



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

Appeal Number: HU/12648/2015  
HU/12680/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> November 2017**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> November 2017**

**Before**

**RT HON LORD BOYD OF DUNCANSBY  
SITTING AS A JUDGE OF THE UPPER TRIBUNAL  
and  
UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**SOBIA BIBI  
EMAAN SAFDAR  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr P Duffy (Senior Home Office Presenting Officer)

For the Respondent: Not Represented

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Entry Clearance Officer, with permission, in relation to a Decision of Judge Thomas in the First-tier Tribunal promulgated on 23<sup>rd</sup> May 2017.

2. For the sake of continuity and clarity we shall continue to refer to Ms Bibi and Miss Safdar as the Appellants and the Entry Clearance Officer as the Respondent in this judgment.
3. The Appellants are mother and daughter. They sought leave to enter as the spouse and child of Mr Mohammad Safdar, who is settled in the UK. All are nationals of Pakistan.
4. The Entry Clearance Officer refused the wife's application on the basis that the marriage was bigamous at inception and because she had not passed an English language test.
5. The First-tier Tribunal Judge found the marriage to be valid. In that he was wrong; however that is immaterial as the Sponsor is no longer married to his first wife and the relationship between the 1st Appellant and Sponsor is genuine and subsisting and she can thus be treated as a partner. The First-tier Tribunal Judge also found that she is exempt from the English language requirements and thus succeeds under Appendix FM.
6. There is no challenge by the Secretary of State to that decision.
7. The challenge is to the First-tier Tribunal's reasoning in relation to the 2<sup>nd</sup> Appellant. The Judge erroneously considered the child's appeal under paragraph 297(1) of the Immigration Rules whereas it fell to be decided under paragraph E-ECC of the Rules.
8. Mr Duffy accepted that the 2<sup>nd</sup> Appellant was entitled to succeed in her appeal but on the basis that she meets the correct Rule.
9. We therefore set aside the decision of the First-tier Tribunal so far only as it relates to the 2<sup>nd</sup> Appellant and in redeciding it allow it on the basis that given that both Appellants meet the requirements of the relevant Rules, it is a disproportionate breach of Article 8 to prevent their entry to the UK to join their partner and father. That was in fact the conclusion of the First-tier Tribunal, albeit the incorrect Immigration Rule.

### **Notice of Decision**

The Entry Clearance Officer's appeal to the Upper Tribunal in relation to the 2<sup>nd</sup> Appellant is allowed and that part of the First-tier Tribunal's decision set aside. In redeciding the 2<sup>nd</sup> Appellant's appeal against the Entry Clearance Officer's decision we allow it.

No anonymity direction is made.

Signed

Date 2<sup>nd</sup> November 2017

Upper Tribunal Judge Martin

**TO THE RESPONDENT**  
**FEE AWARD**

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make no fee award on the basis that the evidence before the Tribunal differed from that before the Entry Clearance Officer. Had the Entry Clearance Officer had available the evidence that the Tribunal had he may well have granted entry clearance.

Signed

Date 2<sup>nd</sup> November 2017

Upper Tribunal Judge Martin