



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03885/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

<b>Heard at Field House</b>	<b>Decision</b>	<b>&amp;</b>	<b>Reasons</b>
<b>On 1<sup>st</sup> June, 2017 and Given extempore</b>	<b>Promulgated</b>		
	<b>6<sup>th</sup> June 2017</b>		

**Before**

**UPPER TRIBUNAL JUDGE CHALKLEY**

**Between**

**BUSHRA ZAHID**

(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Ms N Maltice of Counsel, instructed by Malik & Malik Solicitors

For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan, who was born on 9<sup>th</sup> July, 1975. Initially the appellant came to the United Kingdom as a student and after two unsuccessful applications, was granted a visa to enter as a student on 17<sup>th</sup> March, 2011, valid from 28<sup>th</sup> March, 2011 to 24<sup>th</sup> April, 2012. She arrived on 16<sup>th</sup> April, 2011 using her own passport and then applied for her leave to be extended, but on 6<sup>th</sup> September, 2013 it was refused. On 3<sup>rd</sup> July, 2015 she rang the Asylum Unit to claim asylum. Following an interview her application was refused on 11<sup>th</sup> April, 2016. She appealed

against that decision by notice dated 20<sup>th</sup> April, 2016 and her appeal was heard at Sheldon Court, Birmingham by First-tier Tribunal Judge Obhi on 24<sup>th</sup> October, 2016.

2. At paragraph 26 of the judge's determination she stated:

*"In the absence of any evidence that Asif Rashid exists, I am bound to find that the appellant has fabricated her account"*

but in paragraph 13 of the determination, the judge noted that although she had decided that she would not adjourn the hearing part-heard to enable the appellant to produce further evidence about the existence of Asif Rashid, she would grant the appellant a further ten days in which to serve further evidence. She added that if in the light of that evidence there was a need to hear further submissions from either party then she would reconvene the hearing.

3. The appellant's solicitors wrote to the Tribunal with further evidence on 3<sup>rd</sup> November, 2016 and the letter from them was stamped as having been received by the Tribunal on the same date. This was within the ten day period allowed by the judge. It is unfortunate that the judge allowed further time for submitting further evidence. It would have been far preferable, in my view, had she adjourned part-heard.
4. The letter from the appellant's solicitors is date-stamped by the Tribunal on 3<sup>rd</sup> November, 2016 and had been faxed to the Tribunal at 16.38 that day. Attached to the letter were two witness statements and further photographs. Further photographs appeared to have been faxed to the Tribunal at 16.49. that day.
5. As a result, it appears that the First-tier Tribunal Judge was mistaken when she said at paragraph 24:

*"Whilst I gave permission for the appellant to file additional evidence and I have delayed writing this decision, no such evidence has been provided by her."*

The evidence was not of course considered by the judge and should have been. Unfortunately, the evidence was in the form of a facsimile. The original statement and the original photographs have still not been provided to the Tribunal. That is relevant, because the statement is not at all legible and the photographs are not clear either, having been sent by facsimile.

6. I have concluded that the appellant has been denied a fair hearing and at the hearing before me today Mr Wilding, in fairness to the appellant, agreed that the matter should be remitted to the First-tier Tribunal so that the appellant's appeal can be heard afresh.

7. I hope that those instructed by Counsel will ensure that all their evidence is supplied to the First-tier Tribunal well in advance of the renewed hearing date and that the evidence is clear and legible. I believe that two hours should be set aside for the hearing of the appeal and an Urdu interpreter should be made available.

### **Notice of Decision**

This appeal is remitted to the First Tier Tribunal for hearing afresh by a judge other than First Tier Tribunal Judge Obhi.

No anonymity direction is made.

**Richard Chalkley**  
**Upper Tribunal Judge Chalkley**

No fee is paid or payable and therefore there can be no fee award.

**Richard Chalkley**  
**Upper Tribunal Judge Chalkley**