



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/29645/2013

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 26 January 2015

Decision Promulgated  
On 3 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

HARISH GANNAPUREDDY  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Lee of Salam & Co Solicitors

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 16 January 2014 which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 24 July 1986 and is a national of India.
4. The Appellant entered the United Kingdom as a student on 10 October 2009 and his leave was extended until 23 May 2013. On 23 May 2013 the Appellant applied for leave to remain in the United Kingdom on the basis of his relationship with Abbey Heather Kendrick
5. On 27 June 2013 the Secretary of State refused the Appellant's application and issued directions for his removal. The refusal letter gave a number of reasons: the Respondent did not accept that Ms Kendrick was a 'partner' for the purpose of the Appendix FM as they had not been together long enough; he could not benefit from EX.1 as he had no partner or child in the United Kingdom and it was not established that there were insurmountable obstacles to family life outside the United Kingdom ; the Appellant did not meet the requirements of paragraph 276 ADE of the Rules nor would his removal be a breach of Article 8 of ECHR.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thorne ("the Judge") dismissed the appeal against the Respondent's decision. The Judge heard evidence from the Appellant, Ms Kendrick and her father and found that he accepted that Ms Kendrick was a partner for the purpose of Appendix FM; it appears to have been conceded that the Appellant could not meet the financial requirements of the Rules and therefore the Judge went on to consider paragraph EX.1; he did not accept that the Appellant met the evidential burden of establishing that he and his partner continuing their family life outside of the United Kingdom finding it both practically possible and not unduly harsh; he found that the Appellant did not meet the requirements of paragraph 276ADE; he found no arguable grounds for granting leave outside the Rules under Article 8 ; in the alternative he considered the case under Article 8 and found no breach of article 8.
7. Grounds of appeal were lodged which were initially refused and the application was renewed. On 6 March 2014 Upper Tribunal Judge Reeds gave permission to appeal.
8. At the hearing I heard submissions from Ms Lee on behalf of the Appellant that :
  - (a) She relied on the case of **MM (Lebanon) and others [2014] EWCA Civ 985** to suggest that by imposing minimum income requirements there was an interference that required justification.
  - (b) The Judge failed to take into account the evidence about the safety and security issues for the Appellant's partner in India..
  - (c) There had been no consideration of the wife's circumstances in accordance with **Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39.**

9. On behalf of the Respondent Mr Mc Vitie submitted that :
- (a) There was nothing in **MM** to suggest that the court was able to revisit the issue of the maintenance levels. **MM** found that the Respondent was right to set such levels and the levels set were proportionate.
  - (b) The suggestion that the Judge had failed to take into account **Beoku Betts** was not argued in the grounds.
  - (c) In relation to the issue of the security of the Appellant's partner in India the Appellant is relying on Foreign and Commonwealth Travel warnings that apply in India and a number of other major world cities in relation to lone women travelling. It was a warning to be careful and no more. There is no disproportionate levels of violence in India that would make return unreasonable.
  - (d) If the Appellant could not meet the requirements of the Rules the answer was to make a fresh application

### **The Law**

10. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Finding on Material Error**

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
13. Ground 1 argues that the Judge failed to follow the guidance in **MM and Other v Secretary of State for the Home Department [2013] EWHC 1900 (Admin)** where the court had found that the minimum income levels set by the Rules the measures

were arguably so onerous as to be a disproportionate interference with family life and thus a violation of Article 8. However I note that it was always accepted that the Appellant could not meet the financial requirements of the Rules and it is not clear on what basis it was argued before the Judge that the income levels should not have been applied to this Appellant. Even if at the time of the decision the Judge failed to take into **MM** it was not an error that was material as **MM** was overturned on appeal. In **MM (Lebanon) and others [2014] EWCA Civ 985** it was said that in setting the maintenance limits the Secretary of State had "*discharged the burden of demonstrating that the interference was both the minimum necessary and strikes a fair balance between the interests of the groups concerned and the community in general. Individuals will have different views on what constitutes the minimum income requirements needed to accomplish the stated policy aims. In my judgment it is not the court's job to impose its own view unless, objectively judged, the levels chosen are to be characterised as irrational, or inherently unjust or inherently unfair. In my view they cannot be*". **MM** when taken with the statutory presumptions in new paragraph 117B(3) of the Rules, inserted by s.19 of the Immigration Act 2014, with effect from 28 July 2014 (see The Immigration Act 2014 (Commencement No.1, Transitory and Saving Provisions) Order 2014 2014/1820), effectively closes the door on any argument either within or without the Rules that figures less than those set out in the Rules might be acceptable.

14. Ground 2 argues that the Judge erred in his assessment of whether there were insurmountable obstacles to the Appellant and his partner continuing their family life in India. The Judge set out his reasons at paragraphs 29 to 33 of the decision. The grounds accept that the Judge directed himself correctly, which he did at paragraph 31 by reference to all of the relevant caselaw, but applied the test incorrectly in the Appellant's case. I reject that argument. The Judge took into account all of the relevant factors: the couple were young, fit, well educated, resourceful, speak one of the official languages of India; the Appellant's partner knew of his immigration status when they married; there was no adequate evidence that the sponsors concerns about the security situation were well founded or reasonable given that the only evidence relied on was an FCO advice about caution being required if travelling in India and therefore there was no reason to conclude it would be unjustifiably harsh to work elsewhere in India . This ground is an argument about the weight given by the Judge to the evidence produced and is such not an error of law as the conclusions were clearly open to him.
15. The third ground argues that the Judge has failed to take into account the Appellant's relationship with his partner and her family. This argument has no merit. The Judge directed himself correctly taking into account **Razgar, Beoku Betts** and **Chikwamba** (paragraph 48). He heard and recorded in detail the evidence of the Appellant's partner and her father and the fact that she had close family members in the United Kingdom (paragraph 23) I remind myself of what was said in **Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC)** about the requirement for sufficient reasons to be given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*" Against this background of evidence which the Judge did not reject he further detailed the factors that he took into account at paragraph 63 which again specifically related to the Appellant's partner. Therefore the grounds are no more than an attempt to re argue the case.

16. I am therefore satisfied that the Judge properly directed himself and his decision when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

**CONCLUSION**

17. I therefore found that no errors of law have been established and that the Judge's determination should stand.

**DECISION**

18. **The appeal is dismissed.**

Signed

Date 2.2.2015

Deputy Upper Tribunal Judge Birrell