



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeals Number: HU/09295/2015
HU/09298/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 10th January 2019**

**Decision & Reasons
Promulgated
On 8th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**MR MUHAMMAD AFZAAL
MISS YAMEEN YAMEEN
(No anonymity direction made)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by RH & Co,
Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These appeals are brought against a decision by Judge of the First-tier Tribunal Porter dismissing appeals against the refusal of entry clearance. The applications for entry clearance were made on 17th June 2015 and refused on 16th September 2015.

2. The first-named appellant was born on 1st December 1999 and the second-named on 10th February 2001. They are both nationals of Pakistan.
3. The appellants applied for entry clearance to join their mother, [TB], who is a British citizen and the sponsor for the applications leading to these appeals. Entry clearance was refused on a number of grounds under paragraph 297 of the Immigration Rules. The grounds included issues about the reliability of documents pertaining to the appellants and whether their mother had had sole responsibility for them.
4. Having considered the evidence the Judge of the First-tier Tribunal made several clear findings on the points at issue. The judge found that the sponsor is the mother of the appellants. She was divorced from the appellants' father, [MA], in 2000 in Pakistan. On 27th March 2005 the sponsor married [MB] in Pakistan and in September 2006 the sponsor came to the UK. The appellants' father died on 20th August 2006 in Pakistan.
5. The judge gave her reasons for the above findings, which have not been challenged. She then proceeded to refuse the appeals on the grounds that the sponsor did not have sole responsibility for the appellants. It is not now disputed that in so doing the judge erred in law. Because the judge had found the appellants' father had died, consideration should have been under sub-paragraph 297(i)(d) of the Immigration Rules instead of sub-paragraph 297(i)(e). Sub-paragraph 297(i)(d) applies where one parent is settled in the UK and the other parent is dead. There is no requirement under this provision to show sole responsibility for the children by the parent in the UK.
6. Permission to appeal was granted by the Upper Tribunal on this basis.
7. At the hearing before me it was agreed that the decision of the First-tier Tribunal should be set aside and re-made allowing the appeals. The basis for doing this was very clearly set out in the application for permission to appeal drafted by Mr Bryce for the Upper Tribunal. As the Judge of the First-tier Tribunal found that the appellant' father died in 2006, sole responsibility was no longer an issue in the appeals. The appellants met the requirements of paragraph 297(i)(d) of the Immigration Rules and, applying the principle from Mostafa [2015] UKUT 00112, the appeals fell to be allowed. The refusal of entry clearance was a disproportionate interference with the appellants' Article 8 rights.
8. It was pointed out that no issues of maintenance or accommodation had been raised in the refusal decisions against which the appeals were brought. Mr Govan suggested that these

were matters on which the ECO might require further information before granting entry clearance. Hitherto, however, these requirements have been regarded as satisfied.

9. The proper course is for me to give with the consent of the parties the decision which should have been given by the First-tier Tribunal, namely that the appeals are allowed under Article 8.

Conclusions

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
11. The decision is set aside.
12. I re-make the decisions by allowing the appeals.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. I have not been asked to make such a direction and see no reason of substance for doing so.

Fee Award (N.B. This is not part of the decision)

In view of the issues of fact which had to be decided by the First-tier Tribunal I do not consider it appropriate to make a fee award.

M E Deans
Deputy Upper Tribunal Judge

30th January 2019