



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

Appeal Number: HU/17424/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 21st November 2018**

**Decision & Reasons
Promulgated
on 10th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

DR [E O]

(Anonymity direction not made)

Respondent

For the Appellant: Mr A Govan, Senior Home Office Presenting Officer
For the Respondent: Ms L McCrorie, Drummond Miller LLP, Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal David Clapham allowing an appeal by Dr [O] (hereinafter referred to as the "claimant").
2. The appeal was brought before the First-tier Tribunal against a decision dated 23rd November 2017 by the respondent refusing leave to remain under the Immigration Rules and on human rights grounds. In applying for leave to remain the claimant relied upon a

parental relationship with his son and on his own ill health. The claimant has been diagnosed with schizophrenia.

3. The Judge of the First-tier Tribunal found the claimant has a continuing relationship with his son and that there is ongoing family life. The judge purported to allow the appeal under the Immigration Rules.
4. Permission to appeal was granted on two arguable grounds. It was observed that the judge purported to allow the appeal under the Immigration Rules but the judge did not have jurisdiction to do this. The only statutory ground of appeal was that the respondent's decision would be unlawful under section 6 of the Human Rights Act 1998. The judge did not consider the appeal under Article 3 and did not carry out a proportionality assessment under Article 8. Secondly, although purporting to allow the appeal under the Immigration Rules, the judge did not resolve the eligibility question under paragraph E-LTRPT.2.2 of Appendix FM, which was not met, according to the Secretary of State, because the claimant's son was neither a British citizen nor settled in the UK and neither had he lived in the UK for at least seven years.
5. Before me the parties were agreed that the Judge of the First-tier Tribunal erred in law and that the appeal should be remitted. I was satisfied that the judge erred in the manner described in the grant of permission to appeal. So far as remittal was concerned, I was satisfied that the judge had either not made relevant findings on the evidence or had made findings which were not adequately supported. Accordingly the appropriate course in terms of paragraph 7.2(b) of the Practice Statement is for remittal to a differently constituted First-tier Tribunal with no findings preserved.

Conclusions

6. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
7. The decision is set aside.
8. The appeal is remitted to a differently constituted First-tier Tribunal with no findings preserved.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. I have not been asked to make such a direction and I do not consider a direction to be necessary.

M E Deans
6th December 2018

Deputy Upper Tribunal Judge