



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

Appeal Number: IA/33525/2015

THE IMMIGRATION ACTS

Heard at North Shields

On 26th May 2017

**Decision &
Promulgated**

On 6th July 2017

Reasons

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

**MR A S
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr.V.Makol of Maalik and Co, Solicitors.

For the Respondent: Mr.Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant has been given permission to appeal the decision of First-tier Tribunal Judge Cope who dismissed the appellant's appeal on human rights grounds.

2. The appellant is a national of India who sought to remain on the basis of his marriage to a British national and their child who had been born in April 2015.
3. The respondent had refused his application on suitability grounds under the immigration rules. He had originally entered the United Kingdom in January 2011 on a student visa. The respondent alleged that he had subsequently obtained a certificate as to his English language skills through personation. He needed this document in order to obtain a confirmation of acceptance for studies.
4. The respondent also did not accept that the relationship with his partner was genuine and subsisting.
5. Under the parent route of the immigration rules it was pointed out that the appellant and said he lived with his wife and their child. Consequently he did not have sole responsibility of the child.
6. Regarding private life and paragraph 276 ADE he had only been here a short time and the respondent was not satisfied they were very significant obstacles to his integration into India.
7. No exceptional circumstances were identified.

The First tier Tribunal.

8. The parties were represented in the First-tier Tribunal. The judge heard from the appellant and his wife. The judge recorded that by the time of hearing they had a second child born in April 2016.
9. The judge dealt firstly with the question of personation. The respondent relied upon the generic statements typically used in such decisions. The judge referred to the Upper Tribunal decisions on this at paragraph 74. The judge commented on the lack of evidence specific to the appellant and concluded personation had not been established.
10. Turning to family life the judge accepted the existence of family life. It was recorded that the presenting officer was unable to concede the point did not suggest to the contrary (paragraph 105). The judge then proceeded to conduct a freestanding article 8 assessment, stating at paragraph 107 that following the amendments in 2014 this was the only ground of appeal open to the appellant. However, having gone through the Razgar sequential approach to article 8 the judge then turned to the immigration rules.

11. Paragraph 276 ADE (1)(vi) was considered, with the conclusion that this did not assist the appellant. The judge then turned to appendix FM and EX1 and the question of insurmountable obstacles to family life continuing. The judge concluded it had not been demonstrated such obstacles existed.
12. At paragraph 153 the judge noted that his wife only spoke English. She was employment in the United Kingdom and had family here. However, the judge felt these obstacles could be overcome and that English is widely spoken in India.
13. The judge then turned to the children, pointing out that as British citizens they are entitled to be here. Furthermore, the appellant did not have sole responsibility for them. The judge then went on to have regard to section 117 B factors.

The Upper Tribunal

14. Permission to appeal was granted on the basis the judge had failed to consider in the first instance if the immigration rules were met. It was also arguable the judge erred in focusing on insurmountable obstacles rather than the reasonableness of requiring the two British children to leave the United Kingdom or being separated from their father. Reference was also made to a previous appeal which had been allowed.
15. At hearing the presenting officer accepted that it was difficult to say the appellant did not meet the requirements of the immigration rules. The suitability requirements were met. The judge's finding that personation had not been established was not challenged by the respondent. Similarly, the judge's finding that family life existed was not challenged. The respondent had accepted the financial and English requirements were met.
16. The judge was faced with a complicated immigration history and with an appeal which presented with numerous issues. The judge had commented on the failure of the appellant's solicitors to provide a full chronology. Matters were further complicated by an earlier appeal which was allowed and affected the appellant's status.
17. The judge's decision indicates that considerable effort has been expended in its preparation. However the decision itself is most confusing because it lacks a clear progressive structure and intermingles the immigration rules with freestanding article 8 features. At one point it appears to incorrectly suggest there is only a limited right of appeal.

18. However, the judges findings had helped clarify matters in the Upper Tribunal. There was, if not agreement, than a lack of opposition on behalf of the respondent to key issues. The judge had made material unchallenged findings. The first of these was that personation had not been established. Mr.Diwnycz accepted the financial requirements were met. The judge found the existence of family life. The appellant's wife is a British national and through her, the children are British. As such they who have the right to be here is relevant.

19. I find the judge materially erred in dismissing the appeal in light of the found facts. This should have led to the conclusion that the appeal could be allowed under the partner route of the immigration rules. Consequently I would remake the decision on this basis.

Decision.

The decision of First-tier Judge Cope dismissing the appeal materially errs in law. I remake the decision, allowing the appeal under the immigration rules.

Deputy Judge Farrelly

6th July 2017