



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

Appeal Number: HU/05845/2017

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On: 7<sup>th</sup> November 2017**

**Decision & Reasons Promulgated  
On: 13<sup>th</sup> November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
G A BLACK**

**Between**

**[G A]**

**NO ANONYMITY ORDER MADE**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr E. Pipi (Counsel)

For the Respondent: Mr P. Nath (Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an error of law hearing and I consider whether or not there is a material error of law in the decision the First-tier Tribunal (Judge S.J. Clarke) ("FTT") promulgated on 17th August 2017 in which she allowed the appeal to an extent but made a direction for reconsideration by the Respondent.

## **Background**

2. The appellant is a citizen of Afghanistan who applied for leave to enter as an adult dependent relative under the Immigration Rules at Appendix FM. The respondent rejected the application as there was no reliable evidence of the relationship with the sponsor (her son) who had been granted indefinite leave to remain as a refugee. No additional grounds were set out in the ECO decision nor raised in the ECM review [8].

## **FTT decision**

3. The FTT found that the evidence of a DNA report established that the parties were related as claimed [7]. In the light of the refusal letter making reference only to the relationship issue and was “totally” “silent” on any other issues, the FTT decided that she could not assume that the respondent was satisfied as to the other requirements for entry clearance [8]. Accordingly the FTT allowed the appeal on the relationship issue and in terms of the adult dependency issue the FTT directed that the respondent give further consideration [9].

## **Application for permission to appeal**

4. In ground one it was contended that the FTT erred in making a decision that it had no jurisdiction to make, by in effect remitting the matter to the Secretary of State (**Greenwood** No 2 (para 398 considered) [2015] UKUT 629). The second ground argued that the FTT was wrong to raise matters not raised in the refusal grounds which was unfair to the appellant and/or the FTT ought to have considered those issues as primary decision maker. The FTT failed to consider Article 8 outside of the Rules; this was a human rights appeal.

## **Permission grant**

5. Permission was granted by FTJ JM Holmes, who found that there were arguable grounds that the FTT had misunderstood the limits of her jurisdiction. The FTT ought to have considered the article 8 appeal in the context of the facts found.

## **Rule 24 Response**

6. The respondent opposed the application but acknowledged that a valid point was made in terms of the FTT’s jurisdiction.

## **Submissions**

7. Mr Pipi relied on the grounds of appeal and the terms of permission. The ECM had referred to a completely different appellant and thus the Review carried no weight. The FTT had no power to remit to the Secretary of State. Mr Nath opposed the application arguing that the ECM had in fact rectified the position by setting out all matters relied on in the refusal.

There were circumstances in which the FTT was permitted to request that the Secretary of State reconsiders.

**Discussion and conclusion**

8. I found that there was a material error in law in the decision which I set aside. The FTT had no jurisdiction to make a decision other than to allow or to dismiss the appeal. Further in the light of the fact that the refusal was silent on other refusal grounds including the adult dependent criteria, the FTT was not entitled to assume that there were other grounds. The appellant ought to be given all of the refusal reasons in the decision notice and so is in a position to respond to those matters on appeal, otherwise unfairness would arise. Having considered both the ECO decision and the ECM review I found no reference to any other disputed issue under the Rules. Accordingly I am satisfied that there was sufficient evidence (which included medical reports, evidence that the appellant is a widow, evidence of financial transfers) before the FTT to enable the FTT to allow the appeal outright on human rights grounds given that she had found in favour of the appellant on the only issue raised by the respondent and that there was evidence of family relationship and dependency on emotional, medical and financial grounds.

**Decision**

9. There is a material error of law in the decision which shall be set aside.
10. I remake the decision by substituting a decision to allow the appeal on human rights grounds.

Signed

Date 9.11.2017

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 9.11.2017

GA Black

Deputy Judge of the Upper Tribunal