



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

Appeal Number: HU/09795/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21st June 2019**

**Decision & Reasons Promulgated
On 3rd July 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR ALUSINE KALLAY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Ambgah

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a decision and reasons of Judge Lucas in the First-tier Tribunal promulgated on 3rd April 2019 following a hearing on 21st March 2019 at Taylor House.
2. Before the First-tier Tribunal the Appellant was represented by Mr Moriarty of Counsel. The Secretary of State was not represented.
3. The Appellant had made an application for leave to remain as a spouse which had been refused by the Secretary of State solely on the basis that specified evidence required under the Rules had not been provided with

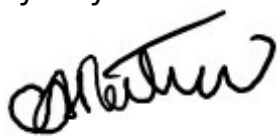
the application. This being a human rights appeal, it was properly accepted by Mr Moriarty before the First-tier Tribunal that the absence of specified evidence at the date of application meant that the Appellant could not succeed under the Rules.

4. This being a human rights case the judge could only look at human rights and his first task was to consider human rights through the lens of the Rules i.e. does the Appellant meet the requirements of the Rules? Clearly, he did not. He then looked at whether the Appellant met the substance of the Rules at the date of the hearing. In other words, did he in fact and could he evidence that he met the financial requirements at the date of the hearing. The judge found he could not because, on the evidence that he had, it appeared that the Sponsor was no longer working. In that case he was entitled to find that the Appellant did not meet the financial requirements as at the date of hearing.
5. He then went on to consider Article 8 and what was relied upon was the relationship that the Appellant had with his wife's son and the judge noted there was no evidence about that relationship and in that he was correct. The Appellant himself makes no mention of the child at all in his witness statement and his wife merely says that she has a British son in full-time education in this country, but no more.
6. The skeleton argument provided to the First-tier Tribunal by Mr Moriarty of Counsel refers to that child, at paragraph 17, as living with his aunt and does not argue on that basis and does not put the case that the child lives with this couple. If the child does not live with the couple and there was no evidence of any meaningful relationship with his mother, let alone with the Appellant, the Appellant cannot be said to have a parental relationship with his stepson as required by Appendix FM Ex.1. The case law in relation to what a parental relationship is and what has to be considered refers to a parental relationship existing if it can be said that a stepparent has "stepped into the shoes" of a parent. In a situation such as this where the only evidence was that there is a child who lived elsewhere that cannot be said to be the case.
7. Accordingly, the judge was entitled to find that the Appellant could not avail himself of Ex.1 and the conclusion that he reached, based on the evidence, was that the appeal should be dismissed. I can detect no error of law in his consideration or conclusions, material or otherwise, and so the appeal to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.



Signed
Upper Tribunal Judge Martin

Date 30th June 2019

I have dismissed the appeal and therefore there can be no fee award.

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

Signed
Upper Tribunal Judge Martin

Date 30th June 2019