Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/11147/2014
OA/11574/2014
OA/11577/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 April 2016	**On 10 May 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

ROBINA AMJAD – FIRST APPELLANT
AKMAL KHAN – SECOND APPELLANT
ASJID KHAN – THIRD APPELLANT
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER – ISLAMABAD

Respondent

Representation:

For the Appellants: Mr I Ahmed (MA Solicitors)
For the Respondent: M C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is the mother of the second and third appellants. They are all citizens of Pakistan. Their sponsor is Mr Amjad Khan. They appeal the decisions dated 4 August 2014 to refuse leave to enter as the spouse and children of the sponsor. The respondent was not satisfied that the first named appellant (hereinafter the appellant) met the financial requirements of the Rules. This was the only point taken against the appellant. There was a review of the decision by the Entry

Clearance Manager on 12 November 2014. It was felt that no new documentary evidence had been submitted with the appeal to address the issues raised.

2. The judge heard oral evidence from the sponsor and it is fair to say that she did not find him to be a credible witness. She indicated that he was evasive and had failed to address inconsistencies. In paragraph 14 the judge noted that the sponsor said he had arrived in this country in 1996. He was granted indefinite leave to remain on the basis of fourteen years' continuous residence. In the application in 2011 he had said "his family in the UK are all the family he has". The judge found that the sponsor had failed to reveal when he made his application for indefinite leave to remain that he had a wife and two children in Pakistan. The letter clearly stated that the only family which the sponsor had were those in the United Kingdom and this significantly damaged his credibility.

3. In paragraph 15 the judge refers to a determination relating to an appeal by the appellants against the refusal of entry clearance to the UK as visitors following applications made in 2009. The judge's decision continues as follows:

> "16. In the grounds of appeal submitted by the first Appellant to the Tribunal in relation to the visit visa appeal in paragraph 3 it states "I mentioned in visa application form that I am living with my husband and two sons in Pakistan." Again in paragraph 6 it states that the first Appellant "is a married woman having husband and two children in Pakistan". In the determination at paragraph 9 it states that in the grounds the first Appellant "says her husband works in the medical store, with a monthly income of Rs 10,000". At paragraph 11 it states "There is also evidence from the Khan Medical Store, supporting the assertion of the [first] Appellant that her husband is employed there and with the income as claimed."
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> 17. In his witness statement prepared for the second hearing, the Sponsor said that the Appellants' applications and grounds of appeal for the family visit visa were prepared by an agent and the first Appellant was not aware of the information provided in support of the applications. It states that the contents of the applications and grounds of appeal were not explained to the first Appellant and she was just asked to sign the papers. At the second hearing he said that the agent was "Afzel Beg", but he said that he had no proof of this, and said that it had all been done in Pakistan. The first Appellant's witness statement says that the application was prepared by an agent "who has never explained to me the contents of our application and the grounds of appeal submitted hereafter".
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> 18. I do not find this to be a credible explanation. First I find on the balance of probabilities that the first Appellant was not entirely honest in her reasons for wanting to come to the United Kingdom in 2009. It may well be that she wanted to visit relatives, but I find on the balance of probabilities that the main reason she came to the United Kingdom was to visit the Sponsor.

He said at the second hearing that he could not sponsor the visit because he did not have status at the time.

19. Secondly, the Appellants applied for a visit visa to visit a relation living in the United Kingdom. He was present at the hearing in 2010. The Sponsor now says that the evidence provided was not genuine and the Appellants did not know anything about it, but I find it lacks credibility that the sponsor on that occasion would not have known that the information provided was false, and that the first Appellant's husband was not working in Pakistan but was living in the United Kingdom. I have no evidence from the sponsor on that occasion to explain what had happened at the previous hearing and why the evidence is so contrary to what is before me on this occasion.

20. Thirdly, I find that the grounds of appeal for the visit visa application state that the first Appellant was working as a schoolteacher. The Sponsor was asked at the hearing whether his wife had ever worked as a schoolteacher and he confirmed that she did. Even if I accept that the notice of appeal was prepared by an agent, I find on the balance of probabilities that there is information in the grounds of appeal which was provided to the agent by the first Appellant. If all of the information was incorrect and merely made up by the agent, I find it is surprising that the agent just happens to have decided to state that the first Appellant was working as a schoolteacher. I find on the balance of probabilities that the first Appellant was aware of the information given to the Respondent relating to the Sponsor's employment, and was aware that false documents were provided in order to corroborate it.

21. At the hearing the Sponsor provided photographs taken when the Appellants came to the United Kingdom to see him in 2010. I find on the balance of probabilities that the Sponsor was in the United Kingdom at the time and that therefore he and the Appellants deliberately provided false documents in order to give the impression that the Sponsor was living and working in Pakistan, which would mean that there was more likelihood of the applications being successful as the Appellants would have been able to claim that they had an incentive to return to Pakistan at the end of their visit."

4. The judge concluded that the circumstances of the previous visit visa applications and the subsequent appeal damaged the credibility of both the appellant and the sponsor.
5. The judge then turned to consider an issue concerning the date of birth of the third appellant. Although a ground of appeal was submitted in relation to the judge's findings on this matter permission was not granted in respect of it. I agree that the judge gave very careful consideration to the evidence and a detailed explanation for his findings on the matter and it is not necessary to set out in full this part of the

decision. The judge found that misleading evidence had been provided and that the sponsor's credibility had been damaged. The failure of the sponsor to mention prior to the disclosure of the determination that he had seen the appellants in the United Kingdom in 2010 cast doubt on his credibility as it did that he had deliberately underplayed the strength of his connections with Pakistan to the extent of not mentioning his wife and children. In relation to the appellant the judge found as follows in paragraph 29 of the determination:

> "29. In relation to the first Appellant, I do not accept her explanation that an agent prepared the visit visa applications and grounds of appeal. I find on the balance of probabilities that she gave the agent information about her own job, and that the false information about the Sponsor was included with her knowledge. The Sponsor gave the name of the agent allegedly used, but no evidence has been given that any complaint was made against him. The first Appellant signed the notice of appeal. It is not enough for her to claim now that she did not know what she was signing. Further, the agent did not represent the Appellants at the hearing in the United Kingdom. There is no evidence before me from the family member who sponsored the visit visa to explain what happened at the hearing, and how the previous Tribunal came to be so misled by the evidence provided. I find that the evidence of the first Appellant cannot be relied on."

6. In relation to the financial requirements of the Immigration Rules the judge stated as follows:

> "31. The Respondent's decision was delayed pending the Court of Appeal decision in MM and others [2014] EWCA Civ 985. The application was made on 9 April 2013, and the notice of decision is dated 4 August 2014. There was some discussion at the first hearing about the relevant dates, and it was agreed that, given the passage of time between the application and decision, any 6 month period during this time would be satisfactory. It was unfortunate that the Appellants were not represented by the same representative on the second occasion, as at the second hearing, it was agreed that the relevant period was a six month period in 2012/2013, prior to the date of application. However, I find that this is all somewhat academic, as the Sponsor has failed to provide the specified documents covering any six month period, either before the application or, given the delay caused by waiting for the MM decision, some later six month period prior to the decision.
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> 32. In relation to his employment, the Sponsor has failed to provide an employer's letter which meets the requirements of Appendix FM-SE. The only letter from Honeytop Foods, for whom the Sponsor works, is found at page 70 of the first bundle. This is dated 13 November 2013. It does not state his salary, nor therefore the period over which he has been paid this salary. It states he is with "Gold Team Agency". At page 71 is a letter

from Goldteam Recruitment Ltd dated 12 November 2013 which states that the Sponsor started work on 23 July 2012. It states his hourly rate, but not how many hours he works. It makes no reference to Honeytop Foods. I asked the Appellants' representative at the second hearing whether there were any other employer's letters, and he confirmed that there were not.

33. The Appellants' representative submitted that the Respondent should have exercised evidential flexibility, and considered all of the evidence in the round. I do not accept this argument. Appendix FM-SE sets out the documents which must be provided. Neither of these two letters meets the requirements of Appendix FM-SE. Taken together, the information in them is not sufficient, as there is no indication of salary. This is not a points based application, so I am able to take into account evidence provided after the date of decision. The Appellants have been represented throughout. The first Appellants' notice of decision was clear that a letter meeting the requirements had not been provided, and the specific requirements were set out in this notice. Not attempt has been made to provide a letter which meets the requirements of Appendix FM-SE. I find that the Appellants have failed to provide evidence in respect of the Sponsor's employment which meets the requirements of Appendix FM-SE.

34. Further, the Appellants' representative at the second hearing submitted that payslips had been provided from 8 August 2012 to 14 February 2013. The P60 for 2012/2013 indicates an income of £11,571.84. The employer is Goldteam. If calculated from the payslips, the Appellants' representative submitted that the total salary was £19,436. However, I have no indication from Goldteam as to the salary the Sponsor was earning. The tax return for 2012/2013 is not the tax return finally submitted, but indicates that it is "in progress" (page 65 of the first bundle). When asked why this was only "in progress" whereas the 2013/2014 return indicated that it had been submitted, the Sponsor said that only his accountant could say why, and that all he could say was that this was the tax paid. The pay from employment is £11,571 (not exactly the same figure as the P60). The pay from self-employment is £9,179. This amounts to £20,750, which is not enough to meet the requirements of the rules.

35. In relation to the £9,179 earned from self-employment, the Sponsor was asked at the second hearing why there were no invoices, given that this is a significant amount of money to have earned without any invoices to show for it. He said that he worked for Asian people, who paid him either with cheques or cash. He said that they never asked for invoices, and so he "did not bother to submit invoices". I did not find this to be a satisfactory or credible answer, and I find that there is no evidence to back up the amount he claims to have earned from self-employment.

36. The Sponsor was asked if he used his saver account for the money from self-employment, and he said that he did. He was asked why the saver account did not show many deposits from self-employment. He replied that he did not know. He said that he had kept on depositing the money he had received in this account. He was referred to pages 131 to 138 of the first bundle. These are statements from his Everyday Saver account covering the period 21 May 2013 to 21 August 2013, around the time of the application. It was put to him that there was very little money paid into the account. The Sponsor said that he could not remember, and that he might have put some in his current account. Given his previous evidence that he used the save account for his self-employment, I did not find this to be a credible or satisfactory answer.

37. At the second hearing, the Appellants' representative referred to money in the current account being made from the sale of scrap metal, and submitted that the receipts provided showed this, which added to the Sponsor's credibility. I was referred to the Halifax statements at page 42-43 of the second bundle, dated 21 November 2014 to 16 February 2015. However, as I pointed out at the hearing, this evidence post-dated the decision, and I did not see how this was relevant to my consideration of the Sponsor's self-employment income prior to the decision. The Sponsor's credibility cannot be significantly enhanced by showing that he can now demonstrate the source of his earnings, given the lack of invoices relating to his self-employment for the relevant period.

38. I find that the Sponsor has failed to provide reliable evidence of his self-employment income. I find that the Sponsor has failed to show that he was earning the required amount to sponsor his wife and sons.

39. Taking all the above into account, I find that the first Appellant has failed to show on the balance of probabilities that she meets the requirements of the immigration rules. I therefore find that the second and third Appellants have failed to demonstrate that they meet the requirements of the immigration rules."

7. In relation to Article 8 the judge refers to **Razgar [2004] UKHL 27**. He accepted that the sponsor and appellant were married and that they had been living apart since (on the sponsor's evidence) 1996. The appellants had only visited the sponsor once in 2010 and the sponsor had visited the appellants once in 2012. There was nothing to prevent further visits taking place and the decisions did not interfere with family life. If there was family life between the appellants and the sponsor any interference would be in accordance with the law and would be proportionate. The judge sets out her assessment of proportionality as follows:

"43. I have taken into account in my assessment of proportionality all of my findings in relation to the applications made under the immigration rules.

I have taken into account my findings as to the credibility of the Sponsor and the first Appellant. I have taken into account the conduct of the first Appellant who misled the Respondent and the Tribunal in the process of applying for, and appealing against the refusal of, the visit visas in 2009. I have taken into account the conduct of the Sponsor who spent 14 years living in the United Kingdom without leave to remain, and who also misled the Respondent when applying for indefinite leave to remain by stating that his only family were his relatives in the United Kingdom, failing to mention his family in Pakistan. He showed no respect for the immigration laws of the United Kingdom by entering illegally and remaining without leave for a prolonged period of time.

44. In assessing the public interest I have taken into account section 19 of the Immigration Act 2014 which inserted a new section 117B into the Nationality, Immigration and Asylum Act 2002, so far as is relevant. Section 117B(1) states that "The maintenance of effective immigration controls is in the public interest."

45. The Respondent was satisfied that the first Appellant met the English language requirements of the immigration rules (section 117B(2)). I have found above that the Appellants do not meet the financial requirements of the immigration rules (section 117B(3)). The Sponsor has failed to provide the specified documents, and the evidence of the Sponsor's income from self-employment cannot be relied on. This is not a case where I have found that the Sponsor is earning a sufficient amount, but has failed to provide the precise documents required by the Respondent. Sections 117B(4) and 117B(6) are not relevant.

46. I find that the Sponsor and the first Appellant chose to conduct their family life with the Sponsor living in the United Kingdom, and the Appellants in Pakistan. No explanation has been given as to why the Sponsor left his family in Pakistan. The Appellants have been living together as a family unit without the Sponsor for over 18 years now. During this period of time, they have seen the Sponsor only twice. This was through choice. The second and third Appellants are now adults, or alternatively the third Appellant is nearly an adult. They will be living their own independent lives.

47. I find that any family life can continue as it has been doing for the past 18 years, through modern methods of communication, and through the Sponsor visiting Pakistan. Alternatively, there is nothing preventing the Sponsor from returning to live in Pakistan to be with the Appellants. He is a citizen of Pakistan, he speaks the language, as shown by his use of interpreters at the hearings, and he has spent all of his life in Pakistan, apart from the last 18 years when he chose to live in the United Kingdom,

without leave for the first 14 years. I find that he has family, social, cultural and linguistic ties to Pakistan.

48. There is a significant public interest in refusing permission to enter to those persons who do not meet the requirements of the immigration rules. I find, taking into account all of the circumstances of the Appellants, my credibility findings in respect of the Sponsor and first Appellant, and the way in which they have misled the Respondent and the Tribunal in the past, that the Appellants have failed to show on the balance of probabilities that the decisions are breach of their rights, or those of the Sponsor, to a family life under Article 8 ECHR, or indeed any other rights protected by the Human Rights Act 1998."

8. There was an application for permission to appeal and the First-tier Tribunal granted permission on 8 March 2016 and permission to appeal was granted on limited grounds. Permission was granted to argue that the judge had erred in considering the relevant period for the consideration of the sponsor's employment and self-employment. The relevant period was 2013/2014 it was submitted and not 2012/2013. The judge had erred at paragraph 34 in failing to consider evidence for what was submitted to be the relevant period – 2013/2014. The sponsor had been earning £25,097 and not £20,750.

9. The judge had erred in presuming that the sponsor had failed to give details of the appellants in his own application for indefinite leave to remain. The respondent had not provided all the pages of the sponsor's application.

10. It was further argued that the judge had misconceived the fact that the sponsor was present at the hearing in paragraph 19 of her determination. This related to the appeal in 2010.

11. A response was filed drafted by Mr Avery on 17 March 2016 in relation to the finances issue it was submitted by the respondent that the correct position was "That the evidence must relate to the six months prior to the date of application. In any event the judge was not satisfied that the evidence provided met the requirements of Appendix FM-SE."

12. In relation to the argument about the attendance at the visit visa hearing it was submitted that this was based on a simple misreading of the determination. The judge was saying that it was the relative who sponsored the visit application who was present.

13. It was submitted by Mr Ahmed that on the chronology the relevant period was 2013/2014 and not 2012/2013. I pointed out that it had been agreed at the hearing when Mr Ahmed had been representing the appellants that the relevant period was a six month period in 2012/2013. Mr Ahmed said that must have been a misunderstanding. There had been a review in November 2014 and the decision had

been in August 2014. The judge had been entitled to take into account the later evidence because of the delay caused by the appeal in **MM**. The only issue had been maintenance. There was the question of evidential flexibility and Mr Ahmed referred me to the Immigration Directorate Instructions. The respondent had a discretion in the matter. The respondent should have asked the appellant to provide evidence. The appellant had been employed by one employer throughout although the employer's name had changed. By March 2015 he was paid £30,000. It was postdecision evidence relevant to the date of decision. Mr Ahmed sought to rely on fresh evidence relating to the birth of the appellant's son. I noted that permission had not been given to argue this ground and it appeared no notice had been given about the proposed fresh evidence.

14. Mr Avery submitted in relation to the financial requirements that it had been agreed at the second hearing that the relevant period was a six month period in 2012/2013. This related to the six month period prior to the application which was what the Rules said. Because of the delay the respondent had looked at the further evidence submitted. This was a generous stance but the judge was confined to the evidence for the six month period prior to the application. This did not comply with Appendix FM-SE. The appellants had not pointed to any compliant evidence. As the judge had said in paragraph 32 of her determination the letters did not meet the requirements. The deficiencies had not been made good. Any material not mentioned had not been relevant. The evidence did not meet the requirements for evidential flexibility to be exercised. There had been no error in the judge's approach. She had dealt with the employment issues. There had been issues with the evidence and she had been entitled to conclude that the evidence was not satisfactory. It was relevant to note that the negative credibility assessment made by the judge called into question the reliability of any evidence that had been provided. The key issue of the funds had been dealt with correctly. There was no flaw in the decision relating to Article 8 and permission had not been given to argue the question about the date of the birth of the child.

15. In reply Mr Ahmed submitted that the relevant dates would go back to 2011/2012 if one was looking at the position prior to the application and the appeal should be remitted and heard afresh. It would not be practical to make a fresh application because the children would be over 18.

16. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision if it was materially flawed in law.

17. In relation to the financial requirements the judge records in paragraph 31 that on the second occasion – when Mr Ahmed was representing the appellants – it was agreed that the relevant period was a six month period in 2012/2013, prior to the date of application. Mr Ahmed submitted that this was a mistake or misunderstanding. Mr Ahmed told me that he had had a hand in drafting the grounds of appeal and there was no reference in the grounds to any mistake or misunderstanding about what the judge had been told as reflected in paragraph 31 of the decision. As Mr Avery points

out the submission was entirely correct. The judge was to focus at the period prior to the date of application.

18. The judge was criticised for not taking into account all the material before her. She found that an employer's letter had not been filed to meet the relevant requirements of Appendix FM-SE. She refers to the salient material and asked Mr Ahmed whether there were any other employers' letters and he confirmed that there were not.

19. In relation to evidential flexibility she gave consideration to the question in paragraph 33. The judge was entitled to conclude that a letter meeting the requirements of Appendix FM-SE had not been provided.

20. I was referred to **DR (Morocco) [2005] UKIAT 00038**. The issue in that case was whether the parties intended to live together as man and wife. The Adjudicator had found that the postdecision evidence showed "a continuing and subsisting relationship" and the Tribunal interpreted this as showing that the later evidence satisfied the Adjudicator that as at the date of the Entry Clearance Officer's decision the couple did indeed genuinely intend to live together as husband and wife. The issue is different in this case. When the judge refers in paragraph 33 to her ability to take into account evidence provided after the date of decision no doubt she had **DR (Morocco)** in mind.

21. Quite apart from the fact that the judge had been referred to the 2012/2013 period by Mr Ahmed she considered that the specified documents had not been provided covering any six month period either before the application or some six month period prior to the decision.

22. This is in my view a very careful and detailed decision where the judge went fully into all the circumstances and made detailed adverse credibility findings. As Mr Avery points out, the reliability of the documentary evidence needed to be viewed in the light of these findings.

23. In relation to the criticism of the judge's credibility assessment, it is said that her findings in paragraph 14 were flawed in that it had been presumed that the sponsor had failed to give details of the spouse and children in his own application for indefinite leave to remain. I do not find that the judge made any such presumption. She simply referred to the covering letter and what it stated thereon. She was entitled to conclude that the letter damaged the sponsor's credibility. There was indeed ample foundation for the judge's negative credibility assessment in a meticulous sifting of the evidence, oral and documentary. The sponsor was found to be an evasive witness and the judge explains fully and satisfactorily why he made this impression on her.

24. This was not a case where evidential flexibility could have assisted the appellants. In relation to the point taken in relation to paragraph 19 of the determination I agree

with Mr Avery that the argument is misconceived in that the reference to presence at the hearing in 2010 relates to the relation then sponsoring the visit visa application.

25. Turning to Article 8 permission was not given to argue the issue relating to the son's date of birth. It was said that the judge's decision was disproportionate in failing to look at all the evidence in the round in the light of the doctrine of evidential flexibility.

26. I am satisfied that the judge approached the issue of Article 8 correctly in the light of the guidance in **Razgar**. The judge noted when making her proportionality assessment that there was a significant public interest in refusing permission to enter to those who did not meet the requirements of the Rules and she took into account her credibility assessment and the way in which the sponsor and first appellant had misled the respondent and the Tribunal.

27. The judge considered all the relevant and salient evidence put before her and reached conclusions under the Rules and in relation to Article 8 that were open to her. I am not persuaded there was any material error of law in the decision as contended and this appeal is dismissed.

28. The appeals under the Immigration Rules are dismissed.

29. The appeals are dismissed on human rights grounds.

30. No anonymity order made.

31. In relation to fee award the judge made no fee award and I make none.

Signed Date 3 May 2016

G Warr
Judge of the Upper Tribunal