



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

Appeal Number: HU/24780/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7th January 2019**

**Decision & Reasons Promulgated
On 16th January 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

USHA KUMARI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, instructed by Maalik & Co

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Upper Tribunal Judge Grubb extended time and granted permission to appeal the decision of First-tier Tribunal Judge Telford who, in a decision promulgated on 8 January 2018, dismissed the appellant's appeal against the refusal of her human rights claim. She had sought leave to remain in the UK as the spouse of Muhammad Afzal Shaffif.
2. Permission was granted primarily because the First-tier Tribunal judge had arguably wrongly excluded consideration of a divorce certificate because it was submitted on the day, yet had accepted evidence produced by the respondent

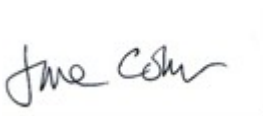
and had irrationally discounted supporting evidence including that from the couple's landlady.

3. The appellant had also, at the hearing before the First-tier Tribunal alleged that she had been wrongly advised by her solicitors in connection with a possible challenge to the interview by the immigration officer. She continues to be represented by those solicitors.
4. The First-tier Tribunal judge relied on the divorce certificate in making adverse credibility findings against the appellant, failed to address the issues raised in the reasons for the refusal letter and gave an irrational reason for not placing any weight on the landlady's evidence – that they were connected and so the evidence was not independent.
5. Taking the decision as a whole, the First-tier Tribunal judge refused to admit as evidence a document that may have a significant bearing on the outcome of the appeal and, in the alternative relied upon that document in making adverse credibility findings. There was significant procedural unfairness in his approach to the copy divorce document.
6. The reason given by the First-tier Tribunal judge to the lack of any weight upon the landlady's evidence was irrational. On the basis put forward by him, which in any event was highly speculative, nobody would be able to give evidence in support of an appellant.
7. The First-tier Tribunal judge materially erred in law in reaching the findings he reached, such findings being significantly infected by his errors.
8. The appellant not having had a hearing at which her evidence could be properly evaluated, I set aside the First-tier Tribunal decision and remit the appeal to the First-tier Tribunal to be heard afresh, no findings preserved.
9. It was not clear before me whether the appellant continued to rely on the very serious allegation made to the First-tier Tribunal that the immigration officer had fabricated his report or that her solicitors had either failed to follow her instructions or given her 'bad' advice. No doubt if she intends to continue to rely on such matters that will be made clear to the First-tier Tribunal and the respondent.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to the First-tier Tribunal, no findings preserved.



Date 7th January 2018

Upper Tribunal Judge Coker