



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-001561

First-tier Tribunal No: HU/04754/2021  
HU/04934/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 17 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**RIFFAT SULTANA  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

On the papers.

**DECISION AND REASONS**

1. Following a hearing at Manchester Civil Justice Centre on 2 August 2024 the Upper Tribunal set aside the determination of the First-tier Tribunal and gave directions for the future management of this appeal.
2. Those directions provided for the Appellant to provide an updated bundle containing all the documentary evidence she was seeking to rely upon no later than 4 PM 30 August 2024, and for the Secretary of State, no later than 4 PM 13 September 2024, to provide a positional statement setting out whether she intends to continue to oppose the appeal and/or provide any other relevant information.
3. The Tribunal is grateful to Mr Bates, the Senior Home Office Presenting Officer with conduct of this matter, who has provided a positional statement in the following terms:

Dear Judge, Re: Mrs Riffat Sultana (24.4.1975) Pakistan

Our Ref: S1428040 Appeal Ref: HU/04754/2021 Reps Ref: N/K

UT Hearing (Manchester CJC 4.11.2024)- UI-2024-001561- SSHD Position Statement

The SSHD was directed [8.8.2024] to provide a concise position statement by 4pm on 13.9.2024. The SSHD can confirm receipt of the skeleton argument [3.9.2024] and Appellant's consolidated bundle [3.9.2024]. The SSHD therefore sets out below their position as to disposal of the appeal.

1. The re-served refusal decision of 27.10.2021 (that dated 13.8.2020 having not been received due to incorrect service) was premised upon established dishonesty thus failure to meet suitability; consequently, the Appellant failed to meet IR 276B(ii)(c) & (iii). The failure to meet S-LTR 1.6 was fatal to both the Family Life 10yr partner route and the 10yr private life route. The application of IR 322(5) was also premised upon the previous finding of dishonesty.
  2. Upon remaking the UT is limited to allowing or dismissing the appeal under Art 8 (Charles (human rights appeal: scope) [2018] UKUT 00089 (IAC)), any leave being granted subsequently from a successful appeal being a matter for the SSHD.
  3. The preserved FTT judicial finding that the Appellant did not practice dishonesty [27/37] has rendered the SSHD's previous position on S-LTR 1.6 and IR 322(5) unsustainable.
  4. Consequently, the SSHD concedes that the appeal falls to be allowed by the Tribunal. The SSHD having previously accepted that, but for the suitability issue, the Appellant had otherwise held 10yrs lawful continuous residence between 15/4/2006-15/6/2016 [39]. It is conceded, therefore, that the refusal decision amounted to disproportionate interference with the Appellant's Art 8 rights.
  5. In light of the above concession the SSHD does not propose to address the alternative arguments under IR 276ADE(1)(vi); albeit the refusal addressed the availability & accessibility of medical treatment in Pakistan.
  6. Reference was made [38] to a child being expected in May 2024. The Appellant makes reference in their latest Witness Statement (Para 12) to a daughter [Princess Eve] as an asserted British Citizen. The partner also makes reference to a British child in their own Witness Statement (Para 15) although no Birth Certificate or British Passport is seemingly included for the child in the Appellant's Bundle (or referenced in the index)?
  7. As the birth of a child would amount to a 'new matter' requiring the SSHD's consent for consideration of s117B(6) NIAA 2002 Nationality, Immigration and Asylum Act 2002 (legislation.gov.uk) by the Tribunal the SSHD reserves their position at this time pending receipt of birth certificate/passport evidence for the child's identity and nationality. Consent is therefore presently withheld.
  8. In light of the concession set out above [4] the SSHD would have no objection to the Tribunal remaking the decision on the papers without the need for an Oral Hearing (presently scheduled for Monday 4th November 2024, Manchester CJC); subject to the Appellant's agreement.
4. In an email dated 5 September 2024 the Appellant acknowledged receipt of the positional statement, confirms agreement to the proposal inviting the Upper Tribunal to allow the appeal on the papers without the need for the oral hearing listed on 4 November 2024, and confirming that the birth certificate for Princess Eve has been attached to Part C of the Appellant's Bundle. As consent has not been given to the Upper Tribunal to deal with the issue of child as a new matter, I record that as comment only.

5. The position adopted by Mr Bates is correct and in accordance with the law and demonstrates the required procedural rigour required of all advocates in identifying the real issues at large, both for and against their respective positions, and avoiding any unnecessary hearings wasting a valuable resource of the Upper Tribunal.
6. I find in light of the agreement of the parties to the Upper Tribunal determining the merits of the appeal on the papers without the need for an oral hearing, that the interest of justice, in accordance with the overriding objective, make it appropriate for me to proceed accordingly.
7. In light of the concession made by the Secretary of State and confirmation received from the appellant I substitute a decision to allow the appeal.
8. The hearing listed before me at Manchester CJC on 4 November 2024 in relation to this appeal shall be vacated.

**Notice of Decision**

9. Appeal allowed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**9 September 2024**