



IAC-AH-CJ-V1

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

Appeal Number: IA/43069/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham

On 12th February 2016

**Decision & Reasons
Promulgated**

On 28th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR GURPREET RAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe (Counsel)

For the Respondent: Mr D Mills (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Colyer, promulgated on 23rd June 2015, following a hearing at Nottingham Justice Centre on 21st May 2015. In the determination, the judge dismissed the appeal of Mr Gurpreet Rai, who 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 citizen of India, who was born on 29th May 1978. He appealed against the decision of the Respondent Secretary of State refusing his application for a variation of leave to remain in the UK dated 10th October 2014 and giving directions under Section 47 for the Appellant's removal.

The Appellant's Claim

3. The Appellant's claim is that the Secretary of State was wrong to conclude that the Appellant's exclusion from the UK was conducive to the public good and there would not be any insurmountable obstacles to him and his wife's settlement in India, following his conviction for battery making it undesirable for him to remain in the UK.

The Judge's Findings

4. The judge considered the essential background to this case, namely, that the Appellant had been in a relationship with Miss Harpreet Rai, but this relationship, which commenced in autumn 2008, had not been a continuous relationship as there had been significant breaks, for example when he had battered his wife, and the judge was not satisfied that the relationship was as strong as the Appellant's wife was now representing before the Tribunal.

Submissions

5. At the hearing before me, Mr Pipe, appearing on behalf of the Appellant, drew my attention to paragraph 3 of the determination, where there had been a challenge to the suitability of the removal. This is because the judge recorded how the Respondent in the refusal letter had observed (see paragraph 22) that on 18th December 2012, the Appellant was convicted of battery and was sentenced to a supervision requirement, a community order, and unpaid work requirement. His exclusion from the UK was conducive to the public good because his character and conduct made it undesirable for him to be allowed to remain in the UK. He had failed to meet the requirements for leave to remain because paragraph S-LTR.1.6 of Appendix FM applied. Mr Pipe submitted that if the Appellant failed his appeal on suitability grounds then his case would have had to have been considered outside the Immigration Rules. This did not happen. The judge, in fact, made no finding on suitability either. It therefore was a matter that needed to go back to the First-tier Tribunal for a decision. If the suitability findings were in the Appellant's favour then this would affect the whole tenor of the determination.
6. For his part, Mr Mills submitted that there was no focus by the judge on "insurmountable obstacles". There had to be a finding on "suitability" as

well. It was not a black and white case. This is because the Appellant's central claim was that his removal was not conducive to the public good. Only if the Appellant won on suitability grounds did EX1 come into operation and the "insurmountable obstacles" question was then dismissed. There was also doubt about the quality of the relationship, but this had not been properly considered.

Error of Law

7. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are that there is no finding on insurmountable obstacles by the judge in any clear way as to whether the Appellant's wife could relocate to India.
8. This is despite the fact that the quality of the relationship between the husband and the wife needs some probing. But that is precisely why the finding on insurmountable obstacles needs all due attention.
9. Secondly, the judge did not consider whether the Respondent ought to have applied her transitional policy for those granted discretionary leave to remain before 9th July 2012 because the Appellant had been granted leave to remain on the basis of his family life in the UK with his wife, and the judge heard submissions before him that family life continued, even though the Appellant may not have had contact with the children because they had been put up for adoption.
10. Accordingly, the matter needs to return back to the First-tier Tribunal for a proper determination of all these issues. A Punjabi/Gujarati interpreter will have to be located and the hearing should be at Stoke-on-Trent as requested.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal at Stoke-on-Trent with a Punjabi/Gujarati interpreter to be allocated.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

26th April 2016