



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/07825/2013
OA/07830/2013
OA/07836/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 24 February 2014**

**Determination Promulgated
On 25 March 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

**MAHWASH TAHIR
MUHAMMAD GHULAM MUSTAFA AHMAD TAHIR
MUHAMMAD ALI TAHIR**

Appellants

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellants: Ms V Easty, Counsel, instructed by Farani Javid Taylor Solicitors
LLP
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, a sister and two brothers, are all citizens of Pakistan born respectively on 20 January 1996, 21 September 1997 and 1 February 2001. They appeal against the respondent's decision to refuse to grant them entry clearance to come to the United Kingdom for settlement as the dependent children of Tahir Mehmood Younes (the sponsor).
2. Currently, the three appellants live with their paternal grandmother in the family home. It is proposed that they would come to live with the sponsor, his second wife and their three children at an address in Croydon, Surrey.
3. In her Visa Application Form dated 13 November 2012, the first appellant indicated that she sees the sponsor "every few years" and speaks to him on the telephone "everyday". In fact the sponsor left Pakistan in October 2007 and returned only once before November 2012 and that was in 2009. He has subsequently returned for a visit in 2013.
4. Two issues arose for consideration in the course of the appeal. The first was whether or not paragraph 297 of the Immigration Rules was satisfied, particularly whether the sponsor had had sole responsibility for the upbringing of the appellants. The conclusion of the First-tier Tribunal Judge was that he had not. The second issue was, notwithstanding that the appellants failed to meet the Rules, whether on the basis of Article 8 of the ECHR there should be family unity in the United Kingdom. Once again, the Judge concluded that Article 8 was not engaged in the circumstances of this case.
5. Grounds of appeal were submitted against that decision. Complaint is made that many findings of fact were based on presumptions by the Immigration Judge that were in reality distortions of the truth. Secondly, it was contended that the Immigration Judge allowed the findings as to sole responsibility to cloud the issue as to Article 8 of the ECHR. In particular, it was contended that the Judge was in error in stating that there was no family life as between the appellants and the sponsor.
6. Permission to appeal was granted on the basis of a lack of focus in respect of Article 8 of the ECHR. Thus the matter comes before me in pursuance of that grant.
7. I was presented with a bundle of documents that was before the First-tier Tribunal.
8. Ms Easty, who represents the appellants, submitted that the approach taken by the First-tier Tribunal Judge towards the sponsor was an unfair one. The Judge at paragraph 8 of the determination did not find the sponsor to be a witness of truth for a number of reasons, in particular that there was little financial evidence documenting the transfer of funds to Rawalpindi and very little indication of any transfer of funds from the sponsor to his divorced wife. This was in relation to the

contention made by the sponsor that he had assumed financial responsibility for the children and would send funds to his wife for them.

9. Ms Easty submits that it was not in issue that the sponsor could meet the maintenance requirements. Therefore it was not to be expected that the Tribunal would be concerned with the financial documents of the sponsor. She indicated that indeed he had such documents at court and could have produced them had he been so requested. She invited me to find that the Judge was in error as to what evidence was or was not properly to be produced.
10. It seems to me, however, that that is to misunderstand the nature of the concerns as expressed by the ECO in the decisions of refusal. It was noted that the sponsor claimed that he transferred money to the appellants via their mother because neither the grandmother nor the appellants had bank accounts. Concerns were expressed that, in the absence of documentation, such position that did not in fact exist. It was noted also that there was no evidence that the sponsor was responsible for making major decisions for the appellants. What the ECO was seeking was some documentary confirmation as to the level of support and/or involvement with the appellants, both financially and in all other ways by the sponsor. Such a lack of documentation gave rise to the concern by the Immigration Judge that the sponsor was not as involved in the lives of the appellants as he claims. It seems to me that that is a proper avenue of approach. I find that in the circumstances the Judge was entitled to make the comments that were made.
11. It was highlighted in the reasons for refusal the need to show that the sponsor took important decisions in the lives of his children. Part of that duty would be the responsibility to take decisions as to education and school life. The Judge notes, particularly at paragraph 8(e) that there is little indication of evidence of those matters.
12. The lack of documentation to show the involvement of the sponsor in the lives of the appellants was, as I so find, a relevant consideration.
13. The Judge having considered the evidence as a whole, concluded that essentially the sponsor had left the responsibility for looking after the appellants to the grandmother. It was also the finding of the Judge that the appellants' natural mother was more closely involved with them than has been presented. Once again, it seems to me that those are findings properly open to be made.
14. Ms Easty asked me to find that certain remarks by the Judge in the determination were more by speculation and seemed to reflect undue criticism of the sponsor for his having left the appellants when he came to the United Kingdom. Although there perhaps are some strong comments, I find that they were open to be made within the overall matrix and context of the case.

15. The thrust of the appeal was, however, based upon the seeming lack of application of the case of Razgar to Article 8 of the ECHR. It was contended that the Judge failed to consider the best interests of the appellants and had been quite wrong in finding that there had been no family life with the appellants. In particular, the evidence was that the appellants kept in contact both with the sponsor and with their step-siblings on a regular basis through telephone and through Skype and that it was wholly wrong therefore to discount the importance of family unity.
16. Mr Richards, who represented the respondent, invited me to find that the Judge properly considered the issue of sole responsibility and that it was a fair comment that there was a lack of supporting evidence for it.
17. He invited me to find that when looked at as a whole, the determination dealt with the Article 8 issues as well as considering the best interests of the appellants. It was not necessary to spell out in great detail the principles providing they had been properly applied.
18. It may well be that the comments in paragraph 11 as to Article 8 of the ECHR would seem, on their face, to be unduly brief and dismissive of the case. It was of course for the Judge to bear in mind the circumstances in which the appellants lived in Pakistan and to determine whether or not, in all the circumstances, there should be unification of them with their family in London.
19. It seems to me, however, that the criticisms made of paragraph 11 fail to take into account that throughout the determination there has been a careful assessment as to the family situation of the appellants and of the sponsor.
20. The starting point for the consideration of Article 8 really lies within the detail of paragraph 9 of the determination.
21. The sponsor left the three appellants six years before the hearing when they were aged 11, 10 and 5 in order to seek economic betterment in the United Kingdom. During those six years, the appellants' father sponsored their stepmother to live in the United Kingdom and fathered three further children, none of whom seemingly have been introduced to the appellants save through the medium of Skype and other communication.
22. During these years, the appellants lived with their paternal grandparents and more recently with their grandmother only.
23. Into that mix were the findings made by the Immigration Judge that the involvement of the appellants' mother was at a higher level than claimed and that she was in closer proximity to them as was alleged. The Judge, for the reasons as set out at paragraph 9(f) did not consider that the natural mother had abdicated all responsibility for the children. In any event, the Judge was not satisfied that the

sponsor had taken very much upon himself in terms of monitoring or directing the appellants' schooling.

24. A significant feature in this particular case is that it is proposed that the three appellants come and live with the sponsor and his wife and his three children in the United Kingdom. As the Judge noted, there seemed to be no evidence from the sponsor's current wife, the appellants' stepmother, as to her support for this application, nor is there any indication from the three children who live in the United Kingdom of what contact they have with the appellants. It would be reasonable to expect that there should be some indication from the stepmother as to her attitude towards the sponsor's three other children arriving.
25. The Judge at paragraph 9(g) considered the best interests of the appellants and noted that their home, their family, their schools, and their friends, and their culture lie in Pakistan. He noted in particular the first appellant was enrolled in a course of tertiary education.
26. The Judge also considered what the appellants themselves had written about their situation and circumstances seen in paragraph 8(a)(i)-(iv). The Judge did not find that that which they had written in support of their application rang true. Reasons are given for such conclusions which in my view are properly sustainable.
27. Although perhaps the Judge was in error in stating the issue on Article 8 in the terms which has been done, it is difficult from the paucity of information as presented, given the lack of credibility findings so far as the sponsor is concerned, to determine the precise contact which he has with them. It may well be that there is indeed Skype contact but the Judge did not accept the quality of the relationship that was claimed or the way in which matters are expressed by them as to their relationship with their father.
28. There is within the bundle of documents presented a marked absence of any statement from the sponsor's present wife or indeed of the three children in the United Kingdom speaking as to the quality of their contact with the appellants or of the nature of the family life which they enjoy with them.
29. I note in particular the witness statement of the first appellant dated 30 October 2013. In that statement she speaks of her mother having moved to Rawalpindi, that she and her siblings were getting used to the fact that she was not around. As the Judge noted, if finances were submitted to the mother in Rawalpindi such would involve a long journey to see the appellants and it was far from clear how the finances for their welfare could be managed.
30. The first appellant speaks of the conversations with her father being long and meaningful and that he would discuss in detail their progress at school and how they were coping with their daily lives. That did not seem to reflect the knowledge of the sponsor or his lack of involvement with their education. There was no mention in

that statement of any contact with the step-siblings or indeed with the stepmother. Rather the first appellant concludes her statement by saying she does not wish to be a burden upon her grandmother.

31. Mention is made in passing that there is a great relationship with the half-brothers and stepmother but no details have been provided nor indeed, as I have indicated, have they written any statement to assist in that respect. It is clear from the determination that the Judge has considered in detail the statements made by the appellants and has given such weight to them as is appropriate in all the circumstances.
32. There are in effect two families, one in the United Kingdom and one in Pakistan. There is a paucity of information or evidence concerning contact of one with the other, other than with the sponsor.
33. It is clear that had the Judge structured the consideration of Article 8 in the proper way and applied the facts as found to be, the conclusion would have been inevitable, namely that there was no imperative for family unity and that the best interests of the appellants were served by their remaining in Pakistan. The building blocks for a full structured consideration of Article 8 were within the determination and the findings properly open to be made.
35. In the circumstances, therefore, I do not find there to be a material error of law. The decision shall therefore stand, namely that the appeal in respect of the Immigration Rules is dismissed and that in respect of Article 8 of the ECHR is also dismissed.

Signed

Date

Upper Tribunal Judge King TD