

IN THE IMMIGRATION APPEAL TRIBUNAL

**HI (Limited Visa Facilities – Insurmountable Obstacle?) Pakistan CG [2004]
UKIAT 00092**

Heard: 19.04.2004

Signed: 21.04.2004

Sent out: 29.04.2004

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2002

Before:

John Freeman
and
Judith Gleeson (vice-presidents)

Between:

Secretary of State for the Home Department,
appellant

and:

claimant

Mr P Deller for the Secretary of State

Mr RA Amarasinha (counsel instructed by Mian Law Associates) for the claimant

DECISION ON APPEAL

This is an appeal from a decision of an adjudicator (Mr JD Atkinson), sitting at Epsom on 13 November 2003, allowing on article 8 grounds only an asylum and human rights appeal by a citizen of Pakistan. Permission to appeal was given on the basis that the Tribunal needed to consider the general point as to "... whether the limited British visa service now available in Pakistan raises an "insurmountable obstacle" to family reunion here by that route".

2. Shortly after permission was given, that same question was considered by another panel (Warr VP and lay members) in a reported decision **[2004] UKIAT 00034 A (Pakistan)**. As will become clear, we fully agree with the decision in **34 A**, and have only a little to add, in the same direction. However, the present panel was set up to deal with this point in a country guidance decision, which it is expected that all adjudicators (and other panels of the Tribunal) will follow.

3. The background evidence filed by Mr Amarasinha shows the visa facilities remain as they were when **34 A** was heard: see § 12.

We have, however, looked at the document setting out the facilities available in Pakistan for the processing of visas. The visa section Islamabad is not able to accept visa applications direct from customers but offers a limited service and a dedicated UK visa telephone enquiry call centre operates from Karachi. A visa service is provided through Gerry's/FedEx offices. Among those who are able to avail themselves of the service are those who are making settlement applications providing, in the case of spouses, that the spouse in the United Kingdom is settled and aged eighteen and over. There is a proviso to which Mr Hussein referred. If the applicant has been refused a visa for the UK or for any other country, or been refused entry to the UK or any other country or failed to comply with conditions of entry to the UK or sought an extension of stay in the UK 'then we may not be able to resolve your application and it may be returned to you'. It is suggested that in complex cases an interview may be necessary and that will cause the appellant difficulties. The British High Commission document appears to suggest that facilities are available for interview – see page 5 'If an interview is necessary, you will be contacted and given details.' There is a further reference later on in the document about an aim to make a decision without calling applicants for interview whenever possible. Processing times for settlement applications is given as three months.

4. The only point of difference between this case and **34 A** is a technical, rather than substantial one. In **34 A** the adjudicator had found in favour of the Home Office on the question of whether the claimant could in fact make his application for a family reunion visa from Pakistan; so that point was not directly in issue on the Home Office appeal from him. However the Tribunal at § 11 saw no reason to disturb that finding.
5. The adjudicator in the present case was - as so often in ones which get this far – let down by the Home Office, who not only failed to field a presenting officer, but also to put in any details of their current visa arrangements. Quite enterprisingly the claimant's representative put in a print-out of their web-site, which showed that there was a limited service available in Islamabad. Exactly why the adjudicator then went on to decide that there was a real risk that the claimant would not be able to make a visa application at all is far from clear; but on the evidence put in before us for the claimant, he was obviously wrong on that.
6. The adjudicator found in favour of the claimant, even if the finding we have just dealt with were wrong, on the basis that there was in any case a real risk that the granting of entry clearance would be severely delayed. Again the factual basis for that finding is not at all clear, and we see none for it in the information before us. The “real risk” test (applied in **Kacaj [01/TH/00632]** to questions arising on asylum and article 3 grounds, and approved on this point by the Court of Appeal) is in our view equally inappropriate to article 8 considerations of this kind. The correct approach is to be found in **Edore [2003] EWCA Civ 716**.
7. Even if that alternative finding were tenable, however, we see no warrant for the conclusion that the adjudicator drew from it, to the effect that the young age of the claimant's children would make that delay an exceptional circumstance, amounting to an “insurmountable obstacle” to family reunion here. That test was

quite clearly set by the Court of Appeal in **Amjad Mahmood [2002] Imm AR 229**; and the Master of the Rolls went so far as to say (at § 65) that not even the fact that such an application might not in the end succeed was any reason to excuse the claimant from making a family reunion application from outside this country.

8. In **34 A**, as well as older children of the claimant's wife by a previous marriage, there was a child of the present marriage on the way. As in that case, both the present claimant and his wife must have been well aware of the claimant's precarious immigration status when they married; and indeed when the children (born 2 February 2002 and 3 November 2003) were conceived. We need not repeat what the Tribunal (Ouseley P, Moulden and Lane VPP) said in **[2004] UKIAT 00024 M* (Croatia)** at §§ 33 & 36, about families started in those circumstances.
9. The Tribunal in **34 A** found no exceptional circumstances in the effect of the current visa facilities in Pakistan on the claimant's family life to justify not following the approach in **Mahmood**; and neither do we in this case. We cannot at present imagine any circumstances, short of the imminent death of one of the family members involved, why the current visa facilities in Pakistan should lead to not following **Mahmood**.
10. So far as this decision may be of any help in dealing with lack of such facilities in other countries, we should go on to recommend adjudicators to pay close attention to the phrase "insurmountable obstacles" used by the Court of Appeal in **Mahmood**. There is no reason to suppose the Court of Appeal did not mean what they said; and nothing to suggest that either having to apply by post, where a postal service exists, or in person in a third country, which there is nothing to show one cannot reach, may amount to such an obstacle.

Home Office appeal allowed

A handwritten signature in black ink, appearing to read 'JLF', with a horizontal line extending to the right from the end of the signature.

John Freeman