



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

Appeal Number: IA/00115/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower

On 13 December 2018

Decision & Reasons

Promulgated

On 5 February 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MAJID ALI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Jafferji of Counsel instructed by DV Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

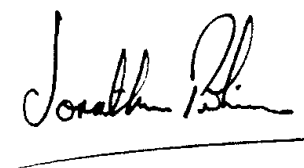
DECISION AND REASONS

- 1.** This appeal has a long history. It has been dealt with unsatisfactorily previously. Most recently it was dealt with by a First-tier Tribunal Judge at Birmingham who in a decision promulgated on 12 December 2017 dismissed the appellant's appeal against a decision of the Secretary of State refusing him leave to remain on human rights grounds and refusing him leave under the Immigration Rules.
- 2.** This is an appeal that is so old it is to be decided under the Rules and not solely on human rights grounds.

3. Given the very reasonable, appropriate and professional approach adopted by Mr Mills at the hearing before me it is not going to be necessary to say too much but I do want to give a proper explanation for my decision which is to allow the appeal.
4. The short point is that the First-tier Tribunal, although directing itself correctly about its scope and powers, completely misdirected itself about the proper application of EX.1 to Appendix FM. The First-tier Tribunal decided that they were not relevant considerations and, as Mr Mills conceded immediately, that was the wrong approach. It is a case where proper application of EX.1 has to be considered. Furthermore, the proper application leads to the appeal being allowed.
5. The short point is that the appellant is in a relationship with a British citizen. In order to succeed he has to show that there are insurmountable obstacles in the way of them continuing their family life in his country of nationality. The difficulty comes not in establishing themselves in the country but in leaving behind the appellant's partner's children from an earlier relationship. The children are in regular contact with their father and there are no realistic prospects of them either being abandoned by their mother or continuing their full relationship with their father from overseas. Nobody suggests for a moment that either of those two routes are at all sensible and certainly it is not the Secretary of State's case that that is what ought to happen.
6. Given those irresistible findings I agree with Mr Mills that the appeal can be only decided one way, which is to allow it.
7. On this occasion Mr Jafferji's submissions (which no doubt would have been very eloquent) were not necessary and I set aside the decision of the First-tier Tribunal for error of law and I substitute a decision allowing the appellant's appeal against the decision of the Secretary of State.

Notice of Decision

The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing the Appellant's appeal.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 January 2019