



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-003426**  
**First-tier Tribunal Nos:**  
**HU/57362/2022**  
**IA/10417/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 November 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**PARAMVIR SINGH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms D Revill, Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 3 November 2023**

**DECISION AND REASONS**

1. The Appellant is a citizen of India whose date of birth is recorded as 20<sup>th</sup> September 1995. On 20<sup>th</sup> September 2021 he made application for leave to remain in the United Kingdom on the basis of family life with his partner, Harpreet Kaur. On 11<sup>th</sup> October 2022 a decision was made to refuse the application and the Appellant appealed.
2. The appeal was heard on 5th July 2023 in the First-tier Tribunal by Judge Chohan, sitting at Coventry Magistrates' Court. In a decision dated 11<sup>th</sup> July 2023 he dismissed the appeal.
3. Not content with that decision, by notice supported by grounds dated 24<sup>th</sup> July 2023 the Appellant sought permission to appeal to the Upper Tribunal as is more particularly set out below.

4. On 2<sup>nd</sup> August 2023 Judge Chohan found the grounds to be no more than a disagreement with his own findings of fact and therefore refused permission.
5. By notice dated 16<sup>th</sup> August 2023 a renewed application was made to the Upper Tribunal. The grounds were identical to those before the First-tier Tribunal save for the additional complaint about Judge Chohan having been the one both to determine the grant of appeal and the substantive appeal.
6. In a decision dated 11<sup>th</sup> September 2023 Upper Tribunal Judge O'Callaghan granted limited leave to appeal on the following grounds:
  - (i) A failure reasonably to consider medical evidence.
  - (ii) A failure reasonably to consider evidence of employment.
  - (iii) A failure to record or address evidence as to the Appellant's family in India being unable to assist the couple.
  - (iv) A failure to consider objective evidence as to the stigma attached to mental health issues in India.
  - (v) A failure lawfully to conduct the Article 8 balancing exercise.
7. The final point of challenge to the refusal by Judge Chohan to grant permission on the basis that he ought not to have decided the permission in respect of a substantive determination, which he had promulgated, was refused.
8. During the course of the hearing before me the grounds were distilled to being one overarching complaint which was: given that it was not contested that the Sponsor had learning difficulties the judge failed to appreciate the relevance of that in his determination of whether there were insurmountable obstacles or give that factor any or any sufficient consideration when determining the proportionality issue.
9. The judge in the First-tier Tribunal had to consider whether the Appellant, who had entered the United Kingdom as a visitor and who had become an overstayer, later encountered by police and who was served with removal papers, who had then married his British citizen wife, Mrs Harpreet Kaur, should be allowed to remain in the United Kingdom on human rights grounds.
10. The legal issue before the Tribunal was by reference to Appendix FM EX.1.(b) and EX.2. EX.1.(b) which provides an exception to the refusal of leave which would ordinarily follow where the general requirements of the immigration rules are not met:

“The Appellant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK”.

EX.2. provides that:

“For the purposes of EX.1.(b) ‘insurmountable obstacles’ means the very significant obstacles which would be faced by the Applicant or their partner in continuing their family life together outside the United Kingdom and

which could not be overcome or would entail very serious hardship for the Applicant or their partner”.

11. In considering the issue of whether or not there would be insurmountable obstacles Judge Chohan said:

*“18. I note that according to the psychological report, the Sponsor’s psychiatric conditions may worsen should she be separated from the Appellant if he were to be removed or if she were to relocate to India with her husband in order to continue her relationship. It is important to note that the Sponsor is not on any current medication and that there is nothing to suggest that if she were to require medication or current treatment that it would not be available in India. Certainly, no evidence was submitted before me to establish that the Sponsor would not be able to seek the medical services in India. The psychological report has been unable to comment with any significant degree of certainty in respect of the medical services in India because the author of the report is not an expert on that topic.*

*19. However, the Appellant and his wife would have each other for support and the support of family, with whom they would be able to live. The Appellant would be able to obtain employment and add to the livelihood of his family members and also support his wife. It must be remembered that the Appellant has a family in India, and I see no reason why they could not support him and his wife. Furthermore, I see no reason why the Sponsor’s family in the United Kingdom could not support the Appellant and their own daughter financially in India. I say that because in this country they gifted a house to them. I appreciate that the Appellant and his wife may experience initial hardship, but none of the matters referred to in the paragraph above, even taken together, constitute insurmountable obstacles”.*

12. Against those two paragraphs complaint is made that no sufficient reference is made to the learning difficulties of the Sponsor. However, the determination is to be read as a whole. It is of note that under the heading Factual findings at paragraph 11 the judge states, “I have taken into account all the evidence and submissions even where something is not expressly referred to” and at paragraph 12 states:

*“The Appellant has no health issues of any significance. The Sponsor does have mental health issues as outlined in the psychological report prepared by Dr J Swede, dated 27 January 2023. The Sponsor has been diagnosed as suffering from major depressive disorder; anxious distress (moderately severe); and Irlen syndrome. The Sponsor’s symptoms include low mood; anxiety; over-worrying; anhedonia; poor sleep; lethargy; fatigue; and feelings of hopelessness. The Irlen syndrome impacts visual perception processing and learning difficulties. According to the expert report, the predominant contributor to the psychiatric difficulties is the Appellant’s ongoing immigration matters and the uncertainty, which are exacerbating the Sponsor’s symptoms and interfering with her recovery”.*

13. It is also of note that the judge had regard to the fact that the Sponsor was at the time of the hearing employed as a cleaner and had been working in that capacity for ten to eleven years.

14. Against that background it is contended, as I have said, that no sufficient regard was given to the Sponsor's learning difficulties.
15. I do not agree.
16. The issue for me is whether or not the findings made by the judge were ones that were open to him. He has found that there would not be insurmountable obstacles to family life continuing in India.
17. It is clear that he has had regard to the learning difficulties of the Sponsor, he has specifically referred to them in the decision, but taking an holistic view has determined that family can be continued in India with support in India.
18. Ms Revill sought to persuade me that I ought to have regard to the fact that the evidence before the First-tier Tribunal Judge was that the Sponsor had difficulty in finding employment even though the Sponsor did eventually find work at McDonald's and that pointed to the extent to which she was adversely affected by her learning difficulties.
19. I do not agree. The judge said in terms at paragraph 11 that he had regard to all of the evidence. There is no sufficient basis for finding that not to have been the case.
20. There are some guiding principles that assist when findings of fact are challenged. I refer first of all to the case of **HA (Iraq) [2022] UKSC 22** at paragraph 72:

"It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding Tribunal. In particular:

- (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the Tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see **AH (Sudan) -v- Secretary of State for the Home Department [2007] UKHL 49** per Baroness Hale of Richmond at para 30.
  - (ii) Where a relevant point is not expressly mentioned by the Tribunal, the court should be slow to infer that it has not been taken into account - see **MA (Somalia) -v- Secretary of State for the Home Department [2010] UKSC 49** per Sir John Dyson.
  - (iii) When it comes to the reasons given by the Tribunal, the court should exercise judicial restraint and should not assume that the Tribunal misdirected itself just because not every step in its reasoning is fully set out - see **R (Jones) -v- First-tier Tribunal (Social Entitlement Chamber) [2013] UKSC 19**".
21. Further, there is guidance in the case of **Riley -v- Sivier [2023] EWCA Civ 71**.

“The overarching point is that an appeal is a review and not a rerun of the trial. To win on appeal the Appellant has to show that there was some serious flaw in the judgment that calls for a change in the result or a retrial. When it comes to findings of fact there are five points to make:

- (1) The court will treat the factual findings of a trial judge with a generous degree of deference. To uphold an appeal on the basis of criticisms of this kind the appeal court will need to be satisfied that there was a critical finding of fact that was either unsupported by the evidence before the judge or a finding that no reasonable judge could have reached.
- (2) This approach applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them.
- (3) The court will bear in mind that the trial judge has a whole ‘sea of evidence’ instead of ‘island-hopping’ as Appellants are prone to do when seeking to challenge findings at first instance.
- (4) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into her consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that she has overlooked it.
- (5) The same applies with even greater force to matters of argument. A judge is not bound to mention and address every single argument advanced”.

22. Moving on from those principles which I have applied when considering the issue of insurmountable obstacles, I have looked then at the argument advanced with respect to the wider consideration of Article 8 and the proportionality assessment made under it.
23. As Mr Melvin rightly pointed out at paragraph 20 of his Determination the judge took as his starting point the findings that he had already made. The fact therefore that the Sponsor had learning difficulties was part of the equation and in my judgment there is no basis for impugning the eventual result. The eventual finding on proportionality is a finding of fact, not a matter of law.
24. In these circumstances the decision of the First-tier Tribunal shall stand and the appeal to the Upper Tribunal is dismissed.



Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**8 November 2023**

