



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/18586/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 14 November 2019**

**Determination Promulgated  
On 15 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**MH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sills, Counsel

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

*Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to*

*comply with this direction could lead to contempt of court proceedings.*

1. In this decision I consider the appellant's substantive appeal against the decision of an entry clearance officer ('ECO') dated 21 August 2018 refusing to grant him entry clearance in order to join his mother in the United Kingdom.
2. In an 'error of law' decision dated 11 September 2019, I noted that the respondent accepted that the decision of the First-tier Tribunal ('FTT') dated 29 May 2019 contains a material error of law. That decision has been set aside.
3. The appellant is a citizen of Pakistan, who was born in May 2002. At the time of his entry clearance application dated 17 April 2018 he was 15, and he is now 17. His mother, sister and step-father reside in the United Kingdom lawfully.
4. At the beginning of the hearing Mr Diwnycz accepted that there was no clear public interest in maintaining the ECO's decision, and invited me to allow the appeal on Article 8 grounds. I indicated that this was an entirely appropriate approach in the light of the matters agreed by the parties, which I summarise below.
  - (i) The FTT's decision contains an error of law regarding the financial requirements, but its factual findings supporting the conclusion that all aspects of the relevant Immigration Rules are met with the exception of E-ECC.1.6 are preserved.
  - (ii) It follows that the only requirement of the Rules that the appellant is unable to meet relates to his mother's immigration status. His mother does not have leave to enter or remain. She is however in the UK entirely lawfully as she has an EEA family residence card valid until 4 October 2021. Given this, according to section 7 of the Immigration Act 1988 the appellant's mother does not require leave to enter or remain as she remains in the United Kingdom entirely lawfully and pursuant to the Immigration (EEA) Regulations 2016.
  - (iii) That means that the proportionality exercise under Article 8 must focus upon the public interest in denying the appellant entry clearance when he meets all requirements of the Rules save one and in relation to that requirement, although his mother does not have leave, her status in the UK is lawful and will be lawful for an extended period of time. In effect the

requirement to have leave should in all the circumstances be waived.

- (iv) In any event, the appellant's best interests, viewed through the lens of Article 8 private and family life firmly support the grant of entry clearance, as does an assessment of the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002. Although there may be an infringement of the "English speaking" public interest, the appellant's age is such that he is likely to learn English quickly. Although he is likely to be educated at public expense and will have the capacity to access other publicly funded services and benefits, his parents meet all the relevant financial requirements of the Rules.
- (v) The public interest in maintaining immigration control is outweighed by the respect that is due to the appellant's family life with his United Kingdom-based family members and the acknowledgement that all of the more substantive aspects of the Immigration Rules are met.

### **Decision**

- 5. I remake the decision by allowing the appeal on Article 8 grounds.

Signed: *UTJ Plimmer*  
Ms M. Plimmer  
Judge of the Upper Tribunal

Date: 14 November 2019