



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: HU/00373/2020 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 20 April 2021

On 29 April 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

DALJIT SINGH JOHAL

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr T Aitkin, instructed by Jasvir Jutla & Co Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the

conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of India with date of birth given as 15.4.80, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 7.4.20 (Judge Ennals), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 18.12.19, to refuse his application made on 18.10.19 for Leave to Remain in the UK on the basis of family life with his British citizen partner and on the basis of very significant obstacles to integration in India pursuant to paragraph 276ADE of the Immigration Rules.
2. Permission to appeal was refused by the First-tier Tribunal on 26.8.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Owens granted permission on 23.9.20, considering it arguable that “the judge made a material misdirection in law in his approach to Article 8 ECHR outside of the rules, by failing to consider cumulatively whether the appellant’s spouse’s employment as a senior care worker, her strong ties to the UK including children and grandchildren, her previous history of domestic violence and mental health problems as well as her close relationship with her injured mother would mean that a refusal of leave would result in ‘unjustifiably harsh consequences’ such that refusal would not be proportionate in accordance (with) [68] to [71] of *CL v SSHD* [2019] EWCA Civ 1925.” Judge Owens considered to be weak the first ground asserting a failure to make findings on whether the appellant arrived in the UK in 2002 or 2011, but did not restrict permission.
3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
4. In the main, the grounds are little more than an elaborate disagreement with the findings and decision. Evidently, the author of the grounds has trawled the decision looking for areas of potential criticism without considering the validity of the overall decision. Lewison LJ in *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 at [114] explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges. At [114] to [115], the Lord Justice said this:

"114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them."
5. In *VW (Sri Lanka)* [2013] EWCA Civ 522 at [12], LJ McCombe stated, “Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with

respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." I find that the present case is such an exercise in seeking areas which are allegedly less fully dealt with.

6. I am satisfied that there is no merit in the first ground. The appellant claimed to have arrived in the UK in 2002 but the respondent states that their first evidence of presence in the UK is from 2011. At [12], the judge stated, "I am not sure that a lot turns on exactly how long he had been here." The grounds argue that the 9-year difference is "relevant to the consideration of insurmountable obstacles, very significant obstacles and proportionality outside of the rules." However, the fact remains that the appellant's presence in the UK has always been unlawful; he has never had leave and the relationship he formed with his partner was knowingly entered into by both parties whilst his immigration status was both precarious and unlawful, for which reason little weight is to be given to that relationship in the public interest considerations outside of the Rules pursuant to s117B of the 2002 Act. Insofar as the difference of 9 years may potentially be relevant, that relevance is at best marginal only to the issues raised and the grounds fail to demonstrate that there is in fact any materiality, or that otherwise the decision could or would have been different. It is clear from [17] of the decision that the judge considered whether there were very significant obstacles to integration. As Mr Tan pointed out, the grounds make no challenge to the finding at [22] that there would not be very significant obstacles to integration. In the premises, no error of law is disclosed by this ground.
7. The second ground argues that in the consideration of insurmountable obstacles and article 8 outside the Rules, "the judge has failed to properly consider how relocating to India or being separated from the appellant would impact the appellant's wife and her mental health in the light of what she has suffered in the past." As put by Mr Aitken in his oral submissions, the judge failed to have "sufficient regard", which is an argument as to weight, which is a matter for the judge. The past referred to is that she was allegedly in a previous abusive relationship whilst left her suffering anxiety and depression. Contrary to the grounds, it is clear from [14] and elsewhere in the decision that the judge made a careful consideration of all of the evidence, including the partner's health and other circumstances, before reaching any findings. At [10] the judge confirmed having considered all of the evidence before embarking on the fact-finding exercise. At [24] the judge confirmed having taken account of the health of both the appellant and his wife, and the health and care needs of her mother. The mental health was also considered but for the reasons given the judge concluded that "her mental health problems are so significant as to be a weighty factor." The judge referred at [14] to the GP letter (AB41), which in a single sentence states only that as of February 2020 she was undergoing therapy and medical treatment for depression and anxiety. No indication was made of any prescribed medication. The judge was entitled to consider this was not a weighty factor, effectively noting that the evidence to support this aspect of the claim was weak. In the premises, it is difficult to argue that insufficient regard was had to the evidence. I am satisfied that no error is disclosed by this ground.

8. The third ground also discloses no error of law. It is submitted that at [21] the judge erred by considering the appellant's ability to return to India and apply for entry clearance from there as part of the EX1(b) insurmountable obstacles consideration. However, as submitted by Mr Tan, the conclusion on insurmountable obstacles was reached at [20] of the impugned decision and the observation at [21] is a different matter, a point validly made that the appellant's wife evidence was that her earnings were sufficient to meet the Appendix FM minimum income financial threshold, so that the appellant could apply for entry clearance from India.
9. The fourth ground criticises the decision at [24] where, in relation to the care the appellant's wife provides for her mother, the judge pointed out that the Rules make no specific provision for the care of disabled relatives. As Mr Tan pointed out, before considering article 8 outside the Rules, it was incumbent on the judge to consider the extent to which the Rules were met. It is argued that the judge erred in failing to properly consider the "rights of the appellant's British wife and the care she provides for her mother which is a material consideration and to which the Immigration Rules are not relevant." Contrary to the grounds, the judge gave very careful and detailed consideration to the care provided by the appellant's wife to her mother. This is referenced at [14], [19] and [24] of the decision. At [24] the judge did make a cumulative assessment, referring back to previous findings, considering the circumstances in the round. No error of law is disclosed by this ground.
10. Finally, the grounds argue that the judge's proportionality assessment "failed to properly set the appellant's side of the scales and cumulatively consider the appellant's private and family life giving appropriate weight to the rights of his wife and her family." As stated above, it is clear from [24] that a cumulative assessment was made. I note that this ground is pleaded in the most general terms and lacks the particularity required. It is clearly no more than a general disagreement with the findings and conclusions of the First-tier Tribunal. No error of law is disclosed by this ground.
11. In the premises and for the reasons set out above, I find no error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the First-tier Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

I make no order for costs.

I make no anonymity direction.

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 20 April 2021