent observation in the context of considering proportionality - "*the report by the IRO shows the extent of the connection of the Sponsor to the Appellants*" (paragraph 63) - is not supported by the contents of the report, and indeed runs contrary to the IRO's apparent perception that there was no ongoing contact.

20. Yet further it is to be noted that the substance of the Judge's analysis was to reject the reliability of the Appellants' case, and the evidence of the Sponsor, in respect of the Appellants' circumstances in Iran. See paragraphs 46-47:

"46. ... Such matters undermine the Sponsor's claim as to the Appellant's being in hiding or at risk.

47. I consider the Appellants claims expressed through the Sponsor as to being at risk and in hiding from the Sponsor's paternal family I find that the Appellant's have failed to establish that they are at risk

or in hiding for the reasons that I have set out above. The Appellants have failed to show to me on, a balance of probabilities, anything as to their domestic and personal circumstances. They are not in hiding or at risk from anyone I conclude."

21. In my judgement what follows from the analysis above, is that the Judge's finding in respect of the engagement of Article 8(1) had no evidential foundation beyond the Judge's strong suspicion that the Sponsor was not being truthful. This was an insufficient and unsustainable basis for the finding. I accept the Respondent's submission that even if the Judge's rejection of the Sponsor's evidence was adequately reasoned, the rejection of her claim not to be in contact with the Appellants - and therefore by implication the apparent finding that she was in contact with the Appellants - is not in and of itself sufficient to demonstrate enduring family life in the absence of any other analysis as to the nature, extent, frequency, and quality of such contact.
22. I am satisfied that the deficiency of adequate reasoning, and the apparent misapplication of the standard of proof, is such as to amount to material errors of law.
23. Necessarily the error in respect of the engagement of Article 8(1) infects the evaluation of proportionality. The evaluation of proportionality is in any event undermined by the Judge's finding that "*The Appellants have failed to show me, on a balance of probabilities, anything as to their domestic and personal circumstances*" (paragraph 47). The analysis is further undermined by the inconsistent approach to the supporting evidence, in particular from the IRO as identified above.
24. The errors are such that the Decisions of the First-tier Tribunal to allow the appeals must be set aside.

Remaking the decisions in the appeals

25. In the context of remaking the decision in the appeals Mr Melvin argued that were I to find that the Decisions of the First-tier Tribunal were to be set aside for error of law, there was no reason to disturb the finding at paragraph 47 as to the Appellant's failure to "*show... anything as to their domestic and personal circumstances*", and as such the appeals could be dismissed without more.
26. Mr Kannangara initially suggested that it would be appropriate to remit the appeals to be reheard before the First-tier Tribunal. I asked him whether that position was essentially contingent upon the Sponsor changing her earlier evidence - i.e. that the Sponsor would no longer assert a lack of contact with the Appellants.
27. Mr Kannangara's immediate response was to comment that the Sponsor maintained that there was no contact between her and the Appellants.

There then followed a brief discussion as to the seemingly insurmountable difficulty this would present the appeals bearing in mind the jurisprudence of **Kugathas** and others. Mr Kannagara was given an opportunity to clarify his instructions and stepped outside of the hearing room for a short while with the Sponsor. On return he confirmed that the Sponsor's instructions were still that she had had no direct contact with the Appellants.

28. In such circumstances it seems to me that Mr Melvin's position is correct. The Appellants cannot establish enduring family life with the Sponsor in circumstances where it is their evidence - through the Sponsor - that there has been no contact between them for a number of years. It follows that Article 8 is not engaged. If Article 8 is not engaged, there being no claim in respect of any other provision of the ECHR, the appeals cannot succeed on human rights grounds.
29. Accordingly, I find that the decisions in the appeals can be remade without more, because it is inevitable that they must be dismissed.
30. It is unnecessary to revisit the issue of fee awards in circumstances where no fee awards were made by the First-tier Tribunal.

Notices of Decisions

31. The decisions of the First-tier Tribunal contained material errors of law and are set aside.
32. The decisions in the appeals are remade.
33. The appeal of Ms Masoumeh Samieipour in HU/00350/2023 is dismissed.
34. The appeal of Ms Zahra Mahmoudi in HU/00350/2023 is dismissed.

I. Lewis
Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)
16 December 2024