



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Numbers: HU/07087/2016  
HU/07089/2016  
HU/07093/2016**

**THE IMMIGRATION ACTS**

**Determined at Field House**

**Decision & Reasons**

**On 13 February 2018**

**Promulgated**

**On 9 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**ST  
MB  
MAB**

**(Anonymity Direction Made)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - SHEFFIELD**

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

1. The first appellant, a national of Pakistan, is the mother of the second and third appellants. The appellants were each refused entry clearance, the ECO concluding: (i) that the first appellant's marriage is not genuine and subsisting and (ii) that the maintenance requirements of the Rules had not been met. On review the ECM conceded the second issue but agreed with the ECO in relation to the first.
2. The appellants' appeals came before FtT Judge Amin on the 14 June 2017 and were dismissed in a conjoined decision promulgated on 27 June 2017, notwithstanding a finding in favour of the appellants on the only live issue on the appeal. Judge Amin, without having raised the issue with the parties, dismissed the appeal on the basis that the English language requirements of the Rule had not been met.
3. Unsurprisingly, the appellants were granted permission to appeal to the Upper Tribunal. In her Rule 24 response the ECO accepts that the FtT erred in law, a concession I concur with. Judge Amin plainly acted unfairly in taking an issue against the appellants that had not been taken by the ECO and without giving the appellants an opportunity to engage with such issue. For this reason, I set aside the FtT's decision.
4. The Rule 24 response also makes clear that the ECO/ECM were satisfied that the English language requirements of the Rules had been met by the appellants. Consequently, the ECO invites the Tribunal to allow the appellants' appeals. I accede to this request.
5. The appellants meet all of the requirements of the Immigration Rules. There is plainly a family life between the appellants and the sponsor, which would be interfered with by the refusal of entry clearance. Article 8 is thus engaged. The Rules reflect the SSHD's view as to where the public interest lies in the proportionality assessment to be carried out under Article 8. The Rules have been met in the instant case. There is nothing else in this case which leads me to conclude that despite the Rules having been met, refusing entry clearance would be proportionate. In the circumstances, and given the concession of the ECO, I conclude that each of the appellants' appeals must be allowed.

### **Decision**

The decision of the FtT is set aside.

Upon remaking the decision under appeal, I allow each of the appellants' appeals on the basis that refusing entry clearance would lead to a breach of Article 8 ECHR.

Signed:



Upper Tribunal Judge O'Connor  
Date: 13 February 2017

This decision has been amended under the slip rule (r42 of the Tribunal Procedure (Upper Tribunal) Rules 2008)