



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/10598/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

On 14 September 2018

Decision

Promulgated

On 01 October 2018

&

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

PETER BRYAN BAILEY
(ANONYMITY DIRECTION NOT MADE)

Appellant

Representation:

For the Appellant: Miss Cleghorn, Counsel.

For the Respondent: Mr Diwnyz, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Australia who applied for leave to remain as a partner of someone present and settled in the United Kingdom. His application was refused and he appealed and following a hearing at North Shields, and in a decision promulgated on 6 March 2018, Judge of the First-Tier Tribunal Hands dismissed his appeal on human rights grounds.
2. The Appellant sought permission to appeal which was initially refused but on 22 May 2018 Upper Tribunal Judge Plimmer granted permission to appeal of a renewed application. Her reasons for so doing were: -

“1. It is arguable that the First-Tier Tribunal (FTT) misunderstood the financial evidence relevant to both the Sponsor and the Appellant as explained in grounds 1 and 4.

2. Grounds 1 and 4 seem to be stronger than grounds 2 and 3 but I give permission to appeal on all grounds.”

3. Thus, the appeal came before me today.
4. Neither the existence of a material error of law within the decision nor the appeal itself were resisted by Mr Diwnyz on behalf of the Respondent.
5. The grounds assert that the Judge materially erred in failing to apply the correct Rules, properly consider Article 8 outside of the Rules (and section 117B), consider the Article 8 rights of the Appellant’s husband’s parents and properly deal with the authority of **Chikwamba v SSHD [2008] UKHL 40**.
6. I share the analysis of both representatives before me today.
7. Judge Hands incorrectly directed herself with regard to appendix FM. She mistook the Appellant’s case for an entry clearance case. This was not an entry clearance case as both the Appellant and his Sponsor have resided in the United Kingdom together for three and a half years. This misdirection, which is clear throughout the decision, materially impacts on the outcome. Instead of referring herself to section EC-P under appendix FM of the Immigration Rules which related to entry clearance cases the Judge should have focused upon E-LTRP, which relates to leave to remain.
8. Both parties accepted that had she focused on the correct Immigration Rules, given her findings at paragraph 28 of her decision in relation to the Appellant’s salary the Immigration Rules were met and in light of that when considering the position under Article 8 the refusal was disproportionate in all the circumstances.
9. I also find that to be the position.

Notice of Decision

The appeal is allowed on human rights grounds.

No anonymity direction is made.

Signed
2018
Deputy Upper Tribunal Judge Appleyard

Date: 24 September