



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004322

First-tier Tribunal No:
HU/55696/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of January 2025

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

FAUZIA FAROOQ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. H. Broachwalla, instructed by Friends Solicitors

For the Respondent: Ms S. Cunha, Senior Home Office Presenting Officer

Heard at Field House on 20 December 2024

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Plowright (“the Judge”) dismissing her appeal against the refusal of her application for entry clearance as the parent of a British citizen child.
2. It is common ground that the appellant is the mother of a British citizen child, with whom she is living in Pakistan. In her entry clearance application of 19 January 2023, she stated that she had previously lived in the UK as the spouse of a British citizen, and her British daughter had been born in the UK. The marriage had ended in divorce, and she and her

daughter had returned to Pakistan together. She said that she was applying for entry clearance because

“my daughter has her fundamental and constitutional right to live in the UK and enjoy privileges of life style in the UK. She has the right to enjoy the UK culture, traditions, life style, education, weather, health felicities [sic]etc [...] My daughter is of tender age and my presence around her [...] is important for her well-being.”

3. The respondent refused the application on the grounds that the appellant did not meet the relationship requirements of Para. E-ECPT.2.1-2.10 of Appendix FM because her daughter was not living in the UK as required by Para. E-ECPT.2.2.(b) and she had failed to provide evidence that she had sole parental responsibility for her as required by Para. E-ECPT.2.3(a) and E-ECPT.2.4. The respondent further found that the financial requirements of Appendix FM were not met, and that the refusal of the application would not have unjustifiably harsh consequences for the appellant or her child. In the refusal decision, the respondent had also noted the absence of the necessary English language and TB certificates, but these issues had fallen away by the time of the appeal hearing.
4. At the appeal, the Judge had before him a 57-page bundle from the appellant, a skeleton argument by Mr Broachwalla, and a 36-page respondent’s bundle. He heard evidence from a single witness, the appellant’s UK-based financial sponsor, Mr Syed Tahir Abbas.
5. In the challenged decision, Judge Plowright set out at [14] that the issues before him were:
 - (i) Does the appellant meet the eligibility relationship requirement?
 - (ii) Can the appellant be adequately maintained without recourse to public funds?
 - (iii) Does the appellant meet the requirements of GEN.3.2?
 - (iv) Would there be a breach of Article 8 if the appellant were refused entry to the UK?
6. The Judge began his “Discussion and Findings” by noting that the respondent had considered the appellant’s entry clearance application under Para. E-ECPT, which is entitled “Family Life as a parent of a child in the UK”, and that the appellant’s child was in fact living with her in Pakistan [18]. He then set out the relationship requirements of that paragraph in full [19], before finding that the appellant met some of those requirements but did not meet E-ECPT.2.2(b), because her daughter was not living in the UK [21].
7. The Judge then turned to consider the issue of sole responsibility, which he noted that the appellant was required to show under E-ECPT.2.3 [22]. He directed himself to the leading caselaw on sole responsibility at [23], before setting out at [25-30] the appellant’s evidence on this point. This consisted of:

- (i) her statement on the application form that she had been living with her daughter in Pakistan since her divorce and “has sole responsibility” for her;
- (ii) “An undertaking dated 13 October 2021, in which the appellant states that she is the biological mother of her daughter; she is divorced and her ex-husband lives abroad; she has responsibility for taking care of her child.”
- (iii) “A divorce deed made on 05 February 2020 in which her ex-husband gives his address in Saudi Arabia. [...] At paragraph 6 of this document he states that his daughter is 4 years old and ‘she will be living to her Mother and I will be fully responsible to bear my daughter’s all expenses on my shoulders.’”
- (iv) The appellant’s witness statement for the appeal, dated 20 March 2024.
- (v) A witness statement from Mr Abbas, in which he states that the appellant has “sole responsibility for her daughter” and Mr Tahir’s oral evidence, in which he stated that “he knows that the appellant’s daughter’s father is in the UK but he does not know where in the UK. He said that the appellant’s daughter’s father has no contact with his daughter and no involvement in his daughter’s life.”

8. At [31], he summarised this evidence as follows:

“Although the appellant has repeatedly stated that she has sole responsibility for her daughter, the evidence relating to the appellant, her daughter, and the appellant’s daughter’s biological father is very limited.”

9. He then considered a range of facts. These included that the appellant said that she had left the UK because her relationship with her child’s father had broken down, but that the divorce decree showed that they had not divorced until almost three years later [32]. He noted that the divorce decree stated that the father was living in Saudi Arabia and would be “fully responsible for his daughter’s expenses, which seems to suggest that at that time, he did intend to have some role in his daughter’s life and had not abandoned his daughter.” Although he acknowledged that Mr Abbas’ evidence was that he believed that the child’s father was now living in the UK, he found that he “had no clear picture as to where the appellant’s husband is”[33]. He noted the very limited evidence about the current circumstances of the appellant, her child, or the child’s father, before concluding that he was not satisfied that the appellant had sole responsibility for her daughter [34].

10. At [35-38], the Judge considered the evidence of the appellant’s work history and her job offer in the UK, alongside the evidence of Mr Abbas’ financial situation and his offer of accommodation and support. He concluded that the financial requirements of the rules were met.

11. Because the appellant could not meet the relationship requirements of the Rules, the Judge then turn to consider whether the refusal of entry

clearance would have unjustifiably harsh consequences for the appellant or her daughter, in accordance with Para. GEN 3.2. He noted that the appellant's daughter was a British citizen and had a right to come to the UK, and accepted that she could not exercise that right if her mother were not granted entry clearance. He reminded himself of the need to take account of the child's best interests [42]. However, the "difficulty in this case is that there is so little evidence" about the child's circumstances, beyond that she had been living with her mother in Karachi for seven years and was going to school. There was nothing to suggest her welfare needs were not being met. He reiterated that he found it "unclear" what role her father had in her life [42]. Although it was "harsh" not to allow the appellant's mother to come to the UK with her daughter, on this evidence it was not "unjustifiably harsh" [43].

12. As to Article 8, the appellant's private and family life were established in Karachi, and the decision would not interfere with them.

The appellant's grounds of appeal

13. The appellant was granted permission to appeal on all grounds. These are:
- (i) The Judge's assessment of the requirements of Para. E-ECPT.2.2.(b) was flawed, because although "in principle" the Rule required the child to be living in the UK, the online application form is "far more flexible" and "clearly envisages circumstances" in which the parent of a child living abroad could be granted entry clearance, because it asks the applicant to identify "the person you are joining or accompanying".
 - (ii) The Judge failed to consider the appellant's or the sponsor's evidence about the sole responsibility issue, and in particular failed to make an assessment of whether that evidence was credible.
 - (iii) In assessing whether the appellant had sole responsibility, the Judge erred by failing to take into account the inherent difficulty of proving a negative, namely the father's lack of involvement in the child's life.
 - (iv) The Judge's assessment of the GEN 3.2. and Article 8 issues was flawed in that:
 - a. He failed to take into account the appellant's statement about the limited educational and health care resources available to the child in Pakistan; and
 - b. He failed to take into account that the application would have succeeded if the child were in the UK; this was described as a "reverse Chikwamba type argument."

The hearing

14. The appeal came before on a hybrid basis; I was present at Field House and both representatives appeared by CVP link. I heard submissions from

both representatives, which I have taken into account and which I will refer to where relevant in the discussion below.

Discussion

15. I consider that Ground One is entirely without merit. The title and the contents of the relevant rule are clear and unambiguous: the child must be in the UK. The reported decision of the Upper Tribunal in SD (British citizen children – entry clearance) Sri Lanka [2020] UKUT 00043(IAC) [51], moreover, confirmed that “there is no path [...] for parents of a British citizen child not living in the UK under the main routes to entry clearance set out in Appendix FM.”
16. The generic question on the application form on which the appellant relies does nothing more than allow the respondent to consider applications from parents accompanying their British children to the UK, i.e. applications made in reliance on GEN 3.2 or outside the rules. Given that the discussion in SD suggests that there may well be specific circumstances in which entry clearance is required by either GEN 3.2. or Article 8, it is sensible that the form is designed in this way. It is not arguable that the Judge should have therefore considered that the rule did not mean what it plainly says. As I indicated to Mr Broachwalla, this ground of appeal is so hopeless that it should not have been raised. Indeed, the appellant was only granted permission to appeal on this ground because the First-tier Tribunal Judge considering the application considered the contents of E-ECPT 2.2.(c), rather than E-ECPT.2.2(b). Nor is there any indication that this argument was put to the Judge below; it is not raised in the appellant’s skeleton argument or referred to in the decision as having been made in submissions.
17. Ground 2 is, at first glance, the appellant’s strongest ground, at least with regard to the sponsor’s evidence. The Judge was clearly willing to accept Mr Abbas’ evidence with regard to his own financial position and his intention to support and accommodate the appellant and her daughter, and he did not explicitly reject his statement in his oral evidence that the child’s father played no role in her life. Nonetheless, reading the decision as a whole, it is apparent that the Judge was not willing to accept Mr Abbas’ oral evidence about the father. He may not have believed Mr Abbas was telling the truth on this issue, or he may have thought that Mr Abbas did not have sufficient direct knowledge to be a reliable source (he refers to his “belief” that the father lived in the UK, which suggests that the evidence was tentative), but he does not say which.
18. It might have been helpful if the Judge had said whether he considered Mr Abbas untruthful or uninformed, but I am mindful of the principle that First-tier Tribunal judges are not required to set out every step in their reasoning, and that their reasons must be read as a whole. The Judge’s failure explicitly to reject Mr Abbas’ statement about the father’s lack of involvement in the child’s life has to be seen in the context of his overall consideration of the sole responsibility issue. His repeated finding was that

the evidence before him was little more than a bare assertion, and that a bare assertion was insufficient to meet the appellant's burden of proof. That finding was clearly open to him.

19. There is no merit to the assertion in Ground Two that the Judge failed to consider the appellant's evidence properly. There is nothing that he has overlooked. He lists and considers the contents of all of the evidence before him. He then gives reasons for finding that it is insufficient to establish sole responsibility: the details of the divorce decree contradict the appellant's statements about when she and her husband divorced, there is no evidence of the father's whereabouts other than what Mr Abbas "believes", the divorce decree indicated that the father was at least initially intending to continue to provide the child with financial support, and the appellant had provided very little evidence about her and her daughter's current circumstances.
20. Given the paucity of evidence, the Judge was entitled to find that the appellant had done nothing more than assert that she had sole responsibility; she had not proven it. It is no legal error for a judge to find that evidence is insufficient to prove an assertion without making a specific finding that a person is not credible.
21. Ground Three is not made out. As noted above, there was very little evidence to confirm that the appellant had sole responsibility for her daughter. Although it is theoretically difficult to prove a negative, there is a range of types of evidence that could have assisted, such as a more detailed statement from the appellant or her sponsor, letters of support from friends and relatives, letters from the child's doctor or her school, or even a statement from the father himself confirming that he has ceased providing the support he intended to provide at the date of divorce. Mr Broachwalla acknowledged as much at the hearing before me. Not only did the appellant provide no such evidence, she does not even indicate that she tried to obtain it but struggled to do so.
22. Moreover, even if the Judge had erred in his determination of the sole responsibility issue, this error would not have been material. The question of sole responsibility only arose because it is a requirement of the rules, and the appellant could not meet the rules in any event because her daughter was not living in the UK.
23. Ground Four is a challenge to the Judge's assessment that effectively preventing the appellant's child from settling in the UK would have "harsh" but not "unjustifiably harsh" consequences. As discussed at some length in SD at [41-42] and [61-71], determining whether effectively denying a British citizen the opportunity to settle in the UK is "unjustifiably harsh" as defined at GEN 3.2 or disproportionate under Article 8 requires a careful assessment of the individual child's actual circumstances. This essentially disposes of the "reverse Chikwamba" argument.

24. As to this child's individual circumstances, it is necessary to return again to the very limited evidence that was before the Judge. This showed that:
- (i) The child was living in Karachi with her mother;
 - (ii) Her mother was in permanent employment and held savings of over 500,000 PKR;
 - (iii) She was enrolled at the City School, and was considered a "brilliant student";
 - (iv) According to her mother's statement, she "yearns" to live in Britain and enjoy its mild weather, green landscapes, and the "facilities and opportunities that British children enjoy as part of their everyday lives"; and
 - (v) Also according to her mother's statement, "the healthcare facilities available to us are often overburdened and unable to meet the healthcare needs of my child adequately."
25. The rest of the mother's statement consists of vague and generalised assertions about differences between conditions in her "region" or "locality" and in the UK. She refers to "economic hardships prevalent in our region" and to the "disparities in access to education and healthcare between British nationals residing in the United Kingdom and those, like my child, living in regions where poverty significantly impacts the quality of life." She does not say that her child has been affected by economic hardship or poverty, and she does not even specify what region she is referring to – it could be South Asia, Pakistan or Sindh. The most specific statement she makes is:
- "The educational institutions in our locality struggle with inadequate infrastructure, limited resources, and a lack of qualified educators. This presents a formidable challenge in providing Miss. [name of child] with the quality education necessary for their development and future prospects. Furthermore, the healthcare facilities available to us are often overburdened and unable to meet the healthcare needs of my child adequately."
26. Even here, the appellant does not say that her own daughter's school struggles with any of these issues, and she does not specify what healthcare needs her daughter has and how often and to what extent her those needs have not been adequately met.
27. In short, the appellant's case was that education and health care in her "region" and her "locality" are, in general, of poorer quality than in Britain, and that "often" her child's health needs were not adequately met in some unspecified way.
28. This failure to put forward any specific evidence of the child's circumstances in Pakistan was reflected in the skeleton argument below, where the argument concerning the child's best interests consisted merely of the assertion that she would "lose the benefits of being a British Citizen

until she turns 18 (or longer). She is missing out on life, culture and other benefits of being a British national.”

29. It was undoubtedly open to the Judge to find that this consequence was not unjustifiably harsh, especially in light of the detailed guidance in SD.
30. For the foregoing reasons, I am satisfied that the appellant’s grounds do not disclose any error of law. I therefore uphold the decision of the First-tier Tribunal with the consequence that the appellant’s appeal remains dismissed.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Plowright promulgated on 28 May 2024 did not involve the making of an error of law. I therefore uphold that decision with the consequence that the appellant’s appeal remains dismissed.

E. Ruddick
Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 January 2025