



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/22068/2016  
& HU/24330/2016

**THE IMMIGRATION ACTS**

Oral application heard:  
31 July 2018

Determination Promulgated  
On 07 August 2018

Before

Upper Tribunal Judge O'Connor

Between

AROOJ FARHAN QURESHI  
SABA NOUMAN QURESHI

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr L Youssefian, instructed by Richmond Chambers LLP

For the Respondent: Mr P Deller, Senior Presenting Officer

**DECISION ON APPLICATION TO SET ASIDE THE UPPER TRIBUNAL'S  
REFUSAL OF PERMISSION TO APPEAL**

1. The parties agree, and I concur, that the decision of Upper Tribunal Judge Allen refusing permission for the appellants to appeal to the Upper Tribunal, sent to the parties on 26 June 2018, should be set aside pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. The parties further agree, and I again concur, that (i) permission to appeal should be granted (ii) the decision of the First-tier Tribunal (promulgated on 18 August 2017) contains an error of law such that it should be set aside and (iii) the appeals should be remitted to the First-tier Tribunal and linked for hearing with the appeals in HU/06998/2016 (the first appellant's husband's appeal) and HU/06992/2016 (the second appellant's husband's appeal).
3. Given the consensus between the parties, I need only set out brief reasons for my concurrence
4. The first appellant is the wife and dependant of Mr Farhan Qureshi. The second appellant is the wife and dependant of his brother Mr Nouman Qureshi. Farhan Qureshi and Nouman Qureshi are brothers.
5. The appellants' husbands each made applications for indefinite leave to remain, which were refused on 22 February 2016. They appealed to the First-tier Tribunal and the appeals were dismissed in decisions of the 19 July 2017. The appellants' husbands were both subsequently granted permission to appeal to the Upper Tribunal and, thereafter, Upper Tribunal Judge Storey found error in the First-tier Tribunal's decisions in relation to each and remitted them back for rehearing before the First-tier Tribunal, that decision being made on 15 June 2018.
6. Returning to the circumstances of the instant appellants', they each applied for further leave to remain as the spouse of a settled person. Both applications were refused because the appellants' husbands were not settled persons. The SSHD treated the applications as human rights claims and refused such claims, thus the appellants had a right to appeal to the First-tier Tribunal. In a combined decision promulgated on 18 August 2017, First-tier Tribunal Judge Lloyd dismissed the appeals. The appellants applied for permission to appeal to the Upper Tribunal, but such permission was refused at first instance by First-tier Tribunal Judge Pedro and then, as already indicated, by Upper Tribunal Judge Allen in a decision of 15 June 2018, which was sent to the parties on 26 June 2018.
7. In his decision refusing permission to appeal Judge Allen, *inter alia*, stated as follows:

“As regards the issue of the appellants' husbands appeals, though permission has been granted, the outcome of those appeals is of course unclear at present, and if they are successful then no doubt the situation of these two appellants will need to be reconsidered.”
8. It will be immediately apparent from the chronology set out above that by the time Judge Allen's decision was sent out, the appellants' husbands' appeals had been dealt with by the Upper Tribunal and remitted to the First-tier Tribunal. It is for this reason that the parties agree that there has been a procedural irregularity in the Upper Tribunal's process in relation to the instant appellants and thus the requirements of rule 43(2)(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 have been met. In all the circumstances of the case, and given the nature of the aforementioned

procedural irregularity, I also conclude that it is in the interests of justice to set aside Judge Allen's decision.

9. Turning then to consider whether there is arguable error in the First-tier Tribunal's decision. It is to be observed that although Judge Lloyd dismissed the appellants' appeals the decision incorporated a direction that they should be linked to the appeals of their husbands. Of course, by this time that was procedurally impossible. Nevertheless, it is agreed, and I concur, that procedural unfairness has occurred in the process before the First-tier Tribunal. The facts and merits of the instant appellants' appeals are so intertwined with the appeals of their respective husbands that the First-tier Tribunal ought to have linked the appeals to be heard on the same occasion.
10. I therefore find, on the very unusual circumstances of the instant appeals, that the First-tier Tribunal's decision contains an error of law capable of affecting the outcome of the appeal. For these reasons, I grant permission to appeal and set aside the decision of the First-tier Tribunal.
11. Given that the appellants' husbands' appeals have now been remitted to the First-tier Tribunal, and also what I have said above, the appropriate course is for these appeals to be remitted to the First-tier Tribunal and for the appeals to be heard on the same occasion as the respective husband's appeals.

### **Decision**

- (1) Upper Tribunal Judge Allen's decision in relation to both appellants refusing permission to appeal is set aside;
- (2) Both appellants are granted permission to appeal to the Upper Tribunal;
- (3) The First-tier Tribunal's decision made in relation to both appellants is set aside;
- (4) The appeals are remitted to the First-tier Tribunal to be heard afresh on the same occasion as the appeals in HU/06998/2016 and HU/06992/2016.

Signed:



Upper Tribunal Judge O'Connor

Date: 3/8/2017