



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

Appeal Number: OA/09203/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 16 March 2016**

**On 11 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**M F**

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mrs H Price, counsel instructed by Pioneer Solicitors

**DECISION AND REASONS**

1. The Entry Clearance Officer (ECO) appeals the decision of First-tier Tribunal Judge McCartney, promulgated on 18 September 2015, allowing an appeal against a decision to refuse the respondent leave to enter the United Kingdom as a parent. Permission to appeal was granted by First-tier Tribunal Judge Frankish on 11 February 2016.

## Background

2. The respondent sought leave to enter the United Kingdom under EC-PT1.1 of Appendix FM to the Immigration Rules in order to exercise the right of access to his 7 year daughter who was in the care of a local authority following the death of her mother. That application was refused on 10 July 2014 as it was said that the respondent had not met the eligibility, financial or English language requirements of the Rules.
3. In relation to eligibility, the ECO stated that the respondent had provided no evidence that he had an active role in the child's upbringing and reference was made to an interim care order obtained by the local authority concerned. Concern was raised as to why the respondent's three siblings in the United Kingdom had not assisted in the care of his daughter.
4. With regard to the financial requirements, these were not met because the respondent was relying on third party support from his brother. The respondent was said not to be exempt from the English language requirement and it was noted by the ECO that he had not passed the required English language test. The ECO considered whether there were exceptional circumstances but declined to grant leave to enter on this basis, noting that the respondent had never met his daughter and had no involvement or contact with her since she was born.
5. In appealing the ECO's decision the respondent argued that the requirements of the Rules were met; raised the best interest of the child concerned and relied on Article 8 ECHR, outside the Rules.
6. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry on 23 December 2014, however the decision to refuse entry was maintained on all grounds for the same reasons as provided previously. Reference was made to the lack of any additional documentary evidence or details. In addition, it was not accepted that it was in the best interests of the respondent's daughter that he be granted entry clearance in view of the fact that he had yet to be assessed as a suitable parent.
7. At the hearing before the FTTJ, counsel for the respondent conceded that the requirements of the Rules were not met, as he could not speak English. The FTTJ allowed the appeal under the Rules, finding that the appellant was entitled to rely on third party support and that there were exceptional circumstances in relation to the English language requirement.

## Error of law

8. The grounds of application argue that the FTTJ erred in finding that the respondent was in a position to maintain himself owing to relying on post-decision evidence; inadequate evidence and without assessing the sponsor's expenditure. Secondly, it was argued that the FTTJ erred in

finding that there were exceptional circumstances, which exempted the respondent from having to satisfy the English language requirement. It was noted that the respondent's wife had died a year prior to the application being made and that therefore there was a significant period of time for basic level English to be learnt.

9. FTTJ Frankish ostensibly granted permission to appeal, while clearly stating that no arguable error arose from the FTTJ's exceptional circumstances test, or as to the finding that there was sufficient maintenance and accommodation.

### The hearing

10. At the hearing before me, Mr Bramble conceded that FTTJ had meant to refuse permission rather than grant. Mrs Price agreed with that position. They both invited me to amend the grant of permission to read, "refused."
11. I agreed that to make the proposed amendment and have done so, in the capacity of a Judge of the First-tier Tribunal, in the enclosed annex, with reference to the following Rule;

#### *31. Clerical mistakes and accidental slips or omissions*

*The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—*

*(a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and*

*(b) making any necessary amendment to any information published in relation to the decision, direction or document*

### Decision

- (1) Permission to appeal refused.

No application for anonymity was made and I could see no reason to make such a direction.

Signed

Date: 19 March 2016

Deputy Upper Tribunal Judge Kamara



**In the First-tier Tribunal  
(Immigration and Asylum Chamber)**

Case No: OA/09203/2014

Decision by First-tier Tribunal Judge Kamara

**In the matter of rule 31(b) of The Tribunal Procedure (First-tier Tribunal)  
(Immigration and Asylum Chamber) Rules 2014**

**Appellant: [M F]**

**Respondent: Secretary of State/Entry Clearance Officer**

**DECISION TO AMEND GRANT OF PERMISSION TO APPEAL**

I hereby amend the decision to grant permission to appeal dated 11 February 2016 of the First-tier Tribunal in this appeal to read, “refused” instead of “granted”.

**REASONS**

The Secretary of State sought permission to appeal the decision of First-tier Tribunal Judge McCartney. First-tier Tribunal Judge Frankish ostensibly granted permission to appeal, however it is clear from reading the decision, that permission was in fact refused as the said judge considered “*no arguable error*” of law arose from the decision and reasons concerned.

When this matter came before me in my capacity of a Deputy Upper Tribunal Judge, both representatives were in agreement that the judge granting permission made a typographical error in stating that permission was granted and that he ought to have said that it was refused.

I concur that the grant of permission to appeal could not be read in any other way; conclude that Judge Frankish made an accidental slip and accordingly, by way of amending information published in relation to the grant of permission, amend the grant of permission under Rule 31(b).

**Signed**

**Judge of the First-tier Tribunal**

**Dated: 19 March 2016**