



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15532/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31<sup>st</sup> October 2018

Decision & Reasons Promulgated  
On 26<sup>th</sup> November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[F A]  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Timson (of Counsel)

For the Respondent: Mr C Bates (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge M Davies, promulgated on 11<sup>th</sup> May 2018, following a hearing in Manchester on 1<sup>st</sup> May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Pakistan, was born on 1<sup>st</sup> January 1972, and is a female. She appealed against the decision of the Respondent dated 9<sup>th</sup> November 2017, refusing her application for leave to remain in the UK on the basis of her genuine and subsisting relationship with her British citizen partner. The applicable Immigration Rules were EX.1(a) of Appendix FM.

## **The Appellant's Case**

3. The Appellant's case was based upon written and oral testimony, of the Appellant, her partner, and her partner's daughter and the Appellant's daughter (see paragraph 18). The judge made it clear that he took into account all of the oral testimony at the hearing. The Appellant gave evidence in her own language (paragraph 23). She explained that her partner and her children were at risk due to threats from her in-laws, namely the family of her deceased husband. She said that they could potentially kill them as it could easily be done in Pakistan (paragraph 25). She said that her deceased husband's family would not accept her relationship with her partner because they were uneducated, illiterate and backward in their thinking and once a person was married they were married for life (paragraph 26). She had said that her present partner and she met a month or two after arriving in the United Kingdom and that her first husband was alive at the time (paragraph 27).
4. In cross-examination it was pointed out that she still had four children in Pakistan, and she accepted this was true. There had been a previous Tribunal decision by Judge Heynes which she did not attend. She gave evidence that initially she had messages from her husband when he was alive and after his death from his brothers who had threatened her and verbally abused her over the telephone (paragraph 30). She could not now return because she had a daughter and she would be found out and killed. She was in contact with her four children in Pakistan. When the Presenting Officer asked the Appellant why her deceased husband's relatives would have a problem with her marriage given that she now claimed to be a widow and had gone through an Islamic marriage in the United Kingdom in 2013, the Appellant's reply was that they were backward in their thinking (paragraph 34).

## **The Judge's Findings**

5. The judge observed how the Appellant had initially been refused leave to enter the United Kingdom as a visitor and had then appealed that decision. As a result of that appeal she succeeded and subsequently entered the UK as a visitor with her daughter. The Appellant's behaviour after her arrival as a visitor, and the fact that she remained without leave "clearly indicates to me that when she initially made an application to come to the United Kingdom as a visitor she was seeking to deceive the Respondent" (paragraph 65). The Appellant "never was a genuine visitor to the United Kingdom and always intended to come here for other reasons" (paragraph 65).
6. Second, Judge Heynes had first decided this matter and had come to the view that her entry to the UK on 14<sup>th</sup> July 2010 with her daughter "was a pre-planned enterprise". The judge now observed that it was reasonably likely that

“The purpose of her entering the United Kingdom was to come to care for the children of her present partner, [AA]. I come to that conclusion because it is not simply a coincidence that the two of [AA]’s children arrived in the United Kingdom on the same date, on the same flight, at the same airport, and at the same terminal as the Appellant and her daughter” (paragraph 66).

7. The judge went on to conclude that the Appellant and her partner had been involved in deception (paragraph 67). The evidence that they had given “is patently untrue” (paragraph 69). The judge also was of the view that the Appellant’s first husband was not dead and that,

“I believe he remained in Pakistan when the Appellant and her daughter came to the United Kingdom to look after the four children that the Appellant claims to have abandoned in Pakistan. I therefore conclude that it is reasonably likely as at the hearing before me, taking into account the untruthful evidence I have received, that the Appellant’s husband is not deceased as claimed” (paragraph 69).

8. It did not end there, the judge went on to also take note of the fact that “the reason why the Appellant and her claimed partner have never gone through a lawful marriage in the United Kingdom and had only gone through an Islamic marriage is because the Appellant is not free to marry as her first husband is still alive” (paragraph 70).
9. Accordingly, the judge’s view was that “there is no substance whatsoever in the claim made by the Appellant and [AA] that they have received threats from the Appellant’s first husband’s family” (paragraph 71). That aside, “there are no significant obstacles in relation to paragraph 276ADE to the Appellant returning to Pakistan and integrating into life there” (paragraph 72).
10. The appeal was dismissed with the observation that, “it is entirely incredible if threats had been made to the Appellant and [AA] from 2013 that they would be raised for the first time at the hearing before me” (paragraph 74).

### **Grounds of Application**

11. The grounds of application state that the judge was wrong to have concluded that the Appellant and her partner were not in a genuine and subsisting relationship because, in the event, she was simply his housekeeper.
12. On 16<sup>th</sup> August 2018 permission to appeal was granted.
13. On 1<sup>st</sup> October 2018, a Rule 24 response was entered to the effect that the judge was entitled to come to the conclusion that the Sponsor and the Appellant were not in a genuine and subsisting relationship. This was given the previous findings of Judge Heynes in relation to the Appellant. Judge Davies had now, after hearing evidence from the Appellant and her witnesses, come to the same conclusion, and the fact that some of the witnesses were not cross-examined was not material, because both the Appellant and the Sponsor were questioned.

## Submissions

14. At the hearing before me on 31<sup>st</sup> October 2018, Mr Timson, appearing on behalf of the Appellant, relied upon the grounds of application. He submitted that the following fundamental issues arose.
15. In addition to the Appellant and her sponsoring husband, there were two other witnesses. These were the children who gave evidence. They were Shafiq [A] (see pages 7 to 8 of the Appellant's bundle); and Faiza [A] (see pages 308 to 309 of the Appellant's bundle). They gave evidence about the nature of the relationship between their parents. The judge does not even refer to their evidence. He does not deal with this. All that one can get a glimpse of in relation to these two witnesses, appears at paragraph 18, where the judge states that, "I have taken into account the written and oral testimony of the Appellant, her partner, her partner's daughter and the Appellant's daughter" (paragraph 18). The witnesses were not cross-examined. Yet, Shafiq [A] was the daughter of the Appellant's husband (see paragraph 6 of her statement at page 8 of the Appellant's bundle) and this makes it clear that they live together as a family unit. The Appellant's youngest son, who is a minor, is not even mentioned in terms of his best interests. There is no finding in this regard.
16. The biological daughter of the Appellant also gave evidence, and attached to her witness statement (at page 310A) is an adoption order from the UK Family Court, and the judge draws no attention to this. If the Appellant's own daughter had been adopted, through Family Court proceedings by her sponsoring husband in the UK, this plainly meant that the child would be able to remain in this country, while her mother, the Appellant, faced removal, and that would split the family up. The judge had no basis at all to come to the view that,

"I cannot be satisfied that there is a genuine and subsisting relationship between the Appellant and her partner's child, [F]. It seems more likely looking at the evidence that the Appellant simply acts as a housekeeper for her claimed partner and [F]. Whilst they may have gone through an Islamic marriage ceremony taking into account their lack of credibility, I do not accept that there is a genuine and subsisting relationship akin to marriage between the Appellant and [AA]" (paragraph 75).
17. Finally, although the judge goes on to consider the adoption of the Appellant's daughter, his rejection of it is simply incomprehensible. He observes that, "when reaching that conclusion I take into account the adoption of the Appellant's daughter by [AA] but that does not satisfy me that because of that there is a genuine and subsisting relationship between the Appellant and Mr [AA]" (paragraph 76). Mr Timson enquired rhetorically as to why the judge felt it necessary to say that he could not be satisfied. If there was an adoption order, plainly that went a long way to satisfying him. In short, without the judge taking into account the evidence of the two children, and evaluating it properly, it was simply not possible to say what impact that evidence would have had on the position of the Appellant and her sponsoring husband [AA]. It was fundamental in terms of procedural fairness, that the evidence of the witnesses should be described and properly evaluated in the body of the determination.

18. For his part, Mr Bates submitted that the Secretary of State was aware of the intention to adopt as long ago as at the time of the refusal letter (see paragraph 14 of the refusal letter). This was not an unknown matter. Of course, by the time of the hearing, the adoption had already taken effect. However, the adopted child was now an adult. If she remained in this country as an adult, that did not prevent the Appellant from returning back to Pakistan to make another application in a lawful manner.
19. Second, Mr Bates explained how there had been two previous hearings. Judge Heynes had found the evidence to have been unreliable and evasive. The questions asked were not answered. They were simply avoided (paragraph 43).
20. Third, the judge had earlier noted that there had been an elaborate design in which the Appellant's application as a visitor, which had initially been refused, but then allowed on appeal, was always intended to be one where she was going to deceive the authorities and not return back to Pakistan. She had succeeded in the deception that was carried out (paragraph 65). The judge had observed that the Appellant arrived as a claimed visitor with a daughter as "a pre-planned enterprise" (paragraph 66). It was a remarkable coincidence that two of [AA]'s children arrived in the UK on the same date, on the same flight, at the same airport, and at the same terminal as the Appellant and her daughter (paragraph 66).
21. Finally, the judge had, in the interests of clarity and a comprehensive approach, ended by saying that if he was wrong in his findings, he did not accept that the Appellant's removal to Pakistan would have consequences of such gravity as to potentially engage the operation of Article 8. The Appellant, if she is genuinely in a relationship with [AA], can return to Pakistan and make an application for entry clearance as a fiancée (paragraph 78).
22. In the end, the very basis of the relationship was questionable because the judge had grave doubts about the Appellant's husband in Pakistan being dead and rejected this contention entirely. Judge Heynes had also found that her first husband was not dead. Judge Davies now concluded that he remained in Pakistan when the Appellant and her daughter came to the UK. If this was the case, then it explained why there had only been an Islamic marriage between the Appellant and Mr [AA] because the fact was "the Appellant is not free to marry as her first husband is still alive" (paragraph 70).
23. In reply Mr Timson submitted that the statement at paragraph 78 that it was open to the Appellant to return back to Pakistan and apply again as a fiancée, was a standard statement that appeared in all refusal letters and it did not add very much at all to the specific nature of this application. If it was the case that two of [AA]'s children arrived in the UK on the same date, on the same flight, at the same airport, and at the same terminal, this only shows the genuineness of the commitment between the parties, and their intention to have a family life in the way that they subsequently have precisely done. It should not be taken against them. The adoption order was of great significance but the judge discounts it as not pointing to the genuineness of the relationship between the Appellant and the Sponsor. The fact that two of the

witnesses who gave evidence, are not even referred to in their evidence, was a serious error of law.

24. He asked me to allow the appeal.

### **No Error of Law**

25. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. I come to this conclusion notwithstanding Mr Timson's measured and impressive efforts to persuade me otherwise. My reasons are as follows.
26. First, it is not the case that the judge is oblivious of the evidence given by the two children, namely, Shafiq [A], and Faiza [A]. The judge expressly refers to this evidence (at paragraph 18) and even makes it clear that, "I have taken into account their oral testimony given at the hearing".
27. Second, the centrality of that evidence is what really matters, and I have to say, that the judge did not consider their evidence to be central to the main issue, namely, whether the Appellant and [AA], were in a genuine and subsisting relationship, living together as man and wife, as they contended the case to be. It would have been altogether otherwise if the judge had not given their evidence the due attention and care that it required. On the contrary, however, the judge in particular detail addresses their evidence (at paragraph 23) referring to first the evidence of [FA], and then setting out both the cross-examination (at paragraph 28), and then the re-examination by Mr Timson (at paragraph 35). He then goes on to consider the evidence of Mr [AA] in the same manner. He was entitled to come to the conclusion that their evidence was tainted with deception, and was "patently untrue", for the reasons that the judge gave, namely, that there was a deliberate desire at the outset to defraud the immigration authorities in this country, for the Appellant to use the route of a visitor's application, as a ruse, to enter this country and remain here indefinitely (see paragraph 65). There had, after all, been a previous decision by Judge Heynes, which the present judge took into account. In addition, the present judge, Mr Davies, himself looked at the specific facts in relation to the case, pointing out how two of Mr [AA]'s children arrived on the same date, on the same flight, at the same airport, and at the same terminal as the Appellant and her daughter (paragraph 66).
28. Third, there is the issue of the adoption of the Appellant's daughter by [AA]. It is important to be clear as to what this is intended to do. It demonstrates that as a matter of law, the daughter is now the adopted child of [AA]. It does not, however, necessarily demonstrate that there is a genuine and subsisting relationship between the Appellant and [AA] themselves. Put another way, it is entirely possible for that relationship to have either been not in existence in the first place, or to have broken down irretrievably thereafter, for the adoption still to be a perfectly valid legal exercise. This, indeed, is exactly the terms in which Judge Davies addresses this question, pointing out that, "I take into account the adoption of the Appellant's

daughter by [AA], but that does not satisfy me that because of that there is a genuine and subsisting relationship between the Appellant and Mr [AA]" (paragraph 76).

29. Finally, I note Mr Timson's perfectly potent submission before me that all of the children now have indefinite leave to remain, and one even is a British citizen. However, the Appellant's daughter, the one who is adopted by Mr [AA], is now an adult, and the fact that the Appellant may be required, in these circumstances, to return back to Pakistan, and to make an application to enter the UK, as a fiancée (as Judge Davies suggests at paragraph 78), is one that is not unreasonable, and does not violate her Article 8 rights to family life.
30. In the end, one has to take the position as it stands in the real world. If the Appellant is required to leave, then that is the starting point of the way in which proportionality must be assessed. This is to say nothing of the fact, that the judge's findings were that the Appellant's first husband in Pakistan was still alive, as held also by Judge Heynes at the earlier decision, and if this is so, then the Appellant is not free to marry Mr [AA] at all. This would also explain why they have simply entered an Islamic religious marriage, with no civil ceremony planned.
31. All in all, therefore, the highly complex, and unusual arrangement that the judge found himself having to contend with, is one that he addressed in a careful and experienced manner, such that the findings reached were those which were entirely open to him. There is no error of law.

### **Notice of Decision**

32. There is no material error of law in the original judge's decision. The determination shall stand.
33. An anonymity direction is made.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

23<sup>rd</sup> November 2018