



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/01123/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 October 2017**

**Decision & Reasons  
Promulgated**

**On 08 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MR JAMES THOMAS GOODE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Amunwa, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision of First-tier Tribunal Judge Malone promulgated on 7 February 2017 in which he dismissed the appellant's appeal against a decision of the Secretary of State to refuse him leave to remain in the United Kingdom and to refuse his human rights claim. The appellant's case is that he did meet the requirements of Appendix FM and Appendix FM-SE of the Immigration Rules. Further, he submits that he ought to have benefited from paragraph 245AA of the Immigration Rules; or, in the alternative, that his removal would be

contrary to the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention.

2. In this case I am satisfied from the witness statement from Mr Richard Bartram, the solicitor who represented the appellant before the First-tier Tribunal, that Judge Malone had at the hearing indicated orally that he was going to allow the appeal following a discussion between the representatives of the Home Office and the appellant at the hearing.
3. The case revolves around primarily two sets of documents. The appellant says that he did submit sufficient bank statements to meet the requirements of Appendix FM-SE he does however accept that he did not supply a full set of payslips. The Secretary of State concluded that the bank statements did not meet the requirements of Appendix FM-SE in calculating the resources available as the bank statements related to fixed term accounts. The judge was satisfied and I consider this finding ought to be preserved that the funds were in fact freely available if the holder of the account was prepared to forego any interest and on that basis ought to have been taken into account in the calculation of resources available. It was also accepted that certain payslips out of a sequence have not been provided.
4. I am satisfied that the judge erred in law for two reasons. First, in announcing at the hearing as a result of preliminary discussions that he would be allowing the appeal, he permitted a procedural error whereby both parties were deprived from properly putting forward their cases, specifically in the case of the applicant preventing a full examination of all issues relating to Article 8. In the alternative, the judge erred in that in producing a written decision he had failed properly to record the decision he had in fact made which was the appeal was to be allowed. On either view a procedural error was committed and I am satisfied that in all the circumstances given that unfortunately a full consideration of all the Article 8 issues would need to be conducted, that the matter must be remitted to the First-tier Tribunal.
5. As the finding that the bank statements recording funds held in fixed terms accounts ought to have been taken into account in assessing resources available under Appendix FM-SE and Appendix FM was a correct decision, it will be for a fresh First-tier Tribunal to consider the impact of that on paragraph 245AA of the Immigration Rules. The difficulty is that given the current appeals regime it is not possible properly to address the simple issue of whether there has been compliance with the Immigration Rules or not it being apparent that if as appears to be accepted between the parties the only thing now missing are a number of payslips out of a sequence.
6. This is precisely the kind of case that ought to have been considered under paragraph 245AA of the Immigration Rules. Nonetheless and not without a considerable degree of reluctance I consider that the only course of action that I can properly take is to remit the decision to the First-tier Tribunal with the finding as to financial resources being preserved. I

would however hope that given the narrow dispute which now exists between the parties that this matter could be resolved without the need for a further hearing.

## **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision. The finding that the requirements of Appendix FM-SE were met in respect of the bank statements is preserved.
3. No anonymity direction is made.

Signed

Date: 6 November 2017

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul