



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

**Appeal No:** HU/00752/2021  
UI-2021-000810

THE IMMIGRATION ACTS

Decided under rule 34  
on 27 May 2022

Decision & Reasons Promulgated  
on 14 July 2022

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**BALVINDER KAUR**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DETERMINATION AND REASONS**

1. This determination is to be read with:
  - (i) The respondent's decision dated 19<sup>th</sup> January 2021.
  - (ii) The decision of FtT Judge Young-Harry, promulgated on 18 August 2021, allowing the appeal of the appellant's husband, Gurdeep Singh, and dismissing the appeal of the appellant (HU/00751 & 00752/2021).
  - (iii) The appellant's grounds of appeal to the UT, dated 25 August 2021.
  - (iv) The grant of permission by FtT Judge Gibbs, dated 20 October 2021.
  - (v) The respondent's response under rule 24, dated 16 March 2022.
2. The SSHD has not sought permission to appeal in the case of the appellant's husband.

3. The grant of permission was on the view that the Judge arguably gave no reasons for departing from a previous decision for one appellant but not the other; failed to take into account that the appellant had reached 20 years residence by the date of the hearing; and failed to take account of the impact of allowing one of the couple to remain in the UK, but not the other.
4. In her response, the SSHD “does not oppose the appellant’s application for permission to appeal and accepts that the FTTJ materially erred in failing to take into account matters relevant to the proportionality assessment as identified in the grounds”.
5. That is helpful, although it might have been even more so. It is irrelevant whether the SSHD’s opposes the application for permission, which has already been granted. The SSHD obviously agrees to the decision being set aside, but she might have been explicit about what should follow.
6. However, having considered all materials to date, the outcome of this case is so plain that it may fairly be resolved without a hearing under the Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 34.
7. The only distinction between the cases of the two appellants was that at the date of application to the SSHD the first had reached 20 years residence (on the findings of the FtT, although that had not been accepted by the SSHD) while the second had not.
8. There are, of course, many cases where one spouse has a right to remain in the UK while the other does not; but the SHD has not suggested that there is anything which might justify that conclusion in this case, once the second appellant also arrived at the 20 year point.
9. The decision of the FtT is **set aside**, and in remaking the decision, there is only one sensible outcome.
10. The appeal, as originally brought to the FtT, is **allowed** on human rights grounds.
11. No anonymity direction has been requested or made.

H Macleman

27 May 2022  
UT Judge Macleman

### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.