Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/09502/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 5 January 2016	**On 14 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SHAZIA BEGUM

Appellant

and

ENTRY CLEARANCE OFFICER, PAKISTAN

Respondent

Representation:
For the Appellant: Mr M Shoaib, of Shoaib Associates
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 20 May 1985. She has not asked for an anonymity direction, and none has been made. The respondent refused her application for entry clearance as a spouse for reasons given in a notice dated 9 July 2014. First-tier Tribunal Judge David C Clapham SSC dismissed her appeal for reasons given in a decision promulgated on 9 June 2015.

2. The appellant's grounds of appeal to the Upper Tribunal are rather diffuse, and in large part are simply narrative and repetition of the case put to the First-tier Tribunal.

3. The grounds include an insistence that although the Entry Clearance Officer thought that one bank statement was missing from a 12 months sequence, all were submitted. At the hearing in the Upper Tribunal, no attempt was made to demonstrate that the application did meet the terms of the Immigration Rules in that respect.

4. The appellant says in her grounds that she made only one prior application, not two. Mr Shoaib tried to demonstrate this by reference to copy records. However, it became clear from the best available copy (produced in course of submissions by the Presenting Officer) that she did make two previous applications, in both of which she gave a false name and false date of birth. One application was refused and the other was withdrawn. Mr Shoaib accepted (a) that a second application had been made and (b) that even if the judge had been wrong to think that she ought to have disclosed both applications, the point was a relatively minor one which could not by itself change the outcome.

5. Mr Shoaib said that the grounds disclosed two substantial issues. On the first, he submitted that the judge failed to give any, or adequate, reasons for finding the evidence for the appellant (mainly given through the sponsor) not credible; that the appellant had not been given credit for disclosing that she previously used deception, which was how the decision maker traced the matter; and that an there were before the First-tier Tribunal an affidavit by the appellant and a declaration by the sponsor dealing with the issue.

6. The second point was that even if the adverse credibility finding were to stand, there was a UK citizen child; the judge failed to consider the best interests of that child; and the judge also failed to apply the *Razgar* approach.

7. Finally, Mr Shoaib submitted that on the basis of either or both of these errors, the determination should be set aside; there should be a finding that the appellant made no false representation; it should be accepted that the appellant and sponsor established the income required under the Rules; and the appeal should be allowed under the Rules, or alternatively under Article 8, based on the best interests of the child.

8. I enquired what evidence was before the First-tier Tribunal dealing with the best interests of the child. Mr Shoaib indicated that large bundles of materials both from the respondent and from the appellant had been produced. However, all of that information deals with the immigration history, financial matters and so on. Mr Shoaib was unable to refer to anything amongst it which bears on how the child's interests are adversely affected by the refusal of entry clearance. Mr Shoaib advised me that the child has lived since birth with his mother in Pakistan.

9. Mr Matthews submitted as follows. Records showed that the appellant had indeed made two prior applications. The decision maker and the judge were correct on that point. He agreed that it appeared odd that the deceit held against her was the statement that she had made one, not two, prior applications, while the decision made nothing of previous applications being made in a false identity. However, that made no difference to the respondent's decision or to the judge's finding on failure to disclose material facts. The prior deceptive applications were relevant to the credibility assessment. Reading the determination as a whole, it was very clear why the evidence from the sponsor was rejected. His examination-in-chief and cross-examination were set out in detail. The responses recorded were self-evidently unsatisfactory and evasive, which amply justified the judge's finding at paragraph 29 that he was not impressed by the evidence of the sponsor. The judge was entitled to find that there was no good explanation for the prior deceptive applications. The grounds of appeal also contain criticism of the interpretation of the sponsor's evidence at the hearing (although Mr Shoaib had made no submissions to the Upper tribunal on that point). These alleged difficulties had not been raised at the hearing and were not supported by any proposed evidence. The sponsor now complained about giving evidence in Urdu (to which he agreed on the day) although a Pushtu interpreter had been asked for. The appellant said in the application form that the sponsor spoke Urdu. No apparent difficulty had been recorded by the judge. There was no content to the grounds based on Article 8 on the best interests of the child. It was for the appellant to put forward the evidence to support any such case and she failed to do so. The judge's resolution of that matter at paragraph 33 showed no legal error. There was no apparent reason why the sponsor might not join his family in Pakistan, and no case to resolve on how the child's best interests might be adversely affected.

10. Mr Shoaib in response said that the Article 8 issue had been raised in the skeleton argument in the First-tier Tribunal. He confirmed in response to my question that he is a fluent Urdu speaker. He said that he realised during cross-examination of the sponsor that there was a problem, but accepted that he had not mentioned it to the judge.

11. I reserved my determination.

12. There may be unusual cases where an interpretation problem arises in course of the hearing but is not apparent to representatives or to the judge, resulting in a constructive error of law even though there is no fault of the judge. This case does not come close to such circumstances. There is a vague allegation of difficulty in interpretation, but no supporting evidence is offered, the point was not raised on the day as it might have been, and there is nothing to explain what the sponsor might have said to the Tribunal but was unable to convey.

13. It is odd that the Entry Clearance Officer founded on the relatively minor point of saying there was only one prior application not two, and not on the more substantial issue of use of false identity. However, there is

nothing to disclose legal error in the conclusions on this point reached by the ECO or by the judge.

14. There was no case based on the best interests of the child and on Article 8 of the ECHR which required any further consideration.

15. The grounds in essence are no more than repetition of the case which was put to the First-tier Tribunal and an expression of dissatisfaction with the outcome.

16. No error of law is disclosed. The determination of the First-tier Tribunal shall stand.

Upper Tribunal Judge Macleman

13 January 2016