



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU / 06911 / 2020
HU / 06914 / 2020
HU / 06918 / 2020

THE IMMIGRATION ACTS

Heard at Field House
via Microsoft Teams
On 9 December 2021

Decision & Reasons Promulgated

On 20 December 2021

Before:

UPPER TRIBUNAL JUDGE GILL

Between

(1) Master Muhammed Ammaz Mahmood
(2) Master Muhammad Hammad Mahmood
(3) Miss Anmber Mahmood
(ANONYMITY ORDER NOT MADE)

Appellants

And

Entry Clearance Officer

Respondent

Representation:

For the Appellants: Mr E Nicholson, of Counsel, instructed by JJ Law Chambers.

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are siblings. They are nationals of Pakistan. They appeal against a decision of Judge of the First-tier Tribunal Rastogi who, in a decision promulgated on 26 May 2021 following a hearing on 7 May 2021, dismissed their appeals on human rights grounds (Article 8). The judge found that the decision was not disproportionate. In giving her reasons at paras 69-75, she took into account, inter alia, that the appellants had not shown that they satisfied the criteria in para 297(i)(f) of the Immigration Rules, i.e. that they had not shown that there were serious and compelling family or other considerations which made their exclusion from the United Kingdom undesirable.
2. The appellants' grounds of appeal challenged the judge's finding that they did not satisfy the criteria in para 297(i)(f).
3. By way of background, the appellants had applied on 20 March 2020 for entry clearance under para 297 of the Immigration Rules in order to join their paternal

uncle, Mr Amjad Ali (hereafter the “sponsor”) in the United Kingdom. The sponsor is a British citizen. The appellants’ applications were refused by the respondent in decisions dated 14 April 2020 (in relation to the first and second appellants) and 21 July 2020 (in relation to the third appellant).

4. The appellants live in Pakistan with their biological mother. The evidence relied upon before the judge included the following medical evidence which the appellants relied upon to show that their mother was suffering from mental health problems following the deaths of their father and their maternal grandfather such that she was unable to care for them:
 - (i) A report from Professor Abdul Shakoor, Head of the Department of Psychiatry in Lahore; and
 - (iii) A report from Dr Mariam Kashmiri, a UK based Consultant Psychiatrist.
5. Mr Clarke and Mr Nicholson agreed that the judge had materially erred in law in failing to engage with the report of Professor Shakoor. They agreed that the judge's decision should therefore be set aside and that the appeal should be remitted to the First-tier Tribunal for a fresh hearing.
6. I agree. The judge set out a summary of the report of Professor Shakoor at para 37. She made a brief mention of his report in the first sentence of para 49 where she said: “*I note that Dr Kashmiri’s diagnosis is consistent with that given by Professor Shakoor ...*”. However, she did not engage with his report. In particular, she did not indicate the weight that she gave to the report. In view of the contents of the report as summarised by the judge at para 37 of her decision, I am satisfied that the failure to engage with Professor Shakoor’s report and to indicate the weight that she gave it amounted to an error of law. In addition, given that Professor Shakoor stated, inter alia, that, “*due to her psychological state [the appellants’ mother] has lost the willingness to take care of her children*”, I am satisfied that the error was material to the outcome.
7. For the reasons given above, I set aside the decision of the judge in its entirety.
8. In my judgment, this case falls within para 7.2(b) of Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal and that it is appropriate to remit this case to the First-tier Tribunal for a fresh hearing on all issues on the merits.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law such that the decision falls to be set aside. The decision is set aside in its entirety. This appeal is remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Rastogi.

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email