



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

Appeal Number: HU/08792/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2019**

**Decision & Reasons Promulgated
On 09 April 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**SONY MATHEW
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is Mr Mathew's appeal against the decision of the First-tier Tribunal which refused his application for leave to remain on the basis of family life with a partner by reference to Appendix FM.
2. The respondent was not satisfied that he met the eligibility relationship requirement and there were no insurmountable obstacles for family life continuing outside the United Kingdom. Nobody appeared on behalf of the appellant or the respondent. The respondent was happy to go ahead without representation and the judge was satisfied that the appellant and the legal representatives for the appellant had adequate notice of the

hearing and went ahead, heard the appeal and dismissed it and it was challenged on the basis that in fact there had been a request made by fax sent in two days, I think, before the hearing for it to be dealt with on the papers and it was also written at that time that his wife's appeal had been allowed and his appeal needed to be allowed in line with the decision in her case and a copy of the determination was sent. Clearly these matters did not get in front of the judge and I do not think there can be criticism of the judge for that, but the fact of the matter is that they were not before the judge and permission to appeal was granted on the basis that there had arguably been a procedural error in that Mr Mathew's wife's appeal had been allowed but the decision on her appeal was not placed before the judge.

3. Although I hear what Mr Avery says about the fact that the wife still does not have leave to remain and the fact that obviously it was not a matter before the judge that now her successful appeal has been challenged unsuccessfully by the Secretary of State, but it does seem to me that there is a procedural error in this case. As I say, it is not the judge's fault but the fact of the matter is that the decision in the wife's case was sent to him and that was something that could have made a difference in the judge's thinking, being aware of her successful appeal. So, as a consequence, as it seems to me, this decision will have to be set aside and there will have to be a full rehearing of the matter at Taylor House.

No anonymity direction is made.



Signed

Date 8 April 2019

Upper Tribunal Judge Allen