



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

Appeal Number: HU/11619/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> January 2019**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> January 2019**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR MD SHIFUL ISLAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Basith, Solicitor, Taj Solicitors

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

This is an appeal to the Upper Tribunal by the Appellant, with a very peculiar grant of permission. The grant of permission states that there is no disclosable arguable error of law and nevertheless appears to grant permission.

The whole matter is somewhat confused. The situation is that in fact the appeal was allowed by the First-tier Tribunal on human rights grounds. It was a human rights appeal and it could only be allowed on human rights grounds. The Appellant's disagreement seems to be about the nature of the grant from the Secretary of

State which followed the appeal being allowed. The Secretary of State, noting that the Appellant succeeded under Ex.1, granted leave under the ten-year route. Had the Appellant met the requirements of the substantive Rule without having to rely on Ex.1 he would have been within the five-year route and that is the complaint made by the Appellant in this case.

However, the judge in considering the matter noted that the Secretary of State had first of all refused the application on suitability grounds which ground was withdrawn by the Secretary of State prior to the hearing. Once the suitability ground was removed the judge then went on to consider the requirements of Appendix FM. The Secretary of State refused the substantive requirements due to a lack of all the required specified evidence to confirm the relevant amount of income. The judge looked at the additional documents that had been put before him and found that in fact they did meet the threshold minimum income requirement. However, that did not mean that the Appellant met the requirements of the Rules because the Rules require that specified evidence to be lodged with the application, which it had not been.

The judge then went on to consider the requirements of Ex.1, which now that the suitability requirement had gone he was permitted to do. He found that the Appellant did meet the requirements of Ex.1 and, taking all matters into account, allowed the appeal on Article 8 grounds, relying on the fact that he met Ex.1 and considering proportionality under Article 8, taking into account the requirements of Section 117B.

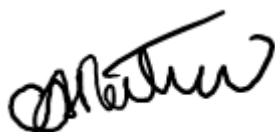
The judge could have done nothing else on the basis of those findings. The fact that the Secretary of State has granted him leave under the ten-year route rather than five-year route is a Decision to be taken by the Secretary of State and cannot be dictated by the Tribunal. If the Appellant feels aggrieved by that grant then his recourse would have been to judicially review that Decision. Alternatively, he may feel that he could in fact succeed under the five-year route if he made a fresh application with the requisite documents this time.

However, none of that means that the First-tier Tribunal made a material error of law. An error that the First-tier Tribunal did make was in thinking that the Appellant had no valid leave at the time he made his application. In fact, he did have valid leave but that still would not mean that he met the substantive requirements of the Rules. The judge did allow the appeal and thereafter it was a matter for the Secretary of State to grant such leave as he saw fit. I find that there is no material error of law in the First-tier Tribunal's conclusions and findings.

**Notice of Decision**

The appeal to the Upper Tribunal is dismissed.

There was no anonymity direction made in the First-tier Tribunal, no application for one and I see no reason to make one.

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

Signed

Date 18<sup>th</sup> January 2019

Upper Tribunal Judge Martin