



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/27319/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 17 April 2018**

**Decision &  
Promulgated**

**On 18 April 2018**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MADIHA ADMAN RAJPUT  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr A Gilbert, instructed by Lighthouse Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision promulgated on 9 November 2017 of First-tier Tribunal Judge A A Wilson which refused Mrs Rajput's Article 8 ECHR appeal.
2. Mrs Rajput is a citizen of Pakistan, born on 20 February 1982.
3. The background to the application is that Mrs Rajput married the sponsor, Mr Adnan Rajput, on 18 October 2010. It is undisputed that the couple now have two children. The oldest child is said to be British and it was also submitted that an application for British nationality had been made for the younger child.

4. Mrs Rajput made an application for entry clearance but this was refused on 7 October 2016. The application was refused as Mr Rajput had been married to his first wife until 21 October 2010. He was therefore still married to his first wife when he married Mrs Rajput. The respondent considered that as he was domiciled in the UK, under UK law the second marriage to Mrs Rajput was polygamous and not valid. Further, the respondent did not find that the materials provided in support of the application showed intervening devotion such that the relationship could be said to be genuine and subsisting or that the couple intended to live together permanently in the UK.
5. The appeal against the refusal was listed for 3 November 2017. The case was placed on the “float” list. First-tier Tribunal Wilson indicated at [3] and [4] of the decision that when “a substantial gap occurred in my list that morning” the case was put on before him. The sponsor did not appear. The sponsor had not appeared by early afternoon when the list was complete and so Judge Wilson determined the case on the basis of the papers and submissions from the Home Office Presenting Officer. The First-tier Tribunal found that the marriage was not valid. He found that the family were living together in Pakistan so no breach of any family life arose as a result of the decision. The appeal was refused.
6. Mr Rajput appealed the decision as he maintained that he had been present at the hearing centre and some kind of administrative error had led to his not being made aware that his wife’s case had been called. He provided a detailed witness statement dated 6 December 2017 describing how he had come back to the UK to attend the hearing. He had arrived at approximately 8:30am. When he was informed that the case was on the “float” list he sat and waited and then went to get a coffee as the machine in the hearing centre was broken. On his return he was told that the case had been heard in his absence. He was told that nothing could be done. He asked to speak to the Immigration Judge but was told that the appeal had been concluded.
7. The statement provided by Mr Rajput contains, in my view, compelling details, such as his having to wait until reception opened at 9am, the nearest coffee shop being in Tesco’s opposite the hearing centre, his concern at the delay of 13 months in the case being listed at all and his anxiety that the case might not get heard if it was on the “float” list. I am more than satisfied that Mr Rajput was present and that an administrative error in the way in which the case was called led to a material procedural error, the case being determined without his evidence or submissions.
8. The parties were in agreement that there were also confusing statements in the decision, for example at [8] which was difficult to follow. There was also agreement that the proper approach of assessing whether the Immigration Rules were met in order to inform the Article 8 ECHR assessment did not appear to have been taken. The parties were also in agreement that even if the issue of the validity of the marriage was conceded by the appellant, the couple still maintained that the human rights assessment had to take into account their claim to have been in a

relationship akin to marriage for the requisite period and the best interests of the children.

9. My conclusion is that a procedural error has occurred and the decision of the First-tier Tribunal is set aside to be re-made *de novo*. Where that is so, it is appropriate for the remaking to take place in the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade by the First-tier Tribunal.

Signed:   
Upper Tribunal Judge Pitt

Date: 17 April 2018