



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Nos: OA/24731/2012  
OA/24734/2012  
OA/24737/2012  
OA/24740/2012  
OA/24744/2012  
OA/24747/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
on 18 March 2014

Determination promulgated  
on 24 March 2014

Before  
**THE HON Mr JUSTICE BAKER  
& UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**ENTRY CLEARANCE OFFICER, Islamabad**

Appellant

and

**GUL BIBI KHAN + 5**

Respondents

No anonymity order requested or made

For the Appellant: Mrs J Heybroek, Counsel, instructed by Kothala & Co, Solicitors  
For the Respondent: Miss J Isherwood, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This determination refers to parties as they were in the First-tier Tribunal.

2. The appellants are a wife and five children, citizens of Afghanistan. They sought entry clearance to settle in the UK as the family members of Aqab Khan, an Afghan citizen recognised as a refugee. The ECO refused their applications by notices of decision dated 7 November 2012.
3. First-tier Tribunal Judge Nicholls allowed the appellants' appeals by determination promulgated on 12 December 2013. The judge found that the ECO was justified in refusing the applications under paragraph 320 (7A) of the Rules for reliance on a false certificate of marriage between the first appellant and the sponsor, and dismissed the appeals under the Rules. However, the judge thought at paragraph 21 that the ECO might have assessed the applications on the basis of unmarried partners, and went on at paragraph 22:

... the best interests of the children indicate that they should be brought up by both parents, one of whom is recognised as a refugee in the UK ... the balance... under Article 8 falls in favour of the appellants ... despite the provision of a false document, their exclusion ... amounts to an unjustified and disproportionate interference with the right to respect for private and family life and is not in the best interests of the children.

4. The SSHD's grounds of appeal to the Upper Tribunal are as follows:

... the tribunal has failed to provide adequate reasons why it is disproportionate to refuse entry ... the appellants submitted false representations to mislead the ECO about their circumstances ... the tribunal found ... that the main appellant may have qualified for leave as an unmarried partner ... it is proportionate for them to reapply on this basis ... any delay they suffer has been of their own making ... they can maintain contact via modern methods of communication and via visits to a third country as they have been able to do thus far.

... had the tribunal taken these issues into consideration they would have found the decisions proportionate.

5. On their face, those grounds make a good point. Article 8 cannot result in a right to demand entry without making an application required by the Rules. However, in course of submissions Miss Isherwood fairly conceded the point made by Mrs Heybroek that any further applications would fall to be refused under the mandatory provisions for previous use of false documents. The grounds are thus misleading in suggesting that the interference with Article 8 rights would be short term only. Miss Isherwood accepted that any future decisions would have to consider Article 8 as well as the Rules. She submitted that such an exercise might be more appropriately made by the decision maker abroad.
6. The Article 8 question here was properly identified by the judge, but is obscured by the grounds. It is whether the long term exclusion of the appellants can be justified by the use of the false document. The grounds do not contend that such exclusion can be justified. There may be cases where conduct of that nature could have such drastic consequences, but even if the respondent had sought so to argue, we do not think this could be one of them. The situation of the family is

plain, and the balancing exercise may appropriately be carried out by a decision maker in the UK.

7. The grounds of appeal are framed on a false premise. They do not disclose any error of law in the conclusion reached by the First-tier Tribunal.
8. The ECO's appeal is dismissed. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink, appearing to read "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

18 March 2014  
Judge of the Upper Tribunal