



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

Appeal Number: IA/25732/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> September 2017**

**Decision & Reasons  
Promulgated  
On 29<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**MAHMUD REZA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M B Hussain, Solicitor

For the Respondent: Ms Z Ahmad, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Clarke dismissing his appeal under the Immigration Rules and on the basis of his human rights. The Appellant was granted permission to appeal by Upper Tribunal Judge Martin. The grounds upon which permission was granted may be summarised as follows:

“...the well drafted and clear grounds that assert that the judge erred in considering only the applicability of R-LTRP.1.1(d) and not the alternative of

R-LTRP.1.1(c), which it is asserted the Appellant's evidence he met are arguable."

2. I was not provided with a Rule 24 response from the Respondent however I was told that there was one but it was not available at the time that the hearing commenced.

### **Error of Law**

3. At the outset of the appeal Ms Ahmad conceded that the First-tier Tribunal Judge had made a material error of law in respect of considering issues above and beyond the two rules outlined in the refusal letter, namely E-LTRP.1.7 and S-LTR.2.2. This amounted to an error in law as that consideration was unnecessary and superfluous to the central issue of whether the Appellant could meet the immigration rules and the consideration that followed, including the assessment under Article 8 ECHR outside the rules was entirely unnecessary. In light of that fact the parties were in agreement that the determination contained a material error of law such that it should be set aside, albeit only in part; both parties were agreed that the determination was not infected by that material error up until paragraph 52 of that document.
4. In my view, the concession was rightly made and the agreement between the parties was a sensible one. The determination does to my mind contain an error of law which infects the latter portion of the judgment, in that, given the requirements of R-LTRP of Appendix FM, the Respondent's criticism of the application under the rules began and ended with E-LTRP.1.7 and S-LTD.2.2. Thus, by going on to consider EX.1, the judge imitated the Respondent's omission in the Refusal Letter by failing to consider R-LTRP.1.1.(c) and instead considered R-LTRP.1.1.(d) alone. This omission was fatal to the judge's reasoning as on the findings already made, it was clear that the appeal was one that could succeed, as shall become clear.

### **Remaking the Decision**

5. In light of the parties agreed position I was invited to go on and decide the appeal on the basis of the findings reached by the First-tier Tribunal up to paragraph 53 of the First-tier Tribunal's determination.
6. As already set out above, the findings of the First-tier Tribunal in respect of E-LTRP.1.7 in relation to the applicant and his partner being in a genuine and subsisting relationship remain uninfected and I note that the Respondent has not sought to cross-appeal or challenge that finding that the Appellant and his partner enjoy a genuine and subsisting relationship.

In respect of S-LTR.2.2 and the requirement that the applicant should not have submitted false information, representations or documents in relation to an application, again that finding that the Appellant did not do so has not been challenged by the Respondent by way of a cross-appeal and consequently the finding of the First-tier Tribunal upon this issue also

stands. It is not in dispute that the Appellant was not an overstayer but in fact applied whilst he had extant leave to remain.

7. As a result, according to the provisions of R-LTRP.1.1, I find that the Appellant has met the requirements for limited leave to remain as a partner as:
  - (a) he is in the UK;
  - (b) he has made a valid application for limited leave to remain as a partner; and
  - (c) (i) he has not fallen for refusal under Section S-LTR, and  
(ii) the applicant meets all the requirements of Section E-LTRP.
8. Consequently, I find that the Appellant satisfies the Immigration Rules for a grant of limited leave to remain under the 5-year route and given that finding, I allow his appeal under the Immigration Rules on the above bases having established his family life in accordance with Appendix FM.
9. In summary, I find that the First-tier Tribunal materially erred in its consideration of the Appellant's appeal in respect of EX.1 and Article 8 outside the Rules but did not err in respect of its findings in terms of E-LTRP.1.7 and S-LTR.2.2. I thus remake the appeal allowing it, as the Appellant has now demonstrated that he meets R-LTRP.1.1.(c).

### **Notice of Decision**

10. The appeal to the Upper Tribunal is allowed.
11. The decision of the First-tier Tribunal is set aside in part as indicated above, and the appeal is allowed under the Immigration Rules.
12. No anonymity direction was requested and none is considered necessary.

### **TO THE RESPONDENT** **FEE AWARD**

I was not asked to make a fee award by the Appellant and given that it required the Appellant's evidence on appeal to the First-tier Tribunal to satisfy the substantive issues raised in the Refusal Letter in order to succeed in this appeal, I do not see fit to do so.

Signed

Date

Deputy Upper Tribunal Judge Saini