



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/14623/2018

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 7 May 2019

Decision & Reasons Promulgated  
On 07 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MRS MUZALFA SHAH  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Appearances:**

For the Appellant: Mr T Hussain, Counsel instructed by Simo Law Firm

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Pakistan, date of birth 1 February 1990, appealed against the Respondent's decision to refuse leave to remain, made on 27 June 2018. Her appeal came before First-tier Tribunal Judge M Davies, who decided on 18 January 2019 that the appeal should be allowed on Article 8 ECHR grounds. Extensive grounds seeking permission to appeal were drafted by the Specialist Appeals Team

but not by the Home Office Presenting Officer who had appeared. Permission to appeal was given on 27 February 2019

2. In fairness to the Respondent, there was some encouragement to appeal by the brevity of the judge's decision and, without being critical, the somewhat cursory analysis of the law which pertained to Article 8 ECHR claims being pursued where a person has not succeeded under the Rules. The substance of the principal criticism of the Appellant was that she had used deception to gain entry into the UK in claiming that she was single which was clearly found not to be so and that in the circumstances there had been a failure to properly consider the Appellant's immigration status and circumstances when assessing the Article 8 ECHR claim: In particular the consideration of the public interest in the context of Sections 117A and 117B of the NIAA 2002.
3. Having considered this matter in argument, I note that there may be a somewhat infelicitous explanation of the considerations of the burden of proof upon a Respondent, bearing in mind it was ultimately for the judge whether or not the Respondent's decision was disproportionate : Rather than the burden being upon the Respondent to discharge a burden of proof that it was a proportionate decision. Proportionality plainly lies at the heart of Article 8 ECHR claims and to that extent, although the point was not raised in the wide-ranging grounds of appeal, it seemed to me that that was also an unfortunate matter to have arisen. Be that as it may, albeit briefly, I concluded the judge had done enough to show that he took into account the issues, the Respondent's position, the considerations of whether or not Article 8(1) rights were engaged and the extent to which the Respondent's decision amounted to a significant interference.
4. I might have written or reached a different decision or I might have expressed myself more fully in the context of the basis of the claim but I look at this matter in the round and on the evidence which it was not said the judge failed to take into account or evidence was advanced which otherwise indicated an error by omission by the judge.

5. In those circumstances I concluded the Original Tribunal made no material error of law and, were it another Tribunal to look at this matter upon the basis of the same facts, it seemed to me unlikely that a different decision would have been reached.

**DECISION**

The appeal of the Secretary of State is dismissed. The Original Tribunal's decision stands.

**ANONYMITY ORDER**

No anonymity order was made, nor was one sought, nor was one required.

**FEE AWARD**

A fee of £140 was paid. The judge made no order on the issue of costs and it seems to me that that is, in the factual of the case, probably the right outcome, even though it would have been helpful if the judge had set out a decision on that point

Signed

Date 14 May 2019

Deputy Upper Tribunal Judge Davey