



IAC-FH-CK-V1

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

Appeal Numbers: IA/32226/2014  
IA/32225/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 January 2016**

**Decision sent to parties on  
On 21 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

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

Appellant

**and**

**SHAHNAZ AKHTAR  
HIRA ASGHAR  
(NO ANONYMITY ORDER MADE)**

Respondents

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondents: Ms J Fisher, Counsel instructed by Hartley Bain Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the principal claimant's appeal on human rights grounds, pursuant to Article 8 ECHR and the second claimant's appeal under paragraph 276ADE of the Immigration Rules HC 395 (as amended).
2. The claimants are mother and (now adult) daughter. Both claimants, and the principal claimant's husband, are Pakistani citizens and none has

British citizenship. At the date of decision the second claimant was 20 years old and had been in the United Kingdom for 9 years.

3. The principal claimant entered the United Kingdom on 2 occasions on a visit visa, each time giving what she says now were fictitious accounts of her marital status. In August 2003, she stated that she would be travelling with a Mohammed Qureshi and their 3 children. She now says that she was never married to Mr Qureshi and has no connection to any children he may have. She says she was married to Muhammad Rafiq, who died in Pakistan in January 2005, and that he is the father of the second claimant.
4. When both claimants entered the United Kingdom in 2005, again as visitors, they claimed to be travelling with Ali Asghar, who they stated was the father of the second claimant. They did not embark when their visas expired but remained unlawfully in the United Kingdom. They continue to claim now that Mr Rafiq is the second claimant's father.
5. In 2009, the principal claimant applied for a Certificate of Approval for Marriage to Ishaq Ahmed, who had been granted indefinite leave to remain 3 months earlier, after lengthily overstaying. The application was granted and the marriage took place in September 2010. No copy of the application form for the CAM was before the First-tier Tribunal or the Upper Tribunal, so it is not clear whether on this occasion the principal claimant gave a true account of her circumstances, and in particular whether she disclosed her overstaying and lack of legal status in the United Kingdom.
6. Permission to appeal was granted to the Secretary of State on the basis that it was arguable that the First-tier Tribunal had misdirected itself in failing to apply the 'compelling circumstances' test for Article 8 ECHR outside the Rules (see *Secretary of State for the Home Department v SS (Congo) & Ors* [2015] EWCA Civ 387); making contradictory findings as to whether the parties could reasonably be expected to continue their family life outside the United Kingdom; erroneously treating each of the claimants as though she would be returned alone to Pakistan, although the Secretary of State's intention was to return them together, and the principal claimant's husband might well return with them; and finally, that the First-tier Tribunal failed properly to apply part 5A of the Nationality, Immigration and Asylum Act 2002 to the family and private life relied upon in this appeal.
7. The decision in relation to the second claimant contained an additional factual error, in that the First-tier Tribunal found that she entered the United Kingdom on 6 October 2005 aged 11 and had been in the United Kingdom for 'more than half her life'. If the second claimant was 20 at the date of decision, she had been in the United Kingdom for less than half her life.
8. The First-tier Tribunal did not give proper weight to the deceit used by the principal claimant in both of her applications for visit visas, in 2003 and 2005, nor the appropriate weight to be given to her application to

regularise her immigration status in 2009, with an application for a CAM. A CAM application is not an immigration decision and could not regularise the claimants' status. In addition, given the principal claimant's previous fictitious applications for visit visas, and mendacious accounts of her marital circumstances therein, absent a copy of the CAM application, I do not consider that it serves to strengthen her account at all. It is not evidence that the Secretary of State was on notice of her being in the United Kingdom unlawfully at the date when the CAM was granted.

9. At paragraph 63 of the decision, the First-tier Tribunal Judge found that there were no insurmountable obstacles to the principal claimant and her husband continuing their family life in Pakistan, and that there were no matters 'going beyond choice or convenience' preventing them from enjoying family life there. The principal claimant's husband had travelled to Pakistan as recently as 2012.
10. At paragraphs 83-86, the First-tier Tribunal Judge takes an unsustainable position on the 'little weight' provisions of section 117B(4) and 117B(5) of the 2002 Act. He does not give 'little weight' to the period when these parties have been in the United Kingdom unlawfully or precariously. The decision cannot stand and must be set aside and remade.
11. I am satisfied that the proper course is for the decision to be remade in the First-tier Tribunal with no findings of fact or law preserved.

### **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.

The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I do not consider it necessary to make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: Judith AJC Gleeson  
Upper Tribunal Judge Gleeson

Date: 19 January 2016