



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

Appeal Number: HU/02653/2020

THE IMMIGRATION ACTS

**Heard On the Papers at Field House
On 20 January 2022**

Decision & Reasons Promulgated

On 9 February 2022

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**MOHSIN YUNUS ISMAIL PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no attendance or representation

For the Respondent: no representation

DECISION AND REASONS

1. In a decision promulgated on 4 February 2021, subsequent to a hearing on 28 January 2021, Upper Tribunal Judge Smith set aside the decision of the Judge of the First-tier Tribunal dismissing the appellant's appeal against the respondent's decision of 3 February 2020 refusing his human rights claim.
2. Subsequently, following directions from Judge Smith the appellant filed and served a further bundle, including a skeleton argument and in a letter dated 27 October 2021 the appellant requested that the appeal be remade

by the Upper Tribunal without a hearing. Subsequently, the respondent was given the opportunity to state whether she objected to the decision being remade on the papers and to provide any further submissions. No further communication has been received from the respondent. There was a further letter from the appellant of 14 January 2022 in which he asked for the matter to be decided on the papers. As a consequence it is appropriate to decide the appeal on the papers, in accordance with the provisions of Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

3. Judge Smith set aside paragraphs 27 to 33 of the judge's decision and the conclusion dismissing the appeal. She considered that there was an error of law disclosed by ground 2 due to the judge's failure to consider the medical evidence of the appellant's wife. As a consequence therefore she set aside the conclusion that there would not be insurmountable obstacles to family life for the appellant continuing in India with his wife and also the finding that there was no evidence to show it would be unreasonable for family life to continue in India or indeed why he could not travel to India and make the application from abroad. Also set aside was the conclusion that the appellant did not meet the requirements of the Rules for leave to remain as a spouse under Appendix FM and that there was an absence of cogent evidence to satisfy the English language requirements set out in the Rules. Also, at paragraph 30 the judge concluded that there was no cogent evidence to demonstrate that there would be very significant difficulties faced by the appellant or his partner in continuing family life outside the United Kingdom which could not be overcome or would result in very serious hardship for the appellant and his partner. This was set aside, as was also the conclusion that the claim could not succeed on the basis of Article 8 outside the Rules.
4. It must follow therefore that the judge's conclusion that the contention that the appellant had engaged in fraud in obtaining the English language test certificate by fraud was not made out, that having been set out at paragraphs 25 and 26 of the judge's decision.
5. In the further evidence provided by the appellant there is a letter from Dr Pattni, dated 15 February 2021 stating, among other things, that the appellant's wife's ulcerative colitis is not under control. His wife is said to be someone who may be considered clinically extremely vulnerable due to her underlying disease or health condition. In a separate letter from Dr Pattni of 10 February 2021 he asks that the appellant's wife's health problems be taken into consideration in respect of the appellant's visa application. It is said that she is currently taking immunosuppressant drugs to control her disease but unfortunately may still require further escalation of treatment to avoid having an operation to remove her large intestine. He says that she cannot travel back to India due to her being immunocompromised particularly in the current pandemic and furthermore she may not receive the level of care and drugs in India that she is currently having.

6. In his skeleton argument, having summarised this evidence, the appellant also refers to his personal circumstances in that in his village in India there are no medical facilities, no chemist or doctors or shops. The nearest hospital is around two hours' drive away and there is no knowledge as to whether the type of treatment necessary is available. His wife is from Kenya where she has no more relatives and she has no relatives in India.
7. As noted above, there has been no further evidence nor further submissions on the part of the Secretary of State.
8. It is relevant to note that at paragraph 23 of her decision Judge Smith preserved the judge's finding at paragraph 26 that there was no evidence produced to demonstrate that the appellant had discharged the burden upon him to satisfy the English language requirement of the Rules.
9. As Judge Smith pointed out at paragraph 25 of her decision, in order to succeed under the Rules the appellant must show that he meets the requirements of paragraph EX.1. He therefore needs to show there are insurmountable obstacles to family life continuing in India. If his case cannot fall within the Rules he must show there are reasons why his removal would lead to unjustifiably harsh consequences when the impact of removal is balanced against the public interest which, in general terms, favours the removal of those with no right to remain in the United Kingdom within the Rules.
10. The evidence provided takes matters no further as regards the appellant's English language ability. He has not provided an English language certificate or any other documentation to attest to his facility in the English language. As a consequence he does not meet all of the eligibility requirements of section E-LTRP of Appendix FM.
11. I go on to consider whether he is able to show that there are insurmountable obstacles to family life continuing in India.
12. I have considered the medical evidence summarised above. It has not, in my view, been shown that there is not treatment available for the appellant's wife's condition in India. The evidence to the contrary is clearly speculative. Though she could clearly not be expected to travel whilst shielding, as Judge Smith pointed out, there is no evidence that she could not do so due to her condition once the pandemic abates. There is a public interest which favours the removal of those with no right to remain in the United Kingdom within the Rules. That must be placed in the balance as against the medical evidence and bearing in mind the comments I have made above.
13. In conclusion, first it is the case that the appellant cannot satisfy the requirements of the Rules in the absence of proof to satisfy the eligibility requirement of showing that he has a sufficient level of ability in the English language , and the fact that, as I find, he has not identified insurmountable obstacles to family life continuing in India. As regards the

position outside the Rules, I conclude that the balance favours the public interest in removal, having taken into account the health conditions of the appellant's wife and his personal circumstances. He has not shown that his removal would lead to unjustifiably harsh consequences when its impact is balanced against the public interest.

Notice of Decision

14. As a consequence, this appeal is dismissed.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 28 January 2022

Upper Tribunal Judge Allen