



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/18692/2012

THE IMMIGRATION ACTS

Heard at Field House
On 7th March 2014

Determination Promulgated
On 28th March 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS KANWAL SHAHZADI

Respondent/ Claimant

Representation:

For the Appellant: Mr G .Lee, Counsel, instructed by H& M, Solicitors
For the Respondent: Mr C Avery, Home Office Presenting officer

DETERMINATION AND REASONS

1. The claimant is a citizen of Pakistan born on 9 March 1992. She seeks to appeal against the decision of the Secretary of State for the Home Department dated 13 July 2012 refusing to grant her entry clearance under Rule 297(i) of the Immigration Rules

to enter the United Kingdom as a child of a relative present and settled in the United Kingdom.

2. Initially and at the same occasion her brother Wagas Ali Khan born 8 July 1993 had also submitted an application. That had been refused also but now granted.
3. Both the appellant and her brother sought to appeal against the refusals, which appeals came before First-tier Tribunal Judge Trevaskis on 14 October 2013.
4. It was found that the claimant's brother satisfied the Immigration Rules not least because he was under 18 by two days when the application was made in 2011. The claimant herself was over 18 and therefore the pathway to satisfy the ingredients of the Immigration Rules was somewhat different. In that respect she did not succeed for the reasons as set out in paragraph 35 of the determination as follows:-

"I am not satisfied that the second appellant is living alone in the most exceptional compassionate circumstances; she lives with her brother and her grandmother in her family home which is comfortable; she attends college; there is no evidence that she is suffering from any adverse treatment in the community where she lives, as claimed by the sponsor."

5. Nevertheless the Judge went on to consider Article 8 of the ECHR, particularly given the successful appeal of her brother. It was the finding of the Judge that Article 8 of the ECHR was engaged therefore her appeal was allowed on that basis.
6. The Secretary of State for the Home Department seeks to appeal against that decision essentially on the basis that the Judge has made contradictory findings as between paragraph 35 of the determination and paragraph 40. The findings that the appellant would be at risk and exploited had not been objectively verified and little reason has been given for that conclusion. It was contended that the Judge failed to adequately to address the issue of proportionality. Leave was granted.
7. Thus the matter comes before me in pursuance of that grant of leave.
8. Mr Lee, who represents the appellant, submitted that there was no illogicality in the approach to the matter taken by the Judge.
9. The first step that needed to be considered was whether or not the appellant met the Immigration Rules and it was the conclusion of the Judge that she had not for the reasons as set out in paragraph 35.
10. That did not, however, exclude further consideration of the appeal under Article 8 of the ECHR and looking at appropriate wider considerations. The Judge properly took into account that the appellant's situation and circumstances would fundamentally change when her brother left her to join her father in the United Kingdom. There would then be no close family members left other than her grandmother. It was also

submitted that the Judge was entitled to rely upon what the sponsor said as to the safety of his daughter, accordingly it was properly open to the Judge to have dealt with the matter as set out in the determination.

11. There is a slight difficulty in relation to that particular argument. The evidence of the sponsor is recorded at paragraph 10 of the determination :

“the current situation in Pakistan is dangerous for the appellants, particularly the second appellant; as a single woman with no parents to protect her, she is vulnerable to abduction.”

12. That evidence of the sponsor was not accepted in its entirety, as can be seen from the phraseology in paragraph 35 ,because the Judge comments “there is no evidence that she is suffering from any adverse treatment in the community where she lives, as claimed by the sponsor”. The Secretary of State for the Home Department is understandably concerned that the Judge’s findings have not been supported by any objective evidence and are therefore flawed. It is somewhat of a leap from a comfortable family home and college and no adverse treatment in the community to one in which she needs protection to move safely in public areas and prevent her being exploited as a single woman.
13. Nevertheless it seems clear to me that the Judge was entitled in paragraphs 39 and 40 to consider the wider implications of the departure of the brother. It is significant that they are very much of an age, she being just over a year older than her brother. It is reasonable to accept that there is a close family bond as between the two of them as they had always lived together as separate from other family members.
14. A bundle of documents was submitted in some detail before the First-tier Judge although little reference has been made to them. In order to clarify the family situation of the sponsor and his families I asked a number of questions of the sponsor just to understand where the claimant fitted in to the situation.
15. The sponsor had divorced his first wife. There were four children to that first marriage namely the Claimant and her brother Wagas Also there was Naquah Khan born in 1991 and a further brother Awais now aged 17, both of those brothers are living in the United Kingdom as students with the sponsor’s first wife.
16. The sponsor remarried and there are three children to that marriage aged 6, 3 and nearly 2. There is some detail about that marriage and those children in the original bundle.
17. Thus the reality would be that were Wagas to join the sponsor in the United Kingdom ,as now he is permitted to do his appeal having been allowed ,that would mean that the appellant’s three siblings were in the United Kingdom with her mother and father and her three stepsiblings were in the United Kingdom with her father and stepmother. Thus the entire family apart from the appellant would be in the

United Kingdom and she would be with her elderly grandmother in Pakistan. It is of course significant in that context to note, as I have already indicated, that the appellant is not much older than her brother Waqas and is only slightly older than her brother Awais.

18. The Judge comments that the appellant by herself, without the wider support of her brother, would be more vulnerable than were he to be there. It seems to me that that is a conclusion which is reasonably open to be made in all the circumstances. Though she may live in a comfortable home with a caring and loving grandmother the reality would be that with the departure of her brother she would be isolated from her large family in UK and separated from them, particularly from the company of her brother. That represents in common sense a very significant change in her lifestyle and condition.
19. The Judge notes that she would be left with no close family members in Pakistan which would amount to an interference with her family life. Although that perhaps is a finding that could more helpfully have been expanded, it seems to me that that feature, together with her vulnerability, with or without the element of danger, provides a sufficient basis for the Judge to conclude that continued exclusion from the United Kingdom would be disproportionate in all the circumstances.
20. In the circumstances therefore I do not find there to be a material error of law in the determination. It could perhaps have been better expressed and with greater clarity, particularly as the context in which the claim is being made. Nonetheless it is properly open as I find for the Judge to have concluded as was stated.
21. The age of the appellant, her vulnerability and the presence of the rest of her family in the United Kingdom are also significant features to be borne in mind in assessing the proportionality of the decision to refuse.
22. In the circumstances I do not find that the First-tier Tribunal Judge was in error of law in the findings that were made. If in the event I am in error in not finding an error of law by reason of the over simplification of facts, I would nevertheless have gone on to consider the factors which I have set out in the evidence concerning family grouping in the United Kingdom and would have concluded in any event, that it would be disproportionate for the appellant to remain in Pakistan without her brother notwithstanding her loving and caring grandmother.

23. In all the circumstances therefore this appeal by the Secretary of State for the Home Department is dismissed and the decision of the First-tier Tribunal Judge upheld, namely that the appeal is allowed under Article 8 ECHR. It has been noted that application was made as far back as 2011. It is my hope that entry clearance can be granted to the appellant without delay.

Signed

Date

Upper Tribunal Judge King TD