



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

Appeal Number: HU/09215/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 June 2019**

**Decision & Reasons Promulgated  
On 03 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

**MR M F J  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B. K Sharma, Legal Representative.  
For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan who made an application for entry clearance to the United Kingdom under Appendix FM. His application, made on 28 December 2017, was on the basis of his family life with his partner, KB, who is his Sponsor.
2. The Respondent refused the Appellant's application and following an Entry Clearance Manager (ECM) review the original decision stood.
3. The Appellant appealed and following a hearing at Hatton Cross, and in a decision promulgated on 20 March 2019, Judge of the First-tier Tribunal

Mill dismissed the Appellant's appeal both under the Immigration Rules and on human rights grounds.

4. The Appellant sought permission to appeal. His application was considered by Judge of the First-tier Tribunal Ford on 20 May 2019. She granted the application and her reasons for so doing are: -

*"1. The Appellant seeks permission to appeal in time, against a decision of First-tier Tribunal (Judge Mill) dated 20.03.2019 whereby it dismissed the Appellant's appeal against the Secretary of State's decision to refuse his application for entry clearance relying on his relationship with his British national partner.*

*2. The grounds are not focused. They are more in the nature of a skeleton argument than an application for permission. The reality of this application is that the Appellant argues the Tribunal erred in the proportionality assessment, in particular in its consideration of the best interests of the Appellant's two minor sons, one of whom suffers from a serious medical condition (metopic stenosis), for which he is receiving ongoing specialist treatment in the UK.*

*3. While it is not apparent that the Tribunal had evidence before it of the medical condition of the Appellant's eldest son and the Appellant may be open to criticism for this, it is arguable that the assessment of the best interests of the Appellant's 2 children at paragraph 14 is nonetheless deficient.*

*4. The grounds are arguable. There is an arguable material error of law."*

5. Thus, the appeal came before me today.

6. Ms Cunha accepted that the Judge had erred in failing to engage with the totality of the evidence when looking at the proportionality assessment, and in particular in the Judge's consideration of the best interests of the Appellant's two minor sons, one of whom suffers from a serious medical condition (metopic synostosis, for which he is receiving ongoing specialist treatment in the United Kingdom). It was acknowledged that the decision does not deal with this issue and, for example, the evidence in relation thereto. For example, I was referred to paragraph 134 of the Appellant's bundle which is a letter from Mr Greg Thomas, Consultant Plastic Surgeon, and is dated 16 November 2018. There he confirms that the Appellant's son underwent a major cranial reconstructive surgical procedure to correct his metopic synostosis and that he will remain under the hospital's care for regular follow-up for his condition until he is sixteen years old. He is currently suffering from a number of symptoms which necessitate him having a CT scan in the near future. Depending on the result of the scan he may require further surgical intervention.

7. Mr Sharma urged me to accept that this was a material error. The Judge had failed to engage with key evidence within the appeal and as a consequence the decision cannot stand.
8. I find that to be the position. For the reasons identified within the grant of permission to appeal the Judge has materially erred. Further fact finding is required and consequently the appeal is remitted to the First-tier Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Mill.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 1 July 2019

Deputy Upper Tribunal Judge Appleyard