



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

Appeal Number:
UI-2021-000930 (HU/07230/2020)
UI-2021-000932 (HU/07232/2020)
UI-2021-000935 (HU/07233/2020)

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 28th July 2022**

**Decision & Reasons Promulgated
On the 05 October 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**PARAMJIT KAUR (1)
ROBIN SINGH (2)
GAGANDEEP SINGH (3)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A Pipe, Counsel, instructed by Super Immigration Service Ltd

For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of India. The first appellant is the mother of the second and third appellants, who are now 20 and 18 years old

respectively. On 20 December 2019 (*when the second and third appellants were 17 and 16 years old*), the appellants applied for leave to enter the United Kingdom under Appendix FM of the immigration rules on the basis of their family life with Mr Baljit Singh, who is said to be the husband of the first appellant and father of the second and third appellant. I say “said to be” because in refusing the applications for entry clearance, the respondent accepted the first appellant and Mr Baljit Singh were previously married and at some point in the past, were in a genuine and subsisting relationship. The respondent did not challenge the claim that the second and third appellants are the children of the first appellant and Mr Baljit Singh. However, although it was said that the first appellant and Mr Baljit Singh divorced and subsequently remarried, the respondent was not satisfied that the first appellant’s relationship with Mr Baljit Singh is genuine and subsisting, or that they intend to live together permanently in the UK.

2. The applications for entry clearance were refused by the respondent for reasons set out in three separate decisions. In the decision dated 19 August 2020 directed to the first appellant, the respondent concluded that her application falls for refusal on grounds of suitability under section S-EC of Appendix FM, and that she does not meet all of the eligibility requirements of Section E-ECP of Appendix FM. In particular, the respondent concluded the eligibility relationship requirement and eligibility financial requirements are not met. The respondent also concluded that the eligibility English language requirement is not met, and the first appellant is not exempt from that requirement. The decisions directed to the second and third appellants are dated 18th August 2020 and 21st August 2020. As far as they are concerned, the respondent was not satisfied that the eligibility requirements of Section E-ECC of Appendix FM are met. In particular, the respondent concluded the eligibility relationship requirement and eligibility financial requirements are not met. In each case the respondent concluded that there is no evidence to establish that there are exceptional

circumstances which would render refusal of entry clearance a breach of Article 8.

3. The appellants' appeals against those decisions were dismissed by First-tier Tribunal Judge Sharma ("Judge Sharma") for reasons set out in a decision promulgated on 29 September 2021. The respondent was not represented at the hearing before Judge Sharma. Mr Baljit Singh attended the hearing together with his employer. They both gave evidence. The background to the appeal is summarised in paragraphs [1] to [10] of the decision. Judge Sharma sets out a summary of the appellants' response to the matters referred to by the respondent in her decisions, at paragraphs [11] and [12]. Judge Sharma's findings and conclusions are set out at paragraphs [28] to [31]. As far as is material to the appeal before me, Judge Sharma said:

"28. It is not an issue that the first appellant and the sponsor were previously married, but they got divorced and then remarried. Much of the reasoning of the respondent about matters which the first appellant is unaware does not lead me to conclude that the relationship is not genuine and subsisting.

29. What gives rise to concern in my mind is the previous Visa application. I note the explanation given in all of the statements relied upon by the appellants. In a nutshell, this is that the first appellant was not aware of what was being written on her behalf. However, that is not the explanation that was given by her solicitors in the appeal form. I have set that out above. That, if (*sic*) find, given that is the first explanation given, is the true explanation: that she was told that stating she was married and that she had a husband and children to which to return in India would assist her to obtain a Visa. That she may not (and probably did not) appreciate the consequences of the deception is not relevant. She was party to a deliberate misrepresentation. As such her application fails on suitability grounds. The respondent has discharged the burden of proof to satisfy me, on the evidence that I have before me, on this issue.

30. The above matter is also relevant to the relationship requirement. It is for the appellants to prove that the relationship is genuine and subsisting. The false information previously given casts substantial doubt as to what is now claimed. Whilst I find that the various criticisms made by the respondent are insufficient to raise concerns about this issue, the fact that the misrepresentation was previously made demonstrates to me that the first appellant is prepared to be untruthful in order to gain entry into the United Kingdom. What is before me does not persuade me that the relationship is genuine and subsisting.

31. The appeals therefore all fail. For the sake of completeness, for the reasons put forward by Mr Pipe, I find that the financial and language requirements are met. I accept the explanations given by the sponsor and his employer about the discrepancies in the amounts on payslips and what was paid into the sponsor's bank account. As the first appellant has difficulties with her mental health which the medical evidence confirms affects her memory, she should not be required to satisfy the English language requirement."

4. The appellants claim the decision of Judge Sharma is vitiated by material errors of law as set out in the appellants' grounds of appeal settled by counsel and dated 10 October 2021. The grounds can be summarised as follows:

- a) In concluding the first appellant's application falls for refusal on suitability grounds, Judge Sharma:
 - i. failed to note and consider the fact that paragraph S-EC.2.2(a) of Appendix FM is a discretionary grant for refusal and Judge Sharma did not consider the discretionary aspect of the rule;
 - ii. failed to have regard to the statement of Tajinder Singh;
 - iii. failed to consider the medical evidence that the first appellant suffers from depression, memory loss and poor concentration.
- b) In addressing the eligibility relationship requirement, Judge Sharma bases his finding solely on the alleged deception in relation to the previous application for a visit visa, without making a global assessment as to whether the appellant is in a genuine and subsisting relationship.
- c) Judge Sharma failed to properly analyse and make findings in relation to the second and third appellants, and failed to properly consider the position of all the appellants together.
- d) In reaching the decision overall, Judge Sharma failed to make adequate findings and/or failed to give adequate reasons for the adverse findings set out at paragraphs [29] and [30] of the decision.

5. Permission to appeal was granted by First-tier Tribunal Judge McClure on 15th November 2021. Judge McClure said:

“ 3. Whilst much may be said about the findings of fact made by the judge in respect of the first appellant, there appears to be little assessment of the circumstances pertaining to the second and third appellants. A proper assessment needs to be made in respect of the second and third appellant and whether their position impacts upon the assessment of the relationship of the sponsor to the first appellant. The failure to take such a factor into account arguably undermines the whole of the assessment made by the judge.

4. In the circumstances, whilst the substance of the grounds of appeal have little merit especially in light of the fact that the first appellant in the past has used deception, the failure to take account of the position of the second and third appellants is such as to bring into question the whole of the assessment.”

6. The respondent filed a rule 24 response dated 17th December 2021 in which the respondent said she opposes the appeal. In summary, it is said the First-tier Tribunal directed itself properly and the adverse findings made regarding the first appellant were relevant to the judge’s consideration of the claims being advanced on behalf of the second and third appellants.
7. At the outset of the hearing before me, Ms Young, quite properly in my judgement, accepted that the judge placed significant reliance, in paragraph [30], upon the first appellant’s previous visa application and the adverse findings set out in paragraph [29], when considering whether the first appellant and Mr Baljit Singh are in a genuine and subsisting relationship. Ms Young accepts that whilst the previous visa application may be relevant, the judge did not carry out a holistic assessment of the all the evidence before the Tribunal regarding the relationship between the first appellant and Mr Baljit Singh, and give inadequate reasons for concluding that the relationship is not genuine and subsisting. Put simply, the fact that a ‘misrepresentation’ may previously have been made, is not to say that the relationship is not now genuine and subsisting.

8. Ms Young also accepts that at page 111 of the appellant's bundle, there was a letter signed by Mr Tejinder Singh in which he sets out his account of the visit visa application. Ms Young accepts there is no reference to that evidence in the decision. I was told by Mr Pipe that Mr Tejinder Singh did not attend the hearing before the First-tier Tribunal and whilst it may have been open to the Judge to attach little or no weight to that evidence, the difficulty is that it is not apparent from the decision that Judge Sharma considered that evidence at all when considering whether the first appellant's application falls for refusal on suitability grounds.

9. I am quite satisfied that the appellants have established that the decision of Judge Sharma is vitiated by material errors of law as far as the consideration of the suitability and eligibility relationship requirements are concerned, and the decision must be set aside. In the circumstances, I do not need to address the remaining grounds, although it is perhaps fair to note that there is no real analysis of the position of the second and third appellants claims, particularly outside the immigration rules. Although brevity is to be commended, it is now well established that what is required in a decision is that the reasons provided must give sufficient detail to show the parties and the appellate Tribunal the principles upon which the lower Tribunal has acted, and the reasons that led it to its decision, so that they are able to understand why it reached its decision. The reasons set out in the four paragraphs, [28] to [31], are lacking. The question for the Tribunal was not whether the requirements of the immigration rules are met, but whether the decisions to refuse entry clearance are unlawful under s.6 of the Human Rights Act 1998, albeit a failure to meet the requirements of the rules is capable of being a weighty factor when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control.

10. As to disposal, the parties agree that there will need to be a careful and considered analysis of the evidence before the Tribunal regarding refusal on suitability grounds and as to the eligibility relationship requirements. I

am persuaded that the appeal should be remitted to the First-tier Tribunal. The decision of Judge Sharma fails to adequately address material issues. Having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

11. It is agreed by the parties that the discrete findings at paragraph [31], that the eligibility financial requirement is met, and that the first appellant is exempt from the English Language requirement, should be preserved. The respondent has not sought to challenge those findings in the rule 24 response.

NOTICE OF DECISION

12. The decision of First-tier Tribunal Judge Sharma promulgated on 29 September 2021 is set aside.
13. The appeal is remitted to the First-tier Tribunal for rehearing. The findings at paragraph [31] of the decision of Judge Sharma, that the eligibility financial requirement is met, and that the first appellant is exempt from the English Language requirement, are preserved

Signed **V. Mandalia**

Date 1st August 2022

Upper Tribunal Judge Mandalia