



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/10595/2015

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 5 July 2016**

**Decision &  
Promulgated  
On 15 July 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

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

**and**

**YASIR ARAFAT  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr I Richards, Home Office Presenting Officer  
For the Respondent: Mr S Hancox instructed by Bukhari Chambers

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Archer) allowing Yasir Arafat's appeal, I will for convenience continue to refer to the parties as they appeared before the First-tier Tribunal.

## **Introduction**

2. The appellant is a citizen of Pakistan who was born on 9 March 1989. He entered the United Kingdom on 11 February 2011 with entry clearance as a Tier 4 (General) Student. His leave was valid until 30 October 2013. He applied for further leave to remain as a student but that was refused on 18 June 2014 with no right of appeal.
3. A subsequent application for leave based upon his private and family life was made on 29 August 2014 but was subsequently withdrawn. On 10 February 2015, the appellant made a further application as the spouse of a British citizen. On 24 December 2014, he had married Farhat Kousar, a British citizen.
4. On 4 March 2015, the Secretary of State refused the appellant's application for further leave based on his private and family life under the Immigration Rules (HC 395 as amended) and also under Article 8. On 9 March 2015, the Secretary of State made a decision to remove the appellant to Pakistan as an overstayer under s.10 of the Immigration and Asylum Act 1999.

## **The First-Tribunal's Decision**

5. The appellant appealed against that decision to the First-tier Tribunal. The appeal was heard by Judge Archer on 15 September 2015.
6. The focus of Judge Archer's decision was upon the "partner" rule in R-LTRP in Appendix FM. The Secretary of State had concluded in her decision letter that the appellant did not meet the 'suitability' requirements as he fell within S-LTR.2.2., namely that he had, in a previous application, submitted a false document namely a TOEIC English language certificate obtained from ETS having used a proxy-taker for part of the test.
7. In his determination, Judge Archer found (at para 17) that the Secretary of State had failed to discharge the burden of proof upon her to prove this deception in the absence of any supporting witness statement or printouts relating to the appellant.
8. Judge Archer did not, however, go on to consider whether the appellant met the substantive requirements of R-LTRP as a "partner". Although it had been accepted by the Secretary of State that the appellant's marriage was a genuine and subsisting one, it was not accepted that the appellant met the requirements of the Rules, in particular EX.1 because it had not been established that there were "insurmountable obstacles" to the appellant and his wife continuing their family life in Pakistan. Instead, Judge Archer concluded that the decision of the Secretary of State was not in accordance with the law and that the application for leave should be

reconsidered by the Secretary of State in the light of all the evidence. In addition, Judge Archer made no decision in respect of Article 8 outside the Rules.

### **The Appeal to the Upper Tribunal**

9. The Secretary of State sought permission to appeal on two grounds. First, the judge had erred in law in concluding that the Secretary of State had failed to prove that the appellant had submitted a false document with his earlier application. Secondly, the judge was wrong in law to allow the appeal without considering the substantive requirements of the Immigration Rules and, instead, leaving the Secretary of State to reconsider the application on the basis that her decision was not in accordance with the law.
10. On 10 March 2016, the First-tier Tribunal (Judge Grant-Hutchison) granted the Secretary of State permission to appeal on ground two only. Permission was refused on ground one.
11. At the hearing before me, Mr Richards, on behalf of the Secretary of State, did not seek to maintain the challenge to the judge's decision in respect of the suitability requirement and his finding that the Secretary of State had not established that the appellant had submitted a false document in support of his previous application. However, Mr Richards submitted that the judge had erred in law by, in effect, remitting the application back to the Secretary of State for reconsideration. Mr Richards submitted that the judge should have considered the evidence and determined the appeal on the basis of the Immigration Rules and whether the appellant had satisfied the substantive requirements for leave as a "partner" under Appendix FM.
12. Mr Hancox, on behalf of the Appellant, submitted that it was appropriate for Judge Archer to remit the case back to the Secretary of State to determine the application under the substantive requirements of the relevant rules in Appendix FM. Mr Hancox submitted that this would be the proper way to consider, for example, new circumstances that have arisen since the decision namely that the appellant's wife is pregnant.

### **Discussion**

13. I accept Mr Richards' submissions.
14. In my judgment, Judge Archer erred in law by allowing the appeal on the basis that the decision was not in accordance with the law and, in effect, remitting the application for reconsideration by the Secretary of State. There may be some circumstances in which that course is justified but it was not in this appeal where the Secretary of State had given consideration in her decision letter to the substantive requirements of the

Rules. She had concluded that the appellant could not meet all the requirements, including the substantive requirements, of the Rules. Judge Archer's decision did not engage with, let alone set aside, the Secretary of State's adverse findings on the substantive requirements. The proper course for Judge Archer was to consider whether the appellant had established that he met the requirements of the "partner" rules in Appendix FM both (as Judge Archer in fact did) in respect of the suitability requirement and also (as Judge Archer did not) the substantive requirements of the rules. In other words determine the appeal on the ground in s.84(1)(a) of the Nationality, Immigration and Asylum Act 2002: whether "the decision is not in accordance with the immigration rules".

15. I do not accept Mr Hancox submission that remittal to the Secretary of State to reconsider the application was the appropriate mechanism to enable the appellant to have any new circumstances considered. Those new circumstances could, and should, have been considered by the First-tier Tribunal in determining whether the appellant met the substantive requirements of the "partner" rule. The judge was required to consider any matter relevant to the substance of the decision including any matter "arising after the date of decision" (see s.85(4) of the Nationality, Immigration and Asylum Act 2002).

### **Decision and Disposal**

16. For the above reasons, therefore, the First-tier Tribunal erred in law in allowing the appellant's appeal and, in effect, remitting the application for reconsideration to the Secretary of State.
17. The proper disposal of the appeal before the First-tier Tribunal required the First-tier Tribunal to consider, and make findings upon, whether the appellant met the requirements of the Immigration Rules (in particular the "partner" Rules) and whether the decision breached Article 8.
18. Consequently, I set aside the First-tier Tribunal's decision to allow the appellant's appeal and I remit the appeal to the First-tier Tribunal to decide whether the appellant meets the requirements of the relevant Immigration Rules.
19. In doing so, Judge Archer's finding that the Secretary of State has not established that the appellant fell within the suitability requirement in S-LTR.2.2. shall stand.
20. In all the circumstances, the appeal is remitted to the First-tier Tribunal to be reheard on that basis by a judge other than Judge Archer.

Signed

A Grubb  
Judge of the Upper Tribunal

Date: 15 July 2016