



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/04459/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 August 2018

Decision & Reasons Promulgated  
On 4 September 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

GHULAM FATIMA  
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Anwar Qazi instructed by Dotcom Solicitors Ltd

For the Respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant has permission to appeal against the decision of the First-tier Tribunal dismissing her in-country appeal against the decision of the respondent on 1 February 2016 refusing her leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom pursuant to paragraph ECP1.1 of Appendix FM of the Immigration Rules.
2. The appellant grew up in Pakistan of which she is a citizen. She came to the United Kingdom on 16 June 2013 on a visitor visa which expired on 1 November 2013, but

she did not embark for Pakistan. Instead she says that in 2014 she married a person who is a British citizen settled here but who comes originally from the same village in Pakistan where the appellant originates. He has been in the United Kingdom since he was 3 years old but has returned twice to Pakistan, once to bury his father's body and secondly when his brother who lived in Pakistan passed away. The appellant's husband has no living siblings and his late father had no other family. The date of the marriage was 13 June 2014.

3. The appellant claims to have no family in Pakistan because her parents have died and she has only one sister who lives in Dubai. She has an uncle in Birmingham. The appellant speaks very little English communicating with her present husband in Punjabi.
4. The appellant has made four previous applications for leave to remain on family and private life grounds, on 8 November 2013, 8 January 2014, 27 June 2014 and 23 December 2014. On 17 November 2015, she made a fifth application which is the application currently under consideration and on which Judge Chana dismissed the appeal in the First-tier Tribunal. Judge Chana found on the evidence before her that there were no exceptional circumstances: she recorded the evidence given to her at paragraphs 17 to 28 and made findings of fact at paragraphs 29 to 48 of the decision.
5. The grounds of appeal are:
  - (1) That the judge failed to have any proper regard to the impact of removal on the appellant's new husband and his family.
  - (2) That the judge's record of the evidence, particularly at [22]-[23] of the determination does not record the evidence given "as the appellant has clearly confirmed that she did not mention most of what has been stated at [22]-[23]" and the appellant requested a transcript of the hearing "to justify that the appellant has not uttered what made the judge to conclude his decision."
  - (3) At paragraph 7 of the grounds they disagreed with the findings of fact at paragraph 38.
  - (4) Paragraph 9 of the grounds repeats the challenge to consideration of the practicalities of separating the sponsor and forcing him from his adult children or leaving him in limbo if she could not return to Pakistan.
  - (5) At paragraphs 10, 11 and 12 of the grounds the appellant disagrees with the findings of fact and law in the decision.

### **Judge Zucker's directions**

6. This appeal came before Deputy Upper Tribunal Judge Zucker on 4 May 2018. In directions given after the hearing he required the appellant's solicitor to show cause why a wasted costs order should not be made against them because:

"The grounds challenge the judge's record of the evidence yet despite the burden being on the appellant, Counsel attended the hearing without the notes of the appellant's representative who had been present and represented the appellant in the First-tier Tribunal.

Counsel agreed that an adjournment was the better way to proceed ...”

7. That order was sent to Dotcom Solicitors on 13 June 2018. On 25 June 2018 they responded. They set out the history of their retainer with instructions being obtained on 4 July 2017 before the submission of the grounds of appeal with the previous solicitors’ file requested on 5 July 2017, chased on 25 July and supplied on 19 April 2018 after the client had been obliged to go to the previous solicitors’ office and collect the papers. Counsel Rehana Popal was instructed on 1 May 2018 and this challenge was heard on 4 May some four days later.
8. Counsel who appeared in the First-tier Tribunal was Mr A S Latter of Goldsmiths Chambers. There is not and has never been any copy of his note of the First-tier hearing or any witness statement or affidavit from him confirming the extraordinary assertion that the First-tier Judge invented the evidence at [22]-[23] of her determination.
9. There is however on the Tribunal’s file a legible handwritten note of the First-tier Tribunal hearing which plainly includes all the matters which are recorded in those paragraphs.

### **Upper Tribunal hearing**

10. During the course of this morning Mr Qazi has taken instructions and withdrawn the allegation that the First-tier Judge fabricated the evidence at [22]-[23] of the First-tier Judge’s decision.
11. All that remains of the grounds of appeal is a disagreement with the First-tier Judge’s findings of fact and an assertion that the First-tier Judge gave insufficient weight to the difficulties which would be experienced by her second husband and his family in the United Kingdom, by reason of her having to return to Pakistan either with or without her current husband.
12. I have had regard to Section 117B of the 2002 Act. I note that the maintenance of effective immigration controls is in the public interest (Section 117B(1)) that it is in the public interest that persons who seek to enter or remain in the United Kingdom are able to speak English (Section 117B(2)) and that (117B(4)) “little weight should be given to ... (b) a relationship formed with a qualifying partner that is established by a person at a time when the person is in the United Kingdom unlawfully”.
13. That is the situation of this appellant in relation to the marriage relied upon: since November 2013, she has been in the United Kingdom unlawfully. The relationship and the marriage were formed and contracted after her leave had expired. Accordingly, little weight can be given to the marriage, or to the effect of her removal on her husband.
14. There was before me this morning an attempt to rely on a perceived threat from the appellant’s first husband in Pakistan, said to be a bad husband who abused her. There is however before me no evidence that he retains any interest in this appellant

and in any event the allegation as advanced is one which can be made only in person because it is an application for international protection. It remains open to the appellant to make an application for international protection but that is not the case with which I have to deal today.

15. This appeal cannot succeed and I dismiss it.

### Costs

16. I must now deal with the question of wasted costs. Under paragraph 10(1) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), the Upper Tribunal has power to make an order in respect of costs in proceedings on appeal from another Tribunal to the extent and in the circumstances that such other Tribunal has a power to make an order in respect of costs or alternatively sub-Section 10(3)(d) where the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings. Such an order may be made either on application or on the initiative of the Tribunal (see paragraph 10(4)).
17. Following the directions given by Judge Zucker on 13 June 2018, it appears that the appellant launched this serious challenge to the decision of the First-tier Tribunal without any evidence or substance and that efforts to obtain any evidence that the First-tier Judge fabricated the matters set out at [22]-[23] of her determination have been completely unsuccessful.
18. This appeal was adjourned specifically for that evidence: there is no evidence before me of the efforts made to obtain Counsel's note or any other corroboration of this serious allegation. In these circumstances, I consider that a costs order against the appellant and/or a wasted costs order against the solicitors is appropriate.
19. I do not have before me evidence about the appellant's financial means. I therefore direct as follows:
  - (i) Within 7 days from the sending out of this decision, the appellant shall serve and file details of her means, accompanied by a written explanation from the solicitors regarding their failure to comply with Judge Zucker's directions;
  - (ii) Within 14 days thereafter, the respondent shall serve and file a schedule of costs, together with any submissions on costs and/or wasted costs which he wishes the Tribunal to consider; and
  - (iii) The Tribunal will then consider the question of costs, including the question of wasted costs, on the basis of the evidence and submissions received.
20. This appeal is dismissed.

Signed: *Judith A J C Gleeson*  
Upper Tribunal Judge Gleeson

Date: 29 August 2018