IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000373
First-tier Tribunal No: HU/59405/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

MUHAMMAD AZAAN
(No anonymity order made)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Broachwalla of Counsel by CVP
For the Respondent: Mr Diwynicz a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 17 June 2024

DECISION AND REASONS

1. The Appellant was born on 19 May 2009. He is a citizen of Pakistan. He appealed against the decision of the Respondent dated 8 November 2022, refusing him entry clearance as a child for settlement to be with his mother, Mahwish Khizar, who it is said had sole responsibility for him.

2. For consistency and ease of reference I will refer to all documents by reference to the numbering in the bottom right-hand corner of the page of the electronic bundle for the Upper Tribunal, as in some places there are 3 sets of paginations on documents. I will make no reference to the additional documents submitted for this hearing that were not before

Judge Hands, as Mr Broachwalla accepted that the application to consider them was only if a material error of law was found.

3. The Appellant appeals against the decision of First-tier Tribunal Judge Hands, promulgated on 5 June 2023, dismissing the appeal against the refusal of the Respondent's decision.

4. Judge Hands summarised the reasons for the Respondent's refusal as follows;

> "5. The Respondent was not satisfied that the Appellant met the requirements of Paragraph 297. The Respondent had noted the Appellant had failed to provide sufficient evidence to establish his British sponsor was the parent who has the sole responsibility for his upbringing as his grandmother has been his primary carer since 2016, when his mother travelled to the United Kingdom. His grandmother has been the person making the day-to-day decisions in his life. The Appellant had also failed to establish that there were serious or compelling family circumstances that made the Appellant's exclusion from the United Kingdom undesirable. The sponsor has said that her siblings would visit their mother more often to make sure she was okay after her son left Pakistan, therefore, there is no reasonable explanation for them being unable to visit her while the Appellant is living there.
> 6. There is insufficient evidence to establish that the Appellant's father is agreeable to the Appellant traveling to the United Kingdom or that he has no contact with the Appellant. The Appellant's stepfather was evasive in that respect. Pakistan is not on the list of countries the Respondent recognises custody orders from and in any event, the first court order states the sponsor cannot take him out of Pakistan and if the Appellant's father was absent, there should be no need for that clause or for her to return to court, which suggests she does not have sole responsibility for the Appellant.
> 7. Finally, the Respondent found there would be no breach of the Appellant's rights in terms of Article 8 of the European Convention on Human Rights (ECHR) by refusing him entry clearance as the family had made a choice to be one that lived in different countries and although there would be a certain degree of hardship, there were no exceptional circumstances that would entitle the Appellant to enter the United Kingdom. In respect of the best interests of the Appellant in terms of s55, the Appellant will continue to live in the same circumstances he currently enjoys, and it is the status quo for his family circumstances."

Permission to appeal

5. Permission was granted by Upper Tribunal Judge Owens on 9 April 2024 who stated:

> "2. It is arguable that the judge failed to assess the sponsor's oral evidence. The judge arguably gave no or inadequate reasons for rejecting her oral evidence. Further it is arguable that the judge failed to take into account other supporting documentary evidence such as the letter from the appellant's school setting out the mother's involvement in his education.
> 3. All grounds are arguable."

The First-tier Tribunal decision of 5 June 2023

6. Judge Hands made the following findings (highlighted by me) in the decison:

"22. The issue is whether or not the sponsor has sole responsibility for the upbringing of the Appellant and maintains that responsibility. The court document (MK-1) dated 12 June 2021 awards guardianship to the sponsor over the Appellant and a later document (MK-2) dated 01 February 2023 grants her permission to remove him from Pakistan and take him to the United Kingdom.
23. In MK-1, the citation refers to the sponsor taking the petition against the public at large and makes no reference to the Appellant's father, other than the minor involved is his son, nor is there a reference to his grandmother. This leaves the question of whether the Appellant's father was aware of such an action being raised or if he was given the opportunity to put forward his views to the court. It specifically bans the sponsor from taking the Appellant out of the jurisdiction of the court and she could not, therefore remove him from Pakistan. I also note she has provided her mother's address as her place of residence with no reference to her address in the United Kingdom. Regardless of my concerns in respect of the information before the court in Pakistan, **the United Kingdom does not list Pakistan as one of the countries where such custody orders are recognised**.
24. MK-2 is again raised against the public at large but it does refer to the Appellant's father, although not by name, recording no one appeared on his behalf. It also refers to hearing from the Appellant and his willingness to go abroad. It does not state if the Appellant can be taken abroad permanently or for a period of time although it does state it is for the Appellant's 'welfare'. **The length of time the Appellant can be taken abroad is not specified and the fact the sponsor has to post a surety of Rs1,000,000/- would suggest she is expected to return the Appellant to Pakistan at some point. It is also specified that she must produce the Appellant in the court when required or ordered to do so. Failure to do so would forfeit the surety. I can see no other reasonable explanation for the need of a surety to be paid. The order also states that the letter of permission will only be issued after the surety is paid. The letter of permission directs that the Appellant's itinerary of travel is submitted and reiterates the need to produce him in court as and when required. In my judgement, this does not give the sponsor permission to remove the Appellant from Pakistan permanently**.
25. **The newspaper cuttings are not sufficiently reliable to demonstrate all necessary steps were taken to trace the Appellant's father or to show that he is not interested in his son.** The references to him indicate he now has Danish nationality although any reference to him is directed at him being in Pakistan. **The cuttings alone do not demonstrate they were actually published in a paper circulating in an area where the Appellant's father was likely to see them**...
27. Financial support does not in itself indicate sole responsibility. There is evidence of money transfers to either Iqra Khizar (the sponsor's sister) or Muhammad Aqib (the sponsor's brother) from May 2018 to April 2022. There is one money transfer to Tayyaba Shoukat in June 2022, although someone of that name has not been referred to in the evidence. There is no evidence of money being sent to the Appellant's grandmother, Shehnaz Parveen Akhtar. **The reason provided for the transfer of funds is 'family assistance' and there is no specific reference to the funds being for the sole use of the upkeep and wellbeing of the Appellant.** There is no evidence of money transfers between 2016 and 2018 or after June 2022.
28. The medical and dental records submitted and included in the Respondent's bundle part 4, are clearly marked 'not valid for court'. The only ailment of the Appellant's grandmother specifically referred to therein is arthritis. **It is difficult to place much evidential weight on the statement that the sponsor is the contact of the doctor in respect of the Appellant when the documents are marked as not valid for court**.
29. **There is no information from the Appellant's school or contact with the sponsor about the Appellant's education**.
30. **The affidavit from Muhammad Aqib dated 30 April 2022 contradicts the evidence of the sponsor. He swears that he is living at the same address**

as the Appellant and is busy with work. There is no reference to any law degree course at university in Islamabad or a part time job in Islamabad.

31. **The sponsor has provided no insight into the daily life of the Appellant**. She has referred to and provided evidence of contact between them on WhatsApp as evidence of their correspondence and devotion. There are many photographs and WhatsApp messages between the Appellant and the sponsor. It is not apparent when the photographs were taken or who is in them aside from the Appellant and the sponsor. Some were obviously taken some time ago. **I have no doubt the Appellant and the sponsor do have a loving bond**.

32. The meaning of "sole parental responsibility" was explored in the case of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. The test provided is:

> 'The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life – if not, responsibility is shared and so not "sole".'

33. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence. The term "responsibility" in the immigration rules should not be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently. In this case, **whilst there is evidence of financial support via the Appellant's aunt and uncle, there is no evidence of any interaction between his grandmother and the sponsor as to the day-to-day care of the Appellant**. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility. In this case, the Appellant's father is said to have abandoned him as a baby and his mother cared for him until her marriage. At that time, he was left in the care of his grandmother. **There is no evidence of any contact between the sponsor and the persons in Pakistan who has been in receipt of money to be used for the Appellant's day to day care, being maintenance, care and education for him**.

34. It is the concept of "authority" or "control" over a child's upbringing which is important. A really key issue will be the evidence of contact between the applicant parent and the carer on important decisions to be taken about the child and his or her upbringing. In any situation, if that parent can show that he or she has control over the major decisions that affect a child's life, even from afar, then this will be strong evidence to suggest that they meet the "sole" responsibility test. I find that in the absence of this evidence before me, **the Appellant has not established that his mother has sole responsibility for him and that whilst she now provides financial support for him, his grandmother is still involved in his care and has the authority and control over his upbringing, which is supported financially and by visits from the sponsor periodically**.

35. The Borders, Citizenship and Immigration Act 2009 Act section 55 places the best interests of the child as a primary consideration. **The Appellant has been living in Pakistan his whole life and has been separated from the sponsor since 2016**. The focus needs to be on the needs of the child in light of his age, social background and developmental history. **He is still a child** at the time of application and at the time of this hearing. I am told **he is attending school. There is no indication that he is not well cared for**. **Whilst the sponsor is keen for him to come to the United Kingdom, there is no evidence to support a claim that this course of action is best for the Appellant as he will be brought to a country where he cannot speak the language and introduced to a new educational system and culture, as a teenage boy**. **I have not been provided with any insight into the Appellant's desire to leave his life in Pakistan to live in the United Kingdom with his mother, stepfather and half-sister**. In my judgement, on a balance of probabilities, **there is insufficient evidence to establish it is in the Appellant's best interests to uproot him to bring him to join the sponsor in the United Kingdom**.

36. Given the circumstances as I have detailed them, I find the Appellant has established that he does not meet the requirements of the immigration rules.
37. This, however, is not the essence of this appeal. The Appellant can only appeal on human rights grounds and therefore I can only consider his appeal in terms of Article 8 of the ECHR. **The evidence does not establish that the Appellant and the sponsor have any family relationship, other than a biological one. They have lived in different countries over the past seven years and whilst the sponsor has visited him, there is no evidence of any other contact between them or any financial support between 2016 and 2018. Their current relationship is no more than a mother and son, who live in different countries. In my judgement, there is not sufficient evidence before me to establish that the sponsor has participated in her role, either emotionally or financially, as a parent of the Appellant or that the Appellant is dependent on her for his education or any other aspect of his well-being**. In those circumstances, I am satisfied the decision to refuse the Appellant entry to the United Kingdom is in accordance with the law.
38. In coming to my decision, I have to take Section 117A to D of Part 5A of the Nationality, Immigration and Asylum Act 2002 into account. Maintenance of effective immigration control is in the public interest. There would need to be compelling circumstances in respect of the Appellant that would outweigh that public interest. I do not find there is sufficient evidence to establish this is the case.
39. In respect of the Appellant in this case, **there is no evidence of neglect or abuse, there is insufficient evidence to establish that there are unmet needs that cannot be catered for and there are suitable arrangements for the child's physical care. The Appellant is well cared for in the circumstances in which he lives. Sufficient funds are available to him to cater for his physical and emotional needs**.
40. The continuity of residence is also a factor. The Appellant is a minor. It is not in a child's best interests to change the place of residence where the child has grown up and is socially aware. **The Appellant has lived in Pakistan and within the Pakistani culture from birth. He is now fourteen years old and will be socially aware. It would not be in his best interests to change that place of residence.**
41. The case of R (on the application of Agyarko) (Appellant) v SSHD and Others [2017] UKSC 11 sets out that in considering granting an appeal outside the Immigration Rules something very compelling is required to outweigh the public interest. It would not be proportionate where a refusal, in the circumstances, would result in unjustifiably harsh consequences for the individual. **I do not find that given the facts and circumstances of this appeal that a refusal of entry clearance to the Appellant would be unjustifiably harsh either on him or the sponsor, for the reasons I have set out above. I find that the interference by the Respondent in refusing this application to enable the sponsor to achieve her aim of having her son travel to the United Kingdom in order to maintain effective immigration control is proportionate in this case**.
42. Ms. Weatherall made an impassioned plea on behalf of the Appellant that as a teenage boy, he should be allowed to live with his mother in the United Kingdom and that no woman should be made to choose between her son and her husband. Whilst I may or may not agree with these sentiments, what is clear is **the sponsor made the choice in 2016 to travel to the United Kingdom to be with her husband leaving her son in Pakistan with his grandmother. If she was not willing to be separated from him, it was open to her to make an investigation beyond one legal opinion to see how she could achieve her desire to live with both her son and her husband. It is not the decision of the Respondent that has led to the situation the family find themselves in but as a result of their choices and the decisions they have made**. By not interfering with the arrangements they have made, **it cannot be said the Respondent has made a decision which is contrary to their qualified rights in terms of Article 8** of the ECHR.

43. **I find that the decision to refuse entry clearance made by the Respondent for the maintenance of effective immigration control does not breach the Appellant's human rights. The fact it means he cannot join his mother in the United Kingdom is a proportionate and justifiable interference in the Appellant's rights under Article 8** of the ECHR."

The Appellant's grounds seeking permission to appeal

7. The grounds asserted that (excluding repetition with evidence being *italicised*):

"Ground 1- No assessment of Sponsor's (and stepfather's) oral evidence
1. At no stage does the Judge consider the Sponsor's evidence (and the stepfather's evidence- there is a mention at §6 that the stepfather was evasive, but this was the Respondent's case and not a finding made by the Judge). The failure to do so means that there has been no assessment on the oral evidence, and thus no assessment as to whether the witnesses were credible. Given that the Judge has highlighted flaws with the documentary evidence (which are not accepted), it is thus more crucial that the witness evidence is examined…
2. Attention is drawn to the case of Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35 …
3. The above case notes the importance of oral evidence, and thus in turn the evidence of the witnesses. Whilst the Judge finds flaws on some of the documentary evidence, this is not fatal to his claim as there needs to be assessment of whether the witnesses' account is credible and consistent...
Ground 2- The Judge failed to assess the documentary evidence properly
4. The following paragraphs of the determination are pertinent". I will not set out [24 and 25] of the Judge's decision as they are set out above.
"5. Firstly, the document referred to by the Judge as MK2 states the following:
"2. *The appellant attended the court on 01 February 2023. In the hearing he expressed that he is willing to go abroad and join his mother. He further stated that he did not meet with his father*."
6. It clearly states the Appellant is going abroad to "*join*" his mother. It can be inferred from this that the Appellant is moving to the UK to live with his mother and thus, it is respectfully submitted that the Judge's assessment on this evidence was flawed.
7. Secondly, and notwithstanding the above, while it does not say that Appellant cannot be removed from the Pakistan permanently, conversely, it does not say that the removal to the UK should only be temporary.
8. Thirdly, the document titled MK2 notes that notices of the Sponsor's application was posted on the newspaper titled "*Sehar*" and also sent through registered posts to the Respondent (Appellant's biological father). It was clear that the court in Pakistan was satisfied that the Appellant's biological father had notice of the hearing, and thus it is unclear why the Judge takes issue on this point. The court in Pakistan was the decision maker and it would be assumed that it would have taken reasonable steps to have been satisfied that the notice was given to the Appellant's biological father.
9. At §29 of the determination, the Judge states the following:
"There is no information from the Appellant's school or contact with the sponsor about the Appellant's education."
10. The above is incorrect. The Appellant did provide evidence from Leeds Public School which confirms that the Sponsor is in contact with the school. The letter states the following:
"….*is fully touched with the administration of our school and keenly interested for the better career of her son and takes information about his education from us in every week, every month and at any time whenever she require*."
11. The Judge criticises the affidavit of Mohammed Aqib and concludes that it contradicts the evidence of the Sponsor. The Judge states:
"30. The affidavit from Muhammad Aqib dated 30 April 2022 contradicts the evidence of the sponsor. He swears that he is living at the same address as the

Appellant and is busy with work. There is no reference to any law degree course at university in Islamabad or a part time job in Islamabad."

12. Again, it is respectfully submitted that the Judge has erred. The affidavit confirms at §3 that Muhammad Aqib is working and his life is more busy in Pakistan. Further, the affidavit was issued on 23 April 2022, more than a year before the FTT hearing and there may have been a change in the circumstances due to the length of time that has passed.

13. The Judge also states the following:

"There is no evidence of any contact between the sponsor and the persons in Pakistan who has been in receipt of money to be used for the Appellant's day to day care, being maintenance, care and education for him."

14. Muhammad Aqib's affidavit confirms at §2 that the Sponsor "*sent me money for the living expenses of Muhammad Azaan*". The usage of the word living expenses would undoubtedly mean the Appellant's day to day care and thus, it is respectfully submitted that the Judge was wrong in her finding as there is evidence from the Appellant's uncle.

15. The Judge concludes the following:

"I find that in the absence of this evidence before me, the Appellant has not established that his mother has sole responsibility for him and that whilst she now provides financial support for him, his grandmother is still involved in his care and has the authority and control over his upbringing, which is supported financially and by visits from the sponsor periodically."

16. There is no consideration by the Judge of the grandmother's age and thus, her ability to take care of a teenager. The emotional and physical needs of the Appellant would change which would be best provided by his biological mother. The Judge does not properly consider the evidence of Dr Humayan Asghar which states the following on the grandmother's health:

"*She is suffering from congestive cardiac failure and her diabetes has also affected her kidneys. She is at present, almost bed ridden and frequently needs ethic cardiac consultation or hospitalization. She is also unable to look after herself and can't look after her grandson Muhammad Azaan in this condition*."

17. As the grandmother gets older it is inevitable that her health will unfortunately deteriorate. The Judge does not properly assess the grandmother's health and thus, it is respectfully submitted that the Judge has erred as to the assessment of sole parental responsibility.

18. The Judge also states the following" I will not set out here [35, 37, or 40] of the Judge's decision as they are set out above.

"19. The Judge fails to consider the following:

i. The court document from Pakistan notes at §2 that "*The appellant attended the court on 01 February 2023. In the hearing he expressed that he is willing to go abroad and join his mother. He further stated that he did not meet with his father*." It further notes that the "*Minor was also present in court with Muhammad Aqib attorney of the petitioner who was interviewed and heard. Minor is also willing to abroad and to join his mother. He further stated he did not meet with his father*."

It is clear that the Appellant's desire is for him to join his mother in the UK contrary to the Judge's finding that she has not been provided any insight of this.

ii. The Judge was wrong to say that there "there is not sufficient evidence before me to establish that the sponsor has participated in her role, either emotionally or financially, as a parent of the Appellant or that the Appellant is dependent on her for his education or any other aspect of his well-being". The Judge was provided with money transfer receipts from the Sponsor to her family in Pakistan; she was provided with telephone logs between the Appellant and the Sponsor which were (almost) everyday; she was provided with WhatsApp conversation between the 2 (some examples are: on 4 August 2020 the Sponsor asks the Appellant: What are you eating??; on 16 November 2020 she asks: Are you happy?; on 16 June 2021 she asks: Where are you). Further, the affidavit from Muhammad Aqib confirms that the money he receives from the Sponsor is spent on the Appellant's living expenses.

iii. The Judge does not properly assess the evidence of Dr. Danyal Farrukh and Jinnah Hospital which both say the Sponsor is in contact about the Appellant."

Rule 24 notice

8. There was no rule 24 notice.

Oral submissions

9. Mr Broachwalla submitted in addition to the written grounds, in relation to Ground 2 that regarding [4 to 8] of the grounds and [22 to 25] of the decision, the Guardianship proceedings were prior to the visa application. The Judge has assumed what the courts in Pakistan require to establish effective service.

10. Regarding [9 and 10] of the grounds on school contact, there was a letter from the school of 12 April 2022 regarding contact (page 417 electronic bundle).

11. Regarding [11 to 14] of the grounds and [30] of the decision regarding the Appellant's uncle (page 378 electronic bundle), the Judge's concerns were not put to the Sponsor.

12. Regarding [15, 16, and 17] of the grounds, nowhere in the decision is there reasoning as to why the Appellant's grandmother is still involved in the Appellant's care. Dr Asghar's letter of 21 January 2023 was before the Judge (page 139 electronic bundle – extracted above in [7 (17)]). The Appellant's grandmother stated in her affidavit of 7 April 2022 (page 420 electronic bundle) that all decisions are taken by the Sponsor. I point out here that what the affidavit said at [3] is that the Appellant's mother "*wants to apply for Visa…to take him with her in UK on which I have no objection and permit her with my full sweet will and wish because due to my old age factor and illness I am unable to look after Muhammad Azaan personally in Pakistan. 4. That if Muhammad Azaan will travel with his mother Mahwish Khizar from Pakistan to UK and live with her mother permanently on which I will have no objection*."

13. Regarding [18] of the grounds, whilst the Judge found there was insufficient evidence of ties, the statement of Mrs Khizar identifies those at [21] (page 83 electronic bundle) and the decision at [31] refers to a loving bond. In [21] of her statement, the Sponsor said "*I have always been my son's primary carer despite being in the United Kingdom. I have made regular decisions on his care, school, education, dental care, medical care and other day-to-day requirements. Evidence which has been provided as part of my son's application. For the avoidance of doubt, I exhibit the sponsorship declaration and supporting documents submitted as part of the initial application; refer to as "MK-6*". There was a plethora of documents regarding money being sent to Pakistan. That included evidence from the uncle at [2] of his affidavit of 23 April 2022 (page 378 electronic bundle) refers to living expenses which means day-to-day care. There was medical evidence from the dentist Dr Farrukh (page 415 electronic bundle) and Dr Baig from the Jinnah Hospital (page 416 and 419 electronic bundle). Whilst the medical letters say they are not valid for court, weight could have been placed on them.

14. Regarding [18 and 19] of the grounds and [35] of the decision there was no enquiry as to where the Appellant's father was or finding he was involved in the Appellant's care. The Judge wrongly found that guardianship did not equate to legal custody as the Respondent in the refusal letter said that she had failed to establish he had legally relinquished his parental rights or consented to his permanent relocation here, and the Judge therefore imposed a different test.

15. Mr Diwynicz submitted that the Sponsor had elected to separate herself from the Appellant when she came here and the Respondent's decision does not interfere with that as set out in [42] of the Judge's decision.

Discussion

16. In assessing the grounds, I acknowledge the need for appropriate restraint by interfering with the decision of the First-tier Tribunal Judge bearing in mind its task as a primary fact finder on the evidence before it and the allocation of weight to relevant factors and the overall evaluation of the appeal. Decisions are to be read sensibly and holistically; perfection might be an aspiration but not a necessity and there is no requirement of reasons for reasons. I am concerned with whether the Appellant can identify errors of law which could have had a material effect on the outcome and have been properly raised in these proceedings.

17. Regarding ground 1, the Judge does not have to recite every piece of evidence heard or read. In an appeal where, as here, the Judge had many hundreds of pages of documentary evidence to deal with together with the oral evidence, the Judge is bound to be selective in what is recorded. It has not been identified what, over and above what the Sponsor and her husband said in their written evidence the Judge needed to recite in relation to their oral evidence that could have made a material difference. There was accordingly no material error of law in not separately reciting his or indeed any oral evidence.

18. Regarding ground 2 and [5 to 6] of the grounds, the Judge noted at [24] the Appellant's willingness to go abroad. Being willing to do something does not equate to a person's wishes. It is not the same thing as stating a desire to leave Pakistan. Accordingly the Judge ws entitled to find at [35] of the decision that she had "not been provided with any insight into the Appellant's desire to leave his life in Pakistan". There is no material error of law in not giving weight to something the Appellant did not say.

19. Regarding [7] of the grounds and [24] of the decision, the Judge was entitled to find that the surety requirement and specification that the Appellant be produced to the court when required or ordered to do so meant that the judgement was not permission for the Appellant to be removed from Pakistan permanently. The alternative theory proposed in the grounds does not mean that the Judge materially erred in finding as she did.

20. Regarding [8] of the grounds and [25] of the decision, it was for the Judge to determine what weight could be placed on a foreign document, and the Judge was entitled to find as she did that it had not been established that service was effective. Even if he had notice, as it had not been established that the judgement was authorisation for the Appellant to be removed from Pakistan permanently, the Judge did not materially err if she was wrong on the notice issue.

21. Regarding [9 and 10] of the grounds on school contact, there was a letter from the school of 12 April 2022 regarding contact. The letter does not say that the grandmother or another relative such as the aunt or uncle through whom funds are sent are not also in contact with the school or interested in the Appellant's career. Nor does the letter say that the Sponsor makes all or indeed any of the decisions regarding his schooling or that none of the other relatives have an input in that regard. The Judge did not therefore materially err regarding the school contact by erroneously saying there was none, as it is the issues raised in the contact and not the fact of it that is material when considering the question of who made decisions regarding his education.

22. Regarding [11 to 14] of the grounds in relation to the Appellant's uncle, I am not satisfied this is material for these reasons. It was confirmed he lived at the same address as the Appellant. The fact he had a busy life does not mean it had been established he did not have a role in being responsible for the Appellant as many people juggle study and work and are still involved in the lives of teenage boys and can make or be involved in decisions regarding their education and welfare. There was therefore no conflicting evidence to put to the Sponsor.

23. I note in this regard that the grounds do not challenge the finding at [33] by the Judge that there was no evidence from the aunt to whom money was sent. I further note that there was no challenge to the finding at [27] by the Judge that "the transfer of funds is 'family assistance' and there is no specific reference to the funds being for the sole use of the upkeep and wellbeing of the Appellant".

24. In addition, I do not agree with [14] of the grounds that the "*usage of the word living expenses would undoubtedly means the Appellant's day to day care*" as, for example living expenses can include school fees which is not day-to-day care, and day-to-day care can include personal care for which there is no financial cost.

25. Regarding [15 to 17] of the grounds, I note the submission that the Appellant's grandmother stated in her affidavit of 7 April 2022 (page 420 electronic bundle) that all decisions are taken by the Sponsor. That was not the evidence before the Judge from the grandmother and regrettably is a misleading submission. What she said in the affidavit at [3] is that the Appellant's mother "*wants to apply for Visa...to take him with her in UK on which I have no objection and permit her with my full sweet will and wish because due*

to my old age factor and illness I am unable to look after Muhammad Azaan personally in Pakistan. 4. That if Muhammad Azaan will travel with his mother Mahwish Khizar from Pakistan to UK and live with her mother permanently on which I will have no objection."

26. I further note in this regard that there is no challenge to the finding at [33] "there is no evidence of any interaction between his grandmother and the sponsor as to the day-to-day care of the Appellant".

27. The Judge had before her the written evidence of Dr Asghar of 23 January 2023 in relation to the Appellant's grandmother that "*She is suffering from congestive cardiac failure and her diabetes has also affected her kidneys. She is at present, almost bed ridden and frequently needs ethic cardiac consultation or hospitalization. She is also unable to look after herself and can't look after her grandson Muhammad Azaan in this condition.*" That letter did not have the "*not valid for court*" stamp that is present on the documents referred to by the Judge at [28]. Whilst the Judge correctly identifies that the documents contained with MK4 had that stamp and that the only ailment of the grandmother referred to therein was arthritis, it is correctly submitted that was not the only medical evidence available to the Judge. That does not however mean that the Judge materially erred on the issue of being unable to care for herself or the Appellant for the following reasons. The refusal letter was summarised in [5] of the Judge's decision that the "sponsor has said that her siblings would visit their mother more often to make sure she was okay after her son left Pakistan, therefore, there is no reasonable explanation for them being unable to visit her while the Appellant is living there." The only sibling whose ability to be involved was elucidated on in a separate statement was the brother. The Sponsor had identified in [16] of her statement to having a sister who was living an individual life "*and not living in the same area to give extra support that is required*." I note that the sister Iqra Khizar is referred to at [27] of the Judge's decision as being the recipient of money transfers from May 2018 to April 2022. Even if the grandmother was bedridden, in frequent need of medical assistance, and unable to look after herself, the Judge was entitled to find that this does not necessarily mean the Appellant "is not well cared for" [35] or that the Judge was in error to find at [39] that "there is insufficient evidence to establish that there are unmet needs that cannot be catered for" or that the "Appellant is well cared for in the circumstances in which he lives." Nor does it mean that the Judge was in error in finding at [34] that "his grandmother is still involved in his care and has the authority and control over his upbringing".

28. In relation to the submission at [16] of the grounds that the grandmother's age and thus her ability to take care of a teenager are relevant factors in her inability to care for the Appellant I note from the application (page 112 electronic bundle) that she was born on 1 January 1965 and is therefore only 59 years old, which in my judgement does not establish it is a relevant factor. It is an example of grossly "over-egging the pudding" and has no basis whatsoever. I also note in this regard that despite the alleged infirmity and lack of local support from family, there is no challenge in the grounds to the findings by the Judge at [35] regarding the Appellant that there "is no indication that he is not well cared for" and at [39] that "there is no evidence of neglect or abuse, there is insufficient

evidence to establish that there are unmet needs that cannot be catered for and there are suitable arrangements for the child's physical care."

29. There is therefore no material error of law regarding the Judge's findings on the grandmother's ability to care for the Appellant.

30. Regarding [18 and 19] of the grounds, the Judge at no point refers to "insufficient ties". What the Judge said at [37] was that the "evidence does not establish that the Appellant and the sponsor have any family relationship, other than a biological one." On the evidence, that was a finding open to the Judge for the reasons she gave.

31. Regarding [19(i)] of the grounds, as stated above at [18], being willing to do something does not equate to a person's wishes and is not the same thing as stating a desire to leave Pakistan.

32. Regarding [19(ii)] of the grounds, the Judge was entitled to find that money transfers and WhatsApp contact are not sufficient evidence of sole responsibility or the Appellant being dependent on her for his education or other aspects of his well-being. They are simply evidence of a parent sending money for a child and of being in contact.

33. Regarding [19(iii)] of the grounds, just because the Sponsor was in contact with the dentist and hospital, that is not evidence of sole responsibility or the Appellant being dependent on her for his health as it is simply evidence of contact with a health professional as any parent would engage in whether they had sole responsibility or not.

34. The grounds therefore amount to nothing more than a disagreement with findings the Judge was entitled to make on the evidence that the Sponsor had failed to establish sole responsibility.

Notice of Decision

35. The Judge did not make a material error of law. The decision of Judge Hands stands.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 June 2024

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.