



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

Appeal Number: HU/06752/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 25th April 2019**

**Decision & Reasons
Promulgated
On 14th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR ANISH MAHARJAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Atreya, Counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nepal born on 26th October 1989. The Appellant had first entered the United Kingdom on 26th October 2009 with entry clearance as a Tier 4 (General) Student. Subsequent applications

were made until the Appellant applied for further leave to remain on 5th February 2015 which was refused on 27th April 2015.

2. On 4th May 2016 the Appellant made a human rights application for leave to remain on the basis of his family and private life. That application was refused by the Secretary of State on 23rd May 2017.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Baldwin sitting at Hatton Cross on 22nd January 2019. In a decision and reasons promulgated on 29th January 2019 the Appellant's appeal was allowed on human rights grounds.
4. On 29th January 2019 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 26th March 2019 Judge of the First-tier Tribunal Grimmett granted permission to appeal. The judge noted that the grounds contended that the judge had failed to consider whether there would be insurmountable obstacles to the Appellant and his partner living together in Nepal and failed to explain how it would be unjustifiably harsh if they were to be separated while he sought leave from Nepal. Judge Grimmett concluded that it was arguable that both points could be argued on the basis that it was unclear from the decision why the judge had reached the conclusions that he had done.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. For the purpose of continuity throughout the appeal process Mr Maharjan is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant appears by his instructed Counsel, Ms Atreya. Ms Atreya is very familiar with this matter. She appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer, Mr Tarlow.

Submissions/Discussion

6. Mr Tarlow does little more than rely on the Grounds of Appeal. It is however pointed out to me both by Ms Atreya and by Mr Tarlow that there is a witness statement from Miss Nicole Rodriguez. This witness statement is sought to be admitted in evidence by Ms Atreya pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules. Mr Tarlow does not seek to challenge it. That witness statement advises that Miss Rodriguez was granted indefinite leave to remain on 5th March 2019 and that she continues to work in two jobs, one for the NHS as a healthcare assistant with Central Middlesex Hospital and as a carer for which she is paid on a monthly basis. Evidence of her finances are adduced. Mr Tarlow acknowledges that this strengthens the Appellant's position.
7. Ms Atreya indicates that the First-tier Tribunal Judge carefully considered the oral testimony which had been produced along with the written testimony and that this consisted of the evidence of the Appellant and four

witnesses. She submits that the judge had the correct approach in mind when carrying out the balancing exercise and refers me to paragraphs 18 to 22, 26 and 27 of the decision. She submits that the judge has indicated why it would be unduly harsh for the Appellant to be expected to return and asks me to dismiss the appeal on the grounds that it shows no material error of law.

The Law

8. Areas 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 fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. 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 of argument. Disagreement with an Immigration Judge's factual conclusion, 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 which 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 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.

Findings on Error of law

10. The judge's findings are set out in some detail in paragraphs 22 to 27. Prior to that at paragraphs 18 to 22 the judge has set out the legal tests that need to be considered and thereafter has gone on to make reasoned findings, including a finding with regard to the relationship between the Appellant and Miss Rodriguez. He has gone on to state that the case is very finely balanced as to whether or not there are insurmountable obstacles to be overcome with regard to the Appellant having to return to Nepal to make an application and has given due and full consideration to the position in which Miss Rodriguez finds herself in. The judge has considered the factors fully and drawn conclusions that it would be unduly harsh to expect Miss Rodriguez to go and live in Nepal, setting out that it would be particularly traumatic for Miss Rodriguez as she had been seriously depressed by the breakdown of her two previous relationships.

11. Judge Baldwin acknowledged that this was a case where different judges might take a different view, but it was his considered opinion that it would be unreasonable and disproportionate to expect the Appellant now to return to Nepal and unreasonable both for him, Miss Rodriguez' family (to whom he is very close) and to Miss Rodriguez in particular. Of course this decision was reached before Miss Rodriguez was granted indefinite leave to remain. That is only one factor.
12. What is important is the approach adopted by the judge. This is a judge who has given full and thorough reasons for reaching his decision. He has analysed the position of both the Appellant and Miss Rodriguez and he has given reasons for his findings. Providing those reasons are ones which are sustainable it is not for another judge to go behind those findings. All the findings made are ones which the judge was perfectly entitled to make and he has given his reasons for them.
13. In such circumstances I find that there is no material error of law in the decision of the First-tier Tribunal Judge and the Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal Judge discloses no material error of law. The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 5 May 2019

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 5 May 2019

Deputy Upper Tribunal Judge D N Harris