



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

Appeal Number: HU/18830/2016

**THE IMMIGRATION ACTS**

**Heard at Eagle House, Glasgow**

**Decision & Reasons  
Promulgated**

**On 4 January 2018**

**On 23 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MOHSIN [J]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr W Criggie, Latta & Co Solicitors

For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Telford promulgated on 25 September 2017 dismissing his appeal against the decision of the respondent made on 21 July 2016 to refuse him leave to remain and to refuse his human rights claim.
2. The appellant is a citizen of Pakistan who has lived in the United Kingdom since 2012 when he arrived with leave to remain as a student. His first application for leave to remain on the basis of family and private life was refused on 24 April 2014; three further applications were unsuccessful.

The application giving rise to the decision under appeal was made on 26 May 2016.

3. The appellant is married to a British Citizen. He married his wife at a mosque in the United Kingdom on 19 March 2015 and subsequently at a Registry Office in a civil ceremony on 22 February 2016. The couple had since then had their first child, also a British Citizen, born on [ ] 2017.
4. The respondent refused the application on the grounds that the appellant did not qualify for consideration under the 5 year route under Appendix FM as, having overstayed for more than 28 days, he did not meet the relevant suitability requirements. She noted also that the financial requirements were not met. The application was also refused under the 10 year route, the respondent concluding that although the relationship was genuine and subsisting, the requirements of EX.1 were not met. The application was also refused on private life grounds, the respondent concluding that the appellant did not meet the requirements of paragraph 276 ADE of the Immigration Rules
5. The respondent was not present at the appeal before Judge Telford who dismissed the appeal, concluding:
  - (i) That this was an appeal against refusal of entry clearance [2];
  - (ii) That section 85(5) of the 2002 Act permitted him to consider evidence of the appellant's current circumstances as he was in the country [3];
  - (iii) That the requirements of EX.1 were not met [13] - [16];
  - (iv) That the appellant and sponsor did not have a child who has lived for 7 years or more in the United Kingdom [15];
  - (v) That proven income was not sufficient to meet the relevant threshold [17 ] - [18] and that third party support was not sufficient [19] - [23];
  - (vi) That there was no claim to be made outside the Immigration Rules [25]
6. The appellant sought permission to appeal, challenging Judge Telford's assessment of the finances, his failure to take into account the position of the appellant's British born child, or indeed consider him at all including a failure to consider his best interests or section 117B (6) of the Nationality, Immigration and Asylum Act 2002.
7. Both parties agreed that the decision of Judge Telford involved the making of multiple errors of law, not the least of which was a failure to take any account of the appellant's British Citizen child. Judge Telford appears to have been unaware that the requirement to have lived in the United Kingdom for 7 years is a requirement applicable only to non-British Citizen children. He appears also to have been unaware that this a human rights appeal and not an appeal under the Immigration Rules. Even had that been the case, his self-direction at [25] noted above was simply wrong in law.

8. Further, Judge Telford erred in not even considering whether the birth of the child was a “new matter” and then properly to have applied either sections 85(5) and (6) of the 2002 Act.
9. For these reasons the decision involved the making of an error of law and I set it aside. In the circumstances the only course of action which I consider is open is for me to remit the decision to the First-tier Tribunal for a fresh decision on all issues, the matter to be considered by a judge other than Judge Telford.

#### SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues.

Signed

Date 19 January 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul