



IAC-FH-CK-V1

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

Appeal Number: PA/00642/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 27 August 2020**

**Decision & Reasons
Promulgated
On 7 September 2020**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

[S A]

(ANONYMITY DIRECTION MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr N Paramjorthy, instructed by S Satha & Co

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of a Judge of the First-tier Tribunal who allowed the appeal of Mr [A] against the respondent's decision of 6 January 2020 refusing to grant asylum and humanitarian protection.
2. I shall hereafter refer to the Secretary of State as the respondent, as she was before the judge, and to Mr [A] as the appellant, as he was before the judge.

3. It is not necessary to say a great deal about this appeal. Having had a helpful discussion with Mr Tufan and Mr Paramjorthy, and having also the benefit of a skeleton argument drafted by Mr Deller, it is common ground that this appeal is to be remitted for rehearing in the First-tier Tribunal.
4. The difficulty with the judge's decision is that the Article 8 element did not contain a proper assessment of the position of the appellant's partner and daughter under the Immigration Rules, as set out at paragraph 6 of Mr Deller's skeleton argument. As was noted there, any consideration of Article 8 required consideration and application of the relevant Immigration Rules and section 117B of the 2002 Act. That was not done by the judge, who in effect allowed the appeal under Article 8 (the appeal under the Refugee Convention and Articles 2 and 3 of the European Convention on Human Rights not being pursued at the hearing before the judge) on the basis of the grant of limited leave to remain to the appellant's partner under Appendix EU to the Immigration Rules. It was common ground that the judge had erred, not so much in taking into account the position of the appellant's wife under Appendix EU and the grant referred to above, but in not considering the matter in the round in a proper evaluation of Article 8. The findings of fact by the judge on the durability of the relationship and the fact that Ms Pushparajah is a worker as defined by Regulation 6 of the EEA Regulations are maintained, but other than those findings of fact the matter is to be listed for a full rehearing at Hatton Cross before a judge other than First-tier Tribunal Judge Wright.

Notice of Decision

The appeal is allowed to the extent set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.



Signed
Upper Tribunal Judge Allen

Date 27 August 2020

