



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

Appeal Number: HU/04628/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 May 2017**

**Decision given in court
On 10 May 2017**

Before

Upper Tribunal Judge John FREEMAN

Between

Omar GUEBLI

appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

respondent

Representation:

For the appellant: *Tanya Murshed* (counsel instructed by Abbey Law, St Albans)

For the respondent: Mr P Nath

DECISION AND REASONS

This is an appeal from Judge Bernard Andonian, sitting at Taylor House on 31 August 2016 by someone born in Algeria in 1988. In 2012 he arrived on a visit visa and overstayed. The following year he met his wife, who is a British citizen, and on 8 April 2015 he made his first private and family life application, which was refused the following month. The day after that, on 16 May 2015, he married his wife, apparently in a civil ceremony, and on 26 May made his second private and family life application which was refused on 14 August.

2. Various grounds were given for that refusal, none of which I need to consider, except for the way in which the judge's decision dealt with the partner route under Appendix FM to the Rules, paragraph RLTRP1.1(d). That for other reasons could only be satisfied by this appellant if paragraph EX.1 also applies. That was considered by the decision maker who looked at it on the basis of whether paragraph EX.1(a) applied.

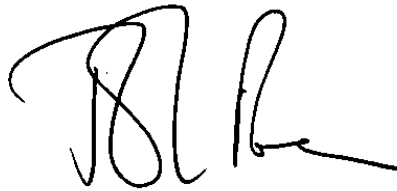
NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*

(2) *persons under 18 are referred to by initials, and must not be further identified.*

3. That paragraph refers to a 'genuine and subsisting parental relationship' with a child, which this appellant and his wife did not have; however there was no consideration by the decision-maker of paragraph EX.1(b), as to whether the appellant had a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, which his wife was. It is not too surprising in the circumstances that the very experienced judge should not himself have dealt with EX1(b) either, though it must be said that this point had been taken in detailed grounds of appeal to the First-tier Tribunal.
4. In the circumstances the parties are agreed that there is no alternative to the appeal being allowed with a direction for a fresh hearing before another judge. It may well be that the answer to the EX.1 point either makes unnecessary, or disposes of any article 8 claim; but that will be something for the judge to consider.

Appeal allowed

Direction for fresh hearing in First-tier Tribunal, not before Judge Andonian

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(a judge of the Upper Tribunal)