



**Upper Tribunal  
(Immigration and Asylum Chamber)    Appeal Number: HU/17377/2019  
(V)**

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 9 April 2021**

**Decision & Reasons Promulgated  
On : 20 April 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ROSHAN MOHANAN PILLAI**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer  
For the Respondent: Ms J Heybroek, instructed by Carmelite Law Practice

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Pillai's appeal against the Secretary of State's decision to refuse his human rights claim.

3. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Pillai as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

4. The appellant is a citizen of India, born on 20 April 1988. He entered the UK on 12 January 2011 as a Tier 4 student, with leave valid until 29 February 2012. An application for further leave as a Tier 4 student was refused but the appellant was subsequently granted leave to remain under the Armed Forces provisions on 27 February 2013, until 27 August 2013. An application for further leave on that basis was refused on 22 January 2014 and an appeal against that decision was finally dismissed on 1 May 2015. On 29 July 2015 the appellant applied for leave to remain on family/ private life grounds, but his application was refused on 27 January 2016.

5. On 29 June 2019 the appellant made a human rights claim on the basis of his family life with his wife-to-be, a national of Sri Lanka who had been granted refugee status in the UK, whom he later married on 5 August 2019. In his application it was stated that his application for further leave under the Armed Forces provisions had been refused owing to a change in the immigration rules on 11 July 2013 requiring a person to have lived in the UK for at least five years before formal recruitment. It was also stated that the appellant met his wife at the end of 2014 and started living with her from the middle of 2015. His wife had been in the UK with leave as the spouse of a refugee, but had separated from her ex-husband in June 2014 due to his violent behaviour and had divorced him on 27 August 2015, following which she had been granted refugee status in her own right in November 2018. It was stated that the appellant could not return to India because of his wife's health issues as she suffered from depression, she had never been to India and she was employed in the UK.

6. The appellant's application was refused on 8 October 2019 on the grounds that there were no insurmountable obstacles to family life continuing in India and that the requirements of Appendix FM could not therefore be met, that the requirements of paragraph 276ADE(1) could not be met and that there were no exceptional circumstances outside the immigration rules.

7. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Taylor on 17 February 2020. The appellant and his wife gave oral evidence before the judge. The judge found that there were insurmountable obstacles to family life continuing in India owing to the sponsor's mental health issues which had arisen as a result of the events she had experienced in Sri Lanka and the trauma of being involved in an abusive marriage. The judge found that the sponsor's mental health had stabilised as a result of the treatment she had received from the Ayurvedic Clinic and the support of the appellant and her friends. The judge considered that requiring the appellant to leave the UK could have a profound effect on the sponsor which may result in the deterioration of her health and the need for additional treatment. Accordingly the judge concluded that the requirements of paragraph EX.1 of Appendix FM were met and the claim succeeded under the

immigration rules. In any event the judge found that the appellant would be very likely to be granted entry clearance to the UK if he returned to India to make an application and, applying the test in Chikwamba v Secretary of State for the Home Department [2008] UKHL 40, he considered that it was not in the public interest to separate the appellant and the sponsor for a number of months in order for him to do so. He accordingly allowed the appeal in a decision promulgated on 11 March 2020.

8. The Secretary of State sought permission to appeal Judge Taylor's decision on the basis that there was inadequate reasoning in regard to the insurmountable obstacles test, that there was insufficient to meet the high threshold set out in Agyarko and Ikuga, R (on the applications of) v Secretary of State for the Home Department [2017] UKSC 11 and that the judge erred by applying the case of Chikwamba.

9. Permission was refused in the First-tier Tribunal but was subsequently granted on a renewed application in the Upper Tribunal. Submissions were made by the parties in response to directions as to whether an oral hearing was required and, as a result, the appeal was listed for a remote hearing conducted through Skype for Business.

### **Hearing and submissions**

10. Both parties made submissions before me, relying and expanding upon their respective written submissions previously made.

11. Mr Whitwell set out the two grounds of appeal, namely that the judge had either not applied the stringent test for 'insurmountable obstacles' or had given inadequate reasons as to why the test was met on the evidence, and that he had erred in his reliance upon Chikwamba. With regard to the first ground, Mr Whitwell relied upon the cases of Agyarko and Lal v The Secretary of State for the Home Department [2019] EWCA Civ 1925. He submitted that the judge's finding at [16] that the test was met relied on three strands, namely the stress of the move to India for the sponsor, the sponsor's mental health concerns and the proximity of India to Sri Lanka. However, that failed to take account of the earlier evidence at [7] that the sponsor was managing to hold down a job, that she had managed to adapt to life in a different country, that there was family support available in India and that the sponsor was not currently receiving treatment. She would continue to receive care and support from the appellant as they would be returning to India together. As for the second ground, the judge was wrong to say that the appellant was bound to succeed in an entry clearance application as he had failed to meet the English language requirements of the immigration rules and therefore such an application was bound to fail.

12. Ms Heybroek submitted that the first ground was essentially a rationality argument, which amounted to no more than a disagreement with the judge's decision. The judge had had the correct test in mind when considering the question of 'insurmountable obstacles' and had given various reasons for

concluding that the test was met, including the medical treatment the sponsor was receiving from the Ayurvedic Clinic. Although that was not traditional medical treatment, it was nevertheless relevant treatment which was assisting the sponsor. The judge was entitled to find that the sponsor's mental health would deteriorate if she was removed from that supportive Ayurvedic community and was entitled to conclude as he did. The Chikwamba point was not raised by the respondent in the refusal decision or before the judge but it had been included in the appellant's skeleton argument before the judge and had been taken up by the judge himself. It could not be said that the appellant's entry clearance application was bound to fail, as his history showed that he could meet the English language requirements.

## **Discussion and conclusions**

13. As I indicated to the parties at the conclusion of the hearing, the judge's decision may well be viewed as a generous one and, furthermore, one which another judge may have decided differently, but that did not mean that it was legally erroneous. Ultimately it seems to me that the Secretary of State's challenge is one of disagreement, as Ms Heybroek submitted. The judge had the benefit of hearing oral evidence from the appellant and the sponsor and was clearly persuaded by their evidence as to the impact upon them, and in particular the sponsor, of relocation to India or separation from each other, even on a temporary basis. I agree with Ms Heybroek that the judge followed the correct approach when applying the relevant legal provisions to that evidence and was entitled to make the findings that he did on the basis of that evidence.

14. At [14] and [15] the judge properly set out the relevant issues in the context of the immigration rules and at [16] he carefully assessed the circumstances of the appellant and the sponsor against the background of the relevant test for 'insurmountable obstacles' in paragraph EX.2 of Appendix FM and the evidence before him. He was plainly fully aware that the test was a stringent one and that the threshold for meeting the test was high and he provided reasons as to why he considered the threshold had been met. It was not simply, as Mr Whitwell submitted, the stress of the move to India, the concern about the sponsor's mental health and the proximity of India to Sri Lanka which persuaded the judge that the high threshold had been met. There were many other factors which the judge considered to be of relevance, including the sponsor's past experiences in Sri Lanka and as a victim of domestic violence in the UK which had led to her mental health concerns, the progress that had been made in treating her mental health through the Ayurvedic Clinic and the impact upon her of the withdrawal of that support if she had to leave the UK in order to remain with the appellant or alternatively if she had to be separated from the appellant even for a short time. In light of the evidence before him, in the form of the report from the Ayurvedic Clinic and the evidence of the appellant and sponsor, the judge was perfectly entitled to conclude that the withdrawal of support from the sponsor would result in the deterioration of her mental health and would have a profound effect on her and

was entitled to find that that was sufficient to meet the high threshold for demonstrating 'insurmountable obstacles' to relocation to India.

15. As Mr Whitwell properly accepted, the second ground, relating to the principles in Chikwamba, was parasitic upon the first ground. Having found, for reasons cogently given, that the requirements of the immigration rules were met, the judge properly found that the appeal could be allowed on Article 8 grounds on that basis alone. The challenge to the judge's decision outside the immigration rules is therefore immaterial.

16. For all of these reasons I find no errors of law in the judge's decision requiring it to be set aside and I uphold the decision.

### **DECISION**

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to allow the appeal stands and the Secretary of State's appeal is dismissed.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Dated: 9 April 2021