Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/11731/2016**

THE IMMIGRATION ACTS

Heard at Glasgow
On 23 April 2018

Decision and Reasons Promulgated
On 27 April 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER

Appellant

and

M R F
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer
For the Respondent: Mr Muzaffar Iqbal, of Muzaffar Associates Ltd, Glasgow

DETERMINATION AND REASONS

1. Parties are as above, but are referred to in the rest of this decision as they were in the FtT.

2. The appellant is a citizen of Pakistan, born on 24 May 2012. His paternal uncle and his wife, both naturalised UK citizens, are the sponsors. They have no children. The appellant is the fifth child in his birth family. The sponsors have entered into an "adoption" or guardianship arrangement with his birth parents in Pakistan, but the law of that country does not provide for adoption. They have obtained from the Scottish Government a certificate of eligibility to adopt the appellant, but that matter cannot advance further unless and until the appellant is granted entry clearance and travels to the UK.

3. The ECO refused the appellant's application for entry clearance by a decision dated 7 April 2016. The requirements of the immigration rules were found not to be met.

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Most importantly, the ECO in terms of rule 297 (i) (f) was "not satisfied that there are serious and compelling family circumstances or other considerations which make your exclusion undesirable …". The application was also refused by reference to article 8 of the ECHR, including the duty regarding children under section 55 of the 2009 Act.

4. FtT Judge Kempton heard the appellant's appeal on 3 November 2017. At ¶19 of her decision promulgated on 8 November 2017 she said, "I allow the appeal under rule 297 (i) (f) and it follows that it should also be allowed under article 8 of the ECHR".

5. It was agreed in the UT that the outcome was wrong in form. The appeal was not available under the immigration rules, only on human rights grounds. However, Mr Matthews acknowledged that if rule 297 (i) (f) was satisfied, its terms were such that success on article 8 grounds would follow, and there was no need for a technical correction.

6. The ECO's grounds of appeal to the UT say, in summary:

    (1) Given that the appellant still lives in the family home with his biological parents and siblings and is cared for more than adequately, the FtT's finding of compelling reasons is not made out. Sympathy with the sponsors has been confused with the actual position of the appellant.

    (2) The sponsors spend about 4 weeks a year with the appellant in Pakistan. This does not amount to protected family life.

    (3) The FtT applied the same flawed reasoning to article 8 as to rule 297 (i) (f).

7. Mr Matthews acknowledged that the category of legal error is not made clear in the grounds. He accepted that the grounds do not say the outcome was irrational, and he did not seek to argue that it was. There was no dispute on the facts. He did not categorise the error as inadequacy of reasoning, but as failure to take account of relevant matters, namely the adequate care provided by the birth parents, and over-reliance on *SK* (Adoption not recognised in UK) India UKAIT 00068. The outcome in that case had been reached "by a very narrow margin", at ¶40. The case was distinct. There had been an adoption in the law of India, but not recognised in the UK. Here there was no legal adoption even in the law of Pakistan, and no *de facto* adoption. The parents in *SK* had to leave the child in India but did not leave her with her natural parents. The child in this case remained with his birth parents. There was nothing to prevent the sponsors living in Pakistan. He submitted that the errors were material and required the decision to be set aside. There being no scope for further fact-finding, the UT should substitute a decision, reversing the outcome.

8. Having considered also the submission of Mr Iqbal, I find that the grounds and submissions for the ECO do not disclose that the FtT erred on any point of law, such as to require its decision to be set aside.

9. It is possible to distinguish *SK*, but there will always be some differences in the facts. That was a very narrow case, but not obviously weaker on the most pertinent

circumstances: a childless couple in the UK, seeking to adopt from extended family abroad, and unable to form a legally recognised adoptive relationship. There is never likely to be a rule either that most such cases succeed, or that most do not. This was also a narrow case. The ongoing care provided by the birth parents was plainly taken into account by the judge at ¶15. She did not think that rule 297 (i) (f) was met "at first blush", but only for the detailed reasons she gave at ¶16 – 18. The ECO's grounds and submissions are in my view only disagreement with that assessment, which was firmly rooted in the facts of the case.

10. The decision of the First-tier Tribunal shall stand.

11. The FtT made an anonymity direction, which is preserved herein.

24 April 2018
Upper Tribunal Judge Macleman