Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: HU/12057/2015

THE IMMIGRATION ACTS

Heard at Field House
On: 12.07.2017

Decision and Reasons Promulgated
On: 19.07.2017

Before

Upper Tribunal Judge John FREEMAN

Between

MOIZ ISHTIAQ

Appellant

and

Entry Clearance Officer, Islamabad

Respondent

Representation:

For the Appellant: The sponsor (Mr Mohd. Ishtiaq) in person
For the Respondent: Mr S Staunton

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Jetsun Lebasci), sitting at Newport on 18 July 2016, to dismiss a dependent relative appeal by a citizen of Pakistan, born 7 August 1998. On 17 September 2015, well before his 18th birthday, the appellant applied for a visa to join his father (the sponsor) who has limited leave to remain in this country as a tier 1 general migrant from 2012 to 17 June 2018.

2. Since the appellant was still living with his mother in Pakistan, paragraph 319H (f) of the Immigration Rules required that

> (ii) The Relevant Points Based System Migrant parent has and has had sole responsibility for the applicant's upbringing, or

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

> (iii) there are serious or compelling family or other considerations which would make it desirable not to refuse the application and suitable arrangements have been made in the UK for the applicant's care.

3. On 16 October 2015, the entry clearance officer concluded, in rather general terms, that the appellant did not satisfy the requirements of paragraph 319H (f). However neither the entry clearance manager nor the judge was satisfied, either that the appellant had sole responsibility for the appellant, nor that there were the 'serious and compelling reasons' required to make it undesirable to refuse the application. Permission to appeal was given on the basis that the judge had not considered the applicant's human rights grounds, to which by date of the decision under appeal he was limited. However no points linked to the facts of the case, but outside the Rules, were made on that aspect, either in the sponsor's grounds of appeal, or in his very articulate oral submissions before me.

4. The sponsor's grounds of appeal to the First-tier Tribunal do not mention anything outside the appellant's personal situation, and their only reference to human rights is a general one to "session 6 of the Human Rights Act 1998". The grounds of appeal to the Upper Tribunal do mention one terrorist outrage in Pakistan, but without any suggestion that the appellant or his family have been personally affected. Details of recent outrages, including some in Rawalpindi, where they live, were added in the sponsor's application for permission to appeal to the Court of Appeal: this was the result of a decision reached after a hearing of which he had not had notice, and caused it to be set aside by the hearing judge.

5. The sponsor referred to these outrages again before me; but first, there was nothing before the first-tier judge to show any article 3 risk to this appellant; and second, nothing in the facts now relied on to show it either. Life may be difficult in Pakistan; but it goes on for the vast majority of its people.

6. Returning to the appellant's family situation, the original grounds of appeal said the sponsor was "… our sole and main financer who is providing all necessities of life according to our Islamic culture and tradition". The judge said at paragraphs 10 and 11 that there was not enough evidence to support that, and the sponsor criticized that finding, on the basis of what had been sent in with the visa application.

7. However, the judge did note that there was evidence about the sponsor's income: an accountant's report for the year ending 28 February 2015 showed he made a net profit of £27,807 as a self-employed legal consultant. The judge was right in saying there that there was no direct evidence of support from him for the applicant. No doubt the sponsor would have been perfectly able to support him and the rest of the family in Pakistan; but the judge ended her paragraph 10 in this way:

> … even if he has been their sole source of income he has clearly not had sole responsibility for the Appellant's upbringing, at the very least this has been shared with the Appellant's mother and it seems the Appellant's grandmother has also played a role.

8. The judge also referred to details of the sponsor's income at paragraph 11, in dealing with the arrangements made for the appellant's care in this country, under paragraph 319H (f) (iii). Again she was correct in saying that there were no details of his planned living

arrangements in the evidence provided; the sponsor might well have been able to look after him here, but the judge was not required to assume that.

9. The question of living arrangements here did not arise unless the judge had been satisfied that there were 'serious or compelling family or other considerations which would make it desirable not to refuse the application'. The grounds of appeal describe the appellant's mother as sick and unable to travel here or look after him or his sister; so his paternal grandmother had been taking care of them. They said she had high blood pressure and breathing problems. The judge dealt with this at paragraph 11, saying the appellant had not been able to provide any medical evidence to support this.

10. That finding was criticized before me by the sponsor, who referred me to notes taken at a hospital in Rawalpindi when the appellant's mother visited their emergency department on 22 November 2015. That was just over a month after the date of the decision under appeal; but the notes could have been relevant to her condition at that time, so I was prepared to consider them. In short handwritten form, they show, so far as they are intelligible to a lay reader, that she complained of headache, vertigo and lower back pain: her blood pressure does appear rather high, even to me; but she was discharged with advice and medication.

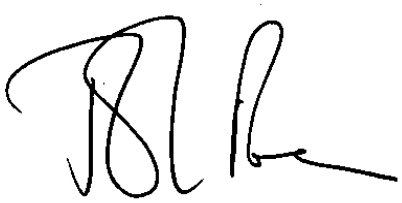
11. Since the appellant was already 17 by the date of the decision, and his grandmother was able to give him as provide him with a home, in my view the judge was fully entitled to take the view that his mother's complaints did not amount to 'serious or compelling family or other considerations which would make it desirable not to refuse the application'. It follows that she was fully entitled on the evidence before her to take the view that the appellant did not satisfy the requirements of either paragraph 319H (f) (ii) or (iii).

12. Nor, on that evidence, was there anything to show that it would have been disproportionate to the legitimate purpose of immigration control, so contrary to article 8 of the Human Rights Convention, to refuse the appellant a visa. Just as there was nothing in the evidence provided to show he satisfied the requirements of paragraph 319H (f), so there was nothing in it to show any particular reason why he should nevertheless have been given a visa. The judge had to start from the Immigration Rules in considering the Human Rights Convention; and it is quite clear from her findings of fact on those that she would have reached the same result if she had done so.

13. The sponsor's final complaint was of what he described as bias on the part of the First-tier Tribunal. This did not relate to anything in the judge's decision itself, but to the date when it was issued, 10 August 2016. The sponsor said he had made three calls to the hearing centre to get hold of it; but I do not think three weeks amounted to undue delay on the part of a judge who was not at that centre all the time. The sponsor's real complaint was that by then, the appellant was just over 18; so he was unable to make another application with any chance of success.

14. This may have been unfortunate for an appellant who had made his visa application in reasonable time before his 18th birthday; but the judge dealt with him as someone who was still 17 at the date of the hearing, and that was what he was entitled to from her. I do not think the time taken to issue her decision remotely raises an issue of bias; and it did nothing to show any arguable error of law in the reasons she gave for it.

Appeal dismissed



18 July 2017

(a judge of the Upper Tribunal)