Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04131/2020 (V)

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 26 January 2022	**On 16 May 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

AMIRENDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant attended in person
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Dixon ("the judge"), promulgated on 27 April 2021, by which he dismissed the Appellant's appeal against the Respondent's refusal of his human rights claim.

2. The Appellant is a citizen of India born in 1986. He came to the United Kingdom in September 2007 as a student and had leave in that capacity until 13 October 2011. Thereafter, he has been an overstayer.

3. On 13 January 2020 the Appellant applied for leave to remain on the basis of his private life in the United Kingdom. His Article 8 claim was based essentially on two elements: first, his lengthy residence in the United Kingdom; secondly, his relationship with an Indian national formed relatively shortly before the hearing in the First-tier Tribunal.

4. In respect of the second element it was said that neither family agreed with the relationship and that this would cause them difficulties (I make it clear that no protection issues have in fact been raised during these proceedings). The Appellant raised the issue of the Covid-19 pandemic and difficulties this was causing to the Indian economy and any attempts to re-establish himself in that country.

Decision of the First-tier Tribunal

5. The judge dealt in relatively concise terms with the claim, directing himself to paragraph 276ADE(1)(vi) of the Immigration Rules, section 117B of the Nationality, Immigration and Asylum Act 2002, as amended, and relevant case-law.

6. On the evidence before him, the judge found that the Appellant would not face very significant obstacles to re-integration into Indian society: the Appellant had spent his formative years in India; was “plainly very familiar with the culture and norms of Indian society”; had entered into a relationship with an Indian national; potentially had familial support in that country (although that was not a decisive factor); and was himself well-educated and able to find and maintain employment.

7. Having conducted a wider proportionality exercise and with regard to the mandatory considerations set out in section 117B of the 2002 Act, the judge concluded that removal would be proportionate and that the Respondent’s decision was lawful. The appeal was duly dismissed.

The Appellant’s appeal to the Upper Tribunal

8. The Appellant, who had been unrepresented throughout, drafted his own grounds of appeal. In essence, these assert that the judge had not taken proper account of his lengthy residence in this country and had not considered the family life aspect of his Article 8 claim. Permission to appeal was granted on all grounds.

The hearing

9. At the hearing I satisfied myself that the Appellant was able to understand the proceedings. He clearly is a well-educated individual and I had no doubt that he was aware of the nature of the proceedings in the Upper Tribunal and the important limitation to my role at this stage, namely that I

was there to look at whether the judge had made legal errors on the basis of the evidence presented to him, not in light of any subsequent changes in circumstances.

10. There were no technical difficulties.

11. Having heard from the Appellant and Mr Walker, I announced at the hearing my conclusion that there were no material errors of law in the judge's decision.

Conclusions on error of law

12. It is only right to say that the evidence relating to the relationship was very thin indeed. The Appellant himself has accepted that it was only formed approximately six months before the hearing in April 2021 and that the couple were not at that point cohabiting. His partner, Ms Kaur, was in the United Kingdom on a student visa which expires in September of this year. I shall return to the circumstances of the relationship as they now stand, below.

13. It is true that the judge did not specifically address the issue of family life and that may be said to constitute an error. If it is, it is plainly not material, having regard to all the circumstances of the case. There is an acceptance in paragraph 21 of the decision that the Appellant was indeed in a relationship with Ms Kaur. It is a fact that she was an Indian national here on a precarious basis. There was no evidence before the judge which could have come close to establishing insurmountable obstacles to the relationship continuing abroad (namely in India). Thus, there was no evidential basis on which the Appellant could have established an interference with family life.

14. Alternatively, there was no proper basis on which the judge could have concluded that a separation of the couple would have been disproportionate. The Appellant had been an overstayer since 2011 and his relationship with Ms Kaur was established when he was here unlawfully. Ms Kaur was not of course a "qualifying partner" within the meaning of section 117B(4) of the 2002 Act and this further undermined his claim. Even if she had been, "little weight" would inevitably have been attributed to the relationship in any event. The Appellant could clearly not meet any of the relevant Rules and the relationship was very short-lived at the time of the judge's decision. In light of the statutory provisions and case-law there would have been only one rational answer, namely that the Appellant's removal would have been proportionate even if Ms Kaur remained in the United Kingdom.

15. In respect of the Appellant's time in the United Kingdom, it is right that this was fairly lengthy. However, the large majority of it had been on an unlawful basis and prior to that it was only ever highly precarious. The twenty year threshold set out in the Rules had not been met. On any rational view, the judge was entitled to conclude that paragraph

276ADE(1)(vi) of the Rules was not satisfied, nor were there any circumstances which could properly have been regarded as compelling or exceptional. The Covid-19 issue was having a detrimental effect on countries around the world. It could not properly have been said that this formed a basis on which the Appellant's appeal might have been allowed.

16. In light of the above there was in reality only really one outcome in this case, namely the dismissal of the Appellant's appeal based on his circumstances at that time.

Postscript

17. I note that the Appellant has provided the Tribunal and the Respondent with additional evidence relating to changes in his circumstances. His relationship with Ms Kaur has continued. The evidence now on file indicates that she is currently six months pregnant and that the couple underwent a religious marriage in October of last year. They have cohabited now for just over six months. Whilst I have had no regard to this evidence when reaching my conclusion on the error of law issue, the Respondent may wish to consider this new evidence and any further representations which the Appellant may make in due course.

Notice of Decision

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

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed H Norton-Taylor Date: 7 February 2022

Upper Tribunal Judge Norton-Taylor