Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/21792/2012
VA/21856/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 31 October 2013	**On 01 November 2013**
	……

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MRS NOOR JAHAN
MISS QURAT ULAIN KHAN
(anonymity order not made)

Appellant

and

ENTRY CLEARANCE OFFICER
ABU DHABI

Respondent

Representation:

For the Appellant: Mr S Otchere, Solicitor
For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. These linked appeals of mother and daughter come before me following the grant of permission to appeal by First-tier Tribunal Judge Frankish on 9 August 2013. The appellants are from Pakistan and were born on 17 March 1956 and 27 November 1982 respectively. They seek entry clearance to visit the sponsor, Sohail Khawar. He is

married to the first appellant's daughter. Their applications were refused by the respondent on 7 June 2012. The ECO was not satisfied about their circumstances in Pakistan, their social and economic ties or that they would be adequately maintained and accommodated in the UK or that they would leave the UK after their visit. They did not request an oral hearing and the appeals were determined on the papers and dismissed by First-tier Tribunal Judge Devittie by way of a determination dated 25 April 2013. The challenge to that determination led to these proceedings.

2. The appellants had also previously been refused entry clearance but their challenge against that refusal led to a successful appeal in 2007. A copy of the determination of Judge Neilson based in Glasgow is included in the court file.

Error of law hearing

3. Four grounds for permission are put forward. The first is that the judge ignored the fundamental concept of *res judicata* and erred in making findings on issues already addressed in the 2007 determination. The second is that there was unfairness because the respondent did not comply with directions "until the date of the decision". The third ground is that the judge referred in his determination to photographs being provided whereas it is maintained that the appellants did not submit any photographs. Finally it is argued that the appellants paid separate fees and their appeals should not have been treated as one.

4. At the hearing I heard submissions from Mr Otchere. He conceded that it was difficult to criticise the judge's determination and accepted that the judge had considered relevant matters and had not taken account of irrelevant matters. However, he nevertheless submitted that the sponsor was settled and had sufficient resources to support the appellants. He had not been able to attend the hearing. Mr Otchere did not argue the first two points made in the grounds.

5. Ms Kiss responded briefly in view of Mr Otchere's submissions. She added, however, that there had been discrepancies between the statements of the sponsor and his wife with regard to their address which gave further cause for concern and which reinforced the ECO's refusal. She submitted that the judge had properly considered the evidence and his determination could not be criticised.

6. Mr Otchere stated that the sponsor and his wife were going through a divorce hence the different addresses. He accepted that this impacted upon the issue of accommodation particularly as the sponsor had failed to attend the hearing.

7. At the conclusion of the hearing I gave reasons as to why I intended to uphold the judge's determination. These are set out below.

Findings and conclusions

8. There is no merit whatsoever in the first ground. The reported decision in Mobu and Others (immigration appeals – res judicata) [2012] UKUT 00398 (IAC) makes it plain that the principle of res judicata does not operate in immigration appeals). A copy of

this determination was handed to the parties at the start of the hearing; I can only comment that the author of the grounds should have been familiar with it. In the circumstances, Mr Otchere quite properly did not then seek to pursue that argument.

9. The second ground is difficult to follow and Mr Otchere was unable to clarify the point. The respondent and appellant were issued with directions that any further documentary evidence to be relied on should be provided within a certain time frame. The respondent's appeals bundle was received by the Tribunal on 7 January 2013. A copy was made available to the appellants and their representatives. The appellants submitted further documentary evidence through their sponsor. The judge determined the appeal on 27 March 2013. He had both bundles before him. The complaint that the appellants were somehow disadvantaged by the respondent's failure to comply with directions "until the date of the decision" is incomprehensible. There were no additional documents the respondent chose to submit once the bundle had been served and the appellants had all those documents well before the judge came to determine the appeal and so had the opportunity to comments on them, and indeed did so.

10. The third complaint is that the judge referred to photographs which were on file and which had no relevance to these appellants. It is quite correct that there are some photographs on file and that the judge referred to having these at paragraph 6. I accept they do not relate to these appellants as they show individuals with turbans and the appellants are not Sikhs. How they got on the Tribunal file is unclear. What is clear, however, is that the photographs played no role in the judge's decision making. He did not refer to them in his reasons for dismissing the appeals and Mr Otchere confirmed that it was not suggested that the judge had relied on any documents which did not pertain to the two appellants.

11. The last criticism is that the judge should have prepared two separate determinations. However, there is no clarification on why a failure to do so is an error of law. The judge plainly dealt with the two appellants as individuals in his determination. He sets out the circumstances of both and then the different reasons for refusal given by the ECO. He then considers the evidence. It should be noted that the same documents were relied on in both cases. He then proceeds to set out his reasons for rejecting the case of the first appellant followed by the reasons for rejecting the case of the second appellant. The fact that all this is contained in a single determination is hardly surprising given the fact that the appellants are mother and daughter seeking to visit the same sponsor. It certainly does not amount to an error of law.

12. The judge gave clear and sustainable reasons for finding that the requirements of the rules had not been met. In doing so he gave full regard to previous visits made by the appellants. His conclusions are wholly sustainable and do not disclose any errors of law. It should also be pointed out that there was no challenge in the grounds to the judge's findings on the lack of evidence regarding accommodation. Even if the grounds had some substance, therefore, which they do not, the appeals would have failed on that basis alone. The issue was specifically raised in the refusals by the ECO

yet no independent documentary evidence to address the ECO's concerns was adduced at any stage. I am now told that the sponsor and his wife live apart as they are going through a divorce. That only serves to reinforce the judge's findings on the difficulties regarding accommodation. It is open to the appellants to make fresh entry clearance applications she they wish to do so on the basis of the change in the sponsor's circumstances. However, if they choose that route, they should ensure that all the necessary evidence is adduced.

Decision

13. The First-tier Tribunal Judge did not make any errors of law and his determination dismissing both appeals is upheld.

Signed

Dr R Kekić
Upper Tribunal Judge
31 October 2013