



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

Appeal Number: HU/18117/2016

THE IMMIGRATION ACTS

Heard at Field House

On 31 July 2018

**Decision & Reasons
Promulgated**

On 3 October 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**SARABJIT [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Irene Sriharan of Counsel, instructed by Sriharan Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of India, has permission to challenge the decision of Judge Murray of the First-tier Tribunal (FtT) dismissing his appeal against the decision made by the respondent on 12 July 2016 to refuse

leave to remain in the United Kingdom. Like the respondent, the judge did not find credible the appellant's claim that he was in a genuine and subsisting relationship with Ms P.

2. The principal thrust of the grounds as advanced before me by Miss Sriharan, concerns the judge's finding at paragraph 24:

“When cross-examined, there were a number of discrepancies and inconsistencies in the evidence. The Appellant could not remember Ms P's birthday and blamed memory loss. However, there is no supporting medical evidence of this. Their evidence as to what they did on her birthday and the Tuesday predating the hearing was not consistent. He said that on the Tuesday she fell sick and she said that they spent a normal day together.”

3. It is submitted that this was predicated on a mistake of fact demonstrated by the GP letter dated 30 November 2017 stating that the appellant has memory problems. Miss Sriharan also submitted that the judge's treatment of the memory loss issue was vitiated by a failure to have regard to the documentary evidence indicating that the appellant was a recovering heroin addict on methadone, which was an identified cause of memory loss.
4. I find no arguable merit in this ground. As regards the GP letter, it is a post-decision document which was not in existence at the date the judge heard the appeal and it is not arguable that the judge erred by failing to anticipate it.
5. Insofar as the grounds contend that the judge failed to take account of other evidence before him indicating that the appellant suffered memory loss, I am prepared to accept that the judge did not refer to the letter provided by his partner stating that he “forgets things”. However, the judge received detailed submissions regarding the appellant's claimed memory loss, noting at paragraph 12 Counsel's submission that “there was no expert medical evidence but the Appellant had said it and he invited me to accept it.” The judge does not state at paragraph 24 that there was “no evidence” to support the appellant's claim to memory loss, only that there was “no medical evidence” and there is no reason to conclude the judge failed to take account of what the appellant and his partner said about this. The judge was entitled to consider that in light of the lack of medical evidence the evidence given by the appellant and his partner was not reliable as to this matter.
6. I see no merit in the contention that the judge should have regarded memory loss as established by the medical evidence produced to show the appellant was a recovering heroin addict. None of the material relating to this indicated that the appellant's heroin addiction or the medication he took to obviate it caused his memory loss (I would add that the GP's letter dated 30 November is not in any event cogent evidence since it only

states provisionally that “it looks like he has got some difficulties with short-term memory” and “I need to do more investigations...”).

7. The second main argument raised in the grounds is that the judge failed to adequately engage with the evidence relating to the “true nature” of the relationship between the appellant and his partner, but it is manifest that the judge did engage with that evidence and gave sound reasons for the evaluation he made, namely that it did not establish that they had a genuine and subsisting relationship.
8. The written grounds also submitted that the judge failed to attach weight when assessing the appellant’s private life that he had accepted that the appellant “provides support for Ms P” and “that this assists her given she is on higher rate DLA”. That argument founders on the clear terms of paragraph 32 which made clear that (even though rejecting that the couple enjoyed family life) the judge took into account in the Article 8 proportionality assessment that the appellant “provides support to Ms P” but that this factor was “outweighed by the public interest in removal”. Paragraph 32 also reflects the judge’s acceptance at paragraph 25 that the couple have known each other for some time but that “it has been as friends and he has provided her support”. Given that the relationship was clearly not established as a genuine and subsisting one between partners and was only accepted as being a friendship it was open to the judge to conclude that its quality and nature were not such as to render the respondent’s refusal of leave to remain disproportionate.
9. For the above reasons I conclude that the judge did not materially err in law and his decision to dismiss the appellant’s appeal must stand.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed:

Date: 27 September 2018



Dr H H Storey
Judge of the Upper Tribunal