



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

Appeal Number: HU/01123/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

Decision & Reasons

On May 3, 2019

**Promulgated
On 16 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MUHAMMAD IHTISHAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt, Counsel, instructed by Eric H Smith Solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer
Interpreter: Mr Azhar

DECISION AND REASONS

1. The appellant, a Pakistani national, applied on May 30, 2017 for entry clearance under paragraph 297 HC 395. The respondent refused his

application on November 20, 2017 finding that the appellant did not satisfy either paragraph 297(i)(e) or (f) HC 395.

2. The appellant appealed this decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Shergill on November 6, 2018 and in a decision promulgated on November 22, 2018 the Judge dismissed the appellant's appeal on all grounds.
3. Permission to appeal was given by Upper Tribunal Judge Finch on March 8, 2019 who found there was an arguable error of law where the Judge had sought to go behind the Court Order without having any legal expert evidence to support the findings made.
4. No anonymity direction is made.

SUBMISSIONS

5. Mr Holt adopted the grounds of appeal and submitted that the Judge had not given adequate reasons for attaching no weight to the order that had been made in Pakistan. He submitted that the Judge had refused the appeal for three reasons, namely:-
 - (1) the foreign Order had to be lawfully attained;
 - (2) a foreign Court Order had been obtained under false pretences; and
 - (3) there had been a failure by the sponsor to tell the court that he was residing in the United Kingdom.

Based on those findings the Judge had attached no weight to the Court Order. Mr Holt submitted that this approach was flawed because there was evidence before the court in Pakistan that the sponsor was living in the United Kingdom and that the court would have been aware of it. The documentation clearly demonstrated that the Judge in Pakistan had the sponsor's power of attorney documentation, which was contained at page 55 of the appellant's own bundle, and the Court Order (contained at page 57) confirmed the court had the document before it. The power of attorney documentation confirmed that the appellant was residing in the United Kingdom.

6. The Judge also erred by finding that "presently residing" was only a temporary state of affairs. He submitted "presently residing" meant currently residing and the Judge had attempted to interpret the Pakistani court was thinking. The respondent had never suggested the court documents were not genuine and the Judge should not have gone behind them.
7. Mr Tan submitted that the Court Order from Pakistan simply established that the sponsor had been awarded custody of the child. The Judge had

listened to the oral evidence and found that this evidence contradicted evidence that had been presented to the court in Pakistan. The Judge had to consider whether the Immigration Rules were met and he had concluded that neither sub-paragraph (e) nor (f) of paragraph 297 HC 395 had been satisfied. The Judge concluded at paragraph [10] that the sponsor did make a financial contribution but also found that the appellant's mother played a significant role in the appellant's upbringing. Mr Tan argued that the materiality of a Court Order had to be considered because the Judge had found the appellant had failed to demonstrate that the sponsor had sole responsibility and the findings made in respect of sub-paragraph (f) were clearly open to the Judge.

8. Mr Holt responded to this argument submitting that the error was material because the Judge had ignored the fact that the sponsor did have a Court Order and he argued that if weight had been given to the Order then the court may have concluded the sponsor had sole responsibility, or alternatively, that the order would amount to serious and other family circumstances, namely that preventing the appellant to join the sponsor would be a breach of the Court Order.

FINDINGS ON ERROR IN LAW

9. This had been an application by the appellant to join his father and in refusing his appeal the First-tier Judge rejected the appellant's claim that the sponsor had sole responsibility for him and also rejected his claim that there were serious and compelling family or other considerations which made his exclusion undesirable.
10. Permission appears to have been given on the approach taken by the Judge to the Order. I accept there may be an argument that the Judge's approach to the documentation may have gone beyond his jurisdiction, but how material that ultimately is a separate issue. In order to decide that, it is necessary to look at the Judge's decision. His findings commenced at paragraph [6] and concluded at paragraph [17].
11. The Judge found the sponsor to be a straightforward and candid witness who had provided financial support through the payment of various remittances, fees, the sending of gifts and the occasional visit to Pakistan.
12. The Judge did not accept the Court Order in the sense that he found that the court in Pakistan did not have the full picture. The Judge effectively went behind the Court Order on the basis of the oral evidence that he was given.
13. Mr Holt challenged that approach, but as in any case oral evidence can be viewed with greater weight than written evidence. The court in Pakistan was simply provided with a signed document, whereas the First-tier Tribunal Judge had the benefit of hearing oral evidence. The Judge thereafter made a number of findings, which in any appeal would normally

be open to him. Mr Holt argued that by going behind the Court Order the Judge has erred.

14. Paragraph [12] of the Judge's decision is significant because in that paragraph the Judge considered the issue of sole responsibility and concluded that the mother had not abdicated responsibility. Accordingly, regardless of what the Court Order actually said the Judge concluded the sponsor did not have sole. In other words, the reality of the situation was different to what was written on paper. The grounds of appeal did not actually challenge that finding.
15. The Judge went on to consider paragraph 297(1)(f) HC 395, namely whether there were any serious and compelling family or other considerations which would make the appellant's exclusion undesirable and in detailed reasons the Judge concluded that it was in the child's best interests to remain in Pakistan. None of those reasons have been challenged.
16. Whilst it is arguable the Judge may have erred by rejecting the Court Order I find that firstly, the First-tier Tribunal Judge was in a better position to consider the situation because he had the benefit of hearing oral evidence from the sponsor, whereas the court in Pakistan simply had documentation presented; and secondly, having heard the oral evidence the Judge concluded the appellant did not meet the Immigration Rules and accordingly dismissed the appeal.
17. Those findings were open to the Judge and I therefore find there was no material error in law.

NOTICE OF DECISION

18. The original decision is upheld. I dismiss the appeal.

Signed

Date

15 May 2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

There is no fee award as I have dismissed the appeal.

Signed

Date

15 May 2019

A handwritten signature in black ink, appearing to read 'SP Alis'. The signature is written in a cursive style with a long horizontal stroke at the bottom.

Deputy Upper Tribunal Judge Alis