



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

**Appeal Number: AA/10760/2014**

**THE IMMIGRATION ACTS**

**Resumed Hearing: Heard at Field  
House, London  
On 9<sup>th</sup> September 2015**

**Decision & Reasons  
Promulgated  
On 2<sup>nd</sup> October 2015**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MR SURINDER PAL SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Plowright, of Counsel instructed by Nasim & Co Solicitors

For the Respondent: Mr D Clark, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, Surinder Pal Singh was born on 31<sup>st</sup> July 1978 and is a citizen of India. Following an initial hearing in the Upper Tribunal on 16<sup>th</sup> July 2015, I set aside the determination of the First-tier Tribunal promulgated on 9<sup>th</sup> February 2015 and adjourned the appeal to a resumed hearing in the Upper Tribunal at or following which I would remake the decision. My reasons for finding that the First-tier Tribunal made an error of law such that its decision fell to be set aside were as follows:

**REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW SUCH THAT ITS DECISION FALLS TO BE SET ASIDE**

- (i) The Appellant is a citizen of India born 31<sup>st</sup> July 1978. He has been given permission to appeal against the decision of First-tier Tribunal Judge Clarke dismissing his appeal against the Respondent's decision to refuse his asylum and human rights claim and to issue directions to remove him from the UK to India as a person subject to administrative removal. (Section 20 Immigration and Asylum Act 1999)

## **History**

- (ii) The Appellant claims to have arrived in the UK via Germany in January 2001. He claimed asylum on 2<sup>nd</sup> June 2001. This claim remained outstanding because of the Appellant's failure to provide the Respondent with an address. The basis of his claim to asylum rested upon his assertion that he is wanted in India on false charges because of his support for Khalistan.
- (iii) The Respondent refused the Appellant's asylum application by way of two reasons for refusal letters dated 10<sup>th</sup> September 2001 and 21<sup>st</sup> November 2014 respectively.
- (iv) The Respondent in coming to the decision to refuse asylum concluded that at best the Appellant was only a very low level Khalistani student supporter between 1997 and 2001 and further there was no evidence of any sur place activities in the UK where he has spent over thirteen years.
- (v) The Appellant had also claimed that he is in a genuine and subsisting relationship with a Miss Kittu, an Indian national but the mother of a 2 year old child whom it is claimed is the child of the Appellant.

## **First-tier Tribunal Hearing**

- (vi) When the Appellant's appeal came before the FtT the Judge heard oral evidence from the Appellant and his claimed partner Miss Kittu. There were two strands to the Appellant's appeal; first whether his claim to asylum was made out and secondly whether the claimed relationship with Miss Kittu was such that removal of the Appellant to India would constitute a breach of his Article 8 ECHR rights.
- (vii) The FtT Judge found against the Appellant on both issues. The Appellant sought and was granted permission to appeal on the Article 8 issue alone. There is no challenge, either in the grounds seeking permission or in the grant of permission, against the Judge's findings and conclusion dismissing the Appellant's asylum claim and therefore those findings contained in [17] to [22] stand.
- (viii) The grant of permission succinctly sets out what is in contention regarding Article 8. The relevant parts are reproduced here:

*"It is arguable that the Judge's finding that the Appellant was not in a genuine relationship with his claimed partner (Miss Kittu) and that he did not have a genuine parental relationship with their child was inadequately reasoned given that the Appellant was named as the child's father on her UK birth certificate and Miss Kittu gave oral evidence at the hearing confirming that the relationship was genuine and that the Appellant played an active role in their child's life. IN such circumstances it is also arguable that the Judge failed to give adequate*

*reasons for rejecting this evidence and that her failure to do so amounted to an error of law.*

*It is further arguable that these errors materially affected the Judge's consideration of the Appellant's claim under Article 8 and the best interest of the child under section 55 of the 2009 Act."*

### **Error of Law**

- (ix) Mr Plowright relied in the main, on the grounds seeking permission. He submitted that the permission grant was clear. [23] to [26] of the Judge's decision could not stand because although the Appellant and his partner Miss Kittu both gave oral evidence, there is no analysis or reasoning why that evidence was rejected. This renders that part of the determination defective and such defect amounts to material error. An appellant is entitled to know why his case has been rejected.
- (x) Mr Walker relied on his Rule 24 response to defend the determination. In fairness he did not press the points raised in the response strongly.

### **Consideration**

- (xi) I find merit in Mr Plowright's submissions. So far as the asylum issue is concerned the Judge's findings of fact present as well reasoned and considered.
- (xii) However so far as the Article 8 issue is concerned I find the Judge erred in his consideration of whether the Appellant and Miss Kittu are in a genuine and subsisting relationship. I see no mention, let alone any clear findings made, on Miss Kittu's evidence. The documents contained in the case file show that she gave evidence and was cross-examined by the Respondent's representative. Failure to give reasons on this core part of the evidence clearly amounts to a material error. I set aside the decision so far as the Article 8 issue is concerned.
- (xiii) I heard submissions from both parties as to the appropriate course of action in the event that I came to the view set out above. Both parties agreed that if I was to find an error of law in the terms set out above the matter should be set down for a resumed hearing in the Upper Tribunal. Evidence will need to be called from both the Appellant and Miss Kittu and findings of fact made on the discrete issue of the genuineness or otherwise of their relationship.
- (xiv) Accordingly this matter is now to set down for a resumed hearing in the Upper Tribunal before me on a date to be fixed.
- (xv) I emphasise there has been no challenge to the Ft-Ts findings on the asylum issue. I see no reason to set aside those findings, and they are therefore preserved.

### **Resumed Hearing**

2. At the resumed hearing on 9<sup>th</sup> September 2015, Mr Plowright appeared for the Appellant. Mr Clark a Senior Home Office Presenting Officer appeared

for the Respondent. I heard evidence from both the Appellant and Miss Kittu. Prior to the commencement of their evidence Mr Plowright presented a photograph album showing photographs of a wedding ceremony which had taken place at the Gurdwara in 2011. The certificate from the Gurdwara makes it clear that this ceremony does not constitute a legal marriage. Those photographs were accepted by Mr Clark as depicting the Appellant and Miss Kittu. There were also produced two further photographs showing the Appellant together with Miss Kittu and their child - one at a graduation ceremony and one taken as a formal family portrait.

3. In addition a tenancy agreement relating to a property at [50 .....] was handed in. I was told this had been signed by both Miss Kittu and Mr Singh as joint tenants of that property.
4. Mr Clark on behalf of the Respondent handed in a police report which showed that in April 2015 Miss Kittu had called the police to her then address at [15.....]. She had called the police to the premises because the Appellant was making threats to kill against her. The police report shows that they attended and treated the matter as a domestic one. I understand that the Appellant was arrested but not charged with any offense.
5. The Appellant Surinder Pal Singh gave evidence. He relied firstly on the contents of his statement which had been put before the First-tier Tribunal dated 18<sup>th</sup> January 2015. In summary the relevant parts of his statement say as follows. He has been living in the UK for 13 years during which time he has established a private/family life. He refers to his relationship with Miss Kittu in these terms -

“Whilst in the UK I have established his (sic) private and family life in the UK, I am in a relationship with Kittu DOB: 06.12.1987 Nat: Indian who has valid leave to remain as a Tier 4 General Student valid form (sic) 03.06.2014 valid until 29.02.2016. Copy of her status documents are enclosed. We have one child from our relationship for whom we share parental responsibility namely, S K DOB: 01.08.2012 Nat: Stateless. Copy of her Birth Certificate is enclosed.

Due to the uncertainty of my immigration status our daughter is stateless she has been unable to be recognised as an Indian national or be issued an Indian passport. Furthermore, my partner and I have plans of getting married but again have been unable to do so, due to my immigration status, which has left our lives in limbo.

I have been living in the UK continuously since my arrival in 2001. I have been in the UK for over 13 years in which time I have established his (sic) private and family life in the UK as well as developing close ties to British society and culture. I have made many good friends in this country and have become accustomed to the British way of living, thus it is submitted my removal from the UK would be a fundamental breach of his (sic) Rights under Article 8 of the Human Rights Act 1998 and ECHR and would not be reasonable or proportionate.” - Statement dated 18<sup>th</sup> January 2015.

6. In addition to the above, the Appellant said he didn't wish to return to India because his wife works full-time in the UK and he helps look after his daughter. When asked what would be the effect on his daughter, should he return to India, he responded by saying "I am the one who looks after her - she is 3 years old - she goes to nursery."
7. Mr Clark then asked a series of questions pursuing the line of whether the Appellant had now obtained any cogent evidence to support his claimed relationship with Miss Kittu and their child. Firstly he was asked about where he now lived. He replied that he and his partner had moved into a new property together at [ ]. The tenancy agreement was produced. He was then asked about the three letters of support which had been produced before the FtT. Were the signatories to those letters now here to give evidence? The Appellant replied that they were not, because they were busy at work. However he did agree in response to Mr Clark that none of those letters evidenced his relationship with Miss Kittu. He agreed that was nothing further by way of letters of support. When asked why he had not approached his friends and asked them to come to the hearing and give evidence on his behalf, he gave no reply.
8. The Appellant was then asked about the relationship with his child. He was asked who looked after his child during the day. He said that she goes to nursery five days a week. When asked about his daughter's teacher at nursery, he was able to give very little information and responded hesitatingly saying "One is Emma - I have spoken to her a couple of times, she looks after the daughter."
9. He was aware that his daughter's doctor is Dr Khan and knew that last month his daughter had suffered with fever and cough.
10. He was then asked about the police report and the domestic violence incident. He agreed that Miss Kittu had contacted the police in April to make a complaint against him of threats to kill her. He said he was arrested but not charged.
11. He then said that he has his mother living in India; his siblings all live in Finland. He described his mother as quite old and said she is financed by his brothers from Finland. She lives in the family house with one servant. His wife also has a mother in India together with a sister living there. Her father lives in Australia.
12. He did agree that he had told Miss Kittu about his immigration status at the time they underwent the ceremony at the Gurdwara, but when asked whether she and the child would accompany him to India should his appeal fail, he replied by saying, "We have not really spoken about it - she will go." That concluded his evidence.
13. I next heard from Miss Kittu. She gave the same address as the Appellant. Her evidence amounted to this. She is a national of India whose leave to remain expires, I understand, in 2018.

14. She told me that while she is working her daughter attends a nursery but claimed that her partner looks after her the rest of the time. She said she now works as a healthcare assistant and it would be hard for her to give this up.
15. She also said that her daughter was looked after by the Appellant on one occasion when she had to visit Finland for five days. She said she would not be able to see the Appellant during any holiday leave periods as she has just started her job and she is only allowed three to four weeks holiday a year.
16. When asked by Mr Clark why there was no evidence from her landlord to confirm that she and the Appellant were living together, she responded saying that she was not aware that any such evidence was required. She agreed that the three letters of support which had been put forward on behalf of the Appellant at the original hearing were from his "friends". She also agreed that she had been responsible for calling the police to her home in April. She put this down to what she called a lack of understanding between her and the Appellant.
17. Finally she said she was aware of the Appellant's lack of immigration status when they entered into their relationship and did say she would go back to India with him if necessary, because she loves him and they would not separate. That concluded her evidence.

### **Consideration/Remaking the Decision**

18. I start my consideration at the point of my setting aside the FtT's decision for error of law. It is clear that the FtT's error revolved around a lack of reasoning for finding that the Appellant and Miss Kittu were in a genuine relationship and that in turn impacted on the genuineness of the relationship between him and their child. Any such findings on these points, could materially affect any consideration of the Appellant's Article 8 claim and the best interests of the child under Section 55 of the Borders Act 2009.
19. In order to ensure that the Appellant had been given a full opportunity of having a fair hearing, I heard evidence from both him and Miss Kittu. In assessing that evidence I regret to say that I found neither of them presented as credible. I accept that I was shown photographs of a ceremony which took place in the Gurdwara in 2011. It is also correct to say that there is a certificate of marriage from the Gurdwara. However that certificate clearly states that the ceremony is not a binding civil ceremony.
20. On the other hand however, there was nothing to show, other than two formal photographs, that the Appellant and Miss Kittu are in what I term a normal family relationship.

21. There was no evidence from either of them fleshing out the bare assertion that they made that they are in a relationship.
22. When the Appellant was asked why he could not return to India his response was along the lines that his wife works full-time and he helps look after his daughter. There was no evidence of any depth to the relationship with the child. In my judgment the reality is that the Appellant may occasionally look after his daughter but in truth she attends nursery whilst her mother works for some of the time. I am reinforced in this view that there was no real evidence of the Appellant ever being involved in his daughter's upbringing in the way that a father would. He could not even say with confidence who his child's teacher was when she was left at nursery let alone any evidence of time spent together as one would expect.
23. So far as getting letters of support concerning his relationship with Miss Kittu, the three letters produced are of little or no weight. They make no mention of the relationship as such, they are from "friends" and yet despite knowing the importance of needing such evidence, none of these people attended the hearing.
24. So far as Miss Kittu is concerned her evidence was hardly helpful. When asked, what I consider to be the most pertinent question of all - would she go back to India to be with the Appellant - her lack of enthusiasm for this idea rang through. She immediately responded saying it would be hard for her because she now works in the UK. When asked about visiting the Appellant during any leave periods, she displayed little enthusiasm for that course either. Her response was to make excuses on the basis that she had just started her job. She finally did say she would go back to India with the Appellant because she loves him and they are not going to be separated. I do not accept this evidence. I gained the impression that her job and remaining in the UK are far more important to her than any relationship with the Appellant.
25. Equally I find her evidence not credible when she asserts that her daughter needs the Appellant to remain here because he looks after her. As I noted earlier, the child goes to nursery and in my judgment it was telling that for a couple who both claim that their child needs the Appellant, there was no real evidence of why she needs him, other than possibly he picks her up from nursery on occasions. There was no evidence of any father/child interaction such as one would expect from a normal father/child relationship. No evidence of him supervising any activities on behalf of his child, taking her to visit places. In my judgment that lends weight to my finding that the Appellant and Miss Kittu are not living together in a relationship as claimed.
26. That finding should be sufficient to dispose of this matter since I have made it clear that there is no reason to disturb the FtT's findings on the Appellant's asylum claim.

27. However for the sake of completeness it is correct that the FtT did consider whether the Appellant's Article 8 claim could be considered in that he is named as the father of Miss Kittu's child.
28. The FtT recognised that removal of the Appellant to India could amount to an interference with his relationship with his daughter since he is named on her birth certificate. The FtT therefore went on to consider the best interests of the child.
29. However as the FtT correctly pointed out the child is an Indian national and her mother is an Indian national. Her mother has leave to remain at present it is true but since I have found in any event that the relationship between the child's mother and father is not as claimed, I find that the Appellant plays no significant role in the child's life. Her best interests will of course be to remain with her mother in the UK. I find therefore that the Appellant's removal to India would make little or no difference to the well-being of the child.
30. Even if I am wrong about the extent of their relationship, I find there is nothing unjustifiably harsh in saying that the Appellant, Miss Kittu and the child can return to India as a family unit. The Appellant on his own evidence has the ability to find work in India. Both he and Miss Kittu are Indian nationals. Both have family members remaining in India.
31. I find therefore that the Appellant has failed to show that there are good grounds for a grant of leave to remain outside the Immigration Rules.

### **Decision**

The Appellant's appeal against the respondent's decision of 21 November 2014 to refuse him leave to enter the United Kingdom is dismissed.

No anonymity direction is made

### **Signature**

Judge of the Upper Tribunal

### **Dated**