



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-001209
UI-2024-001208
UI-2024-001210

First-tier Tribunal Nos:
HU/62115/2023, LH/06689/2023
HU/62114/2023, LH/06688/2023
HU/62116/2023, LH/06690/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 22 October 2024**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**IK(First Appellant)
SK (Second Appellant)
AA (Third Appellant)
(ANONYMITY ORDER MADE)**

Appellants

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Ms C Besso, Counsel instructed by Kent Law Clinic
For the Respondent: Ms S. Lecointe, Home Office Presenting Officer

Heard at Field House on 26 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants or any members of their family is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellants or members of their family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellants are minors and nationals of Afghanistan. I maintain the direction to anonymise the Appellants made by the First-tier Tribunal. The first Appellant's date of birth is 1.7.11. The second Appellant's date of birth is 17.03.13. The third Appellant's date of birth is 12.04.12.
2. The Appellants were granted permission by First-tier Tribunal Judge Handler (on 19 March 2024) to appeal against the decision of First-tier Tribunal (Judge S J Clarke) to dismiss their appeals against the decision of the Entry Clearance Officer on 13 September 2024 to refuse their applications for entry clearance to join IK's and AA's brother and SK's cousin (the Sponsor) who has been granted ILR following his claim for asylum. He fled Afghanistan on 7 October 2015 when he was age 13.
3. The matter was listed before me for an error of law hearing. There was no response from the SSHD pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Procedure Rules 2008").
4. The Appellants' claim in a nutshell is that they had lost contact with the Sponsor for many years despite making attempts through the Red Cross tracing service. The Sponsor made contact with the Appellants following their attempts to contact him on Facebook in November 2021. The Appellants fled Afghanistan following the takeover by the Taliban. At the time of application they were living in Pakistan. They fled with a neighbour, Zareef, and his family leaving their mothers, whose whereabouts are unknown. The Appellants' fathers are deceased.
5. The Sponsor was accepted to be a refugee by the Respondent. The names and ages of the brothers recorded by the Sponsor in his SEF accord with those of first and second Appellants. He disclosed that his father, a mullah and part-time labourer, died in 2015. The Sponsor said in his SEF that his maternal uncle arranged for and paid for his departure from Afghanistan.
6. The first Appellant was aged 4 and the second was aged Appellant 2½ years of when the Sponsor left Afghanistan.

The Evidence

7. In support of contact between the Appellants and the Sponsor, there was a screenshot of a letter from Zareef which he had signed with a thumb print dated 26 December 2022. There was Zareef's tazkera which had been issued on 1 April 2017 and records that he was to be aged 52 in 2017. It did not record his place of birth and described him as a labourer and married.
8. The Appellants did not produce their birth certificates which the Sponsor was told were destroyed in a house fire. New ones had been obtained which read under occupation "labourers" and record the first, second Appellant and Sponsor's father as the father for the first and second Appellants and adult for all three Appellants.
9. The Land Info Report dated 22 May 2019 reads that applications for replacement tazkeras in Afghanistan can be made both in the home district and in Kabul. If one does not have a birth certificate it is a requirement that the tazkera of a male family member on the father's side should be presented. A

married woman may submit her husband's tazkera or possibly one of her husband's close male relatives.

The Sponsor's evidence

10. Zareef took his own family and the Appellants to Pakistan. The Sponsor was told that the family home was locked after the Taliban raided it. The mothers of all three Appellants and a sister had disappeared.
11. They were living in Pakistan without permission. The second Appellant's hospitalisation brought them to the attention of the authorities. As a result they were all detained. The authorities tried to Zareef and his family. He was able to resist deportation to remain in Pakistan with the Appellants. His own family was deported.
12. The Appellants had been visited in detention by Usman (a friend) and Mr Iqbal (a lawyer) so that they could collect evidence in support of their case. Zareef's sim had been removed from his mobile phone..
13. There were three affidavits from Mr Iqbal to support his identity. His Bar Counsel number, ID card, mobile number and email address were produced. There was an affidavit from a UK lawyer saying that as a result of a Google search, he found a daily cause list in which Mr Malik Yasir Iqbal's name was disclosed.
14. The Appellants initially made contact with the Sponsor through Facebook. They sent a request to be friends. They also tried to call him on Facebook messenger a few times. The Sponsor did not believe that it was the Appellants trying to contact him. However, he recognised them from photographs. He was able to speak with them on WhatsApp. The Appellants recognised the Sponsor from his Facebook picture.
15. There was evidence of a Facebook message from a man called Jameel Khan to the Sponsor. He helped facilitate contact. The judge had a transcript of a conversation between the Sponsor and Jameel Khan to support initial contact.

Summary of the findings

16. The judge noted that the Sponsor had been granted protection by the Respondent. His claim was accepted. In his application he named his brothers (the first and second Appellant). The judge also acknowledged that it was accepted by the Respondent that the Appellant had sent money to Afghanistan, through Usman, to fund medical treatment for the second Appellant.
17. The first and second Appellant's tazkeras noted their occupations as labourers, an issue specifically raised by the Respondent. The first and second Appellants' (and the Sponsor's) father was identified as the adult all the Appellants despite being the third Appellant's maternal uncle. The judge described this as a curiosity. The evidence about this was that he was named as the adult on the third Appellant's tazkera because he was a mullah and that the mosque had his details. The judge noted that the background evidence did not state whether in the circumstances when an adult ID card produced pertains to a male family member other than the child's father, this would be recorded on the tazkera.

However, the judge observed that the first Appellants' father was the third Appellant's maternal uncle and that he had predeceased his own father.

18. The judge said that in respect of the evidence of the Sponsor, he could only give evidence about what he was told.
19. The judge said that the letter from Zareef signed with his thumb print was the only evidence of regular contact that the Sponsor had with the Appellants.
20. The judge attached weight to the absence of evidence from the Appellants' lawyer, Mr Iqbal, or Usman to support contact. What had been produced by them on the issue of contact was undated. The judge found that the three affidavits from Mr Iqbal were in poor English. Despite the production of Mr Iqbal's Bar Council card (a copy), Bar Council number, mobile and email addresses, there was no evidence to whom he had sent these documents. The judge took into account the affidavit from a UK lawyer that he had googled a copy of a cause list from a court in Pakistan which disclosed Mr Iqbal's full name. The judge placed little weight on this evidence which she said could relate to a lawyer of the same name.
21. The judge noted that there was no evidence from the authorities to support that the Appellants are detained or that Zareef managed to resist deportation as was claimed. The judge said that this was "key evidence." The judge found that it was implausible. The judge also observed that there was no evidence to support Zareef having to pay a fine of £10,000 Rupees as claimed. The Sponsor's evidence was that the receipt has been thrown away.
22. The judge found the evidence of when the Appellants and the Sponsor first had contact unreliable. The reasons are given at [31]. The judge found that the dates given were inconsistent. The judge noted that the evidence was that an individual called Jameel Khan had facilitated contact between the Sponsor and the Appellants through his Facebook account. The judge did not find it credible that the brothers would recognise each other considering that the Sponsor was aged thirteen when he left Afghanistan and the first two Appellants were aged respectively four and two and a half.
23. The judge considered a transcript of a conversation from Jameel Khan and the Sponsor. The judge said that the Sponsor did not ask about his mother and sister and that Jameel Khan stated that "they lost some family members on the way. Mother, sister and uncle's wife.". The judge found that it was curious to describe the third Appellants' mother in this way and that it was mentioned late on in the conversation. The judge said that she had taken into account that the account was consistent with the background evidence.
24. The judge said that "drawing the strands together, and looking at the evidence in the round, I find that the Appellants have not shown that they are the relations of the Sponsor as claimed.."

The Grounds of Appeal

25. I heard submissions from the parties which I will engage with when considering the grounds. The Appellant relied on a skeleton argument. There was an

application to amend the grounds which I engage with when considering ground one.

26. The grounds are an attempt to re-argue the Appellant's case. I bear in mind was said by Baroness Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at [30]:

“Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.”

27. This was re-affirmed by the Court of Appeal in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095. I have also taken into account the more recent case of Volpi v Volpi [2022] EWCA Civ.

Ground one

failure to make clear findings of fact on the evidence/making inconsistent findings.

28. The judge made a series of incomplete and inconsistent findings. It is unclear what weight she attached to the evidence. There is no explanation why, if the medical evidence and evidence of remittances is accepted as genuine, this would not demonstrate that the Sponsor is sending money to help his brother. The judge raises concerns about the evidence relating to the Pakistani lawyer but she does not explicitly state what additional evidence of his credentials beyond his Bar Counsel ID card she would expect to see. In any event, concerns about the identity of the lawyer do not go directly to disapprove the claimed relationship.
29. The judge raised a concern about the lack of evidence, at [30], but does not come to a conclusion as to what she makes of this.
30. The judge found that the audio calls and transcript of contact was unreliable, primarily based on alleged implausibilities in the Sponsor's account. However, it is not clear from the judge's conclusion that she finds the conversation has been fabricated. The screenshots were dated and time stamped and they came from the Sponsor's Facebook messenger account which was available for inspection by the judge.

Conclusions- ground one

31. When reading the decision as a whole it is clear that the judge attached little weight to the evidence in support of the Appellants because of the problems with it which she described in the decision. The ground does not consider the decision as a whole. She directed herself on the standard and burden of proof. She listed the difficulties in the evidence. She preferred the Respondent's case to that of the Appellants' and gave adequate reasons for this. I do not find that the findings or reasons are incomplete or that she did not resolve issues of conflict.
32. The judge was mindful of the evidence that was accepted by the Respondent; namely that the Sponsor sent money to the second Appellant for his medical treatment and that the Sponsor had named his brothers in his evidence in support of his asylum claim. The judge unarguably considered the evidence before her on this basis. The issue raised at [26] and [27] of the grounds is an attempt to re-argue the case.

33. I accept that the judge when assessing aspects of the evidence does not at the same time specifically say that it is unreliable. However, to assess whether there has been an error, the decision must be read as a whole. She makes reference to difficulties in the evidence throughout her decision. The judge at [30] did not make a finding about the Sponsor's evidence relating to the receipt but the judge had already said that the evidence of the Sponsor's evidence is what he has been told, therefore finding it unreliable. The grounds fail to consider the decision in context.
34. The grounds at [31] relate to the judges' findings concerning the audio tapes. The judge did not have to find the conversation has been fabricated. It is clear from the decision that she found that the evidence was unreliable for reasons she explained that she attached little weight to it. The judge was entitled to conclude that the evidence was insufficient and did not have to make a finding that the evidence was fabricated. While there is a typographical mistake a proper reading discloses that the judge was cognisant of the parties to the conversation.
35. The judge explained the anomalies with the taskeras contrary to what is said in the grounds. The judge took into account that the recently issued taskeras showed the occupations of the Appellants as labourers and raised specific concerns about the third Appellant's taskera. There is nothing to support that the judge did not consider the Facebook evidence. The judge did not accept that the evidence established the identity of the lawyer primarily because of the lack of evidence of to whom the evidence had been emailed. She considered the evidence as a whole.
36. What weight to attach to the evidence was a matter for the judge. The findings are adequately reasoned.

Ground two

making unreasonable/irrational findings concerning plausibility

37. There are grammatical and factual errors in the judge's description of the evidence of contact between the Sponsor and the Appellants (see paragraphs 33 and 34). The evidence of time and date stamped screenshots from the Sponsor's Facebook messenger account in August 2021, show communication between him Jamil, who was helping his brothers in Pakistan. There was also a video of the voicemail messages that were sent using this account when the Appellants first made contact.
38. The judge found that it is "somewhat implausible" that the Appellants' brothers, who were 2½ and 4 years old when the Sponsor left Afghanistan in 2015, would have been able to identify the Sponsor nearly six years later, when they were 8½ and 10 years old, from looking at Facebook pictures in August 2021. It is submitted that this is not implausible and that a 10 year old would be quite capable of identifying pictures of their brother. In respect of the Appellant's being able to recognise the Sponsor the judge did not take into account that the picture (from the Sponsor's Facebook account) was an old photograph from several years ago when he first set up the account.

39. The judge found it “somewhat implausible” that Zareef managed to delay his deportation. It is submitted that the judge may think this is unlikely from experience of how UK deportation proceedings would be conducted but it will often be inappropriate for a judge to make implausibility findings in relation to events in other countries based on such assumptions.

Conclusions - ground two

40. There was no evidence that the Appellants had seen photographs of the Sponsor when growing up or of the age of the Sponsor when the picture of him was taken. Ms Besso at the start of the hearing indicated that she wished to amend the ground to include procedural unfairness on the basis that the Sponsor was not cross-examined about recognition and had he been he would have stated that the picture was taken some time ago. I heard the ground *bene esse*. Ms Lecointe was not in a position to say one way or another whether the Sponsor had been cross-examined on this issue. I take into account that the issue of recognition was not raised in the Respondent’s review; however, it is an issue directly relevant to the relationship which was at the heart of the appeal and which was not accepted by the Respondent. The Appellants were represented and had the opportunity to expand on the evidence relating to recognition. Whether or not the Appellant was cross-examined on this specific issue, the credibility of the Appellants was key. There was no unfairness. The findings that the judge made about recognition were open to her on the evidence.
41. In respect of the findings about the delayed deportation of Zareef at [29], I do not accept that there is an error of law. The finding must be considered in context. The judge did not accept the evidence in respect of the fine imposed which was an issue directly raised in the Respondent’s decision. The criticism is that the judge made plausibility findings in relation to events in other countries based on assumptions contrary to established case law. The ground has no substance. This was an aspect of the Appellants account which could reasonably have been supported by evidence relating to the legal system in Pakistan. The judge was entitled to conclude that the evidence of delayed deportation was not credible.
42. Notwithstanding the judge made a typographical error when considering the transcript, a proper reading of the decision discloses that the judge was cognisant that the conversation was between the Sponsor and Jamal Khan.

Ground three

Material Misdirection of Law – Approach to Evidence in a Family Reunion Case

43. The judge did not make explicit findings that the documentary evidence submitted was wholly unreliable.
44. The judge has not had regard to the Home Office policy guidance on family reunion applications.
45. Home Office, family reunion: for individuals with protection status in the UK version 10.0, 17th July 2023. The guidance was included in the Appellants’ bundle and it makes clear that when dealing with refugee family reunion cases, decision makers must be careful not to demand a level of evidence that it is unrealistic

and that such cases should be treated differently from other Immigration Rule applications. The guidance states as follows,

“You must be mindful of the difficulties individuals may face in providing documentary evidence. Those fleeing conflict zones or dangerous situations may not have time to collect supporting documents or have realised they would be required...[26]

Proof of relationship

The evidence provided must establish that a genuine relationship between the sponsor and the applicant exists and that it existed prior to the sponsor having fled the country of origin to seek asylum in the UK. Applicants and sponsors in refugee family reunion cases may not be able to provide the level of evidence that would be required for other applications under the Immigration Rules, due to the nature of refugee journeys.”

46. The Appellants provided significant evidence bearing in mind what they had available and given their means. Their evidence concerning separation from their parents and arrival in Pakistan in August 2021 following the Taliban takeover of Afghanistan and the problems experienced as undocumented refugees in Pakistan is wholly consistent with the significant background evidence that was provided in the Appellants’ bundle. This evidence was given very limited attention by the judge.

Conclusions - ground three

47. The judge found inconsistencies or shortcomings in the evidence of the relationship as well as a lack of evidence. The judge’s findings about the documentary evidence are sufficient and the reasons given are adequate. The findings are not contrary to the guidance. In so far as the ground raises the assessment of the evidence, I have already engaged with the issue in ground 1.
48. I conclude that there is no error of law and the decision of the First-tier Tribunal to dismiss the appeal stands.

Joanna McWilliam
Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 October 2024