



IAC-FH-AR-V1

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

Appeal Numbers: IA/37752/2014
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THE IMMIGRATION ACTS

**Heard at Field House
and decision given orally
on 6 January 2016**

**Decision & Reasons Promulgated
On 1 February 2016**

Before

**The President, The Hon. Mr Justice McCloskey
Upper Tribunal Judge McWilliam**

Between

**MR GHEHZAD GUL FARUKI
MISS FATIMA SHEHZAD**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellants:

Not represented

Respondent:

Ms A Holmes, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal in which the outcome is entirely uncomplicated. Without rehearsing the background in undue detail the basic facts are that both Appellants made applications under the Tier 4 (General) Student provisions of the Rules. The Appellants are married. They are the parents of two young children. They are nationals of Pakistan. In refusing the application of both Appellants the Secretary of State provided the same

reason, namely that there was no government sponsored student undertaking a course of study with a sponsor who is either a recognised body or a higher education institution. As a result it was concluded the applications were non-compliant with paragraph 319H(i) of the Rules.

2. In the decision of the First-tier Tribunal the Appellants' cases were formulated in the following terms. The judge said:

"It is clear that the Appellants cannot succeed under the Immigration Rules and their representative put his case under Article 8 of the Human Rights Convention".

The judge also noted that the course being pursued by the mother ran from September 2014 to September 2015 and that it was represented or had the intention of returning to Pakistan upon completion of the course.

3. In dismissing the appeals the judge said the following:

"If she, that is the mother, is unable due to financial pressures to stay in the United Kingdom without her husband working to support her, I do not find that a sufficient reason for him to be allowed to remain. Her course is not at an institution recognised by the Home Office and it is at a lower level than her degree from the University of Pakistan."

The judge also made reference to Section 117B(1) of the Nationality, Immigration and Asylum Act 2002.

4. The appeal was heard on 7 April 2014. In the ensuing grounds of appeal the first Appellant states:

"My appeal was on 7 April 2014 and at that time the judge gave his decision that 'Your appeal is allowed' but now I get the written decision after three months in which my appeal is dismissed."

From the grounds of appeal we learn a little bit more of the family unit consisting of mother and father and two children, one aged three years and eight months and the other aged 6 months and breast feeding. The *cri de coeur* is made "*They cannot live without their mother*". It was claimed that all were intending to return to their country of origin upon completion of the mother's course of study in September 2015.

5. At this stage we draw attention to the record of proceedings. It is clear beyond peradventure from the note made by the judge at the conclusion of the hearing that he stated that the decision under challenge appeared to unlawful under the Rules and he was allowing the appeal under the Rules. The judge in his notes attributes to himself a statement in open court to this effect. Applying the provisions of the First-tier Tribunal Rules as construed recently by the Court of Appeal in the case of R (Patel) v SSHD [2015] EWCA Civ 1175 the irresistible conclusion which we are driven to make is that the decision of the First-tier Tribunal is unsustainable in law.

6. We have canvassed with Miss Holmes the question of whether there is any argument that this error is immaterial. There is no submission to the effect that it is of this variety and we have no reason independently for thus concluding.
7. Accordingly on this ground alone the decision of the First-tier Tribunal must be set aside.
8. The second ground of appeal also has some prime facie merit. The complaint in substance raised by this ground is that the judge failed to engage with the Article 8 case which was to the effect that these two very young children could not be expected to survive adequately without their mother in the event of the scenario of the mother remaining in the United Kingdom to complete her studies and the father and the two children returning to their country of origin.
9. The judge has failed to engage with this case in the decision. There is a bare conclusion in the statement in [26] that there are no compelling Article 8 reasons as required by the ruling in Gulshan. This, to begin with, does not apply the test formulated in MF (Nigeria) and secondly, and in any event, is an unreasoned, unvarnished conclusion. It cannot be sustained in the absence of elementary reasons and, accordingly, we conclude that the second ground of appeal is also made out.
10. This brings us to the question of what course should now be adopted. In view of the nature of the first error of law which we have found, the application of the Upper Tribunal. Practice Directions points to remittal to a different constitution of the First-tier Tribunal and we so order.

Notice of Decision

The appeal is allowed to the extent of setting aside the FtT decision and remittal for rehearing and fresh decision on human rights grounds and under the Immigration Rules.

No anonymity direction is made.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 25 January 2016