



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: IA/15198/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 February 2015**

**Determination  
Promulgated  
On 13 February 2015**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

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

Appellant

**And**

**MRS SABIHA SHAHEEN  
(No Anonymity Direction Made)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin a Senior Home Office Presenting Officer

For the Respondent: Mr R De Mello of counsel

**DETERMINATION AND REASONS**

1. The appellant is the Secretary of State for the Home Department ("the Secretary of State"). The respondent is a citizen of Pakistan who was born on 6 January 1978 ("the claimant"). The Secretary of State has been given permission to appeal the determination of First-Tier Tribunal Judge Juss ("the FTTJ") who allowed the claimant's appeal

against the Secretary of State's decision of 12 March 2014 to refuse her application for indefinite leave to remain in the UK as the spouse of a person present and settled here under the provisions of paragraph 287 of the Immigration Rules.

2. The claimant entered the UK as a student on 25 April 2009. On 23 December 2011 she applied for leave to remain as the spouse of a person present and settled here. On 17 February 2012 she was granted leave to remain as a spouse for a period expiring on 17 February 2014. On 26 July 2013 she applied for indefinite leave to remain in the same capacity. She and her husband were interviewed separately on 11 February 2014.
3. The Secretary of State considered that there were a large number of inconsistencies between the answers of the claimant and her husband. It was concluded that they were not credible, were not living together and their marriage was not subsisting.
4. The claimant appealed and the FTTJ heard her appeal on 4 September 2014. Both parties were represented. The claimant and her husband gave evidence. The claimant's representative conceded that if the claimant could not succeed under the Immigration Rules she also failed on Article 8 human rights grounds.
5. The FTTJ found that the evidence of the claimant and her husband had been difficult to follow and got worse as the hearing progressed. Their spoken English was difficult to understand. The husband in particular tended to conflate different events and "the more nervous he became the more unintelligible he became". There was an almost complete absence of any documentary evidence to show that they had been living together. Notwithstanding this, the FTTJ found both of them to be credible witnesses. Such ambiguities and inconsistencies between their evidence had arisen because of a lack of proficiency in English. He went on to say that an interpreter should have been provided for them both at their interviews and at the hearing. However, he took into account the fact that the claimant and her husband had been granted probationary leave. He found that the claimant and her husband had been living together and continued to do so.
6. The Secretary of State applied for and was granted permission to appeal. It is argued that the FTTJ erred in law by failing to give adequate reasons for the finding that the marriage was genuine and subsisting; failing properly to consider the inconsistencies between the evidence of the claimant and her husband arising from the interview, failing properly to consider the lack of documentary evidence and the lack of proficiency in English. The claimant could have but did not ask for an interpreter. The First-Tier Tribunal Judge who granted permission to appeal also made the point that if the

evidence which the claimant and her husband gave at the hearing was so poor that it was difficult to follow and got worse as the hearing progressed then the FTTJ should have considered whether he was presiding over a fair hearing and whether there should be an adjournment in order to provide an interpreter.

7. The claimant and her husband attended the hearing before me. The claimant has submitted a further bundle of documents with her letter of 2 February 2015. Mr De Mello told me that the documents between pages 89 and 148 were before the FTTJ. The documents at pages 1 to 88 were new material which was not before the FTTJ. The documents from pages 149 to 174 were procedural documents common to both parties. In reply to my question, Mr De Mello accepted that the documents at pages 89 to 148 had not been put before the Secretary of State.
8. Mr De Mello said that he did not have the record of the interviews with the claimant and her husband. I provided him with a copy.
9. Both representatives agreed that there were material errors of law. These were identified in the grounds of appeal. It was also agreed that the outcome should be for the decision to be set aside with no findings of credibility or fact preserved. The appeal should be reheard in the First-Tier Tribunal.
10. I have not been asked to make an anonymity direction and can see no good reason to do so.
11. I find that there are material errors of law as set out in the Secretary of State's grounds of appeal and the grant of permission to appeal. I set aside the decision. No findings of credibility or fact are preserved. The appeal should be re-heard in the First-Tier Tribunal by a judge other than First-Tier Tribunal Judge Juss.

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Signed  
Upper Tribunal Judge Moulden

Date 11 February 2015