



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

Case No: UI-2024-000703

First-tier Tribunal No: HU/50226/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 7<sup>th</sup> of January 2025

**Before**

**UPPER TRIBUNAL JUDGE LOUGHRAN**

**Between**

**NB**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E. Tripp, Counsel instructed by Sky Solicitors Ltd

For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 8 November 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, the sponsor and their children are granted anonymity.**

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

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Pakistan who was born on 8 September 1984. On 15 December 2021 the appellant and her children applied to join BA, the sponsor, as the partner or children of a refugee under paragraphs 352A or 352D of the

Immigration Rules, respectively. In decisions dated 19 December 2022 the respondent refused the applications and their human rights claims.

2. The appellant and her children appealed against the refusal of their human rights claims and in a decision dated 27 December 2023 First-tier Tribunal Judge Sweet dismissed their appeals. The judge found that the sponsor and first appellant were not in a genuine and subsisting relationship and did not intend to live permanently together and it was in the childrens' best interests to stay with their mother.
3. The appellant and her children applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by First-tier Tribunal Judge Sills on 26 February 2024.
4. The matter was listed before me on 30 August 2024 to determine whether the First-tier Tribunal had materially erred in law.
5. In an extempore decision after a hearing on 30 August 2024 (a copy of which is appended below), I set aside the decision of First-tier Tribunal Judge Sweet dismissing the appellant's and her childrens' appeals. I remade the decision in respect of the Appellant's children allowing their appeals pursuant to Article 8 ECHR.
6. I adjourned the appeal in respect of the Appellant and I now re-make the decision. I preserved the following findings:
  - (i) The appellants did not use deliberate deception in their previous applications.
  - (ii) The family relationship existed before the sponsor left Pakistan in order to come to the UK.

### Issues

7. Although these provisions have now been deleted from the Immigration Rules it is not in issue that the applicable legal framework was to be found in paragraphs 352A of the Immigration Rules.
8. The parties agree that the issue for me to determine is whether there is a genuine and subsisting relationship between the appellant and the sponsor and whether they intend to live permanently together.
9. Ms Ahmed confirmed that if I find in the positive, the appeal falls to be allowed under Article 8 ECHR.
10. If I find that the rule is not satisfied, I must consider whether the decision to refuse entry clearance is lawful pursuant to s6(1) Human Rights Act 1998.

### Relevant Factual Background

11. The appellant married the sponsor on 14 April 2007 in Pakistan. Their son was born on 21 January 2008 and their daughter was born on 15 September 2009.
12. The sponsor left Pakistan for the United Kingdom in 2010 and in 2018 he was granted refugee status in the United Kingdom.

13. The sponsor fled Pakistan after being attacked for helping the Christian community in his village. On 19 March 2017, the sponsor formally converted to Christianity.
14. After the sponsor fled Pakistan, he did not maintain contact with the appellant or their children. It is the sponsor's evidence that he could not contact the appellant because where she lived was remote and telephone and internet access were rare and he would not have been able to contact her without coming to the attention of others and he did not want to cause his family trouble.
15. In his asylum interview on 15 September 2018, the sponsor was asked if he had any relationships in the UK. He replied that he did. He was then asked how long he had been in his relationship for. The appellant replied that had lived with a woman from Poland for approximately two and half years. The sponsor confirmed that they were not married. The sponsor now states that he was not in a romantic relationship with this woman and they were just friends. They lived in the same house, but other people also lived in the same property.
16. In 2020, the sponsor made contact with the appellant through a friend of his. The sponsor asked someone he knew who travelled to Pakistan to try and locate his family and on his third attempt he found them. The sponsor and appellant started speaking regularly.
17. On 15 December 2021 the appellant and her two children applied to join, the sponsor, as the partner or children of a refugee under paragraphs 352A or 352D of the Immigration Rules, respectively.
18. On 7 February 2023, the sponsor travelled to Saudi Arabia to meet the appellant and their children who arrived on 8 February 2023. They spent one month in Saudi Arabia together, until 7 March 2023.

### The Evidence and Submissions

19. At the hearing, the sponsor gave oral evidence through an interpreter. He adopted his witness statement and was cross examined. Due to a lack of court time the parties were directed to file and serve written submissions, which they duly did.

### Findings

20. I have carefully considered all the evidence and the arguments made by the parties both in their pleadings and before me at the hearing.
21. As outlined above, the issue I am required to consider is whether the appellant and the sponsor intend to live permanently together and whether their relationship is genuine and subsisting.
22. I am not persuaded by the appellant's submission that 'the phrase "the relationship is genuine and subsisting"...' should be taken as marking only a requirement that the legal relationship established by a (valid) marriage must be subsisting.' The issue for me to determine is not whether the appellant and sponsor are in a valid marriage, but whether that marriage is 'genuine and subsisting' at the date of the hearing, which "requires an assessment of the current relationship between the parties and a decision as to whether in the

broadest sense it comprises a marriage properly described as “subsisting.” [GA (“Subsisting” marriage) Ghana [2006] UKAIT 00046.]

23. I note that there has been an exceptionally long interval of absence in the relationship between the appellant and the sponsor. However, I am satisfied that at the date of the hearing (and since the couple regained contact) the relationship is genuine and subsisting. There is no requirement that the relationship subsisted in the intervening period between the sponsor’s flight and the time of the appeal hearing. I am satisfied that there is a good reason for that omission. The purpose of the rule is to unite families who have had to separate for one of them to seek asylum. It is apparent that there may be a break of the subsistence of such relationships.
24. The respondent understandably relied on the sponsor’s statement in his asylum interview record that he was in a relationship with a woman from Poland. I have considered the sponsor’s asylum interview records. I note that the interview record records that whilst the sponsor’s purported relationship is being discussed there was a technical issue. The following is recorded: “applicant having difficulty seeing me, the interpreter and himself.” Although the sponsor states that he is in a relationship. I note that he describes them as having “been living together in this house for about two and half to two years.” He does not describe their relationship as being that length. I also note that when the sponsor is asked if he is married to her he responds “No sir, I am not married to this woman.” He is then asked about his wife and children in Pakistan and confirms that he has a wife and children in Pakistan but that he does not know their whereabouts. Later on in the interview at question 18, the sponsor explains that his friend provides him with a room that he doesn’t charge the sponsor for. At this point in the interview, he does not refer to cohabiting with a partner.
25. Having considered the asylum interviews records in detail and the sponsor’s explanation in his witness statement and oral evidence I am satisfied that the sponsor was not claiming to be in a relationship at the time of his interview and his statement that he was in a relationship arose as a result of a misunderstanding.
26. If I am wrong and the sponsor was in fact in a relationship for two years I am satisfied that this does not preclude him from being in a genuine and subsisting relationship with the appellant now.
27. I also accept the sponsor’s explanation as to why he lost contact with his family. I am not persuaded by the respondent’s submission that the sponsor has been inconsistent in his explanation. I am satisfied that the sponsor lost contact with the appellant on account of the lack of facilities in the village where they lived and because he was scared that attempts to make contact with them might put them at risk. I do not find this to be inconsistent.
28. I am not persuaded by the respondent’s submission that the sponsor’s explanation that there was a lack of facilities in the village where they lived is inconsistent with the fact that they use modern means of communication to stay in contact now. It was the sponsor’s evidence, which I accept, that he provided the appellant with a smart phone in 2021, after they regained contact.
29. I accept the sponsor and appellant’s evidence as to how they regained contact.

I'm not persuaded that their account is implausible or that I should give it limited weight because it is not corroborated by the man who made contact on the sponsor's behalf. I accept the sponsor's account that they could not obtain corroborative evidence from him because they fell out because the sponsor did not pay him rent.

30. The respondent accepts that the sponsor visited his family in Saudi Arabia, but submits that aspects of the sponsor and appellant's account of this trip are "incredible." I am not persuaded by the submission that the sponsor would not travel to Saudi Arabia and spend time in Makka and Medinah on account of his Christian conversion. Contrary to the respondent's submission I am satisfied that the appellant has provided sufficient evidence to demonstrate that the couple and their children met in Saudi Arabia and shared a hotel room together. I am also satisfied that the appellant has provided the tribunal with a sufficient amount of photographic evidence to demonstrate that the family were together in Saudi Arabia for the period claimed.

31. I have read and considered the messages between the appellant and sponsor and the evidence of video calls between them. I find that these clearly indicate that the couple are in a genuine and subsisting relationship and intend to live permanently together. I am not persuaded by the respondent's submission that the nature and frequency of the messages indicate that they are "manufactured." On the contrary, I am satisfied that the fact that appellant does not always apply to the sponsor's messages and that they are not all of an affectionate nature but discuss their children indicate a genuine and subsisting marriage, rather than an attempt to manufacture one.

32. I found the sponsor to be a witness of truth. I am satisfied that the appellant has provided sufficient evidence to discharge the burden of proof that they are in a genuine and subsisting relationship and intend to live permanently together.

33. The appellant has therefore shown, on a balance of probabilities, that she meets all of the requirements of the rule and it follows that her appeal must be allowed on human rights grounds.

### **Notice of Decision**

34. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.

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

**23 December 2024**



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

***Ex tempore decision***

Case Nos: UI-2024-000703  
UI-2024-000704  
UI-2024-000705  
First-tier Tribunal Nos: HU/50226/2023  
HU/50227/2023  
HU/50228/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

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**Before**

**UPPER TRIBUNAL JUDGE LOUGHRAN**

**Between**

**NB  
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**(ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr E Fripp, Counsel instructed by Sky Solicitors Ltd  
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 30 August 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants and sponsor are granted anonymity.**

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

**DECISION AND REASONS**

1. The appellants appeal with the permission of First-tier Tribunal Judge Sills against a decision of First-tier Tribunal Judge Sweet (“the judge”) dated 27 December 2023 dismissing the appellants’ appeal against the decision to refuse their human rights claims.
2. Mr Fripp represented the appellants and Mr Terrell represented the Secretary of State for the Home Department. I was provided with an appeal bundle of 583 pages. There was no Rule 24 response.
3. At the outset of the hearing I raised the issue of anonymity as this was a family refugee reunion claim and because two of the appellants are children. Mr Fripp requested that the appellants and sponsor be granted anonymity. Mr Terrell did not object and remained neutral on the issue. I granted the appellants and the sponsor anonymity.
4. The appellants are nationals of Pakistan. The first appellant is the mother of the second and third appellants. On 15 December 2021 the appellants applied to join BA, the sponsor, as the partner or children of a refugee under paragraphs 352A or 352D of the Immigration Rules, respectively. In decisions dated 19 December 2022 the respondent refused the applications and the appellants human rights claims.
5. The appellants appealed against the respondent’s decision and the appeal was heard before the judge on 21 December 2023. On that occasion the appellants were represented by Mr Fripp and the respondent was represented by Mr Williams, a Home Office Presenting Officer. The sponsor gave evidence at the hearing and both parties made submissions.
6. The judge accepted that the appellants had not used deliberate deception in respect of earlier applications because they were made by agents on their behalf.
7. The judge accepted the family relationship existed before the sponsor left Pakistan because he and the first appellant were married on 14 April 2007, their children were born in 2008 and 2009 and they were all listed in the family registration certificate.
8. The judge found that the sponsor and first appellant were not in a genuine and subsisting relationship and did not intend to live permanently together. The judge reached that conclusion because of the vagueness of the sponsor’s evidence generally, the fact that there had been no contact between 2010 and 2020 and there was not an explanation as to why contact was made in 2020. The judge also noted that during that period the sponsor had had a two year relationship with a Polish national that had ended in 2018.
9. The judge placed little weight on the sponsor’s evidence that he had visited Saudi Arabia in 2022 to make contact with the appellants because no corroborative documentary evidence had been provided.
10. The judge found that it was in the second and third appellants’ best interests to stay with their mother. The judge dismissed the appellants appeal.
11. The appellants applied for permission to appeal to the Upper Tribunal on the following grounds.

Ground 1. The judge failed to give adequate reasons for finding that the first appellant and the sponsor were not in a genuine and subsisting relationship and did not intend to live permanently together.

Ground 2. The judge acted unlawfully in placing weight on the lack of evidence corroborating the sponsor's trip to Saudi Arabia because corroborative evidence had subsequently been produced with the application for permission to appeal.

Ground 3. The judge failed to consider the second and third appellants' appeals separately. There is no requirement for the children of refugees and their sponsors to intend to live permanently together and for the relationship to be genuine and subsisting.

12. Permission was granted by First-tier Tribunal Judge Sills on 26 February 2024.
13. At the outset of the hearing Mr Terrell indicated that in respect of ground 3 he accepted that the judge had erred in his consideration of the second and third appellants' appeals. He accepted that the second and third appellants met the Immigration Rules and that the judge should have allowed their appeals. I am in agreement with this concession. I therefore set aside the First tier Tribunal decision in respect of the second and third appellants and remake the decision allowing their appeals. The parties agreed that this was the appropriate course of action.
14. I heard submissions from Mr Fripp and Mr Terrell in respect of grounds 1 and 2.
15. In respect of the first appellant I am satisfied that the judge materially erred by failing to give adequate reasons why the first appellant and the sponsor were not in a genuine and subsisting relationship and did not intend to live together permanently.
16. The judge accepted the first appellant and sponsor were in a relationship before the sponsor left Pakistan in 2010. The judge records the sponsor's evidence that he fled their village in Pakistan and went into hiding before travelling to the UK, that their village was remote and did not have internet or telephone facilities and that the first appellant is uneducated. These aspects of the sponsor's evidence are clearly relevant to the judge's consideration of the fact that there had been no contact between 2010 and 2020.
17. The judge also records the sponsor's evidence that he regained contact with the appellants in 2020 when a friend of his from the UK went to the appellants' address in Pakistan and made contact with them after three attempts. This aspect of the sponsor's evidence addresses why they regained contact in 2020.
18. Notwithstanding, the judge's description of the sponsor's evidence as vague it is not clear whether the judge accepted or rejected these aspects of the sponsor's evidence or what aspects of it he found unclear or vague or why he did so. I am satisfied that the judge failed to give adequate reasons for rejecting the sponsors evidence if that is indeed what he did.
19. I am also satisfied that the judge failed to consider that the lack of contact between 2010 and 2020 was (at least initially) caused by the sponsor fleeing persecution and that he was now a recognised refugee.



20. In respect of ground 2, I find the judge was entitled to take account of the sponsor's unexplained failure to provide corroborative evidence of his visit to Saudi Arabia. The fact that it was produced with the application for permission to appeal demonstrates that it was available to him and could have produced. [*TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40]
21. However, for the reasons I have already given I find that the judge materially erred in dismissing the first appellants appeal and accordingly, I set aside the decision.

### **Notice of decision**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside in its entirety.
- (2) I remake the decision in respect of the second and third appellants, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, allowing their appeals pursuant to Article 8 ECHR.
- (3) I adjourn the appeal in respect of the first appellant and direct that it be re-made in the Upper Tribunal on a date to be fixed with a time estimate of 2 hours. An Urdu interpreter will be booked.
- (4) The following findings of fact are preserved:
  - (i) The appellants did not use deliberate deception in their previous applications.
  - (ii) The family relationship existed before the sponsor left Pakistan in order to come to the UK.
- (5) If either party wishes to adduce any further evidence, this must be served in electronic format on the other party and the Upper Tribunal at least 10 working days before the next hearing, accompanied by an application made pursuant to rule 15 (2A) of the Tribunals Procedure (Upper Tribunal) Rules 2008.

**G.Loughran**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Transcript approved on 23 September 2024**