



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01764/2016**

Appeal Numbers:

IA/01765/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 7th March 2018

On 4th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**MR FAHEEM ABDUL HAMEED
MRS ARIBA FAHEEM
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Murphy, Counsel instructed by SG Solicitors
For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Andonian sitting at Taylor House on 8th September 2017. Permission to appeal was granted by Upper Tribunal Judge Blum. The original grounds were detailed and there were ten such grounds but ultimately when Judge Blum granted permission he said as follows,

“The grounds/skeleton argument did however raise Article 8 as a ground of appeal. The FtJ did not engage with this ground. Although the Appellant is likely to face difficulties in demonstrating a breach of Article 8 it cannot be said at this stage that had the FtJ considered Article 8 the appeal would inevitably have been dismissed.”

The learned Upper Tribunal Judge made it clear that he was not granting permission to appeal in respect of the Tier 1 Entrepreneur Immigration Rules aspect nor was he granting permission in respect of paragraph 245AA and/or the evidential flexibility policy.

2. Mr Murphy in clear and focused submissions says that there is an apparent error of law in the circumstances because the judge had failed to deal with Article 8 and he referred, for example to two letters which are in the judge’s decision which merely say “PA” and Mr Murphy speculates as to whether the judge intended to deal with Article 8 or not but in any event his submission is that the judge failed to deal with Article 8. Mr Murphy says that this is a case in which there are two relevant children and that issues in respect of the best interests of the children pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009 had to be considered as a primary consideration, but they do not feature within the judge’s decision. He asked me to remit the matter to the First-tier Tribunal where the matter can be considered with up-to-date evidence.
3. Mr Nath in his submissions, also clear and focused, said one has to ask the question as to whether it would have made a material difference if the judge had considered Article 8. He invited me to consider the judge’s Record of Proceedings to see the way in which the Appellants had then sought to argue Article 8 and he asked in a rhetorical way was it therefore incumbent upon the judge to make findings in respect of matters which had not been pleaded?
4. Having looked at the Tribunal’s file and having sought to look at the Record of Proceedings, it is right to say that it is a Record of Proceedings in manuscript, is not the easiest to decipher, but in my judgment the fundamental difficulty here in this case is that identified by UTJ Blum. Namely that Article 8 had been raised both in the grounds and in the skeleton argument by the Appellants. It was therefore essential for the First-tier Tribunal Judge to deal with that issue. The Judge may well have concluded that this was a difficult Article 8 claim. The problem though is that that task has not been completed and in view of the factors which Mr Murphy brings to my attention in my judgment there is a material error of law. The matter in respect of Article 8 is therefore remitted to the First-tier Tribunal. There has been no proper first instance consideration of those Article 8 matters and so the appropriate venue for the appeal will be at the First-tier Tribunal.
5. There was no permission granted in respect of the Immigration Rules or the Tier 1 aspects so that aspect remains dismissed. The First-tier Tribunal at Taylor House will give further appropriate directions as to

bundles and such like which the Appellants must comply with but for today's purposes my decision is that there is a material error of law in the decision of the First-tier Tribunal. That decision is set aside and there will be a re-hearing at the First-tier Tribunal on Article 8 issues only.

No anonymity direction is made.

Signed A. Mahmood

Date: 7 March 2018

Deputy Upper Tribunal Judge Mahmood