



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03969/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7th September 2018

Decision & Reasons Promulgated
On 17th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR MALIK MUHADDIS AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Foulandvand, Legal Representative
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan whose date of birth is recorded as 6th May 2000. He made an application to join his mother on 31st January 2017 and a decision was made to refuse that application. He appealed. The appeal was heard by Judge of the

First-tier Tribunal Holder sitting at Newport on 24th November 2017. The judge found that the Appellant could not meet paragraph 301 of the Immigration Rules. I observe that that was accepted by the Appellant's representative in the First-tier Tribunal and noted as such at paragraph 16(j). However, that was on the basis of the Appellant's mother not coming within the requirements of the Rule. Looking at the wider application of Article 8 the judge resolved the proportionality issue in favour of the Secretary of State and therefore dismissed the appeal.

2. Not content with that decision, on 22nd June 2018, the Appellant made application for permission to appeal to the Upper Tribunal. Judge Simpson granted permission. She noted that although the Appellant's mother did not come within Rule 301 the Appellant's father had died, the Appellant's mother had remarried, and that the Appellant's stepfather was settled in the United Kingdom. The stepfather in these circumstances having regard to Rule 6 is a parent. I went through the provisions of paragraph 301 with both representatives and having done so, Ms Everett quite properly having regard to the Rule and the guidance in the case of **Mostafa (Article 8 in entry clearance) [2015] UKUT 112** conceded that the appeal should have been allowed.
3. In the circumstances I find that there was a material error of law, that the judge misdirected himself and that in re-making the decision and by consent the appeal is allowed on human rights grounds.

DECISION

By CONSENT the appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is remade such that the appeal to the First-tier Tribunal is allowed on human rights grounds.

Signed

Date: 13 September 2018



Deputy Upper Tribunal Judge Zucker