



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

Appeal Number: HU/02646/2016

THE IMMIGRATION ACTS

Heard at Field House

On 7 March 2018

**Decision & Reasons
Promulgated
On 8 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MURTAZA KOCAKAYA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Home Officer Presenting Officer

For the Respondent: Mr I Maka, Counsel, 4 Kings Bench Walk

DECISION AND REASONS

- 1.** Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.
- 2.** The Appellant, a citizen of Turkey, appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer (ECO) of 31 December 2015 to refuse his application for entry clearance as a partner under Appendix FM of the Immigration Rules. First-tier Tribunal Judge Majid allowed the Appellant's appeal in a decision promulgated on 25 July 2017. The Secretary of State now appeals with permission granted by First-tier Tribunal Judge Saffer on 16 January 2018.

3. It appears from the papers before me that the background to this appeal is that the Appellant made an application for entry clearance to join his partner in the UK. The ECO refused the application on the basis that certain documents in relation to the financial requirements had not been submitted with the application and accordingly the mandatory requirements of Appendix FM-SE had not been met. The appeal against that decision came before First-tier Tribunal Judge Majid and was allowed.
4. The Secretary of State challenges the decision of First-tier Tribunal Judge Majid on the grounds that it is unclear from the judge's decision what the case is about and there has been no full and proper consideration of the application or the finances. The grounds highlight that Judge Majid makes reference to an 'asylum claim' and coming to the UK as a 'visitor' [12-13]. It is pointed out that there are also references to the best interests of the child and to reports on Radio 5 Live without any explanation as to the relevance of these matters. It is contended that it is not clear why the Appellant has won his case.
5. In correspondence submitted in advance and at the hearing before me Mr Maka accepted that there are errors of law in the decision of First-tier Tribunal Judge Majid. He accepted that the decision should be set aside and requested that the decision be remade in the Upper Tribunal. He made this submission on the basis that the issue was narrow and the Appellant had already been prejudiced by the delay, having made his application for entry clearance in 2015. He highlighted that the Appellant had missed the recent birth of his twin children in the UK. However Ms Fijiwala said that she had a number of concerns about aspects of the evidence and was unable to agree that the appeal should be allowed.

Error of law

6. In my view the decision of First-tier Tribunal Judge Majid is fatally undermined in a number of respects.
7. Firstly this was an appeal under Article 8 but the judge referred to it being an asylum appeal [12] and referred to a visit to grandchildren [13]. Much of the rest of the decision comprises case law and general statements. There is no analysis of Appendix FM or of Article 8. Accordingly the judge has failed to consider the very basis on which the appeal was brought. There is no proper explanation of the background or of the facts or of the factors relevant to the judge's decision.
8. In considering the decision in this appeal I have taken account of the decision of the Upper Tribunal in the case of **MM and Others** (unreported appeal number AA/06906/2014) which levels criticisms in relation to a number of decisions made by First-tier Tribunal Judge Majid. I take into account paragraph 47 where the Tribunal says:

"We regard the body of his work that we have examined in the course of these appeals as wholly failing to meet the standards that are demanded by the office of a judge and expected by the parties. As a result, every one of the decisions under appeal shows errors of law, in most cases serious error, in most case multiple serious errors.

Whether the decisions are looked at together or separately, they show that nobody should assume that Judge Majid has an adequate knowledge of the law of his task as a judge. If his decisions continue to have the features we have identified in the foregoing examination, they are clearly open to criticism”.

- 9.** The decision in the instant appeal contains a number of the paragraphs highlighted by the Tribunal in the case of **MM** and therefore does have a number of features identified in that case as demonstrating the wrong approach on the part of the judge.
- 10.** Considering the decision in the instant appeal I find that the decision discloses the material errors of law identified above which are capable of affecting the outcome of the appeal. In these circumstances and, as no findings of fact have been made, I set aside the decision of the First-tier Tribunal Judge.
- 11.** Although Mr Maka requested that the decision be remade in the Upper Tribunal I bear in mind the Presidential Practice Statements and I take into account that the effect of the error identified has been to deprive the Appellant of the opportunity for his case to be considered by the First-tier Tribunal and the nature or extent of the judicial fact finding in relation to Article 8 which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal Judge contains material errors of law.

I set the decision of the First-tier Tribunal aside.

The appeal is remitted to the First-tier Tribunal for hearing afresh.

No anonymity direction is made.

Signed

Date: 7th March 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT **FEE AWARD**

No award for costs is made as the matter is still outstanding before the First-tier Tribunal.

Signed

Date: 7th March 2018

Deputy Upper Tribunal Judge Grimes