



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/04291/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 2 May 2019**

**Decision & Reasons Promulgated  
On 9 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**PANASHE [M]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms. E. Norman, Counsel instructed by Tann Law Solicitors  
For the Respondent: Ms. H. Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge E. M. M. Smith, promulgated on 11 September 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse entry clearance on human rights grounds.
2. Permission to appeal was granted as follows:-

"It is arguable that the FtTJ erred by failing to recognise, when "factoring in" to his proportionality balancing exercise the fact the appellant had shown that he met the rules for entry clearance as a child, that there was little remaining public interest in refusal."

3. The Sponsor attended the hearing.
4. In her submissions, Ms. Aboni accepted that, when conducting the proportionality assessment, the Judge had given no weight to the fact that the Appellant met the requirements of the immigration rules. She also accepted that it appeared that the author of the Rule 24 response had not considered the contents of the bundle, or the decision of Judge Grimes.
5. At the hearing, with reference to the case of TZ (Pakistan) [2018] EWCA Civ 1109, I set the decision aside, and remade the appeal, allowing the Appellant's appeal on human rights grounds.

### **Error of Law**

6. The Judge finds at [25] that the Appellant "would have satisfied the burden of proof and established his father had sole responsibility for him". At [34] he states:

"I am, therefore, satisfied that having factored in my findings that the appellant would have satisfied the Immigration Rules and carrying out a balancing exercise of the facts that to refuse leave to the appellant to enter the UK for the purposes of family life is not disproportionate."
7. Although the Judge has stated that he has "factored in" his findings that the Appellant met the requirements of the immigration rules, he has given no weight to it. His proportionality assessment is set out from [26] to [33]. He states at [26] that it was not argued that "paragraph 276ADE or appendix FM can be satisfied", but this is irrelevant. Paragraph 276ADE applies to individuals who are already in the United Kingdom. Appendix FM is not relevant, as the appropriate immigration rule in the Appellant's case was paragraph 297. The Judge then accepts that the case justifies consideration "outside The Rules".
8. He then sets out some caselaw. His consideration of the Appellant's circumstances is from [31] to [33]. There is no reference to section 117B of the 2002 Act, and the factors set out there. There is no reference to the public interest. There is no reference to the fact that the immigration rules were satisfied, and therefore that there was little public interest in refusing the appeal.
9. TZ (Pakistan) states at [34]:-

"That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."
10. TZ makes clear that, where a person meets the requirements of the rules, that is positively determinative of the Article 8 appeal where Article 8(1) is engaged. There was no dispute that there was family life between the Appellant and Sponsor (see [34]). The Judge failed to take into account

that the Appellant satisfied the requirements of the immigration rules when carrying out the proportionality assessment. I find that this is a material error of law. Following TZ, I find the fact that the Appellant satisfied the requirements of the immigration rules is determinative of his appeal. I find that the decision is disproportionate, and that there is no public interest in refusing the Appellant's appeal.

11. Further, although it is not material, I find that there was evidence before the Judge of the Appellant's wishes to come to the United Kingdom to be with the Sponsor and his family in the copious WhatsApp communication between the Appellant and Sponsor (B73 to B205 of the Appellant's bundle).

### **Notice of Decision**

12. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
13. I remake the decision allowing the Appellant's appeal on human rights grounds.
14. No anonymity direction is made.

Signed

Date 6 May 2019

**Deputy Upper Tribunal Judge Chamberlain**

### **TO THE RESPONDENT FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. I have decided to make a fee award. It appears from [19] of the decision of the First-tier Tribunal that the findings of Judge Grimes were not taken into account by the Respondent when the decision was made. It was Judge Grimes' decision that led to the Judge finding that the requirements of the immigration rules were met. In the circumstances I make a fee award for the entire fee paid.

Signed

Date 6 May 2019

**Deputy Upper Tribunal Judge Chamberlain**