



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12296/2015  
HU/12304/2015  
HU/12313/2015  
HU/12324/2015  
HU/12329/2015

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 14 August 2018

Decision & Reasons Promulgated  
On 28 August 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

SHAKILA AYOUBI  
BOPAE KHAN  
SHAKAR KHAN  
MALIHA KHAN  
HAMID KHAN

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms E Rutherford, instructed by French & Company Solicitors  
For the Respondent: Mr H Aboni, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. First-tier Tribunal Judge A J Parker dismissed the human rights appeals by the appellants for reasons set out in one decision promulgated on 24<sup>th</sup> April 2017. The appellants, all of whom are Afghan citizens, had sought entry clearance as the spouse and dependent children of Amir Khan. The respondent had refused their applications for reasons set out in decisions dated 29<sup>th</sup> October 2015: he did not accept that Amir Khan and Shakila Ayoubi were in a genuine and

subsisting relationship or that there would be adequate financial support for the whole family if they were admitted to the UK. Their appeals against the refusal of their human rights claim were heard by Judge Parker on 5<sup>th</sup> April 2017. Designated First-tier Tribunal Judge Peart granted permission to appeal to the Upper Tribunal on the grounds that it was arguable that the decision of the First-tier Tribunal judge was unstructured, had utilised standard template paragraphs inappropriately and that it was thus difficult to determine the judge's reasoning.

### **Immigration background**

2. Mr Khan had left Afghanistan in late 2001/early 2002 and travelled to the UK. He sought asylum in February 2002. His asylum claim was refused but he was granted 4 years exceptional leave to remain and then indefinite leave to remain. In April 2009 he became a British Citizen.
3. He has visited his family in either Pakistan or, latterly, Afghanistan every year, staying for about two months each visit. An application for his family to join him in the UK was refused in 2009 on financial grounds. His last visit to Afghanistan was, it seems, in 2016 and he stayed for about two months with his family.
4. In 2011 he lost the sight in both eyes. He is dependent on 2 carers who assist him with paperwork, cooking, cleaning, shopping and housework. He also suffers from depression and high blood pressure and reports being unable to sleep.
5. On his last visit he states that he had difficulties there: his family live in a remote village, medical facilities are not available, and the nearest facilities are about 40 minutes away. His prescriptions in the UK are only for 2 months' supply of medication and he feels he cannot afford to stay longer because of the cost of treatment there.

### **Error of law**

6. The First-tier Tribunal judge found that the relationship between Mr Khan and Ms Ayoubi was genuine and subsisting and that the four children are theirs. The respondent has not sought to challenge that finding.
7. The First-tier Tribunal judge found that there was a shortfall in finance available to the family as a whole. The financial requirements of the Rules cannot be met given the number of appellants.
8. The core of the appeal as made to the First-tier Tribunal was that the personal, emotional and family circumstances of the appellants and the sponsor, including the best interests of the children, was such that entry clearance should be granted.
9. The First-tier Tribunal judge decision is confused. There are references in the decision to the appellants as if they are in-country applicants; he refers to the precariousness of the appellants' immigration status yet this was an entry clearance appeal and the sponsor is a British citizen; the judge states that there

is a positive duty on the “respondent to allow the appeal when the reasonable financial requirements have not been met” which is neither the correct test and nor is it the respondent who allows an appeal; the judge speculated on the ability of Ms Ayoubi being able to work in Afghanistan with no regard to the situation of women in a remote village in Afghanistan; the judge speculated on the ability of Mr Khan being able to re-train and/or find employment in Afghanistan despite finding that he cannot work; the judge failed to give reasons for not accepting the appellant’s account of the difficulties he faced in Afghanistan such a finding impacting adversely on the conclusions reached; the judge failed to make reasoned findings on the best interest of the children.

10. Whilst it was uncontentious that the decision by the First-tier Tribunal judge raised several errors of law, there was an issue whether those errors of law were material. The decision of the First-tier Tribunal judge is, in this instance, so confused that it is difficult to establish what evidence, or lack of evidence, led to the dismissal of the appeal. The speculative comments by the judge as to conditions in Afghanistan, the failure to give adequate, or any consideration, to the best interests of the children (particularly the girls) and the taking into account of irrelevant (and incorrect) matters is of such a scale that I am satisfied that the decision (on all the appellants) of the First-tier Tribunal should be set aside to be re-made.
11. Given the nature of the errors of law made by the First-tier Tribunal judge, I am satisfied that there has been no adequate hearing of the substance of the appeal. The only finding that can be sustained is that Mr Khan and the family are in a genuine and subsisting relationship. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. I conclude that the decision should be remitted to the First-tier Tribunal to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeals to the First-tier Tribunal to be re-made.

Date 16<sup>th</sup> August 2018



Upper Tribunal Judge Coker