



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-002592 UI-2023-002594
UI-2023-002595 UI-2023-002596
Tribunal Nos: IA/02035/2022 IA/02037/2022
IA/02039/2022
IA/02040/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

- (i) Mr Sadaf Akbarzada
- (ii) Miss Breshna Akbarzada
- (iii) Miss Khalida Akbarzada
- (iv) Miss Amya Akbarzada

(NO ANONYMITY ORDER MADE)

and

The Secretary of State for the Home Department

Appellants

Respondent

Representation:

For the Appellants: Mr D Bazini (Counsel)
For the Respondent: Mr E Terrell (Senior Home Office Presenting Officer)

Heard at Field House on 8 September 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Chana, promulgated on 20th March 2022, following a hearing at Hatton Cross on 10th February 2023. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are all citizens of Afghanistan, who were born on 7th May 2003, 9th July 2007, 7th May 2006 and 4th April 2005 respectively. They are siblings, and they appeal against the decision of the Respondent dated 20th January 2022 and 28th January 2022, refusing their applications for leave to enter the United Kingdom as dependent siblings of a British citizen, for adult settlement and for settlement of children under the age of 18. The applicable Rules are paragraph 297 and EC-DR.1.1 of Appendix FM of the Immigration Rules.

The Appellants' Claim

3. The essence of the Appellants' claim is that they are the dependent younger sisters of their elder brother, Mr Hassib Akbarzada, who is a British citizen, and was born on 10th October 1991. Their father was killed by the Taliban in Afghanistan. Their mother arranged for them to be taken to India where they arrived in August 2019. Although their mother and another brother said that they would later join them, there has been no more contact with them since they left Afghanistan and their whereabouts are unknown. The Appellants have been living in India as refugees and are accepted by the UNHCR, as having a well-founded fear of persecution.
4. With the exception of the first Appellant, all the other remaining sisters are minors. They are suffering from mental health issues, with depression, and have no access to education or employment.

The Judge's Findings

5. The judge, in refusing the Appellants' appeal, held that there was no reason why the Appellants could not continue to live in India, because they are living in a two bedroom house, and have been accepted as refugees by the UNHCR. The evidence of the Sponsor, Mr Hassib Akbarzada, before the judge, was not accepted when they said that they were not studying in India. After all, the first Appellant was an adult, and indeed there was no evidence before the judge that they were living in deprived or harsh circumstances (paragraph 36). The appeals were dismissed.

The Grant of Permission

6. On 13th July 2023, the First-tier Tribunal granted permission to appeal against the decision of Judge Chana on the basis that the judge had failed to consider the Sponsor's savings when assessing whether the Appellants could be maintained and accommodated without recourse to public funds. It was also arguable that there had been a mistake of fact when the judge stated that the Appellants' father had arranged for them to travel to India when he was deceased. It was also arguably an error to state that they were not currently dependent on their sponsoring brother because this was not an issue that had ever been taken by the Respondent and it materially affected the reliability of the decision. There were also no findings made on the Appellants' mental health issues.

Submissions

7. At the hearing before me on 8th September 2023, both Mr Bazini and Mr Terrell accepted that the judge had failed to take into account the savings of the Sponsor. It had been a material issue all along. It had been raised in the Appellants' skeleton argument. It affected the

sustainability of the overall decision in question. The Sponsor had, in his Santander account, savings of £48,000 and he had visited his sisters as the visa stamps in his passport showed more than once and yet there had been no findings on this. The judge's conclusion that the Sponsor was not earning £36,000 could not be upheld. These matters also went to the consideration of Article 8 ECHR and yet the judge had held that it was not even engaged. It was agreed that the appropriate course of action was for this matter to be remitted back to the First-tier Tribunal.

Error of Law

8. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that it stands to be set aside.

Notice of Decision

9. The decision of the First-tier Tribunal involved the making of an error of law. I set aside the decision of the original judge. This matter is remitted back to the First-tier Tribunal to be heard by a judge other than Judge Chana with no findings preserved under Practice Statement 7.2.(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023