



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/20239/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 September 2017**

**Decision & Reasons  
Promulgated  
On 11 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
on behalf of an Entry Clearance Officer (New Delhi 4060082)**

Appellant

**and**

**NEERAJ KUMAR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Singh Senior Home Office Presenting Officer.  
For the Respondent: Mr Raza instructed by Charles Simmons Immigration Solicitors

**ERROR OF LAW FINDING AND REASONS**

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal T Jones promulgated on 28 February 2017 in which the Judge allowed the appeal under the Immigration Rules against the refusal of an application for entry clearance as a partner under Appendix FM.

**Error of law**

2. The Secretary of State challenged the decision on two grounds the first of which asserted the Judge failed to explain how it was that the

sponsor's evidence satisfied the requirements of Appendix FM—SE. Mr Singh did not pursue this ground on the basis the Judge sets out the appellant's evidence at [8 - 10]. The Judge was clearly aware of the evidence provided in the sponsor's witness statement together with skeleton argument which clearly, when taken together show the Judge does explain how the requirements of Appendix FM—SE were satisfied. Accordingly, no arguable legal error is made out in relation to Ground 1.

3. Ground 2 asserted that as the application was made on 7 June 2016 and refused on 26 July 2016 the appeal was limited to human rights grounds only. Whilst the Secretary of State accepts that compliance with the Rules is capable of being an important part of the assessment of proportionality it is not the only consideration, particularly when the Judge has not adequately engaged with the Rules.
4. It is not disputed that article 8 ECHR formed a ground of appeal to the First-tier Tribunal. It is not disputed that the changes brought about by the Immigration Act 2014 removed as a ground of appeal that a decision is not in accordance with the Immigration Rules. Notwithstanding, the Judge only allows the appeal by finding that the requirements of the Immigration Rules are met.
5. The Upper Tribunal is grateful to Mr Singh who, having accepted that the requirements of the Rules are met and in the absence of countervailing factors, accepted that although arguable legal error had been made on a ground of jurisdiction the Upper Tribunal were entitled to substitute a decision allowing the appeal on the human rights grounds.
6. The Upper Tribunal finds the Judge erred in allowing the appeal under the Rules when he had no jurisdiction to do so. The Upper Tribunal sets aside the decision of the First-tier Tribunal although the findings in relation to maintenance shall be preserved. In light of the ability of the appellant to satisfy the requirements of the Immigration Rules, the factors to be considered pursuant to section 117 of the 2002 Act, and in the absence of countervailing factors, the Upper Tribunal substitutes a decision allowing the appeal on human rights grounds pursuant to article 8 ECHR.

## **Decision**

7. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is allowed on human rights grounds.**

Signed.....  
Judge of the Upper Tribunal

Dated the 11 September 2017