



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

Appeal Number: HU/08818/2018

**THE IMMIGRATION ACTS**

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

**Decision & Reasons  
Promulgated  
On 20 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**MOHAMMED SHAHINUZ ZAMAN**

Appellant

**and**

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

Respondent

**DECISION OF THE UPPER TRIBUNAL  
PURSUANT TO RULE 40(3)(a) OF  
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for leave to remain in the United Kingdom on family and private life grounds pursuant to the Immigration Rules HC 395 (as amended) and Article 8 ECHR outside the Rules.
2. Permission to appeal was granted on 19 December 2018 on the basis that the First-tier Tribunal hearing was arguably unfair by reason of the amount of questioning by the First-tier Judge, that the Judge misapplied the relevant law, failed to consider paragraph EX.1 of Appendix FM of the Immigration Rules HC 395 (as amended), and failed properly to apply both part VA of the Nationality, Immigration and Asylum Act 2002 (as amended)

and section 55 of the Borders, Citizenship and Immigration Act 2009 (the best interests of the appellant's children).

3. By an out of time Rule 24 Reply, the respondent accepted that the grounds of appeal reveal material errors of law by the First-tier Tribunal in the Judge's consideration of Appendix FM, Article 8 and section 55. The respondent invited the Upper Tribunal to remit this human rights appeal afresh to the First-tier Tribunal, without the need for an oral hearing before the Upper Tribunal.
4. It is therefore common ground that the First-tier Tribunal did materially err in law and both parties agree that this is a case where the decision of the First-tier Tribunal must be set aside. I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
5. I therefore set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.
6. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above. If in consequence an oral hearing is required, but the outcome is the same, the Upper Tribunal will consider making an order for wasted costs.

Signed: [Judith A J C Gleeson](#)  
February 2019  
Upper Tribunal Judge Gleeson

Date: 14