



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004012

First-tier Tribunal No: HU/53356/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 19 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE HIRST**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**SS**

**(Anonymity order made)**

Respondent

**Representation:**

For the Appellant: Mr Wain, Senior Home Office Presenting Officer

For the Respondent: Mr Nicholson of counsel, instructed by JJ Law Chambers

**Heard at Field House on 15 November 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Respondent, likely to lead members of the public to identify her. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant Secretary of State appeals from the decision of First Tier Tribunal Judge Howard promulgated on 30 June 2024, allowing the Respondent's appeal under the Immigration Rules and on human rights (Article 8) grounds.
2. The Respondent is a 4 year old child and I consider it in the interests of justice to make an anonymity order as set out above.

## **Background to the appeal**

3. The Respondent is a citizen of Pakistan born on 24 April 2020. The sponsor, Mr Sarfaraz Khan, is a British citizen who is the adoptive father of the Respondent; he is also her paternal uncle.
4. From August 2020 onwards the Respondent lived with and was cared for by her adoptive mother, with the sponsor visiting them from the UK. On 24 September 2020 the Family Court at Peshawar made a deed of adoption in favour of Mr Khan and his wife and on 14 October 2020 the civil court at Peshawar awarded them legal guardianship of the Respondent.
5. On 23 December 2020 an application for entry clearance was made to allow the Respondent to join her adoptive parents in the UK. That application was refused. Her subsequent appeal was dismissed by First Tier Tribunal Judge Symes on 13 March 2023. In a detailed determination, Judge Symes found that there was family life between the Respondent and her adoptive parents and that it was clearly in the Respondent's best interests to be raised by the sponsor and his wife. However, whilst finding that the Respondent's circumstances raised serious and compelling factors, he dismissed the appeal on the basis that the Respondent did not come within the definition of an 'adopted child' within paragraph 297(i)(f) of the Immigration Rules. Neither party appealed Judge Symes' decision.
6. On 5 August 2021 the Respondent made another application for entry clearance to join her adoptive parents. That application was refused on 25 January 2023 and her appeal against that decision came before the First Tier Tribunal on 14 June 2024.
7. First Tier Tribunal Judge Howard allowed the appeal. He concluded, as had Judge Symes, that the Respondent could not satisfy paragraph 314 or 316A of the Immigration Rules because (i) adoptions from Pakistan after 3 January 2014 are not recognised in the UK pursuant to The Adoption (Recognition of Overseas Adoptions) Order 2013, and (ii) the Respondent could not satisfy the definition of 'de facto' adoption within the relevant Rules. He found however, in reliance on *SK (Adoption not recognised in UK) (India)* [2006] UKAIT 00068, that paragraph 297(i)(f) of the Rules could apply because the Respondent was also the niece of the sponsor and was therefore could be considered as a 'relative' rather than an 'adopted child' under that paragraph. He found that there were "serious and compelling family or other considerations" which rendered the Respondent's exclusion undesirable under paragraph 297(i)(f) and allowed the appeal under the Immigration Rules and on Article 8 grounds.
8. The Appellant appealed on the single ground that Judge Howard had erred by making a material misdirection in law. As set out in the grounds of appeal to the Upper Tribunal and in submissions before me, there were two limbs to this ground. First, it was asserted that the judge had failed to apply the high threshold imposed by 'serious and compelling circumstances' and had failed to give reasons for his conclusion that the threshold was met on the evidence before him. Second, the Respondent contended that the judge had erred in allowing the appeal on Article 8 grounds in the alternative, because he had overlooked the prohibition in s83 Adoption and Children Act 2002 on bringing children into the UK where the Immigration Rules did not apply.

## **Paragraph 297(i)(f) of the Immigration Rules**

9. On behalf of the Appellant, Mr Wain focused on paragraphs 46-47 of Judge Howard's decision. He submitted that the judge had failed to identify the serious and compelling family or other considerations which he considered brought the case within paragraph 297(i)(f), and instead had focused exclusively on the fact that the sponsor and his wife had legal responsibility for the Respondent. Further, the judge's conclusion that the Respondent no longer had contact with her birth parents was not reasoned, and the judge had not addressed the evidence that the Respondent had lived with her birth parents.
10. The Appellant's criticisms of the judge on this issue are not in my view well founded. As Judge Howard recognised at §33 of his decision, the starting point for his consideration of the issues in the appeal was the decision of Judge Symes dated 13 March 2023, and the principles in *Devaseelan v SSHD* [2003] Imm AR 1 applied. The judge set out the relevant findings of Judge Symes at some length at §34, concluding at §35 that he was not satisfied that there were any reasons to depart from them. That conclusion was unarguably open to him on the evidence before him and given that the previous appeal had taken place only 15 months previously.
11. Judge Howard's conclusions at paragraphs 46-48 of the determination refer back to the findings of Judge Symes and have to be read in the context of those findings. It is clear, on a fair reading of the decision, that the legal responsibility of the sponsor and his wife for the Respondent was only one of the factors which the judge took into account. The judge was required to treat the best interests of the Respondent as a primary consideration (*Zoumbas v SSHD* [2013] UKSC 74) and found, in agreement with Judge Symes, that her best interests clearly lay in living with her adoptive parents.
12. In relation to paragraph 47 and the finding as to lack of contact between the Respondent and her birth parents, Judge Symes had found [§34] that the Respondent had remained with her birth parents for four months but with her adoptive parents thereafter, and that she was not wanted by her birth parents. Those findings were the starting point; the evidence before Judge Howard in the sponsor's witness statement was that the Respondent's birth parents had "purposefully cut all ties" with her and that she had no contact with her birth parents. Judge Howard's finding that there was an absence of contact between the Respondent and her birth parents was therefore unarguably one which was open to him on the evidence before him.
13. The judge properly directed himself to consider all the evidence in the round [§49] and his conclusion that the requirements of paragraph 297(i)(f) were met was one which was unarguably open to him. There was no error of law in his decision.

### **Article 8 outside the Rules**

14. With respect to Mr Wain, I did not find the Appellant's case on Article 8 outside the Rules to be easy to follow. The grounds of appeal asserted that, following paragraph 9 of *TY (Overseas Adoptions - Certificates of Eligibility) Jamaica* [2018] UKUT 00197 (IAC) and applying the prohibition on bringing children into the UK in s83 Adoption and Children Act 2002 ('s83') where the Immigration Rules do not otherwise provide, the judge was wrong to consider Article 8 outside the Rules at all.
15. In submissions, the case was put slightly differently. Mr Wain submitted that s83(1)(a) applied to the Respondent, and that there was therefore a statutory

prohibition on bringing the Respondent to the UK if she could not meet the Immigration Rules, but alternatively, if s83 did not apply then the existence of the statutory bar under s83 was a factor which the judge was nonetheless obliged to consider in assessing proportionality.

16. My conclusion on paragraph 297(i)(f) is dispositive of the appeal since I have found that there was no error in the conclusion that the Immigration Rules did apply, but for completeness I address the Appellant's alternative case.
17. The first difficulty for the Appellant is that the judge does not appear to have been addressed as to the relevance or application of s83. Although s83 was referred to in the review decision dated 27 February 2024, that was in the context of the lack of a certificate of eligibility and referred to the possibility of an offence being committed under s83(7) or (8); the argument now made to the Upper Tribunal does not appear to have been before the judge.
18. Even if the argument had been made, however, s83 would appear not to apply in the Respondent's case. s83(1) provides:

"This section applies where a person who is habitually resident in the British Islands (the "British resident")—

  - (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
  - (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of twelve months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person."
19. Neither 83(1)(a) nor (b) applied to the Respondent: she was not being brought into the UK "for the purpose of adoption", and her external adoption in Pakistan had taken place over twelve months previously. Section 83 did not apply to her case and there was therefore no bar to her being brought into the UK.
20. The judge was not obliged, when assessing Article 8 proportionality, to consider or weigh in the balance the existence of a statutory bar which did not apply to the Respondent. The judge considered relevant factors and correctly directed himself by reference to *Razgar* [2004] UKHL 21. There was no error of law in his approach.

### **Notice of Decision**

The decision of the First Tier Tribunal did not involve the making of an error of law and I decline to set it aside.

The Secretary of State's appeal is dismissed.

**L Hirst**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**15 November 2024**