



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: HU/25062/2018

HU/25061/2018

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THE IMMIGRATION ACTS

**Sitting at Birmingham CJC
On the 11th May 2021**

**Decision & Reasons Promulgated
On the 17th June 2021**

Before

**UPPER TRIBUNAL JUDGE MANDALIA
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

FIB (1)

MB (2)

FAB (3)

MAZ (4)

(ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: The Sponsor as a Litigant in Person

For the Respondent: Mr C Bates, Home Office Presenting Office

DECISION AND REASONS

An anonymity direction was made by the First-tier Tribunal (“FtT”) and, as the Appellants are minors and their Sponsor has been granted refugee status, it is appropriate that a direction is made. Unless and

until a Tribunal or Court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

- 1.** The Appellants are all minors and nationals of Pakistan. They are the biological children of the Sponsor, NA, and were born as follows:
 - a. FIB born 8 September 2010 (aged 10)
 - b. MB born 1 February 2009 (aged 12)
 - c. FAB born 4 August 2006 (aged 14)
 - d. MAZ, born 22 December 2004 (aged 16)

- 2.** The Sponsor arrived in the UK in 2011 on a student visa. He is in a relationship with [SN]. He was recognised as a refugee by letter dated 28 November 2017 and has been granted leave to remain in the UK until 8 September 2022.

- 3.** The Appellants, via the Sponsor, made applications on 14 September 2018 for entry clearance to the UK under Immigration Rule (“IR”) 352D to join the Sponsor as the pre-flight children of a refugee. Their applications were refused by the Respondent by letters dated 29 November 2018 written in substantially the same terms (together “the Refusal Letter”). The decisions were maintained following a review by the Entry Clearance Manager on 4 March 2019. The Appellants’ linked appeals against those decisions were dismissed by First-tier Tribunal Judge Lodge for reasons set out in a decision promulgated on 22 August 2019.

- 4.** Permission to appeal was granted by Upper Tribunal Judge Grubb on 6 January 2020. He noted that the central issue was whether the Appellants had formed an independent family unit but there was also the issue of whether First Tier Judge Lodge had accepted that the Appellants’ biological mother was living with them and the Sponsor when the Sponsor left

Pakistan; if so, whether they still lived with her; and even if they did, whether they had formed an independent family unit since the Sponsor had left. On 3 June 2020 the Respondent conceded that the grounds of appeal had merit and that a fresh assessment was needed as to whether the children had established an independent family unit and therefore met the requirements of IR 352D.

5. In an error of law decision promulgated on 4 September 2020, Upper Tribunal Judge Pitt found the decision of Judge Lodge was vitiated by a material error of law and must be set aside. She decided that as the issues remaining to be determined were narrow, the appeal was to be listed for a resumed hearing before the Upper Tribunal to remake the decision.
6. The matter was listed for a resumed face to face hearing before us on 11 May 2021, sitting at the Birmingham Civil Justice Centre. The Sponsor attended as representative for the Appellants. Mr Bates attended on behalf of the Respondent. The Sponsor gave oral evidence in Urdu via the interpreter, Mr Azhar Riaz, whom the Sponsor confirmed he understood.

The Respondent's decision

7. The Refusal Letter stated that the applications made by the Appellants were refused because the Respondent could not sufficiently determine on the evidence provided whether the Appellants were dependant on the Sponsor or had formed an independent family unit with their aunt, siblings and grandparents in Pakistan. The Respondent noted that, although there were a number of letters and witness statements to support the claim that the Appellants have lived with their paternal grandparents and their aunt since birth, there was no mention of the Appellants' relationship with their mother. The Respondent said the evidence of contact between the Appellants and their Sponsor was comprised of a series of missed calls, one-word messages and repeat calls made in quick succession and that

there was insufficient evidence of money transfers demonstrating that the Sponsor had supported the Appellants for the entire period since he had fled Pakistan. As such, it said, the requirements of IR 352D had not been met.

The appeal before us

- 8.** The only ground of appeal available to the Appellants pursuant to s.84(2) of the 2002 Act is that the Respondent's decision is unlawful under s.6 of the Human Rights Act 1998. The burden of proof is upon the Appellants to show, on the balance of probabilities, that they have established a family and/or private life, and that the refusal of leave to enter interferes with that right. It is then for the Respondent to justify any interference caused. The Respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.

The issues

- 9.** At the outset of the hearing before us, Mr Bates confirmed the Respondent's acceptance that the Appellants are the biological children of the Sponsor and that they were part of his household at the time he left Pakistan. Mr Bates confirmed that whether the Appellants' mother had left in 2010 was still a live issue.
- 10.** It was agreed by the parties that the sole issue is whether the Appellants have formed an independent family unit for the purposes of paragraph 352D(iii) of the IR. If this rule is met, then the decision to refuse clearance would be disproportionate for the purposes of Article 8 ECHR. If the rule is not met, the Tribunal will have to consider whether the refusal of entry clearance or leave to enter is in breach of Article 8 ECHR.
- 11.** We have had regard to all the oral and documentary evidence and considered the submissions even where not specifically mentioned.

- 12.** Full notes of the oral evidence and submissions are set down in the record of proceedings. The main points arising from the oral evidence were as follows:

Sponsor's oral evidence

- 13.** The Sponsor confirmed his mother, the Appellants' grandmother, with whom the Appellants live, is almost illiterate, she can only read basic Urdu and sign her signature. As to how she was able to write her witness statement in English, the Sponsor said the official language in Pakistan and all paperwork is done in English; once a witness statement is dictated in Urdu or English, it is written down and read to you and you sign, there is normally nothing on it to indicate it has been read back to you in a language you have understood.
- 14.** The Sponsor said he was still legally married to the children's biological mother; there is a set procedure in Pakistan whereby you need to go to the Union Council which has a reconciliation body before which both parties need to appear to get a final divorce. As regards whether he is married under Islamic law to his partner in the UK, the Sponsor said yes, you can have four wives, but according to Pakistani records, there is only one wife (the children's' mother); he was aware you could only have one wife in the UK.
- 15.** He confirmed the children's mother left the family home on 21 October 2010 when his youngest child was 6-8 weeks' old; she left because there were problems over a division of land. He said the children's mother was his cousin, his maternal uncle's daughter; his mother and father are also cousins. He said, "*according to our culture, we don't marry with our own free will and we also don't live together as per our own will, it is the decision of the families, we don't marry for love*". He said in his culture, women take the side of their own immediate family and the children's mother chose to side with her own parents. As to whether the mother said

anything about the children's care when she left, the Sponsor said, *"the children are always the father's in Pakistan, so she said the children are yours, you take care of them"*.

- 16.** The Sponsor said he did not know the mother's address after she left him, and he had never tried to find out where she went because of the animosity. He said that when his mother applied for a guardianship certificate, the court in Pakistan sent a summons to the children's mother's last known address which was not complied with, so two adverts were placed in the national newspapers telling her of the grandmother's application for guardianship of the children. He said the address for the mother stated in the application for guardianship was her last known address; this is the one address for everyone who lives in the village. He said there are no street or house names, you get one address, everyone knows everyone there, so it is the same address for his own family's home and that of his maternal uncle.
- 17.** The Sponsor confirmed his maternal uncle/the father of the children's mother lived in the same village about 5-7 minutes' walk from his family's house; the uncle had always lived there; the Sponsor last saw him in around 2010 on the land where they were making the division, before the children's mother left. The Sponsor said he did not know where his wife went when she left him, but he was pretty sure she did not go to her father's house because he thought he would have seen her had she gone there. He confirmed he did not try and contact her because of the issue of the land causing a lot of grief and the matter went to the police. He said this is why she chose to walk away from her children.
- 18.** As to why, if she chose her own parents over her children, she did not go to her parents, the Sponsor said she only had her father. Her mother and father had divorced, and her mother was re-married and living with her husband in Lahore which was quite far away. He said his wife could have

gone to Lahore. He said her parents separated a long time ago, before his own childhood and before he and his wife were married. He said his wife spoke to her mother, but he had never visited his wife's mother.

- 19.** The Sponsor confirmed he lost contact with his children and his mother between 2015-2017 because SN's parents found out about their relationship and started harassing his children "*based on honour-based violence*". He said his mother was an old-fashioned person and was annoyed with him because SN had already been forced to marry her cousin; when the Sponsor's mother came to know that he was living with a married woman and doing an un-Islamic act, she stopped contacting him, having moved to a new house from the area due to the harassment she was receiving from SN's family. As regards whether the children had suffered any specific threats or attacks, the Sponsor simply said they left because of the harassment, SN's family were demanding a daughter in place of the daughter he had taken. During the period when there was no contact, the Sponsor said the children had some savings which they were using to support themselves and his father was in the army, so they were in receipt of his pension.
- 20.** The Sponsor said that after he came here in 2011, he had chosen tutors for the children and did so again after regaining contact with the children in 2017. He said he now makes all the decisions in relation to their tutors, religious education, schooling, curricular activities, their gym memberships etc.
- 21.** When asked about a letter dated 14 May 2018 from a private tutor named Asma saying the grandmother is the only one who picks up and drops off the children, and is the only person contacted regarding progress and in case of emergency, the Sponsor said he chose the tutor and the grandmother has to do the pick-up and drop-offs because he is not there; he sends money to the grandmother who then pays the tutor; the tutor

would not know he had chosen her. He said he and his mother had a consultation about tutors in the area and this one was selected because she was female and after the Sponsor discussed subjects with his children. The Sponsor said the letters from schools confirm he is in direct contact with the children's education providers.

- 22.** The Sponsor said since he left Pakistan, the children have always lived with his parents and one of his sisters. His parents are both very ill and his sister helps take care of the children as she lives in the same household. He said he was living with all of these people together before he left, but at a different address. He said the children have had to move schools over the last few years as a result of moving house; he had chosen the new schools. He said he spoke to his mother before he left about caring for the children but at that time there was no plan to bring the children to the UK.
- 23.** As to whether either of his parents had worked at any point since he left in 2011, the Sponsor said they have agricultural land from which they receive money, they rent out a house and receive an income from that and he sends them expenses every month for the children. As to whether the grandparents and aunt would have enough money without his assistance, the Sponsor said yes, for themselves, but not for the children as it is very expensive in Pakistan.
- 24.** As to the relationship with his current partner, the Sponsor said he thought it started in 2010; he knew her before the children's mother left but formed the relationship after this. He said he left when he did in 2011 because he had formed a physical relationship with [SN] and there was a date set for her to go and live with her husband whom she was forced to marry; she didn't want to go as she was no longer a virgin, and had they found out about this, she would have been killed and it would have had consequences for him as well.

The submissions

25. We heard submissions from both parties, which are recorded in the record of proceedings and which we have carefully considered in reaching our decision. It serves no purpose to burden this decision with a lengthy recital of those submissions.

Respondent

26. Essentially, Mr Bates relied on the Refusal Letter and Entry Clearance Manager Review (“Review”) which raised the issue around a lack of evidence regarding the whereabouts of children’s mother. He submitted the Sponsor is not a credible witness and that we should attach little weight to the evidence in the form of letters and statements in the Appellants’ bundle and to his assertions concerning the cultural and legal norms in Pakistan i.e. that it would be usual for a daughter to side with her own family, that children default to the care of the father, and that he and the mother needed to be in front of a council to divorce. Mr Bates said the Respondent does not accept these assertions absent any background evidence to support them.

27. Mr Bates submitted that his own experience was that generally in Pakistan, when a daughter marries into another family, her loyalties are to that family; he said the Appellants’ mother would have had care of the children as minors, for her sons up to age 7, and for her daughters up until puberty, although he accepts these are not hard and fast rules.

28. Mr Bates submitted the Sponsor’s credibility is an issue. He said although the children are entitled to rely upon paragraph 352D of the IR, the Sponsor came here on a student visa but has since entered into an Islamic marriage with his partner, with whom he has a child; this

arrangement could explain why he was evasive about the whereabouts of the children's mother and is not being candid about the situation.

- 29.** Mr Bates submitted we should attach little weight to the typed statement from the Appellants' grandmother, being someone whom the Sponsor says is largely illiterate. He said the explanation provide by the Sponsor of how such statements are made is not supported by objective material. He said the fact that much of the evidence is in surprisingly good English (and, concerning the children's statements, uses legalese) goes to the reliability of the documents and the weight we can attach to what is said in them. Mr Bates said he did not go as far to suggest the statements and letters relied upon by the Appellants are fraudulent or not genuine, but it is a question of the weight we should attach to them, and their reliability. He said the Appellants' case really relies upon the credibility of the Sponsor and his evidence.
- 30.** Mr Bates submitted that the other evidence relied upon barely makes any mention of the Appellants' mother. He said the authors of the statements and letters confirm they have known the Sponsor for a long time and by extension, should have known about the children's mother, as she disappeared from the family home where she lived with the children, Sponsor and her in-laws, only a few weeks after giving birth. He submitted, on balance, it is unlikely that a mother would have abandoned her youngest child within 6-8 weeks of giving birth. He referred to the Sponsor saying that this came about due to a dispute over a land issue; that his wife did not go to her father's house in same village but went to her own mother who had divorced and remarried and lived some distance away. He submitted this was an unlikely chain of events.
- 31.** Mr Bates submitted that although the Sponsor claims in his evidence that without his financial support, his mother, father and sister would be unable to support the children and their education, such that it is essential that he

fulfils that role, the Sponsor also accepts there was a gap between 2015-2017 where he had no contact with the Appellants and was clearly not supporting them; during that period the only people doing so were his parents and potentially his sibling(s). Mr Bates submitted we should reject the Sponsor's evidence that his family would be unable to care for and educate the children without the Sponsor's financial support; they have done so in the past and are able to do so in the future.

- 32.** Mr Bates submitted the Sponsor left Pakistan when his youngest child [FIB] was only a few months' old such that the only family she has known is with her grandparents and aunt, and potentially the mother. Mr Bates submitted on the Sponsor's account of events, the Appellants' grandmother chose to sever ties for a period of time with the Sponsor, saying this was due to the harassment the family were being subjected to in Pakistan. Mr Bates submitted that although the family may have been subjected to some harassment such that the family chose to relocate, if, as the Sponsor indicated, the grandmother took exception to his relationship in the UK and chose not to have contact with him, she would have taken on sole responsibility and control for the children earlier because there does not appear to be anyone else who could have done so.
- 33.** Mr Bates submitted we should find the Sponsor not to be a credible witness and that the Appellants have failed to discharge the burden of proof that they have not formed an independent family unit.

Appellants

- 34.** The Sponsor drew our attention to the wealth of statements and letters provided by a number of individuals and submits the evidence clearly establishes that he is involved in the Appellants' lives, sends them money and gives instructions to his mother. He said the letters from the local council and chairman are official letters, which all verify this. As regards the documents being in English, he said the guardianship certificate and

police letters are also in English, that is the official language, and all official letters are in English. He drew our attention to the police survey report and the guardianship certificate and submitted these are both official documents issued by the authorities and were undeniable evidence to which we can attach due weight.

- 35.** The Sponsor submitted that it is the documentary evidence that matters here, and if he had any documentary evidence that proved the children were living with their mother, there is no reason why he would not have disclosed that. As regards the period where he lost contact with his children and the reason for that, the Sponsor said mobile phones have only recently become commonplace in Pakistan, and they were not frequently available during the relevant period between 2015 and 2017. He submitted that during that time, his family were in a state of shock and panic and were moving from one place to another; that is the reason why his contact with them had stopped. He submitted his father retired in 1990 and when contact was lost, they had to survive on whatever means they had, whether at a poverty level or a higher level, they had no other option. His father's pension as retired army personnel was limited. He submitted his father is now about 70 and is about to die, he needs personal assistance 24/7.
- 36.** As regards where the Appellants' mother went, the Sponsor said he was unable to confirm that she went to her mother's, but his evidence is that it was possible that she went there; as far as his family were concerned, when she left her young baby, she could have gone anywhere. He submits he has Islamically divorced her, but there is no legally recognised divorce as they had to appear before the reconciliation body to obtain one, which they could not do in her absence.

- 37.** The Sponsor submitted that, contrary to what is said by the Respondent, this is not a “sole responsibility” case, but a refugee family reunion case and there is no sole responsibility test.
- 38.** The Sponsor submitted that the Appellants’ social, psychological and emotional needs are such that they need to be with him. He submits he has provided extensive evidence of his relationship with the Appellants; they have a good standard of English because they have been taught in English from their first class onwards. He submitted that, looking at the evidence in the round, the evidence establishes the children are with his mother and are living with her as a pragmatic necessity, not by choice and because they are very young. He submitted that they are all under 18 and unmarried, and they have no choice as to where they can live.
- 39.** The Sponsor said he relied on the cases set out in his skeleton argument; the Appellants are his children, and it is his right that they should live together. He said the Respondent is bound under the Refugee Convention to facilitate family reunion and not complicate things. He said his children should be allowed to live with him, and it is in their best interests to do so as his mother and father are both aged and ill, and, especially during the pandemic, they are at high risk and cannot go outside. He submitted that the appeals should be allowed with costs.
- 40.** After hearing submissions from the parties, we reserved our decision and informed the parties that our decision would follow in writing. Here follows that decision, to which we have both contributed.

Discussion

Legal Framework

- 41.** The Appellants have appealed the Respondent’s decisions to refuse their application for entry clearance, under s.82 of the Nationality, Immigration

and Asylum Act 2002 on the ground that the decisions are unlawful under s.6 of the Human Rights Act 1998. The Appellants must satisfy us on the balance of probabilities that Article 8 ECHR is engaged. If we find that it is, the burden shifts to the Respondent to establish that the decisions are proportionate.

42. Although the Appellants' ability to satisfy the IR is not the question to be determined, it is capable of being a weighty factor when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control. As set out by the Court of Appeal in TZ (Pakistan) [2018] EWCA Civ 1109, compliance with the rules would usually mean that there is nothing on the Respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the Respondent's policy as set out in the rules. Conversely, if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control.

43. Paragraph 352D of the IR states as follows:

Requirements for leave to enter or remain as the child of a refugee
352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:

(i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum; and

(v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

- 44.** The Appellants fall for consideration under 352D because their applications were made on the basis that they were under 18 at the time of application and the Sponsor has been granted refugee status in the UK. As we noted at the outset, the sole issue before us is whether the Appellants have formed an independent family unit.
- 45.** As the Appellants are under 18, adhering to the spirit of section 55 of the of the Borders, Citizenship and Immigration Act 2009 (as they are outside the UK) requires us to have regard to the need to safeguard and promote their welfare.
- 46.** Under section 117A of the Nationality, Immigration and Asylum Act 2002, when determining whether a decision would be unlawful on the basis that it breaches the right to respect for private and family life, when considering the question whether an interference with a person's right to respect for private and family life is justified under Article 8(2), we must have regard in particular to the considerations listed in section 117B.
- 47.** The burden of proof is on the Appellants to prove the facts they allege and so far as the IR are concerned, the standard is the balance of probabilities.

Findings and Conclusions

Engagement of Article 8 ECHR

- 48.** It was not suggested by Mr Bates that the Appellants do not enjoy a family life with the Sponsor. The Respondent accepts that the Appellants are the Sponsor's biological children and that they were part of his household at the time he left Pakistan.
- 49.** We find the Sponsor has sufficiently demonstrated that he and the Appellants enjoy family life together and that Article 8 is engaged. We find that the decision to refuse the Appellants leave to enter has consequences of such gravity as to engage the operation of Article 8. We accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal is whether the interference is proportionate to the legitimate public end sought to be achieved. The importance of, and weight to be given to immigration control has been underscored by Parliament in s.117 of the Nationality, Immigration and Asylum Act 2002 (as amended) as referred to above.

Rule 352D

- 50.** Broadly put, insofar as is relevant to our decision, paragraph 352D of the IR requires that the Appellants are under 18, are not leading an independent life, are unmarried and have not formed an independent family unit; and were part of the family unit of the Sponsor when the Sponsor left Pakistan in 2011.
- 51.** No issue has been raised as to the Appellants' ages. They are all minors. It is accepted that the Sponsor has refugee status and that he is biologically related to the Appellants. We note that the Sponsor was recognised as a refugee as the dependant of his partner SN, who had been granted asylum, without his evidence being tested in a Tribunal.

Is the Appellant's mother absent?

- 52.** It is useful for us to begin by considering the claim made by the Appellants and the Sponsor that the Appellants' mother left the family in 2010 and that her whereabouts since are unknown. The Appellants' grandmother states in her statement dated 8 April 2011 that the "*Sponsor separated with appellants mother on 21-10.2010*", without any further elaboration or further reference to the Appellants' mother.
- 53.** The statutory declaration made by the Appellants' grandfather on 21 June 2019 claims the Sponsor separated from his wife (the Appellants' mother) in 2010. The grandfather claims the children were abandoned and left in the care of the Sponsor and that the Appellants' mother has not met with them since 2010, neither has the family heard anything about her. He claims that in their community, when couples separate, it is considered to be a declaration of "war" and the woman's side consider the children to be children of the enemy. He confirms that he is not in a position to look after the Appellants because of his own health related issues and other commitments.
- 54.** The Appellants' aunt who we refer to as [SP] has provided a statement in which she simply states; "*I confirm that children are living without their both parents. Children mother is not living with their children (appellants) since 2010 and father is in the UK*".
- 55.** The Sponsor's partner [SN] has made a statement dated 27 April 2021. She states that when the Sponsor entered her life, she knew that he was a father of four children, and he was a single parent because the Appellants' mother left them in his care and separated.
- 56.** We have a number of letters and statements in the evidence before us that make the bare assertion that the Appellants have been living with their grandparents, and without their mother since 2010. Their content is

vague and devoid of any details such that we attach little weight to that evidence. Examples are as follows:

- a. Letters in manuscript written by [FAB] and [MAZ] in June 2019 (when aged 13 and 11 respectively). [FAB] was only 4 in 2010 and [MAZ] was 2. Neither child makes any reference to their mother, but both confirm they are living with their grandparents and siblings.
- b. A supporting letter from Gulla Abbasi dated 8 April 2021 confirming the Appellants are living without their mother and father and are looked after by their grandmother.
- c. Letters from Raja Mehmood, Vice Chairman of UC Mandi Bhalwal, The Sarai Alamgir District, dated 20 August 2018 and 20 November 2020. He states that he knows the Sponsor and his family personally. He states the Sponsor and his wife separated in 2010 *“because of property/land disputes between the families”*, and that since the Sponsor’s departure from Pakistan his four children have remained under the care of their grandmother *“without their real mother”*.
- d. A letter from Muhammad Daud Khan dated 16 May 2018 who states he personally knows the Appellants are living without their mother and father but with their grandparents and an aunt.
- e. A letter from Memoona Rashid dated 15 September 2018 saying she has known the Sponsor since 2005 as a class fellow and good friend, they visited each other houses prior to Memoona’s departure from Pakistan in 2010, at which point all the children were part of the Sponsor’s family unit and household. Since the Sponsor has been in the UK, they have been in contact.
- f. A letter from Asghar Ali, a General Councillor, dated 17 August 2018. He confirms that he knows the Sponsor and his family personally, and that the Sponsor used to live with his four children, parents and siblings until he left for the UK in April 2011.

- g. Two letters from Raja Zulqarnain, who claims to have responsibility for collection of fixed agricultural revenue. In his first letter dated 20 August 2018, he states that he knows the Sponsor and his family as residents of the same village, and the Sponsor lived with his four children in the ancestral home until he left for the UK in April 2011, following which his children were left in the care of their grandmother. In a subsequent undated letter, he adds that the Sponsor separated from his wife "*because of land disputes with his in-laws*". He states the Appellants are living with their grandparents and an aunt, and that "*I know they are living without their real mother*".
- h. A letter from Tazeem Akhtar, an employee of the Health Department dated 20 August 2018, in which she claims she personally knows the Sponsor and his family and that she had been providing designated services to the Sponsor's family and his children, until they left the ancestral home in 2015.
- i. A letter from Ch. Jiger Muhammad Shakir dated 12 May 2018 which says he is a teacher and had been teaching [FAB] and [FIB] who were enrolled by their grandmother; the grandmother is the only person who drops off and picks up the children to and from the institution and is the contact person regarding their progress and in case of emergency.
- j. A letter from Ijaz Ahmad dated 20 August 2018 who confirms that he last provided a vaccination to the Appellants' mother on 14 June 2010 and 14 July 2010. He last provided a measles vaccination to [FAB] on 15 September 2019 at the family home in the presence of her grandmother.
- k. A letter from Imam Jamroz Khan dated 20 August 2018 in which he confirms that he personally knows the Sponsor and his family. He confirms all four children were part of the Sponsor's family until the Sponsor left for the UK and after that, the Appellants' grandmother was responsible for them.

- i. Two letters from Asma Bukhtawar. The first dated 14 May 2018 confirms that she is a private tutor and has been teaching the Appellants for two hours a day. She states the children are living with their grandparents and an aunt without their mother and father. In that first letter she states *“All the matters regarding tuition fee and time have been settled by children’s grandmother. She is the only person who provides pick and drop to the children. She is also the only contact person regarding the children’s progress and in case of emergency.”* In a subsequent letter dated 25 November 2020 she refers to the Appellants’ grandmother and states *“she is the only person who provides pick and drop to the children. She is also the key contact person regarding the children’s progress and in case of emergency.* In that second letter she adds *“Children father [the Sponsor] also keeps in contact with me regarding children progress.”*
- m. Letter from the Principal of Sajid Memorial Public High School dated 21 August 2018 confirming [MAZ] was enrolled under the guardianship of his father on 29 May 2010 and 31 March 2011, and [MB] and [FIB] by their grandmother on 3 April 2014 and 30 May 2014 and that the Sponsor paid the fees directly.
- n. Letter from the Deputy Principal of Madrisa Tul Madina Lilbinnat dated 25 November 2020 confirming [FIB], [MB] and [FAB] were enrolled by their grandmother. She confirms their mother is not living with them and their grandmother is their “Carer/Guardian”.

57. We have considered the evidence set out in the statements and letters before us in the round, together with the evidence of the Sponsor. We are not satisfied that the evidence establishes that the Appellants’ mother did leave the family home in 2010 as claimed. It is incredible that she would have simply left the family home leaving her four children in the way claimed by the Sponsor.

- 58.** The fact that there are a number of individuals that are all prepared to say that the Appellants have lived without their mother since 2010 is not sufficient to establish that this is the case, especially where the authors of the letters and statements provide very little, if any, information regarding the breakdown of the Sponsor's relationship with his wife and where the wife went in 2010, despite the two families living in the same area, and despite claims that the authors knew the Sponsor's family personally. The Sponsor's wife was the daughter of his maternal uncle who also lived in the same area, and it is likely that the authors of a number of the letters would have known her whereabouts. It is not clear how the authors of the school letters would know that the children were living without their mother beyond the authors having been told that by the Sponsor or his family. We find that the bare assertions set out in the letters and statements are, in truth, an attempt by the Sponsor to bolster the claim that his wife left the family home in 2010.
- 59.** We attach little weight to the evidence of the Appellants' grandparents. The statements of the grandmother are in English and signed by her in Urdu. She is said to be illiterate. In her statement of 21 May 2018, she says *"I can't read or write and also unable to operate latest gadgets, so we have been in contact with [Sponsor] via mostly voice calls"*. However, there is nothing in her statements that suggest they have been translated or read to her before they were signed or that they were signed in the presence of an interpreter. The statements of the Sponsor's parents barely mention the children's mother, the breakdown of the Sponsor's relationship with his wife or the considerable impact that her, and later the Sponsor's leaving, is likely to have had upon the family. Their statements do not refer to the land dispute or indeed any reason for the mother leaving, despite the fact that the land dispute is likely to have had an impact upon the Sponsor's mother too. She is the sister of the Sponsor's father-in-law.

- 60.** Even if they all lived together prior to 2010, the grandparents went from being peripheral carers to being the primary carers of the children, one of whom was a very young baby at the time. Beyond the claim that the Appellants' mother left the home because of a 'land dispute' we have no credible evidence or explanation as to why she would simply abandon her young children and make no attempt whatsoever to see or contact them again. There is no evidence before us of any attempt made by the Sponsor or the Appellants' grandparents to establish contact with the Appellants' mother, and we do not accept that the Sponsor would have failed to make even the most basic of enquiries to establish where she had gone, given the family connections and proximity within which both families lived.
- 61.** [SN] has provided a statement dated 27 April 2021 in which she claims that when the Sponsor entered her life, she knew that he was the father of four children and was a single parent because the Appellants' mother left them in his care. [SN] was not called to give evidence and her evidence has not been tested in cross-examination. [SN] had previously provided a letter from Dr Amy Au-Young, a Consultant Perinatal Psychiatrist dated 5 July 2019 who says she is "currently" working with [SN] as her Consultant Psychiatrist. Dr Amy Au-Young simply states; *"..attending court would be very challenging and may be too traumatising for her.."* but there is no further information since about any underlying mental health diagnosis or treatment. We note from a document headed "CA3 Children's Further Assessment" dated 13 May 2016 (although the date is not entirely clear as it is a poor photocopy) in the bundle before the First-tier Tribunal that SN had been diagnosed with psychotic symptoms which could be triggered by discussing her history. However, there is no up-to-date medical evidence before us regarding the health of [SN] and no explanation for her failure to attend and give evidence before us on 11 May 2021, almost two years after the letter from Dr Amy Au-Young. The statement of [SN] regarding the Appellants' mother is in the vaguest of terms and we attach little weight to her evidence.

- 62.** We find it odd that the letters from the children used phrases such as “*I want to live with my father for my social, psychological, mental, physical and emotional growth and development*”, noting the Sponsor used a very similar phrase in his closing submissions. This phraseology, which one would not expect from children, together with their letters being in very good English cause us to find on balance that the Sponsor was likely largely responsible for the content of these letters rather than them being evidence free from manipulation of the true position of the Appellants.
- 63.** We accept the submission made by Mr Bates that there is no objective background material before us to establish that English is the official language of Pakistan such that it is the norm for it to be used in all official documents. In direct contradiction of the Sponsor’s assertion, the newspaper extracts provided by the Sponsor are not in English, and the Appellants’ bundle also contains copies of the ‘Application for Grant of Guardianship Certificate’ and a ‘Security Survey’ together with translations. The fact that those official documents are not in English and required translations undermines the Sponsor’s claim that it is the norm for English to be used on all official documents. In the absence of any objective background material, we do not accept the Sponsor’s assertions as to his inability to obtain a divorce in Pakistan nor Mr Bates’ assertions as to the age to which children are usually cared for by their mothers in Pakistan.
- 64.** The Sponsor’s mother applied for guardianship of the Appellants in 2019, eight years after the Sponsor left Pakistan and four years after the remaining family’s first move away from the village. We have been provided with a copy of the grandmother’s application and a translation. The Sponsor confirmed at the hearing that the house moves required changes of school and the letter from Sajid Memorial High School supports this by stating that three of the Appellants were issued with School Leaving Certificates in February 2015. The Sponsor in his ‘written

argument' states that his mother applied for a guardianship certificate because she faced difficulties without it "*especially two appellants are in secondary school and their awarding body needs real parent or real guardians' signature*". The application itself states the reason for it being made was "*Applicant has been facing problems with the minor's school, NADRA office and passport office*". On balance, we find the Sponsor's explanation for the certificate being obtained is not entirely truthful. We find it more likely that it was obtained because the Sponsor thought it looked like persuasive 'official' evidence of the children's mother being absent. We find the application for a guardianship certificate is again an attempt to persuade us that the Appellants' mother left the family home and has played no role in the Appellants' lives since 2010. In this respect:

- a. The timing of the application is of some concern. We note it was made on 20 September 2019, shortly after Judge Lodge had dismissed the First-tier Tribunal appeal on 22 August 2019.
- b. The Sponsor produced several further documents concerning the application, being: a petition for guardianship dated 20 January 2020 referring to it being an 'amended petition'; two newspaper adverts (which we discuss below); a certificate of guardianship dated 8 February 2020 and a surety bond dated 8 February 2020. The petition adduced is an 'amended' petition. We have not seen the original petition filed when the application was made; nor do we know why there was a need for it to be amended or what the amendment was.
- c. We have been provided with copies of two newspaper adverts with translations. The first is from a newspaper dated 30 September 2019 addressed to the "Public at Large" and required anybody who had an objection to the application to approach the court on 4 October 2019 at 08:00. The second is from a newspaper dated 2 December 2019 addressed to the Appellants' mother and states, "*service of the summons to the respondent is difficult*" and informs that she must

attend the court on 09/12/2019 at 09:00. We have been provided with the originals of the newspaper adverts. The second advert has quite clearly been tampered with. Part of the advert has been cut away and a piece of paper stuck on to the reverse so that a date of 12-12-19 appears in the advert, which in any event is also at odds with the translation of 09/12/2019.

- d. We note that both newspaper adverts pre-date the 'amended' petition of 20 January 2020 and there is no evidence before us of any attempt made by the Appellants' grandmother or the Court to bring the amended petition to the attention of the Appellants' mother.
- e. The guardianship certificate states the "Date of Decision" to be 20.01.2020. That is the same date as the date of the amended petition. The guardianship certificate appears to have been issued simply upon the basis of the 'Statement of Facts' set out in the amended petition dated 20 January 2020 and there is no evidence of any attempt having been made by the Court to verify the accuracy of the matters set out in the amended petition. There is no evidence before us that the Court made its decision to grant a guardianship certificate after having heard any evidence from the Appellants' grandmother or other witnesses or having had the opportunity of having the content of the petition probed in any way.
- f. Overall, we attach little weight to these documents. At their highest, they establish that the grandmother is recognised as a legal guardian, not that the Appellants' mother is absent.

65. The translations of the documents that are before us are wholly unsatisfactory. The Practice Direction of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as most recently amended by Sir Ernest Ryder, Senior President of Tribunals on 18 December 2018 provides, at [8.2], that the best practice for the preparation of bundles is that where the document is not in the English

language, a typed translation of the document signed by the translator, and certifying that the translation is accurate, must be inserted in the bundle next to the copy of the original document, together with details of the identity and qualifications of the translator. The translations that we have in the papers before us are not signed by the translator, or certified as being accurate. Neither are the details of the identity and qualifications of the translator set out. Given our serious concerns about the newspaper advert that we have set out, we are not prepared to accept the translations are accurate without proper compliance with the Practice Direction.

- 66.** There are other inconsistencies in the evidence that we have taken into account in our assessment of the credibility of the Sponsor and the extent to which we can attach weight to the evidence of the Appellants' grandparents and aunt in particular. We note the Sponsor at the hearing said his sister is helping his parents to care for the children because they are both very ill and she lives in the same household. However, his sister's statement says *"I am helping my mother in looking after the appellants and also in other matters at the moment. I live in my own home with my husband and am not available full time any more"*. The Sponsor also said his father needs 24/7 care and yet his father's statement says he is *"taking care of my agricultural land and cattle farms"* indicating he is still working. These inconsistencies negatively affect the Sponsor's credibility.
- 67.** Overall, we do not find it proved on the balance of probabilities that the children are living without their biological mother, nor do we accept the Sponsors' explanations as to why she left. We find it likely that she is still a part of the Appellants' lives and that they are part of a family unit with her and the Sponsor's parents and, for a time, his sister.
- 68.** The question is then, whether the Appellants, together with their mother, grandparents and aunt, have formed an independent family unit.

Independent family unit

69. The cases of MI (paragraph 298 (iii); “independent life”) Pakistan 2007 UKAIT 00052 and NM (Leading an independent life) Zimbabwe [2007] UKAIT 00051 put forward by the Appellants both concern the formation of an independent life, not an independent family unit. MI does not assist us particularly but NM, although focussing on ‘independent life’ in respect of (then) IR 197 is relevant in saying:

“[Headnote] Where a child (who may be over 18) is seeking limited leave to remain as the child of a parent with limited leave, in order to establish that he is not “leading an independent life” he must not have formed through choice a separate (and therefore independent) social unit from his parents’ family unit whether alone or with others. A child who, for example, chooses to live away from home may be “leading an independent life” despite some continuing financial and/or emotional dependence upon his parents.”

...

[12] First, there is the underlying purpose of para 197 (and other similar rules such as paras 243, 274 and 298) which is to maintain the family unit between parents and their children when the former come to the UK with limited leave to enter or remain. It allows children to remain part of the family unit in which they lived abroad with their parents (or sole surviving parent or one with sole responsibility). At least at the point of application (and most likely decision) the child must by virtue of para 197(ii) be under the age of 18. As such, the rule clearly contemplates the situation where, usually at any rate, the applicant (on entry) is a child who is naturally part of the family unit headed by its parent or parents. Thus, paragraph 197 is properly seen as a rule providing for the continuation of “family unity”. The difficulty arises when applying the provision post-entry to a child who is now an adult but to whom the rule can still be applied providing he is

unmarried, has not formed an independent family unit and is not leading an independent life. However, the underlying purpose of the rule is the same - the continuation and maintenance of the "family unit" with the parents.

[13] Second, there is the context of the phrase itself as it appears in para 197(iii). The child must be "unmarried", have not formed an independent family unit" or, as are concerned with in this appeal, "not [be] leading an independent life". Clearly, these are three distinct possibilities but, in our view, they have a common feature. A child who has married or formed his own independent family has separated from the family unit of his parents. He has formed his own social unit with others. It seems to us that the third possibility also requires the same element of "separation"; the formation of a separate (and therefore independent) social unit from his parents' whether alone or with others, for example a girlfriend or boyfriend. The rule does not require that the child must be independent of everyone; just that he must be independent of his parents. At that point, the underlying purpose of para 197 of maintaining the family unit with the parents is no longer engaged. Further leave to remain should now be a matter of the child satisfying the Immigration Rules on his own right rather than as a component of the social unit of which he is no longer part.

[14]. Mr Tranter submitted that it was a matter of assessing the nature of the choices made by the child. To an extent we agree. It is not enough that the child does make choices about his life, for example to take up employment. This, like other choices made by the child, may be factors to be taken into account but the crucial issue is always to ask whether the child has, through choice, separated from his parents' family to form his own social unit, whether alone, by marrying or as part of his own independent social unit. Consequently, a child who leaves his parents' home and sets up home alone can properly be said to be "leading an independent life". This is not the same as saying he must no longer be dependent upon his parents or is no longer part of their family. He clearly is the latter even if living alone and "independently" of them. The family ties remain even if the family unit

headed by the parents has now split up. Likewise, even if living his own independent life he may be financially dependent (at least in part) on his parents, for example they may help him set up his separate home and, perhaps, even help him with his rent or mortgage for a period until he has found his feet financially. But, in our view such a person may still be seen as “leading an independent life”. Financial or emotional dependence is not, in this context, the antithesis of “independence”. Again, these are relevant factors to be taken into account but no more.”

- 70.** The Appellants’ other proffered case of BM and AL (352D(iv); meaning of “family unit”) Colombia [2007] UKAIT 00055 held that what comprises a ‘family unit’ for the purposes of (then) rule 352D(iv) is a question of fact. It is of limited assistance in terms of ascertaining the meaning of ‘independent’ family unit in circumstances where it has been accepted that the Appellants were part of the Sponsor’s family unit before he left Pakistan. Having said that, we find the following paragraphs to be noteworthy:

“[27] We regard the issue as to what is a “family unit” for the purposes of para 352D(iv) as a question of fact. In many cases it will be clear that a child was part of a family unit with an asylum seeker in his country of habitual residence. The child will have lived with the asylum seeker and perhaps another partner. Alternatively if there has been separation the reason for that separation may well be associated with the claim of persecution and a child might still remain part of the family unit from which the potential refugee had been temporarily separated. Here no such claim is made.”

[28] If on the other hand the separation is the result of social choice by the parties and a separate family unit based upon the mother is created, it will be correspondingly harder to establish that a child is in reality a part of two different family units. This will be especially so if the child is young and the consequence will be separation from the

mother rather than family unity as envisaged by the UNHCR handbook."

- 71.** The facts in BM and AL were that the Sponsor came to the UK with his current partner and their son, after which the Sponsor was recognised as a refugee. Applications were made for his two children, who never lived with him and were the product of his affairs with other women, to come to the UK as pre-flight members of his family unit. Their applications were refused, and these refusals were upheld on appeal by both the First Tier and the Upper Tier Tribunal, on the basis that the applicants had never been part of the Sponsor's family unit. At the time of leaving his country, the Sponsor had been living with his current partner and their son, who were able to join him in the UK some years later. He was therefore found to have a family unit with only these people, and not the applicants, despite there being a relationship between the Sponsor and applicants in terms of contact and financial assistance.
- 72.** The authorities referred to by the Appellants do not address the central issue that we are concerned with, although it is clear that a fact sensitive assessment is required. Paragraph 352D IR makes provision for family reunion so that children under the age of 18 may join a parent granted asylum as long as the child has not *inter alia* formed an independent family unit. A fact-specific assessment is required, and we must consider whether the particular circumstances in which the Appellants live, are such that they can be said to have formed an independent family unit.
- 73.** We have found that the Appellants' mother is still a part of the Appellants' lives. We accept that the Appellants' grandparents and (initially) their aunt in Pakistan have also played a significant role in the Appellants' lives and have done so since the Sponsor left them in 2011. The Sponsor confirms he fled Pakistan in 2011 with his current partner because they had committed an 'un-Islamic act' and formed a relationship

together in breach of their respective marriages to other people. Since being in the UK, the Sponsor and [SN] have had children together.

- 74.** The Sponsor confirmed at the hearing that when he left Pakistan, he had no plans for the Appellants to join him in the UK in the future and handed their care to his mother, their grandmother. Although we accept the Appellants may live with their grandparents, we find they do so along with their mother. We find the Sponsor did not need to have any plans for the Appellants to join him in the UK because they remained in Pakistan as part of a family unit with their mother, and grandparents.
- 75.** We accept, save for a period between 2015 and 2017, the Sponsor has maintained regular contact with the Appellants and has provided some financial support, but we reject his evidence that he has been the one directing their lives. We accept Mr Bates' submission concerning the nature of the evidence of phone and message contact between the Appellants and Sponsor. We note there is some evidence of money transfers and gifts from the Sponsor and that he paid some school fees.
- 76.** The Sponsor confirmed at the hearing that there was a total lack of contact between 2015 and 2017, which is confirmed by the grandmother's witness statement dated 21 May 2018. We also have the two statements made by Asma Bukhtawar. In the first statement of 14 May 2018, she said the grandmother is the only person who provides "*pick and drop to the children*" and she is also the only contact regarding the children's progress and in case of emergency. She makes no reference to any contact with the Sponsor. In her second statement dated 25 November 2020 she said the Sponsor also keeps in contact with her regarding the children's progress. We attach little weight to this evidence in the absence of any explanation from her as to why she did not refer to the contact with the Sponsor previously. Her second statement was made after the First-Tier Tribunal decision dismissing the Appellants' appeal on 22 August 2019. On

balance, we find that it is the Appellants' family in Pakistan (i.e. their mother and grandmother in particular) that make the decisions as regards the Appellants' education and are the primary point of contact and care for them.

- 77.** We accept the appellant is not required to establish he has 'sole responsibility' for the appellant. That is not the test. In the end we must be satisfied that on balance, the Appellants have not formed an independent family unit. There is force in the submission made by the Sponsor that the narrow interpretation adopted by the Respondent would mean that no child of a refugee who has been left in the care of another family member would qualify under the family reunion rules. A fact sensitive assessment is required. With this in mind and when looking at the case in the round, we find that the Appellants have formed an independent family unit separate from the Sponsor. On the facts and findings we have made, we do not accept the Appellants have separated from their mother. They were part of a family unit with her prior to the Sponsor's departure from Pakistan and we find they have 'formed an independent family unit' with her, since the Sponsor's departure.
- 78.** The Appellants remain as part of an independent family unit with their mother. Being so young, the Appellants were not capable, at the time of the Sponsor leaving, of choosing to form a separate family unit. Rather, the separation of the family unit was caused by the positive act of the Sponsor choosing to leave them and come to the UK with his current partner. His departure, using a student visa, was planned in advance, and the Sponsor says he had no plans to bring the Appellants to the UK at a later date. The Sponsor's separation from the Appellants was not temporary. He chose to leave his family unit that then comprised of the mother, the Appellants, the grandparents and aunt, in favour of a new life with his current partner, with whom he has since had children.

- 79.** The fact that the Sponsor assists the Appellants financially and is in some form of continued contact with them is not sufficient to persuade us on balance that the Appellants have not formed an independent family unit. Furthermore, there was a gap between 2015 and 2017 when the Sponsor did not financially support or contact the Appellants. During this period, the Appellants' family unit was entirely self-sufficient. There is no evidence that the Appellants had any unmet needs during that period. We do not accept the Sponsor's explanation that the lack of contact during this period was due to mobile phones being scarce in Pakistan. His evidence is internally inconsistent with his claim that his mother is an old-fashioned woman who was not happy with what the Sponsor had done, and that was the reason why contact ceased.
- 80.** In any event, the Appellants' grandmother, with the consent of the Sponsor, has now also secured a certificate of guardianship. The position now is that not only were the Appellants left by the Sponsor in Pakistan when he left in 2011, but with the consent of the Sponsor, the children are now also part of an independent family unit with their grandmother.
- 81.** On balance, we therefore find the requirements of IR 352D(iii) are not met because the Appellants have formed an independent family unit with their mother and grandparents, the aunt having left the family home at some point.

Best interests of the children

- 82.** As above, the Section 55 duty requires immigration functions to be discharged having regard to the need to safeguard and promote the Appellants' welfare as they are children.

- 83.** The starting point is that it is in the Appellants' bests interest to be with at least one of their parents. Since we have found their mother is still with them and never left, it is in their best interests to stay with her in Pakistan. We find she is likely to have been their primary carer. We find the Sponsor has exaggerated the role played by his parents in the roles of the children and the belated steps taken to obtain a guardianship certificate to be nothing more than an attempt to bolster the Sponsor's claim that the Appellants' mother left without trace in 2010. Alternatively, the grandmother has now, with the consent of the Sponsor, secured a guardianship certificate recognising the important role she plays in the lives of the Appellants. Even on the Appellant's own case, she has been the stable figure throughout their lives and we find it would be in their best interests to stay with her. The Appellants have only ever lived in Pakistan and will be familiar with the culture and language there. There is insufficient evidence of the grandparents being in such a poor state of health to persuade us on balance that they are unable to look after the Appellants; indeed we have found the evidence of the grandfather indicates that he is still working and much of the documentary evidence shows that the grandmother drops off and picks up the Appellants from school so must be reasonably fit and well.
- 84.** We note from the "CA3 Children's Further Assessment" referred to above that the Sponsor and SN's child was subject to a child protection plan after it was identified that SN had slapped the child across the face. It details how SN had been diagnosed with psychotic symptoms which could be triggered by discussing her history. We have already discussed the evidence of Dr Amy Au-Young from 2019. There is insufficient evidence on which to make any findings about SN's present mental state. We mention this purely because it indicates the possibility of the environment available in the UK being in contrast to that in Pakistan, where there is no evidence to show any ill treatment or lack of care of the Appellants, such that it would be in their best interests to remain there.

85. We find on balance it would not be in the best interests of the Appellants to live in the UK away from everything they have ever known and when they appear to be being well cared for and are all in stable education. We acknowledge that this has an impact upon their relationship with the Sponsor because they are physically separated from him. However, we have found that the Appellants have formed an independent family unit with their mother. As Mr Bates submits, she has no entitlement to enter the UK under the family reunion provisions because the Sponsor is no longer in a relationship with her. If the Appellants join their father in the UK, that will result in them being separated from their mother and other close family members who have played a significant role in their lives. We see no reason why the Sponsor cannot continue to support the Appellants financially from the UK. We find on balance it is in the Appellants' best interests to maintain the status quo.

Conclusion on the Immigration Rules and Best Interests

86. We have found the Appellants do not meet the requirements of the Immigration Rules and it would not be in their best interests to come to the UK. We therefore turn to Article 8.

Article 8

87. We have found that Article 8 ECHR is engaged.

88. The impact of the refusal decision means that such family life as the Appellants and Sponsor do and could enjoy, will be interfered with by their continued separation.

89. Addressing the Razgar test, the interference is in accordance with the law and necessary in the interests of the economic well-being of the country. We therefore need to consider whether the interference is proportionate to the legitimate aim of having efficient immigration controls.

90. We have considered the case of GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630 which included the following observations about the test to be applied:

- a. the test for an assessment outside the immigration rules was whether a fair balance was struck between competing public and private interests;
- b. that proportionality test was to be applied to the circumstances of the individual case.

91. Taking s.117B into consideration:

- a. it is in the public interest that the Appellants are financially independent. No issue has been raised by the Respondent as to whether the Sponsor could adequately provide for the Appellant in terms of finance and accommodation. In any event, this factor is neutral in the balance.
- b. it is in the public interest that the Appellants can speak English. As children, they are exempt from the requirement and this factor is also neutral.
- c. the maintenance of effective immigration controls is in the public interest. We have found that the Appellants do not meet the requirements of the immigration rules.
- d. We have found it is in the Appellants' best interests to remain with their mother and grandparents as a family unit in Pakistan.

92. We have conducted a balancing exercise and have had regard to factors that weigh in favour of the Appellants and Sponsor. We acknowledge that the refusal of the application is such that the Appellants are unable to live with one of their biological parents. However, if the Appellants are reunited with the Sponsor, they would lose the benefit of their relationship with their biological mother and their grandparents and aunt, all of whom

we accept have played a significant role in the lives of the Appellants. Weighing the balance, we find the interference to be proportionate.

93. Accordingly, we conclude that the refusal decisions are proportionate and dismiss the appeal.

Notice of Decision

94. We dismiss the appeal on the basis that the refusal of entry clearance does not breach section 6 Human Rights Act 1998 (based on Article 8 ECHR).

95. An anonymity direction is made as the Appellants are the children of a person who has been recognised as a refugee.

Signed **L. Shepherd**

Date: 14 June 2021

Deputy Upper Tribunal Judge Shepherd