



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000869
PA/50843/2021
IA/04153/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 03 July 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR BALRAJ VERMA
(Anonymity order not made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, counsel

For the Respondent: Ms S Lecointe, Home Office Presenting Officer

Heard at Field House on 14 June 2023

Prepared On 14 June 2023

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of India born on 5 January 1985. He appeals against a decision of Judge of the First-tier Tribunal Ruth dated January 2022 which dismissed the appellants appeal against a decision of the respondent dated 9 February 2021. That decision in turn was to refuse the appellant's application for international protection and under Article 8. The appellant entered the United Kingdom on 28 December 2010 as a student with leave valid until 10 May 2012. After that leave expired the appellant had no further leave. He claimed asylum on 13 May 2019 and it was the refusal of that claim that led to the present proceedings.

The Appellants' Case

2. Before coming to the United Kingdom the appellant had married in November 2009 and a child was born in March 2010. The marriage was an unhappy one and although the appellants spouse came to the United Kingdom in 2012, there were cross allegations by the spouses of domestic violence against each other. In 2015 the appellant's parents were detained as a result of a complaint by the appellant's wife and they were held in detention for 72 days before being released on bail. The wife has also brought a civil claim against the appellant which he says is still outstanding. Subsequently the appellant had a religious marriage to another lady who has joint British and United States citizenship. The appellant's second wife has no ties to India and he says that it is not possible for the couple to live their married life in India and therefore the respondent's decision breaches Article 8.

The Decision at First Instance

3. In evidence to the judge the appellant relied on a number of documents sent to him from India which he said confirmed the various court proceedings that had been taken against him and his parents. The judge did not find the appellant to be a credible witness describing the appellants evidence as vague and at one point "frankly garbled and incoherent" [42]. The judge drew attention to a number of inconsistencies in the evidence for example the arrival of the appellant's wife in the United Kingdom in 2012 at a time when she was said to be in litigation with the appellant. The judge also noted the delay by the appellant in claiming asylum and did not accept the appellant's explanation that he did not know how to claim asylum.
4. The judge gave very little weight to the documents produced noting they were photocopies not originals. There was no evidence before the judge that these documents were of a kind that would be produced. The documents had apparently been obtained by the appellant's lawyer and passed on to the appellant's parents but there was no letter from a lawyer to confirm any of that. The documents raised a number of questions and at [48] the judge noted that these questions included: where had the documents come from and where were the originals? The judge dismissed the appeal.

The Onward Appeal

5. The appellant's onward appeal drafted by counsel who appeared before me made three main points. The first was that the judge had criticised the appellant for lack of detail in his account and yet the appellant had not been asked at the hearing to supply that further detail. The appellant could not have applied for asylum earlier as he did not have sufficient knowledge of the asylum system. The appellant had evidence to show that the proceedings against him in India were ongoing as he had an online record from the official Indian government website. In due course he would

seek to put that further evidence before the court. The appellant's claim to have a case against him in India was supported by the evidence of his partner. She had accompanied the appellant to a meeting with a lawyer in the United Kingdom which the appellant had said was to discuss the proceedings in India. The partner did not understand what was being said as it was in a foreign language but she could confirm that a meeting took place.

6. The second ground was that the judge had failed to mention section EX.1. (b) which was relevant to the appellant's case that he and his partner would not be able to travel to India as there would be insurmountable obstacles to family life continuing outside the United Kingdom. The third ground was that the judge had dealt with the appellants article 8 claim inadequately. Although the judge suggested that the appellant might not secure entry clearance after he had returned to India, the respondent had not said that and the judge had not made clear how the appellant was likely to fail in an application for entry clearance.
7. The First-tier Tribunal refused permission to appeal stating that the judge had given detailed reasons for his findings and that whilst EX.1 had not been specifically mentioned the judge had referred to obstacles to the appellant and his partner returning to India. As to whether the appellant could obtain entry clearance, the burden of proof of establishing that he could not rested upon the appellant. The appellant renewed his application for permission to appeal to the Upper Tribunal and permission was granted on 31 May 2022 by Upper Tribunal Judge Lane. He found it arguable that it was an error to find the appellant had failed to provide additional evidence when it was unclear whether such matters had been raised.

The Hearing Before Me

8. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
9. In oral submissions counsel argued that although the judge referred to the appellant's evidence on delay in claiming asylum to be garbled or incoherent he did not say specifically what was garbled or incoherent. The appellant said he visited a lawyer and the judge appeared to accept that a visit to a lawyer had taken place which was confirmed by the appellant's partner. The fact of the meeting was an important point. I queried with counsel whether the appellant's partner had asked the appellant after the meeting what was discussed but it appears she did not as counsel replied that the partner's knowledge of the visit and presence at the at the visit was not in question.
10. Counsel accepted that the respondent's reply to the appellant's skeleton argument had referred to documents being treated in accordance with the

established authority of Tanveer Ahmed. If the appellant's explanation about the documents was unclear the matter should have been put to the appellant by way of clarification. In relation to ground 2, EX.1 was obviously relevant to the case but the determination did not have any reference to the test. EX.1 was not considered and therefore the determination was flawed. In relation to article 8, counsel accepted that the Court of Appeal found in Alam that the test in Chikwamba was of limited assistance but the respondent accepted the appellant's suitability. No legal provisions were cited by the judge.

11. In reply the presenting officer relied on the reasons given by the First-tier when refusing permission to appeal. The appellant's evidence had lacked credibility. There were several paragraphs in the determination where the judge gave an indication of the vagueness of the appellant's evidence, for example at [17], [18] and [19]. The judge rejected the idea that there were insurmountable obstacles to the appellant's return. The appellant's claims were designed to mislead the tribunal. The judge made it clear that it was not just vagueness in one part of the evidence that led him to a negative finding of credibility. Although the judge had not specifically said he had considered EX.1 he had considered the obstacles, if any, the couple might find.
12. In conclusion counsel wondered whether when the appellate referred to having "original documents" he was referring to the originals of the documents he had received from India. The only reference to EX1 was at [19] which had a summary of a submission made by the respondent on the issue. [68] and [69] did not answer that criticism. Counsel adopted the grounds of appeal noting that the respondent had not served a reply under rule 24. The judge had failed to raise particular issues and there was insufficient reasoning to his conclusions. There was no consideration of EX.1 and there was an overall flawed approach to article 8. If the appellant's evidence on the dispute with his ex-wife was unclear the appellant should have been asked about that.

Discussion and Findings

13. The criticism of the determination in this case is essentially a reasons based challenge to the findings of the judge. The judge was quite critical of the appellant's case and the principle attack on the determination is that matters have been taken against the appellant which were not put to him during the course of the hearing at first instance. The appellant had produced certain documents which he said he had obtained from India to support his claim that he would be at risk upon return. The risk came from his ex-wife and her family who he said were involved in litigation with him and his parents had already suffered harm from this dispute.
14. The judge dismissed the appellants claim in part because of a perceived lack of detail but also because there were inconsistencies in the appellant's case for example why the appellant's ex-wife had come to the United Kingdom to be with the appellant at a time when she was said to be

in litigation with him. That was not an issue on which it was necessary for the judge to ask more questions to elucidate what the appellants case was. The appellant was legally represented and was in a position to put his case across. If as the judge found the appellant's case did not make sense it was not for the judge to intervene in order to ask questions to make the appellants case clearer. The burden of establishing that the appellant was entitled to international protection rested on the appellant.

15. The appellant was aware from the respondent's reply to the ASA that the validity of the documents he had produced from India was in dispute. The appellant had referred to the documents produced as being originals when they clearly were not. The judge would have been open to criticism for entering the arena if he had speculated that the reason why the appellant referred to the documents as originals was because he was referring to the copies sent to him from India. There were a number of problems with the documents and the appellant and his advisers were put on notice that the documents were not accepted. At that point it was for the appellant to explain the circumstances of these documents and how they had come into existence. It was argued by counsel that the appellant would not have known that but this was the appellant's case and it was reasonable to expect him to have taken a sufficient interest in the case to inquire from his parents where the lawyer had allegedly got these documents from.
16. Another example where the appellant had not given detail about his case was in relation to the evidence of his partner that she had accompanied the appellant to a meeting with a lawyer in the United Kingdom. She had not understood what was said at that meeting because the meeting was conducted in a foreign language which she did not understand. However it is reasonable to expect her to have asked the appellant about the contents of that meeting if indeed it was to do with the appellant's difficulties in India since that also impacted on her. The absence of such evidence entitled the judge to conclude that the appellant could not prove he was speaking to a lawyer about the problems he had in India as opposed to anything else.
17. The appellant also sought to criticise the judge for the adverse inference drawn by the judge from section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 whereby the judge took issue with the length of time it had taken the appellant to claim asylum. The judge was aware of the appellant's immigration history. The appellant had entered the United Kingdom with leave as a student and therefore had some knowledge already of the workings of the immigration system but the appellant had only claimed asylum after being in the United Kingdom for nine years, seven of which he was here unlawfully. If as the appellant argued his litigation was still in existence in India that means that throughout the period that the appellant did not claim asylum his circumstances remained the same. There was therefore no reason why the appellant had delayed the claim unless it was that the claim had no merit as the judge found.

18. The remaining grounds deal with the failure of the judge to refer to EX.1 in the determination and contain a general criticism of the judge's dismissal of the appellants' article 8 claim. It is correct that the judge does not refer to EX1 in terms. The relevance of the section is that it places a burden on the appellant to demonstrate that there are insurmountable obstacles to a return to the home country. The problem for the appellant is that he could not demonstrate any such obstacles to his return. The judge comprehensively disbelieved the appellant's asylum claim and the appellant would therefore be returning to India like any other citizen of that country. Nor did the judge find there would be any problems for the appellant's partner, the judge finding it reasonable to accept that the partner would be able to find work in India. Whilst therefore it might have been an error not to specifically refer to EX.1 it was not a material error since the appellant could not bring himself within the section given the particular facts as found by the judge which were open to him on the evidence.
19. In relation to article 8 the appellant claimed that upon return to India he would succeed in any claim for entry clearance and thus removing him to India would be merely a bureaucratic step. The judge expressed his doubts about the validity of that argument. It was conceded by counsel in the hearing before me that the Upper Tribunal have in the case of Younas [2020] UKUT 129 (IAC) clarified the extent of the so-called Chikwamba principle (see paragraph 20 below). Given the appellant's length of time spent in the United Kingdom without leave and the fact that he made an asylum claim found to be false there would be a public interest in him being removed to India. This would mean that he would have to apply for entry clearance from there and in the light of that history it is not more likely than not he would be granted entry clearance.
20. In Younas, the Tribunal stated " if there is at least some degree of public interest in a person being temporarily removed then it will be necessary to evaluate how much weight is to be given to that public interest so that this can be factored into the proportionality assessment under article 8(2)." The judge carefully examined the Article 8 claims of both the appellant and his partner noting that little weight could be given to the appellant's private life claim and also noting that the appellant and his partner did not have the right to choose where to exercise their life as a couple. There were no insurmountable obstacles to married life being conducted in India and in the proportionality exercise the judge found that there was more weight on the side of the public interest. The onward appeal in this case is no more than a mere disagreement with the decision of the judge. I do not find that the determination demonstrates any material error of law. I dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 16th day of June 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed this 16th day of June 2023

.....
Judge Woodcraft
Deputy Upper Tribunal Judge