



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/07679/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower,  
Birmingham  
On 2<sup>nd</sup> November 2017**

**Decision & Reasons  
Promulgated  
On 24<sup>th</sup> November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**CHANNALAL PRABHUDAS NAYEE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - NEW DELHI**

Respondent

**Representation:**

For the Appellant: Ms V Sehgal of VRS Immigration

For the Respondent: Mrs M Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of India born on 1<sup>st</sup> December 1950. On 15<sup>th</sup> March 2016 he applied for entry clearance to enter the UK as the husband of the Sponsor, his wife Sushilaben Chanualal Nayee. That application was refused for the reasons given in a Notice of Decision dated 1<sup>st</sup> March 2016.

2. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Asjad (the Judge) sitting at Birmingham on 12<sup>th</sup> July 2017. She decided to dismiss the appeal for the reasons given in her Decision dated 3<sup>rd</sup> August 2017. The Appellant sought leave to appeal that decision, and on 7<sup>th</sup> September 2017 such permission was granted.

### **Error of Law**

3. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
4. The Judge dismissed the appeal because although she found a genuine and subsisting marriage between the Appellant and the Sponsor, the Appellant failed to satisfy the requirements of Appendix FM of HC 395 because the Sponsor was wholly dependent on state funds and had lived separate and apart from the Appellant as a matter of choice for a number of years. The Judge considered the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002 and found in particular that both the Appellant and the Sponsor spoke no English. For the same reasons, the Judge found the decision of the Respondent proportionate for the purposes of Article 8 ECHR.
5. At the hearing before me, Ms Sehgal argued that the Judge had erred in law in coming to this conclusion. When finding that family life between the Appellant and the Sponsor could continue by way of the Sponsor visiting the Appellant in India, the Judge overlooked the medical evidence showing that the Appellant could not travel to India for medical reasons. The Judge had not considered whether there were any exceptional circumstances, nor whether there were any insurmountable obstacles to the Sponsor joining her husband in India for the purposes of paragraph EX.1.(b) of Appendix FM. Finally, the Judge had failed to carry out any proper proportionality assessment.
6. In response, Mrs Aboni referred to the Rule 24 response and argued that the Judge had directed himself appropriately and had made findings open to her. Her reasons for her decision were sufficiently explained. In particular, the Judge referred to the factors mentioned in Section 117B of the 2002 Act and clearly found that the public interest outweighed any compassionate circumstances in the case.
7. I find no material error of law in the decision of the Judge which I therefore do not set aside. The decision is not heavily detailed, but the Judge made sufficient findings of fact and gave adequate reasons to support her decision. In particular, it is clear from what the Judge wrote at paragraph 8 of the Decision that she carried out the balancing exercise necessary for any proper assessment of proportionality and made a proper finding that the public interest outweighed any compassionate circumstances in the case. The Judge properly applied the provisions of Section 117B of the 2002 Act. It is true that in the Decision the Judge made no reference to the medical condition of the Sponsor as shown in the medical reports produced by way of evidence, but the Sponsor's inability to visit the

Appellant in India was only one factor considered by the Judge and it is apparent that the Judge found a number of other factors supporting the public interest of immigration control. The decision of the Judge that the decision of the Respondent was proportionate was not perverse. The Judge considered all the relevant factors in the case including any circumstances pertaining to the Appellant and the Sponsor which might be considered exceptional. It is also true that the Judge did not specifically deal with the provisions of paragraph EX.1.(b) of Appendix FM. However, according to the Decision, this provision was not relied upon at the hearing before the Judge and no evidence was produced directly relevant to the issue of insurmountable obstacles. In any event, it must follow from the Judge's finding that the decision of the Respondent was proportionate that the Judge also found that there were no insurmountable obstacles to family life between the Appellant and the Sponsor continuing outside the UK.

8. For these reasons I find no material error of law in the decision of the Judge.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

### **Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Dated 23<sup>rd</sup> November 2017

Deputy Upper Tribunal Judge Renton