



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

Appeal Number: HU/07387/2016

THE IMMIGRATION ACTS

Heard at Field House

On 14 March 2018

**Decision & Reasons
Promulgated
On 5 April 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MR MANJINDER SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Mawaha, Counsel instructed by Direct Access

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India and his date of birth is 17 April 1992. He made an application for entry clearance to join his spouse here. The application was refused by the ECO on 1 February 2016. The appellant appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Monaghan following a hearing on 18 May 2017. The judge found that the appellant met the requirements of Appendix FM, but dismissed the appeal under Article 8. Permission was granted to the appellant by First-tier Tribunal Judge Nightingale on 2 December 2017.

2. At the hearing before me Ms Willocks-Briscoe conceded that the judge materially erred and indicated that the application was not opposed. She conceded that following the judge's findings under Appendix FM, the appeal should have been allowed under Article 8. I agreed with Ms Willocks-Briscoe.
3. The only issue as far as the ECO was concerned was that the relationship was genuine and subsisting and the judge concluded that it was, having found the sponsor to be a credible witness. The judge found that the appellant met the requirements of the Rules for entry clearance as a spouse under Appendix FM, but concluded that the interference was proportionate.
4. The Rules under Appendix FM represent the respondent's view of proportionality. It cannot sensibly be argued in this case that when the Rules under Appendix FM are met the decision to refuse entry clearance is proportionate. The decision to dismiss the appeal under Article 8 is set aside. I remake the appeal and allow it under Article 8.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 3 April 2018

Upper Tribunal Judge McWilliam