Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-005300
UI-2022-005301
HU/58072/2021
HU/58070/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th July 2023	**On 17th August 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between
(1) Miss KI
(2) Master BI
(ANONYMITY DIRECTION MADE)

Appellants

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Khan, Counsel, instructed by Vista Legal Services
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan. They appeal against the decision of First-tier Tribunal Judge Mensah ('the Judge') who in a decision dated 7 September 2022 dismissed their appeals against the respondent's decision to refuse them entry clearance.

Background

2. The appellants' application was based on the claim that their parents are both dead and that they live with their maternal grandmother in Pakistan. The sponsor is their maternal Aunt who took over responsibility for the children when her sister, the appellants' mother, died in 2019. At the date of the application they were 16 and 13, and 18 and 14 at the date of the appeal. The respondent refused their application on 21 November 2021.

3. The appellants' submitted that they met the provisions of paragraph 297(1)(f) of the Immigration Rules, namely that there were serious and compelling family or other considerations which make their exclusion undesirable and suitable arrangements have been made for their care. The appellants further argued in the alternative that the respondent's refusal breached their Article 8 rights.

4. The Judge dismissed their appeal on the basis:

> *'31. Taking the evidence together, I find the Appellants have failed to establish there are serious and compelling family or other considerations which make exclusion of the child undesirable. I accept Mrs Bibi would like to be relieved of the caring responsibilities but I do not accept she is not managing them at present. I also consider on the evidence the best interests of the second Appellant is that the status quo is maintained and she remain with her brother and grandmother in Pakistan where she is living a good life by Pakistan standards, and has continuity in her education and care.*
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> *32. Turning then to Article 8, I accept on the evidence the Sponsor has Guardianship of the Appellants. I accept she has been sending money to the Appellants. However, I note she is not the only relative providing money for their care. The Sponsor's bank statements show another relative is sending £100 per month for their care. The Sponsor says she sends £100 per month on average and so it appears the reality is she is a vessel through which another relative is providing financial support and her income is tied up in her own care and that of her own three children.*
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> *33. I have no doubt the Sponsor is motivated by good intentions and well meaning, but she was appointed Guardian in January 2019 and clearly did not feel the Appellants' needs were not being met in Pakistan at that time, otherwise I can see no reason why she would not have sought to apply to bring them to the United Kingdom then, and sought permission from the Pakistan court at the same time she was seeking guardianship.*
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> *34. Instead she has sat on this order for another two years before making an application and this suggests she was not raising concerns regarding the welfare of the children with the court in Pakistan. I*

accept the Sponsor has been involved in some of the decisions regarding the Appellants, such as completing the forms for the schools, but she admitted she has never even spoken to any of the teachers and has not been to visit the Appellants' since 2019!

35. Even with the Pandemic and Covid restrictions it is not consistent with the expressed concerns for the welfare of the children and alleged inability of Mrs Bibi to care for the Appellants that the Sponsor has not returned. This suggests to me she is satisfied the Appellants are being cared for. Further, even when she did visit in 2019 she only stayed one week. Whilst I can understand she has her own children now aged 18,17 and 14 , her behaviour is not consistent with the claimed mental health or safety concerns. I find she is sharing the responsibility for decision making, beyond the day to day care envisaged in TD, with Mrs Bibi.

36. I therefore accept she has established a family life in that sense and speaks with the Appellants on a regular basis. However, I am also satisfied Mrs Bibi has established a family life with the Appellant's in Pakistan. The country evidence does not establish a real risk to the second Appellant simply by virtue of being female, she is not in an all female household and her brother is now over 18 years. I accept Mrs Bibi was concerned over the behaviour of a local shop keeper but this appears an isolated incident. The first Appellant is now over 18 years and appears to be going on to College. I accept he isn't suddenly a responsible adult, but he is able to take on more responsibility as a male member of the household and appears to be a well behaved young man who will be able to increase his support for his grandmother and sister in the future. As I have already concluded the Appellants' needs are being met in Pakistan under the current arrangements, and absent any reliable evidence to the contrary, I find it is not disproportionate for entry to be refused.

5. The appellants were dissatisfied and applied for permission to appeal on four grounds:

   (i) Inadequate reasoning: unlawful speculation

   (ii) Perversity in so far as the claim that the second appellant was the victim of grooming and had to change schools. It was said on any rational view this was a strong indication of a compelling consideration, the Judge's conclusion to the contrary was perverse.

   (iii) Inappropriate judicial notice in relation to Hypertension being asymptomatic.

   (iv) Misdirection in law in relation to the consideration of TD Yemen to an appeal under 297(i)(f) that then (i)(e).

Permission to appeal was granted on all four grounds by First-tier Tribunal Judge Pickering, who placed emphasis on ground two being the strongest ground, but without limiting the grant of permission.

The hearing

6. We heard submissions from both representatives, a note of which is found in the record of proceedings. We are grateful to both advocates for the clear and succinct way that they put their respective cases.

Findings and reasons

7. We have carefully considered the grounds of appeal and the Judge's decision under appeal, however we conclude that the Judge did not materially err in law in any of the ways advanced.

8. Ms Khan's focus in her submissions was the second ground, as such we will take this ground first in our consideration. We do not consider that the Judge's consideration of the claimed grooming episode was irrational as to her global finding that there are no serious and compelling family or other considerations making exclusion undesirable.

9. The Judge referred to it in her decision at paragraphs 14, and 27. In particular paragraph 27 she sets out as follows:

> *'27. I am willing to accept Mrs Bibi will at times struggle with chores and rely upon the Appellants to assist her but beyond that I don't accept she is neglecting their care ort they are suffering neglect. Even much younger parents would expect children of these ages to help out at home. This isn't in my view evidence of compelling or compassionate factors. It appears the reality of the home life for the Appellants is their physical needs are being met. When the Sponsor was asked what problems the Appellants had in living with their grandmother, she turned to an example of a risk from others, not neglect or lack of care and I think this is telling.'*

10. The above passage appears to be an accurate reflection of how the case was advanced before the FTT. The incident relied on by the appellant is one which prompted the sponsor and the appellants' grandmother to make arrangements for the second appellant to move school. There was no further evidence before the FTT that the second appellant had continued to receive either unwanted advances, or in fact any other evidence of "grooming".

11. The Judge was entitled to find, on the evidence before her, that the unwanted attention that the second appellant received was a one-off incident, which was addressed by moving schools. It was neither perverse

nor irrational to make such a finding, nor can it be said that such a finding could only have led to a finding of compelling circumstances.

12. This component was one of several ingredients in the factual matrix before her, she was entitled to conclude as she did, that there was no evidence of the children's needs not being met, and when put to the sponsor the only problem identified was an external one, which was solved by the family.

13. Ultimately this is a case in which the family would prefer, for perfectly understandable reasons, for the two appellants to come to the UK and live with their aunt here. However, their care and upkeep has been readily met by their grandmother in Pakistan, who to date has done a fine job of ensuring their needs are met. The central feature of the Judge's finding is that the two of them have been more than adequately cared for and continue to be adequately cared for by their grandmother. That finding was, in our judgment, plainly one which the Judge was entitled to come to.

14. Turning to the other grounds as pleaded. Ground one argues that the Judge has speculated in respect of several findings, it is said that:

> *'3. At [23] the FTT states that, "it would be reasonable to assume the Appellants needs were far greater in 2018, when they would have been aged around 14 and 9 years respectively." This assumption is unsupported by the oral evidence before the tribunal, which is that the Appellants' unmet needs grew commensurately with their grandmother's decline in health.*
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> *4. At [25] the FTT states, "I note they have not been countersigned by an independent interpreter and so for all I know they may have been the product of the Sponsor's translation." This hypothesis was not put to the sponsor, who gave evidence at the hearing before JFTT Mensah, and there was no evidential basis for this claim.*
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> *5. At [26] the FTT states, "I would also feel safe to assume, again because of the absence of and evidence, the Appellants have reached an aged where they can wash and dress themselves and help out with cooking and housework.". Once again, this was not specifically put to the parties at the hearing.'*

15. There is nothing outlined further in the grounds about how any of the above examples were, in essence, speculation which materially affected the outcome of the decision. It is not speculation for the Judge to outline what she did at paragraphs 23, 25 and 26. It is merely a set of findings on the evidence she had before her. We have gone back to consider the statements submitted with the appeal, and there is nothing to suggest that the appellants' circumstances have worsened since their mother died in 2018. We do not consider the above three passages to be speculation, less so unlawful speculation. We further note that were this to be speculation that was unlawful, then by extension such speculation could be shown to be manifestly incorrect. The appellants have not sought to apply under rule 15(2A) to produce any evidence to rebut what the Judge

said in these paragraphs. As a whole therefore we consider that the challenge that the Judge unlawfully speculated to be not made out.

16. Ground three is of a similar theme. The ground simply says:

> *'8. At [28], Judge Mensah states, "As I deal with Hypertension on a regular basis as a judge of the Social Entitlement chamber, I take judicial note that Hypertension is asymptomatic." This approach is wrong in principle.*
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> *9. Judicial notice involves something which is obvious to any judge hearing a case in this jurisdiction in the United Kingdom. A Judge cannot take judicial notice of something that is not obvious in that way. It is certainly not obvious to the Appellant or his advisors that hypertension is always asymptomatic. In any event, that the Judge was to take Judicial Notice of this point was not brought to the attention of the parties to the appeal.'*

17. For similar reasons to ground one, we do not consider this ground is made out at all. The appellant argues that the approach was wrong in principle, but fails to identify how such an approach has had a material bearing on the outcome. We do not understand why it is said that the Judge was wrong, less so why she was materially wrong. Ground three is not made out.

18. Finally, ground four advances the proposition that the Judge appears, at paragraph 35, to have applied the test found in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, in other words that the Judge had applied the test of sole responsibility which applies to parents rather than the provisions in (i)(f). We reject this ground. It is obvious from the decision that the Judge has applied to correct test for the purposes of the Immigration Rules. Paragraph 35 is one of the paragraphs where the balancing exercise has been undertaken, we consider it completely understandable why the Judge has considered how the sponsor and the appellants' grandmother have gone about making the key decisions for them since their parents died. In our judgment the Judge was doing no more than considering the complete circumstances in her proportionality assessment.

19. For all of the reasons identified above we do not consider that the Judge materially erred in law.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity – rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

T.S. Wilding

Deputy Upper Tribunal Judge Wilding Date 2 August 2023