



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-001131

First-tier Tribunal No:
HU/51186/2023
LH/06130/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**BIBI HUMERA
(No anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini

For the Respondent: Mr T Melvin

Heard at Field House on 16 September 2024

DECISION AND REASONS

1. This is the appeal of Bibi Humera, a citizen of Afghanistan born 1 January 1994, against the Respondent's refusal of her entry clearance application. The First-tier Tribunal previously dismissed the appeal but there were a number of errors in the determination such that I set it aside in my own decision of 19 June 2024. As noted in that error of law decision, it was appropriate to treat the findings of fact made below as preserved and to retain the appeal in the Upper Tribunal for re-hearing.

2. The facts are undisputed. The Appellant's father Sherindel Khan came to the UK in 1999 and was granted asylum on the basis of his fear of persecution at the hands of the Taliban, having been a junior civil servant in the Najibullah regime and subsequently facing jail and execution following a false allegation. The Appellant, her mother (Azziza Bibi) and two of her brothers fled Afghanistan in 2005, moving to Pakistan. Her mother and those brothers were sponsored to come to the UK as her father's dependents after he obtained British citizenship in 2015. Her youngest brother, who was born a British citizen, remained with her until 2019, when he too was brought to the UK.
3. It had always been intended for the Appellant to come to the UK too, but as she was aged over 18 when the other children applied in 2015 as minors, the family had been advised by their UK lawyers not to include her in the application. Aside from a brief period when she returned to Afghanistan to stay with extended family members before being compelled to return to Pakistan because of the Taliban's ascendancy across the whole of Afghanistan, the Appellant remained in Pakistan with her youngest brother, awaiting his own British citizen passport's issue, caring for him pending him being able to use that document to come to the UK. She remained at the home of a family friend in Pakistan, the agreement always having been that this would be a temporary arrangement. She had no valid identity document there
4. The family's case is that the Appellant lacks legal status in Pakistan, has never worked or lived independently, and has always depended on her father's financial support; he earned something over £19,000 annually and had £48,000 in savings, and rented a flat with a large living room and two double bedrooms. Her father still made decisions regarding her religious upbringing, education and leisure activities, and they were regularly in touch by telephone. Her parents had last visited her in October 2023 for one month.
5. The First-tier Tribunal accepted that the Appellant lived without a residence permit in Pakistan, as her passports issued in Karachi on 5 June 2009 and 31 May 2022 bore no evidence of lawful stay. Remittances to her from her UK family were evidenced, understandably sent via her relatives in Pakistan as it would not be realistic to send them directly to a single woman without status in that country; those sums would suffice to meet all her expenses (albeit that only around half the total sums claimed were shown by the available receipts); additionally, her parents had taken her cash when visiting her in Pakistan. The UK family and the Appellant frequently messaged each other. The Tribunal also accepted that family life was established between the family members in the UK and the Appellant given the financial and emotional dependency between them.
6. Country evidence placed before me includes a statement by Elaine Pearson, Asia director at Human Rights Watch, in December 2023, recounting that "Pakistani officials have created a coercive environment

for Afghans to force them to return to life-threatening conditions in Afghanistan,” explaining that this included demanding bribes, confiscating jewellery, livestock and other property, and bulldozing homes, with a view to forcing them to return to Afghanistan. In May 2024 Time magazine reported increasing calls by the Pakistan government for undocumented Afghans to leave the country by November 2024, in the context of significant numbers of arrests and expulsions from Karachi, including of school-going girls. There are various other articles to similar effect.

7. For the Appellant Mr Bazini submitted that the Appellant’s difficulties in interacting with society in Pakistan were serious ones, arising as they did from an official policy aimed at securing the return of Afghans to Pakistan via a hostile environment and given that the UK’s own domestic Immigration Rules used integrative opportunities as a benchmark for assessing proportionality. If anything, the Appellant’s case for reunion with her family was stronger now than in 2018, when she was caring for her younger brother in Pakistan whereas he too now resided in the UK, and it was essential to have regard to external factors preventing earlier travel, such as intervention of the pandemic.
8. Mr Melvin for the Respondent submitted that there was a significant delay in making the application on her behalf which diminished the degree of family life established between her and her UK relatives. The Appellant had been able to gain some education in Pakistan and had not lived in a state of complete confinement. There had been a long history of Afghan refugees being accommodated in Pakistan.

Decision and reasons

9. Taking them in aggregate from the original refusal letter, pre-First-tier Tribunal appeal hearing review and Mr Melvin’s skeleton argument, the Respondent’s submissions are essentially that the Appellant
 - (a) Could not satisfy the only available immigration route under the Immigration Rules, that of adult dependent relative, as she could not establish a need for long-term care to perform daily tasks due to illness or disability;
 - (b) Had not established family life with her UK relatives given she had lived apart from them for much of her life;
 - (c) Had delayed in making her application for several years and had not established that any direct threats of deportation had been made to her, in a broader context where Pakistan had long hosted a significant Afghan diaspora;
 - (d) Could point to no obligation on the UK to consider asylum claims made from abroad and was no worse off than other Afghans residing in Pakistan

10. I consider that the Appellant has strong answers to each of those points. She has established family life with her parents and siblings, from whom her separation has been due to the incidents of civil war, persecution and forced migration. She has not formed an independent family unit by marriage or otherwise. Her current living conditions have never been intended as anything other than temporary. Her application has been delayed due to the exigencies of her family's circumstances, given that at one time they were advised that as a youthful adult her situation might adversely affect their application. It is of course possible that such legal advice might lead family members to accept long-term separation and begin to part ways emotionally and practically. But that is not the case here. Her father has continued to have oversight over her upbringing, consistent with the patriarchal Afghan culture, and she has been in regular contact with her UK family upon whom she is financially dependent. She is in a position akin to that of lone relatives whose plight has been recognised by the Home Office in other arenas of immigration law, where the policy has been to avoid "the phenomenon of the "stranded sibling", whose parents and younger siblings have all gone to the UK, leaving him alone in his own country": UG (Nepal) [2012] EWCA Civ 58 §21.
11. I accept that the immigration decision occasions a serious interference with that family life, given that it prevents a family who have been separated by force of circumstances from reuniting. That leaves the question of proportionality. The public interest factor upon which the Respondent has relied is essentially that her application cannot fit into the nearest apposite immigration route. However, there are other relevant considerations that to my mind have greater force:
- (a) It seems to me that the more appropriate analogous immigration route by which to assess her application is that of refugee family reunion rather than adult dependent relative; the latter obviously focusses on the circumstances of relatives, almost always elderly ones, for whom no care is available to meet their daily living needs. That route, now found in Appendix Settlement Protection, requires an applicant to have been a member of the family unit before the others fled their country of habitual residence, not to have formed an independent family unit of their own, and if over 18 years old, to be able to establish exceptional circumstances, such as receiving financial and emotional support, being able to access support or employment in the country where they are living, and being at risk of destitution. For the reasons above and below, it seems to me that just such exceptional circumstances are present here.
- (b) I accept that the Appellant will be unable to study or otherwise integrate into society such as to seriously infringe her private life. This is partly because she is a lone woman, but additionally because to live publicly would expose her to a real risk of deportation in the current climate in Pakistan. The country evidence does not differentiate between the locations where

individuals may be at risk. Her problems represent a facet of the family life as a whole: Al Hassan [2024] UKUT 234 (IAC) emphasises that serious risks to relatives abroad are factors which are relevant to assessing the proportionality of an interference with family life. On the facts here, it must be excruciating for the rest of the family to know the problems the Appellant faces and yet to be unable to meaningfully protect her.

- (c) The delay in the family pursuing the application was due to her having to remain in Pakistan until 2019 because the Respondent had not accepted that her infant brother for whom she cared was entitled to British citizenship.
- (d) Her UK-resident relatives have no legal right to reside in Pakistan, which is of course not their country of origin or nationality. The normal alternative to family reunion in the UK would be life together in the family's country of nationality. However, she cannot return to her country of origin, Afghanistan, given that she has family members with a well-founded fear of persecution at the hands of the Taliban, and herself would be a lone woman with no experience of life under their rule and who departed the country because she and her family did not wish for her to be subjected to the restrictions they place on women.
- (e) Having regard to the statutory considerations mandated by s117B of the Nationality Immigration and Asylum Act 2002, the Appellant will not be a burden on the state given the availability of adequate maintenance and accommodation when she arrives here, and the likelihood that she will eventually find work. She will be in an English speaking family which will help her to integrate. Her family are all lawfully established in the UK and an appropriate immigration application has been made.

12. Those factors, in my assessment, outweigh the public interest points upon which the Respondent relies. Given the strength of her family ties in the UK, her application cannot simply be analysed as an extra-territorial asylum claim, and the difficulties she faces in Pakistan as a lone woman are more extreme than those facing the average displaced Afghan.

Decision:

The appeal is allowed.

Mark Symes

Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

15 October 2024

