



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/18236/2016

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 1 June 2018

Decision & Reasons Promulgated  
On 19 June 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

MR YASIR [S]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Reyaz, Solicitor, Rasools Law

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant sought entry clearance as a partner under Appendix FM of the Immigration Rules. The respondent refused his application on 14 June 2016 because he was not satisfied that the spouse was earning an income that met the financial requirements in respect of the sponsor's employment with Sartax. The appellant's appeal came before Judge Caswell of the First-tier Tribunal. Although finding in the appellant's favour on certain matters, the judge dismissed the appellant's human rights appeal. The two key paragraphs of the judge's decision are 13 and 14:

“13. Although there was no explanation or evidence from the Sartex employers, the sponsor and the representatives had tried to get this, and I have seen the letter sent and recorded delivery note. The credibility of the sponsor was not challenged before me. Her evidence was given very clearly, consistently and logically, and I accept her as credible and reliable. There were before me the original documents relating to the employment, all giving the appearance of being genuine. The record of interviews in the Respondent’s bundle show that there were many instances where the replies of the sponsor and her employer were the same. There were explanations for the matters raised by the Respondent in the refusal letter. The employer said there were 94 employees, whereas the sponsor estimated there were 200-300. She explained that she did not know, and was making an educated guess. The sponsor also gave exactly her work pattern and the hours worked, and her evidence is that her employers answered these questions incorrectly. As already stated, attempts were made to get clarification from the employers, by sending them a registered letter, but no reply was received. Having seen and heard the sponsor, and having considered all the documents before me, I am satisfied that she was employed as she states, and therefore that she met the financial requirement at the date of application and decision.

14. However, this is a human rights appeal, and I apply the *Razgar* test set out above. I am satisfied that there is family life between the Appellant, the sponsor and their daughter. I am also satisfied that the best interests of their child is to be with both her parents. However, no evidence has been put forward before me to show that the sponsor and her daughter could not live in Pakistan with the Appellant, and carry on family life with him there. He is working and lives with his family. They made a month-long visit to Pakistan in 2016 to see him, and there is no evidence of any difficulties encountered there by either the sponsor or their daughter. Accordingly, I am not able to find that family life would be interfered with if the refusal to grant entry clearance were maintained, and the second stage of Lord Bingham’s five stage test has not been met by the Appellant.”

2. The grounds of appeal challenging the judge’s decision were confined to the contention that, having found that the relevant Immigration Rules were met at the date of application and decision, the judge erred in law in failing to find the ECO decision disproportionate, as meeting the Rules is a “weighty” requirement. In oral submissions Mr Reyaz also criticised the judge’s decision for failing to weigh in the balance the best interests of the couple’s 2 year-old child who lives in the UK. Mrs Pettersen argued that the child’s best interests had been sufficiently addressed by the judge at paragraph 14.
3. I am persuaded that the judge materially erred in law. On the judge’s findings the appellant met the only requirements of the Rules that were doubted by the ECO. There has been no reply from the ECO challenging those findings. Accordingly the judge was obliged to weigh in the balance that there was no longer any public interest considerations for resisting the appellant’s appeal. It was clearly accepted by the judge that the appellant and the sponsor have an existing family life (see paragraph 14), even though they live in different countries presently. In such circumstances, the legal position is even more clear-cut than was explained by the Upper Tribunal in **Mostafa**

**(Article 8 in entry clearance)** [2015] UKUT 00112 (IAC). In **TZ (Pakistan) and PG (India) v SSHD** [2018] EWCA Civ 1109 at [34] the Court of Appeal has held that where Article 8 is engaged, satisfying the Immigration Rules also means that the removal would be disproportionate. I can see no reason why the same legal logic as set out in [34] should not apply to a denial of entry clearance.

4. For the above reasons I set aside the decision of the FtT Judge for material error of law.
5. I am in a position to re-make the decision without further ado since, applying the logic of the Court of Appeal's reasoning in [34] of **TZ (Pakistan)**, the fact that the appellant met the Immigration Rules and enjoys an existent Article 8(1) right to family life is sufficient for the issue of proportionality to be decided in the appellant's favour.
6. To conclude:

The decision of the FtT Judge is set aside for material error of law.

The decision I re-make is to allow the appellant's human rights appeal.

No anonymity direction is made.

Signed:

Date: 15 June 2018



Dr H H Storey  
Judge of the Upper Tribunal