



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

Appeal Numbers: HU/05397/2017
HU/15054/2017
HU/15055/2017

THE IMMIGRATION ACTS

Heard at Field House

On 6 December 2018

**Decision & Reasons
Promulgated**

On 11 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**SS
MSS
SS**

(ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - PAKISTAN

Respondent

Representation:

For the Appellants: Mr J Gazzain, Counsel instructed by Loxford Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellants are siblings and citizens of Pakistan. They are all the minor children of the sponsor Mr MSA. The appellants appealed to the First-tier Tribunal against the decision of an Entry Clearance Officer dated 18

February 2017 to refuse the appellants' entry clearance to join the sponsor. In a decision and reasons promulgated on 27 June 2018, Judge of the First-tier Tribunal Beg dismissed the appellants' human rights appeal.

Permission to Appeal

2. The appellants appeal with permission on the grounds that:

Ground 1: the First-tier Tribunal Judge misdirected herself in relation to the guardianship order from the guardian judge in Pakistan, which gave the sponsor full custody of the appellants; and

Ground 2: the judge's reasoning on whether the appellants' mother had responsibility for their upbringing was speculative and the conclusions at [26]-[27] were contrary to the evidence;

Ground 3: the evidence clearly demonstrated that the appellant's sponsor has had sole responsibility for their upbringing.

Error of Law Discussion

Ground 1

3. Ground 1. In a comprehensive discussion of the evidence, from paragraphs [8] to [27] the Judge of the First-tier Tribunal made sustainable findings having considered all of the evidence. The judge specifically records in the recitation of the grounds of appeal at [2] and at [12] that there was a certificate of guardianship/a guardianship order. At [8] the judge records that he took into consideration all of the documents.
4. The issues before the judge were whether the appellants were related to the sponsor as claimed, which the respondent had contested and whether the sponsor had had sole responsibility. The judge found on the balance of probabilities at [9] that the appellants are the children of the sponsor. The only remaining issue therefore was the one of sole responsibility.
5. Although this was an appeal only under human rights grounds it was not contested that the judge's decision as to whether the appellants could meet the requirements of the Rules was a material factor. The judge correctly directed himself in relation to the leading case on sole responsibility of **TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049** and reminded himself that sole responsibility is a matter of fact to be decided upon all the evidence. This included that where both parents are involved in a child's upbringing it will be exceptional that one of them will have sole responsibility.
6. The essence of the judge's decision in this case was that he did not accept the claims of the sponsor, and indeed of the appellants, that the appellants' mother had no contact or involvement with them. The judge's findings were essentially that she did not accept the evidence before her as credible.

7. Although the judge did not explicitly state why the guardianship order in itself was rejected the judge did make specific references to a number of documents including an affidavit from the appellants' mother which he did not find credible. He did not find it credible that the appellants' mother had refused to look after her own children because she considered it "a big responsibility" and noted that there were contradictions in the evidence. This included that in her affidavit dated 17 March 2017 the appellants' mother stated that she had been meeting the children, whereas this directly contradicted the evidence of the sponsor who had said that the mother stopped meeting the children about three years ago. It was in this context, of contradictory evidence, that the judge reached the sustainable conclusion that it was not credible on the evidence before her that the children did not want to meet their own mother.
8. The judge also considered a number of the other documents including noting that there were letters from schools in Pakistan. However the judge took into consideration that the letters were written in the same style as other letters relating to the other two appellants and took into consideration that there were no school reports attached. Having considered all the information, including in the letters, the judge did not find it credible that the sponsor was instrumental in choosing subjects for any of his children or that he had chosen their school.
9. The judge took into consideration and accepted that the sponsor had been in contact with the appellants. The judge considered the photographs. The Tribunal considered that there was an allegation that the appellant's son was beaten up and took into consideration the First Information Report. Although Mr Gazzain submitted that it was not open to the judge to find that it was relatively easy to lodge a First Information Report I note that this was not in the grounds before me. In any event, that finding did not stand on its own but was made in the context of the judge's findings that there was no evidence before the Tribunal that the police had interviewed anyone or were actively pursuing the complaint. The judge went on to consider the medical evidence. Although it was claimed that the appellant's son was kidnapped and severely beaten up Mr Gazzain took me to the medical report which referred to "H/O fight" which the judge mentions at [24] of her decision and reasons.
10. The judge also took into account that it is not credible that the First Information Report stated that the male appellant was attacked by five people on two motorbikes armed with weapons yet he had his left arm and wrist X-rayed and there was no other mention of any injuries serious or otherwise which the judge was entitled to find might have been expected if the child had been attacked by five people on two motorbikes armed with weapons.
11. Having considered all the documentary and oral evidence cumulatively, this led the judge to reach the conclusion she did, at [25] that she did not find the sponsor to be a truthful witness. The judge noted that the sponsor had come to the UK in December 2009 and had married and divorced a

European national and subsequently obtained a permanent residence card. She accepted that he had been sending funds home to his family since about 2014 to support the entire family, that is his brother, his children and his parents.

12. It was open to the judge to find that she did not accept that a mother who was living so geographically close to her children, would have no interest in them and the judge gave adequate reasons for not accepting that evidence including in finding contradictions in the evidence before the Tribunal. It was the First-tier Tribunal's findings, in essence, that the sponsor was trying to mislead the respondent and the court as to the nature of the relationship between the mother and the children and the judge gave detailed reasons for those findings. There can be no material error in not directly addressing the guardianship order when the judge was aware of that evidence but was not satisfied that the Tribunal was being told the truth about the relationship.
13. I have reminded myself what was said in **MD (Turkey) v SSHD [2017] EWCA Civ 1958** that adequacy means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he has lost.

Ground 2

14. Although it was submitted that the judge's findings at [12] to [14] were speculative, again the judge was entitled to find the sponsor's evidence implausible as to why the children's mother refused to look after them. In reaching that finding the judge made sustainable evidence-based findings, including that the sponsor contradicted his own evidence, stating that the mother left the children in 2009 when the first appellant was 9 years old, whereas in cross-examination he said that she had stopped caring for the children about four or five years ago. Given that four or five years ago would have been 2013 this is a significant discrepancy which the judge was entitled to attach adverse inference to.
15. The judge went on to find that the sponsor's claimed explanation that the children's mother did not like her own children nor did she like his parents was not a credible explanation for why a mother would leave three young children and move away. The judge noted that the sponsor went on to state that his wife is from a rich family and that he has on the other hand lived with his parents in two rooms and that they had a number of misunderstandings and therefore he divorced her following an arranged marriage. The judge was found, at [13], that it was not credible that in an arranged marriage the family of someone from a very wealthy background would arrange to marry someone from a very modest background and that it was not credible that this was the reason why they divorced. What the judge was saying, in effect, was that the sponsor's wife would have been

well aware prior to the marriage that she was marrying someone from a modest background and in this context it was simply not credible that they would have divorced for that reason. In the context of a sponsor that the judge gave more than adequate reasons for not finding credible that finding was available to the First-tier Tribunal.

16. The judge went on to find further inconsistencies which led the judge to not find it credible that the mother did not see the children yet only lives half an hour away from them. The judge noted that the sponsor initially stated in cross-examination that the mother only telephoned them last Eid, about a year ago. He then went on to say in fact she used to go and see the children at school for several years and that she stopped meeting them at school about three years ago. Contrary to the grounds complaining that the judge's findings were speculative, it is evident that the judge's findings were based on multiple inconsistencies in the sponsor's evidence. No material error is disclosed in ground 2.

Ground 3

17. This is no more than a disagreement with the findings of the judge; although it is argued that **TD Yemen** confirmed that sole responsibility is a factual matter to be decided on all the evidence that is precisely what the judge did. Although the grounds cite photographs, financial remittances, letters from school, order from court, permission from the court, and an affidavit from the mother included in the evidence, it is clear from the judge's reasoned findings, as discussed above, that the Tribunal took all of this into consideration in the round, and reached findings available to the Tribunal.
18. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

As the appellants are minors I make the following direction: unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 28 December 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As the appeal is dismissed there can be no fee award.

Signed

Date: 28 December 2018

Deputy Upper Tribunal Judge Hutchinson