IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-000934
UI-2022-000935
UI-2022-000936
First-tier Tribunal Nos:
HU/01016/2021
HU/01017/2021
HU/01020/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 April 2023

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE

Between

MR MUDASSIR SHAH HUSSAIN (DOB: 31.12.02)
MISS AYESHA SIDDIQA HUSSAIN (DOB: 7.9.04)
MASTER MUHAMMAD HUZAIFA HUSSAIN (DOB: 2.7.07)
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Sonia Ferguson, counsel instructed by Chauhan Solicitors
For the Respondent: Ms Arifa Ahmed, Home Office Presenting Officer

Hybrid hearing at Field House on 20 February 2023
with Ms Ferguson attending remotely

DECISION AND REASONS

Introduction

1. The Appellants in this appeal are Pakistani nationals. They appeal from the decision of First-tierTribunal Judge N M Paul ('the judge') whereby he

dismissed their appeals against the decisions of the Respondent dated 20 January 2021 refusing their applications for entry clearance under paragraph 297 of the Immigration Rules. They had made applications on 24 September 2020 to join their father, Mr Muzamil Hussain. He is present and settled in the United Kingdom.

The Respondent's decisions

2. The underlying decisions refused entry clearance and stated that because Mr Hussain was present and settled in the United Kingdom and did not have leave under Appendix FM, the applications would be considered under paragraph 297. They noted the documents provided as evidence of the parental relationship and in particular a Pakistani court order dated 7 August 2020 which stated that Mr Hussain had been granted custody of the Appellants. The Appellants were living with an aunt in Pakistan and had done so since 2015.

3. The applications were refused because the Appellants had not proved that Mr Hussain had sole responsibility for them. It was necessary for them to show that he provided for all their needs, including emotional, financial and other needs, and that he exercised full control over the major aspects of their lives including schooling, religion and medical care. The decision letters considered that the arrangement whereby Mr Hussain had custody under the court order *"…is one of convenience and one which has been sought purely to facilitate your admission to the UK."*

4. The decision letters noted that there were receipts for the transfer of money by Mr Hussain since February 2019, about 4 years after he moved to the United Kingdom. It commented *"Your father has been settled in the UK since 2015 and so it is not unreasonable to expect to see evidence of contact from before 2020."* It stated that there had been no applications to visit Mr Hussain or to settle in the UK since 2015, which was surprising if (according to the Appellants' case) their mother had not cared for them since 2015. It concluded *"I am satisfied that the custody arrangement was one of convenience to facilitate your application for entry clearance … I am satisfied that you have a parent that is present and settled in the UK, however I am also satisfied that they do not hold sole responsibility for you and that this remains with your family in Pakistan."* The application was therefore refused.

The appeal

5. The Appellants appealed the refusal of entry clearance and their appeal was heard by the judge on 20 October 2021. They were represented by counsel Mr Waheed. The judge noted in paragraph 2 that *"It is common ground that this is a sole responsibility issue, and that sole responsibility remains the only issue for determination on appeal"*, and in paragraph 5 that *"they had not provided evidence which showed that their father has had day-to-day responsibility for them."*

6. The evidence of Mr Hussain had been that he had been married to Miss Basmeen Begum, and she was the mother of his 4 children (it should be

noted that this means the 3 Appellants and 1 further child – see Mrs Khatam Bibi letter dated 2 October 2020 at paragraph 6). He had moved to the United Kingdom in 2008, and had been granted settled status in 2018.

7. The relationship between the Appellants' father, Mr Hussain, and their mother, Miss Begum, had broken down in 2015 and since then the Appellants had been in Mr Hussain's charge. At that time he was living in the United Kingdom, and so had arranged for his family to look after them. In August 2020 he had made this arrangement more formal via an application to the Family Court in Pakistan concerning the custody of the Appellants. His brother's wife, Mrs Khatam Bibi, had provided a letter dated 2 October 2020 which said that since 2015 she had taken care of all 4 children, and they had lived with her in Pakistan.

8. Mr Hussain stated that the Appellants' mother did not contribute to their needs at all, and in fact he was solely responsible for their needs. They were growing up fast, and he felt that him being away from them was no longer in their interests, and that contact by electronic means was no longer enough. He provided documentary evidence of his identity, his address and employment in Northern Ireland.

9. The judge's core findings were at paragraphs 19-24. He noted that the burden of proof was on the Appellants, and that the Tribunal would approach a parenting arrangement whereby one parent was being deprived of custody with great caution. He identified various curious or troubling aspects of the case. In particular, he noted that the language of the Pakistani Court Order was *"nonsensical"*, and he did not accept its validity. He also noted that the Appellants' mother had effectively abandoned her children to Mr Hussain's care. He accepted the Respondent's view in the decision letters that the circumstances in which the application had been made suggested that it was an arrangement of convenience rather than substance- i.e. he did not believe the Appellants' case and considered that they had not discharged the burden of proof on them.

The application for permission to appeal

10. Permission to appeal was granted by UTJ Grubb on 16 May 2022. He commented

> *"It is arguable that the judge failed to take into account all the evidence relevant to determine the issue of "sole responsibility" in accordance with the guidance in TD (Yemen). Further, the judge arguably failed to consider the issue of "compelling family and other considerations" under para 276(i)(e) and in reaching his decision under Art 8 outside the Rules in [24]."*

Legal framework

11. The legal test is whether the sponsor has sole responsibility for the applicants - see paragraph 297 of the Immigration Rules and the decision

in *TD (Paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 00049.

12. In that case, the Upper Tribunal held that "sole responsibility" is a factual matter to be decided upon all the evidence. Paragraph 52 gives the following helpful summary of the correct approach to sole responsibility cases:

> *52. Questions of "sole responsibility" under the immigration rules should be approached as follows:*
>
> *i. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.*
>
> *ii. The term "responsibility" in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.*
>
> *iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.*
>
> *iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.*
>
> *v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.*
>
> *vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.*
>
> *vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.*

> *viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.*
>
> *ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".*

13. The Tribunal has reminded itself of the Court of Appeal's judgment in *UT (Sri Lanka) v SSHD* [2019] EWCA Civ 1095 and in particular the rule that the Upper Tribunal should only set aside a First-tier Tribunal ('FtT') decision and remake it if there is an error of law. "Error of law" had a wide definition but had to be more than the appellate tribunal disagreeing with the decision or believing that it could make a better one. An appeal against a decision to refuse entry clearance was an issue that judges in the FtT faced on a daily basis and the paradigm of one on which appellate courts should not "rush to find mis-directions".

14. We have also considered *South Bucks v Porter (No.2)* [2004] UKHL 33, in particular the judgment of Lord Brown at paragraph 36:

> *"Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds … The reasons need refer only to the main issues in the dispute, not to every material consideration … Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."*

Submissions

15. On behalf of the Appellants, Ms Ferguson attended the hearing remotely. She submitted that the judge had not properly assessed the documents before him. He had commented at paragraph 20 that the Pakistani Court Order and judgment were *"curious"* but he did not go on to say what weight he attached to those documents. Clearly it was possible to infer that he had some reservations, but he had not taken the documents properly into account or alternatively had failed to give reasons for why he attached little weight. This amounted to an error of law.

16. Ms Ferguson made similar submissions in relation to the letter from Mrs Khatam Bibi. It was referred to earlier in the decision but the judge had not set out in his conclusions and reasons that he rejected it or the basis for doing so. She cited the medical letter dated 10 October 2021 from Dr

Yousaf Khan which stated that he had known the Appellants for over 10 years, and their father called Dr Khan when the Appellants visited the doctor. She also cited the letter from Mr Tahir Hussain dated 3 October 2021 which stated that he drove the second Appellant Ayesha to school and back and was paid by the Mr Hussain. She submitted that the judge had not explained what weight he attached to these letters and had not sought to reconcile the apparent conflict between them and his finding that Mr Hussain did not have sole responsibility.

17. She argued that the judge's finding that it was incredible that Mr Hussain controlled the Appellants' welfare and managed their lives by telephone was inadequately reasoned.

18. Ms Ferguson accepted that the case had not been put on the basis of Article 8, and that it would not succeed under Article 8 if it failed by reference to paragraph 297 of the Immigration Rules.

19. For the Respondent, Ms Ahmed drew the Tribunal's attention to the summary at paragraph 52(v) of *TD (Yemen)* and the judge's clear rejection of the Appellants' case that the Appellants' mother had abdicated responsibility for them. It was not the case that she was unable to look after them, and in fact she had done so for years. The judge was clearly not satisfied by the Appellants' case that the mother had abdicated responsibility, and he had made adverse credibility findings. He considered that the true circumstances had not been properly disclosed, and that the arrangement was one of convenience. She submitted that it was properly open to him not to accept the Court Order from the Pakistani Court given its strange language and that it was difficult to understand. The burden of proof in a case of this type was on the Appellants, and it was for them to discharge it.

20. Ms Ahmed submitted that the judge's findings were concise, and he could have analysed the evidence in more detail. However, that on its own did not amount to an error of law. It was clear that he had considered the appeal as it had been put before him. Even were the Tribunal to find any legal error in the judge's analysis of the evidence, the Appellants could not show that such error was material to the outcome. The Appellants had not discharged the burden of proof on them, and the judge had been entitled to find against them.

21. Ms Ferguson made brief submissions in reply, which were to the same effect as her earlier submissions.

22. The Tribunal permitted Mr Hussain to address us. He stated that he was in regular contact with his children, and that he found the appeal process very stressful. His health had been affected and he had had symptoms of psoriasis. His doctor had prescribed him with anti-depressants.

Analysis and decision

23. Judge Grubb granted permission to appeal on two bases. One of them was the failure to consider Article 8 and compelling family and other

considerations. However, Ms Ferguson accepted that was not the way in which the case had been put, and the original decisions had not been made on that basis. Furthermore, she accepted that the appeal would stand or fall by the paragraph 297 analysis. This is consistent with how the case had been argued before FtT Judge Paul (see paragraph 2 of his judgment quoted above).

24. The core of the Appellants' appeal was that the judge did not make a proper evaluation of the evidence before him, particularly the Court Order and the letters, including the letter from Mrs Khatam Bibi.

25. However, this criticism must be considered in light of a fair reading of the decision. The judge referred explicitly to the Court Order and the letters in setting out the Appellants' account – see paragraphs 9 and 11 in particular. He went on in giving his reasons in paragraph 20 to analyse the Court Order and he noted the standard of English in that document was poor, and in places it made little or no sense.

26. We have reviewed the Court Order, and concur with the judge's comments. There are a number of passages in the Court Order which are scarcely comprehensible - see for example *"That it so happened that Plaintiff got settled in UK in connection with earning his bread and butter with Defendants in Pakistan"*. Later in the judgment it stated *"Issue No1 and 5: these issues having same bearings and interlinked are taken up conjunctively in fact these issues lie at the crux of the controversy between parties as it covers the issues from jurisdiction point of view."*

27. It should be recalled that this strained language is not said to be the product of bad translation; the document is in the original. It is hard to reconcile the drafting of these passages with an elementary understanding of legal English; the most that can be said for them is that they are just about comprehensible. Given the deficiencies in basic drafting exhibited in the Court Order, it was plainly open to the judge not to accept that document.

28. FtT Judge Paul viewed the judgment in the context of the Appellants' case that their mother effectively abandoned them in 2015. He did not accept this part of their case, and that confirmed his doubts about the Court Order.

29. The judge referred to the letter from Mrs Khatam Bibi in setting out the Appellants' case, and so he was plainly aware of it. It is true that he did not then go on to make findings about why he rejected that part of the Appellants' case. The decision would perhaps have been improved if he had done so. However, it is not the law that a judge must refer to every piece of evidence before the court, and the judge is not required to go through each piece of evidence and give a granular analysis of the weight to be attached to it – see *South Bucks* cited above. The decision is addressed to the parties who are familiar with the issues, and the reasons can be briefly expressed.

30. In any event, any lack of reasoning in relation to the letter from Mrs Khatam Bibi was not material because she makes no mention of the whereabouts of the Appellants' mother. She merely states that she has taken care of the Appellants since 2015, when Mr Hussain moved to the UK, and their mother took care of them until 2015. Mrs Bibi's evidence was inconsistent with the evidence of Mr Hussain that he moved to the UK in 2008. Taken at its highest, Mrs Bibi's letter did not support the Appellants' case that the Appellants' mother had abandoned them and Mr Hussain had sole responsibility for the Appellants since 2015.

31. The judge did not accept that the Appellants had discharged the burden of proof on them. He had various reasons for coming to that conclusion, which were not limited to the letter from Mrs Bibi. Accordingly, if the judge's reasons were not sufficient, that insufficiency was not material to the decision.

32. It is also relevant to note that on the Appellants' case, Mr Hussain had had sole responsibility for them since 2015 when his marriage broke down and the Appellants' mother in effect abandoned them. However, the documentary evidence does not show that Mr Hussain was providing for the Appellants in the period from 2015 until (at the earliest) February 2019, which is the date of the earliest record of a financial transfer. That transfer was recorded at page 139 of the paper bundle as having taken place on 18 February 2019 and involved Mr Hussain sending £200 to Khan Wali Khan. There is accordingly a lacuna of about 4 years in the Appellants' case that Mr Hussain provided for them after their mother had abandoned them.

33. The judge was entitled to take into account the lack of documentary evidence which undermined the credibility of Mr Hussain's oral evidence that he had sole responsibility since 2015. At paragraph 23, the judge found Mr Hussain's evidence that he had day to day control over the Appellants' lives to be incredible. This finding was open to the judge on the evidence before him and he gave adequate reasons for his conclusions.

34. This appeal ultimately does not disclose any legal error on the part of FtT Judge Paul. The Appellants are no doubt disappointed that their case was not accepted. However, there were legitimate concerns which the Home Office's decision identified and which FtT Judge Paul shared. The Appellants disagree with his findings, but they cannot point to a legal error. We bear in mind the Court of Appeal's judgment in *UT* and other cases in which they have emphasized that disagreement is not enough to form the basis of allowing an appeal.

35. We find the judge took into account all relevant matters and gave adequate reasons for why he dismissed the Appellants' appeal. Any failure to refer to a specific piece of evidence in his conclusions was not material to the decision. We find no material error of law in the decision promulgated on 8 November 2021. We dismiss the Appellants' appeals.

Notice of Decision

The Appellants' appeals are dismissed.

The decision of the First-tier Tribunal is upheld

John Jolliffe
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 March 2023