



IAC-AH-KRL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/04295/2015  
AA/04297/2015  
AA/04296/2015

**THE IMMIGRATION ACTS**

Heard at Centre City Tower, Birmingham  
On 4<sup>th</sup> January 2016

Decision & Reasons Promulgated  
On 14<sup>th</sup> January 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**ZJ (FIRST APPELLANT)  
OS (SECOND APPELLANT)  
JS (THIRD APPELLANT)  
(ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr A Pipe of Counsel, instructed by Duncan Lewis Solicitors  
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellants appeal against the decision of Judge Anthony of the First-tier Tribunal (the FtT) promulgated on 10<sup>th</sup> June 2015.

2. The Appellants are citizens of Pakistan. The first and second Appellants are unmarried partners and are the parents of the third Appellant who is their daughter who was born in April 2014.
3. The asylum claim was made in May 2013, based upon the first Appellant's fear of her husband in Pakistan who had ill-treated her. She had converted from Christianity to Islam in order to marry him.
4. The first Appellant fears persecution from her husband, and from the general community in Pakistan because she has committed adultery with the second Appellant, and her child has been born outside marriage.
5. The Respondent refused the asylum application by letter dated 23<sup>rd</sup> February 2015, and made decisions to remove the Appellants from the United Kingdom.
6. The Appellants appealed, and their appeals were heard together by the FtT on 29<sup>th</sup> May 2015. The FtT heard evidence from the first and second Appellants and found both Appellants to be unreliable witnesses. The FtT found their account to be a fabrication and that the Appellants would not be at risk if returned to Pakistan.
7. The FtT considered an expert report prepared by Professor Bluth dated 13<sup>th</sup> May 2015 but attached no weight to this report. The FtT did not accept Professor Bluth's conclusion that a marriage certificate produced by the first Appellant, proved that she had been married as claimed.
8. The FtT dismissed the appeals on all grounds. The Appellants applied for permission to appeal to the Upper Tribunal and I set out below the grant of permission by Judge Reid which summarises the grounds relied upon by the Appellants;
  - "2. The grounds argue inter alia: the judge erred in law by failing to properly consider the expert report by Professor Bluth; the judge failed to make any findings in respect of the report save to reject assessment of a marriage certificate; the judge's conclusion on delay was perverse; the judge had a duty to assess both the oral and written evidence and his rejection of elements of the evidence was perverse; the judge failed to consider the significant obstacles to the Appellants integrating into Pakistan society; the judge should have proceeded to carry out a Razgar Article 8 assessment.
  3. At [22] the judge questioned the reliability of the expert's assessment of the authenticity of the marriage certificate. The expert set out his credentials at [2] of his report and at [5.1.5] he refers to the marriage certificate. Whilst not saying that he saw the original he does not say that he only saw a copy and the representatives have confirmed that the original was sent to him. The expert at [2] said Ms Mumtaz assisted with document verification, not that it was carried out by her. It is arguable that there was a degree of speculation by the judge in his assessment of the expert report. It is arguable that he speculated as to the details of the relationship discussed by the first Appellant and her family. It is arguable that the judge failed to give any or proper weight to the fact that the first Appellant has had a child out of wedlock (the third Appellant), when assessing the risk on return.
  4. The grounds disclose an arguable error of law."

9. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

### **The Appellants' Submissions**

10. In brief summary, Mr Pipe relied upon the grounds contained in the application for permission to appeal. He submitted that the primary issue was the assessment by the FtT of the expert report which is contained at paragraphs 21-24 of the FtT decision.
11. Mr Pipe submitted the FtT had erred in paragraph 21 in stating that the expert had only assessed the contents of the marriage certificate, and not assessed the marriage certificate as a whole. The FtT had also erred in speculating that the expert had not had sight of the original document.
12. The FtT had erred in paragraph 22, concluding that the assessment of the document had been undertaken by Uzma Mumtaz, rather than the expert, and it was unclear what expertise Ms Mumtaz had in relation to document authentication.
13. Mr Pipe submitted that the FtT had adopted an irrational assessment of the expert report and had materially erred by failing to give any weight to the report. The error in assessing the report had infected the assessment of credibility and risk. The FtT had not taken into account that the first Appellant had clearly had a child born outside marriage, and therefore the claim to be at risk was not based solely upon adultery, but also upon the fact that she had had a child outside marriage. Mr Pipe submitted that this should also have been considered in relation to paragraph 276ADE(1)(vi) and the FtT had failed to consider obstacles that the first Appellant would face by reason of having a child outside marriage, if she tried to integrate into society in Pakistan. In addition it was submitted that there was no assessment of the best interests of the third Appellant who is a child.
14. Mr Pipe submitted that the decision of the FtT should be set aside, and the appeals remitted back to the FtT for a fresh hearing.

### **The Respondent's Submissions**

15. Mr Harrison relied upon a response dated 16<sup>th</sup> July 2015 which had been submitted by the Respondent pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. This response, in summary, submitted that the FtT had directed itself appropriately, and was entitled to find the Appellants' account to be a complete fabrication, and that the first Appellant was an untruthful witness. The FtT was therefore entitled to conclude that she had never been married and that she would be returning to Pakistan with her existing partner and child.
16. Mr Harrison submitted that the FtT had carefully considered the evidence, and made reasoned and valid comments upon the expert report. Mr Harrison pointed out that the weight to be placed upon evidence was a matter for the FtT.

17. Mr Harrison submitted that the grounds relied upon by the Appellants amounted to a disagreement with the findings made by the FtT, but did not disclose a material error of law.
18. If, however, a material error of law was found as contended by the Appellants, Mr Harrison accepted that there would need to be a further hearing as credibility was central to the appeals, and it would be appropriate to remit the appeals back to the FtT.
19. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

20. The FtT erred in considering the expert report. In paragraph 21 of the decision the FtT has not explained the basis for concluding that the expert assessed only the contents of the marriage certificate, rather than assessing the document as a whole. In paragraph 5.1.5 of the expert report, the expert explains that the marriage certificate had been compared to other documents from Pakistan known to be genuine, and concluded that the document is identical in every respect.
21. There is an element of speculation within paragraph 21 when the FtT states that it is unclear whether the expert had sight of the original marriage certificate. The FtT concludes that if the expert had sight of the original, then it would have expected some commentary on whether the quality of the paper or document was consistent with other documents originating from the same city in Pakistan. The expert did in fact state in paragraph 5.1.5, as noted above, that the document was “identical in every respect” with other documents emanating from the same city in Pakistan. While the expert does not specifically state in the report that he had the original document, he does not indicate that he had received only a photocopy.
22. In paragraph 22 the FtT states that it is unclear whether the expert has any expertise in authenticating such documents as his credentials at paragraph 2 of the report do not make reference to this. It is correct that there is no specific reference to authentication of documents, but the expert does list his qualifications and experience, which indicates that he does have expertise as a country expert in Pakistan. The FtT is incorrect to state in paragraph 22 that assessment of documents in Urdu are undertaken by Uzma Mumtaz. It was confirmed in paragraph 2 of the expert report that Uzma Mumtaz, a native Urdu/Punjabi speaker and doctoral candidate at the University of Leeds, assisted with the assessment of documents in Urdu and Punjabi, but did not undertake the assessment herself.
23. At paragraph 47 the FtT does not adequately explain why Professor Bluth’s conclusions on risk were rejected. The FtT states that this is because his report was dependent on a positive finding that the Appellant was married in the first place, which the FtT rejects. That however is not accurate, and the FtT neglected to consider paragraph 5.2.9 of the expert report which states;  

“Having a child out of wedlock is prima facie evidence of a serious criminal offence, unlawful sexual intercourse. That is why it is very common in Pakistan for babies born out of wedlock to be simply abandoned.”

Therefore even if the FtT rejected the first Appellant's claim to have been married before she left Pakistan, there should have been an assessment of risk, on the basis that she is not married to her current partner, and they have a child born outside marriage.

24. The FtT erred by failing to consider the issue of the first and second Appellant having a child outside marriage, when considering paragraph 276ADE(1)(vi). There is no reference in paragraph 57 in which the FtT sets out findings of fact in relation to consideration of paragraph 276ADE(1) of the first and second Appellants having a child born outside marriage. This needed to be assessed when considering whether there were significant obstacles to integration into Pakistan.
25. The FtT erred by not carrying out an adequate assessment of the best interests of the third Appellant, as a child, which should have been assessed as a primary consideration. The only reference to the best interests of the third Appellant is the last sentence of paragraph 62 in which it is recorded;  

"In addition, it would be in her best interest to return to Pakistan as she would be returning with her parents."
26. The errors set out above are material errors, and infect the credibility findings made by the FtT. Therefore the decision of the FtT is unsafe, and the decision is set aside with no findings preserved.
27. I have taken into account submissions made by both representatives, that if a material error of law was found, it would be appropriate for these appeals to be remitted back to the FtT. I have considered paragraph 7 of the Senior President's Practice Statements dated 25<sup>th</sup> September 2012, and find that it is appropriate to remit the appeals back to the FtT, because of the nature and extent of judicial fact-finding that will be necessary in order for these decisions to be remade.
28. The appeals will be heard by the FtT at the Sheldon Court, Birmingham Hearing Centre, and the parties will be advised of the time and date in due course. The appeals are to be heard by an FtT Judge other than Judge Anthony.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeals are allowed to the extent that they are remitted to the First-tier Tribunal with no findings of fact preserved.

### **Anonymity**

The FtT made an anonymity direction and I continue that anonymity order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 5<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 5<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall