



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

Appeal Number: IA/39746/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

Determination

On 25th July 2014

Promulgated

On 12th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR JASMINDER SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Imamovic (Counsel)

For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Freer promulgated on 23rd April 2014, following a hearing at Birmingham on 17th April 2014. In the determination, the judge allowed the appeal on

human rights grounds of Jasminder Singh. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of India, who was born in 1982. He appealed against the decision of the Respondent Secretary of State dated 25th July 2013 to refuse his application to live in the United Kingdom with his wife Miss Sonia Sandhu, alias Sonia Ayub, a person of Muslim faith. The Appellant himself is a person of Sikh faith. The applicable provisions are paragraph 276ADE of HC 395.

The Appellant's Claim

3. The Appellant's claim essentially is that his marriage is most unusual in that it is a marriage between a Sikh man and a Muslim woman, of Pakistani origin. The parties have been living together as long ago as 2007 and got married on 8th May 2010, almost four years ago. Their marriage was genuine and subsisting. They resided together. The Appellant's wife, a person who had previously been married with three children, no longer had contact with her previous family.
4. However, there had been threats to them from their family members. She did not want to go and live in India (paragraph 21). Their respective families were hostile and she would not be welcomed in India.

The Judge's Findings

5. The judge had regard to the fact that the Appellant's wife,

"Has assimilated to a considerable degree into the Sikh faith and community. It is a case with the Sikh faith, like the Jewish, that it tends to fall strongly into ethnic lines, although converts are known in both instances" (paragraph 44).
6. The judge recognised that there had been threats to the wife but recorded that "his wife has not been threatened for many years" (Paragraph 47).
7. He went on to observe that,

"The evidence before me is not only that the Appellant and his wife lack support from their respective families but, worse than that, they are actively hostile and the police were called in 2007 and 2008. No bridges have been mended since then. Taking account of all the evidence in the round, I find that there is an exceptional case here which begs consideration under Article 8 jurisprudence". (Paragraph 57)
8. The judge then went on to consider the Article 8 jurisprudence. He observed that the marriage was subsisting and had lasted for many years

and that by contemporary standards “it is long enough to be counted as a well-established and successful relationship. It is a strong bond ... I heard detailed evidence from both husband and wife. As evidence of this strong devotion, they are trying to have children and there is medical advice to try *in vitro* fertilisation” (paragraph 59).

9. The judge concluded that the decision maker had not taken important matters into account. This was because,

“The wife is a British citizen. It is not proportionate to interfere with her right to have children or her right to reside in the country of which she is a national. She has never resided in India or been a national of India. She will not go there. Separating them even for a short time is clearly a significant breach ...” (Paragraph 59).

Grounds of Application

10. The grounds of application place reliance upon the case of **Nagre [2013] EWHC 720** where Sales J had referred to the fact that the new Rules are a complete code and that if one is to consider freestanding Article 8 jurisprudence it has to be demonstrated that “there are compelling circumstances not sufficiently recognised under the new Rules to require the grant of such leave” (see paragraph 29).
11. On 23rd May 2014, permission to appeal was granted.

Submissions

12. At the hearing before me on 25th July 2014, Mr Neville Smart, appearing on behalf of the Respondent Secretary of State, submitted that the decision was perverse because the judge had referred to the case of **Hayat** extensively in his determination (see Hyatt [2011] UKUT 0044), but this was a decision which was overruled by the Court of Appeal, and yet the judge was drawing heavily in his citations from the Tribunal judgment in **Hayat**.
13. At paragraph 58 of the determination, Judge Freer was referring to “proportionality” in terms that had been described in **Hayat**, which had been overruled subsequently in the case of **Treebhowan** in the Court of Appeal subsequently.
14. Further, the judge referred to the case of **Zhang [2013] EWHC 891**, but that was a case where the Appellant had been in the country lawfully, and in this case the instant Appellant has been in the country unlawfully, so the same considerations cannot apply.
15. For her part, Ms Imamovic submitted that the judge had given proper regard to all the relevant cases on Article 8, and the way in which this was to be interpreted in relation to the Immigration Rules.

16. The judge had referred to the existence of “exceptional circumstances” because this was a case of a wife, who was not of the same faith as the Appellant, and who was refusing to go to India to live there, as a person of Pakistani origin, such that the marriage would be split up.

No Error of Law

17. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision and remake the decision. There are two reasons for this.
18. First, the judge has set out his recognition of the established cases when looking at, what he describes as a “fast moving” area of the law as far as Article 8 jurisprudence is concerned (see paragraph 50). Consideration is given to **MF (Nigeria)** and to **Nagre** and to **Gulshan** and to **Shahzad** (see paragraph 50).
19. The judge then recognises that if the Appellant is returned to India, his British citizen wife, Sonia Sandhu, will not go with him. This is because “she has never resided in India or been a national of India”. He concludes that there would be a “significant breach” of their right to family life (paragraph 59).
20. These were exceptional circumstances to which the judge turned to after considering the case law in **Zhang** and **Chikwamba** (at paragraph 56) and his findings of fact are designed thereafter to show that exceptional circumstances exist. This is simply a disagreement with the findings of the judge and I can accordingly only conclude that there is no error of law here.

Decision

21. There is no material error of law in the original judge’s decision. The determination shall stand.
22. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

9th August 2014