



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: DA/00474/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 17 December 2015**

**Determination Promulgated
On 13 January 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**GURMIT SINGH DARSHAN SINGH TARMET
(No anonymity direction made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Jones, of counsel, instructed by Cameron Clarke Law firm

For the Respondent: Mr S Kotas, Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India born on 1 May 1975. He appeals the determination of a First-tier Judge promulgated on 25 September 2014 dismissing his appeal against the decision of the respondent to make a deportation order against him as a foreign criminal under the UK Borders Act 2007 on 5 December 2011.

2. The appellant applied for permission to appeal. Permission to appeal was refused by the First-tier Tribunal. The application was renewed. Reference was made to YM (Uganda) v Secretary of State for the Home Department [2014] EWCA Civ 1292 which had been promulgated after the decision of the First-tier Judge.
3. Upper Tribunal Judge Goldstein granted permission to appeal on 12 February 2015 on the basis that the judge had arguably made mistakes of fact in his determination and he had failed to have regard to Exception 2 to s 117C inserted by the Immigration Act 2014.
4. The appellant's wife is a British Citizen and the couple have a daughter, also a British Citizen, born in 2010. The First-tier Judge had found that the couple were in a genuine and subsisting relationship and that the appellant had a genuine and subsisting relationship with his daughter.
5. There are two main disputed findings of fact. The first is that the judge found the appellant's parents continue to live in India and the second is that the appellant's wife could continue to visit the appellant in India were he to be deported "as she had done in the past."
6. The issue of law raised is that the judge applied the rules prior to their amendment following the changes made by the Immigration Act 2014.
7. The parties were in agreement that the matter should be remitted for hearing afresh apart from the issue of the appellant's relationship with his wife and daughter being genuine and subsisting which were not affected by the errors of law.
8. I agree that the appeal must be remitted. The judge of course did not have the benefit of the decision in YM (Uganda) and the question was not free from difficulty although it has to be said that counsel in submissions did refer to the correct test.
9. The factual errors are more puzzling. It was not apparently suggested that the appellant's parents were alive. The wife's evidence was that her parents lived in India and that the appellant had no family there. In the response the Secretary of State referred to paragraph 23 of the determination where the appellant's evidence was that the reason he could not return to India to live with his parents because of the tradition that a married woman, her husband and family live with the in-laws.
10. In the manuscript record of proceedings it was the appellant's wife who is recorded as giving the evidence of this tradition. Paragraph 23 of the determination purports to be a record of counsel's submissions although I cannot identify the particular submissions on this point in the manuscript record of proceedings. It is possible, and I put it no higher, that the evidence of the parties may have got confused in the writing up process.

11. As the parties are agreed that the matter be remitted I need not take this any further but in so far as it is relevant there would appear to have been some confusion in the assessment of the facts and as the case concerns a British Citizen child and a British Citizen partner with both of whom it is accepted the appellant has a genuine and subsisting relationship it is right that the decision should be made on a sound factual and legal footing.
12. The determination is affected by a material error of law and is remitted to be heard afresh apart from the finding that the appellant's relationships with his wife and daughter were genuine and subsisting.

The appeal is allowed to the extent indicated.

Signed

Upper Tribunal Judge Warr

17 December 2015