



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Extempore decision

Case Nos: UI-2024-000703

UI-2024-000704

UI-2024-000705

FTT Nos: HU/50226/2023

LH/06343/2023

HU/50227/2023 LH/06344/2023

HU/50228/2023 LH/06345/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 30 September 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

NB

AB

WB

(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Fripp, Counsel instructed by Sky Solicitors Ltd

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 30 August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants and sponsor are granted anonymity.

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

DECISION AND REASONS

1. The appellants appeal with the permission of First-tier Tribunal Judge Sills against a decision of First-tier Tribunal Judge Sweet (“the judge”) dated 27 December 2023 dismissing the appellants’ appeal against the decision to refuse their human rights claims.
2. Mr Fripp represented the appellants and Mr Terrell represented the Secretary of State for the Home Department. I was provided with an appeal bundle of 583 pages. There was no Rule 24 response.
3. At the outset of the hearing, I raised the issue of anonymity as this was a family refugee reunion claim and because two of the appellants are children. Mr Fripp requested that the appellants and sponsor be granted anonymity. Mr Terrell did not object and remained neutral on the issue. I granted the appellants and the sponsor anonymity.
4. The appellants are nationals of Pakistan. The first appellant is the mother of the second and third appellants. On 15 December 2021 the appellants applied to join BA, the sponsor, as the partner or children of a refugee under paragraphs 352A or 352D of the Immigration Rules, respectively. In decisions dated 19 December 2022 the respondent refused the applications and the appellants human rights claims.
5. The appellants appealed against the respondent’s decision and the appeal was heard before the judge on 21 December 2023. On that occasion the appellants were represented by Mr Fripp and the respondent was represented by Mr Williams, a Home Office Presenting Officer. The sponsor gave evidence at the hearing and both parties made submissions.
6. The judge accepted that the appellants had not used deliberate deception in respect of earlier applications because they were made by agents on their behalf.
7. The judge accepted the family relationship existed before the sponsor left Pakistan because he and the first appellant were married on 14 April 2007, their children were born in 2008 and 2009 and they were all listed in the family registration certificate.
8. The judge found that the sponsor and first appellant were not in a genuine and subsisting relationship and did not intend to live permanently together. The judge reached that conclusion because of the vagueness of the sponsor’s evidence generally, the fact that there had been no contact between 2010 and 2020 and there was not an explanation as to why contact was made in 2020. The judge also noted that during that period the sponsor had had a two year relationship with a Polish national that had ended in 2018.

9. The judge placed little weight on the sponsor's evidence that he had visited Saudi Arabia in 2022 to make contact with the appellants because no corroborative documentary evidence had been provided.
10. The judge found that it was in the second and third appellants' best interests to stay with their mother. The judge dismissed the appellants appeal.
11. The appellants applied for permission to appeal to the Upper Tribunal on the following grounds.

Ground 1. The judge failed to give adequate reasons for finding that the first appellant and the sponsor were not in a genuine and subsisting relationship and did not intend to live permanently together.

Ground 2. The judge acted unlawfully in placing weight on the lack of evidence corroborating the sponsor's trip to Saudi Arabia because corroborative evidence had subsequently been produced with the application for permission to appeal.

Ground 3. The judge failed to consider the second and third appellants' appeals separately. There is no requirement for the children of refugees and their sponsors to intend to live permanently together and for the relationship to be genuine and subsisting.

12. Permission was granted by First-tier Tribunal Judge Sills on 26 February 2024.
13. At the outset of the hearing Mr Terrell indicated that in respect of ground 3 he accepted that the judge had erred in his consideration of the second and third appellants' appeals. He accepted that the second and third appellants met the Immigration Rules and that the judge should have allowed their appeals. I am in agreement with this concession. I therefore set aside the First tier Tribunal decision in respect of the second and third appellants and remake the decision allowing their appeals. The parties agreed that this was the appropriate course of action.
14. I heard submissions from Mr Fripp and Mr Terrell in respect of grounds 1 and 2.
15. In respect of the first appellant I am satisfied that the judge materially erred by failing to give adequate reasons why the first appellant and the sponsor were not in a genuine and subsisting relationship and did not intend to live together permanently.
16. The judge accepted the first appellant and sponsor were in a relationship before the sponsor left Pakistan in 2010. The judge records the sponsor's evidence that he fled their village in Pakistan and went into hiding before

travelling to the UK, that their village was remote and did not have internet or telephone facilities and that the first appellant is uneducated. These aspects of the sponsor's evidence are clearly relevant to the judge's consideration of the fact that there had been no contact between 2010 and 2020.

17. The judge also records the sponsor's evidence that he regained contact with the appellants in 2020 when a friend of his from the UK went to the appellants' address in Pakistan and made contact with them after three attempts. This aspect of the sponsor's evidence addresses why they regained contact in 2020.
18. Notwithstanding, the judge's description of the sponsor's evidence as vague it is not clear whether the judge accepted or rejected these aspects of the sponsor's evidence or what aspects of it he found unclear or vague or why he did so. I am satisfied that the judge failed to give adequate reasons for rejecting the sponsors evidence if that is indeed what he did.
19. I am also satisfied that the judge failed to consider that the lack of contact between 2010 and 2020 was (at least initially) caused by the sponsor fleeing persecution and that he was now a recognised refugee.
20. In respect of ground 2, I find the judge was entitled to take account of the sponsor's unexplained failure to provide corroborative evidence of his visit to Saudi Arabia. The fact that it was produced with the application for permission to appeal demonstrates that it was available to him and could have produced. [*TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40]
21. However, for the reasons I have already given I find that the judge materially erred in dismissing the first appellants appeal and accordingly, I set aside the decision.

Notice of decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside in its entirety.
- (2) I remake the decision in respect of the second and third appellants, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, allowing their appeals pursuant to Article 8 ECHR.
- (3) I adjourn the appeal in respect of the first appellant and direct that it be re-made in the Upper Tribunal on a date to be fixed with a time estimate of 2 hours. An Urdu interpreter will be booked.

- (4) The following findings of fact are preserved:
- (i) The appellants did not use deliberate deception in their previous applications.
 - (ii) The family relationship existed before the sponsor left Pakistan in order to come to the UK.
- (5) If either party wishes to adduce any further evidence, this must be served in electronic format on the other party and the Upper Tribunal at least 10 working days before the next hearing, accompanied by an application made pursuant to rule 15 (2A) of the Tribunals Procedure (Upper Tribunal) Rules 2008.

G. Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Transcript approved on 23 September 2024