Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/20759/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 September 2015	**On 24 November 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DEEPAK JOSHI

Respondent

Representation

For the Appellant: Ms R Pettersen, Senior Presenting Officer
For the Claimant: Mr A Jafar, Counsel instructed by Mayfair Solicitors

DECISION AND REASONS

1. For convenience we refer to the respondent as the Claimant.

2. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Higgins allowing the Claimant's appeal on human rights grounds with reference to Appendix FM.

3. In a Refusal Letter dated 2 May 2014, the Secretary of State refused the Claimant's human rights application, made with reference to Article 8 of the ECHR on private and family life grounds, and issued removal directions

dated 2 May 2014 (IS151B) set for the Claimant's country of origin, India. The First-tier Tribunal promulgated its decision allowing the Claimant's appeal against that decision on 20 February 2015.

4. The Appellant appealed against that decision. The ground of appeal may be summarised as follows:

   (i) The judge erred in giving inadequate reasoning and failed to explain why return to India would entail such significant difficulties that family life could not continue, given that the sponsor and Claimant could communicate with each other in English and can continue to do so in India. The judge failed to consider whether the sponsor could learn Punjabi and this was not a significant difficulty given that the sponsor learned English despite coming from the Philippines. The Appellant accepted that the inability to speak Punjabi would hinder the sponsor's employment opportunities; however this was not something that could not be overcome.

5. We were not provided with a Rule 24 response from the Claimant but were addressed in oral submissions by her counsel and provided with a Skeleton Argument.

No Error of Law

6. At the close of submissions, we indicated that we would reserve our decision, which we shall now give. We do not find that there is an error of law in the decision such that it should be set aside. Our reasons for so finding are as follows.

7. We find that the Secretary of State's appeal must fail in relation to the judge having allegedly failed to give reasons as to why there would be significant difficulties in the couple relocating to India. At paragraph 15 of the determination, the judge sets out the terms of EX.2 which provide that insurmountable obstacles means the "very significant difficulties" which would be faced by either the applicant or their partner in relocating abroad and which could not be overcome or would entail "very serious hardship" for the applicant "or their partner".

8. Thereafter, at paragraphs 18, 22 and 23 of the determination, the judge records that the sponsor is a British citizen and that she would not relocate to India.

9. Ms Pettersen submitted that the judge did not explain what significant difficulties or hardship would ensue in the context of language difficulties or employment, however that is incorrect. At paragraph 22, the judge applies the correct test of significant difficulties or hardship and at paragraph 23 the sponsor's difficulties are properly considered. The judge

also records that the sponsor has never been to India and does not speak any of the fourteen official languages spoken there and found that even if English is spoken in India in some circles, this has to be viewed in light of the population overall and that the use of English is not likely to be widespread in the circles in which the Claimant is likely to live and function.

10. The judge further records that the sponsor could not secure employment equivalent to what she does now as she does not speak any of the mainstream languages of India which would be a significant handicap in the market for someone of her age. Such a significant handicap could be a significant difficulty or hardship and it is clear that the judge so found. The judge concludes the analysis of EX.1 and EX.2 by stating that the sponsor would face "very significant difficulties" in continuing her family life in India and those very significant difficulties would entail "very serious hardship" for her.

11. We find that the Judge reached findings upon the evidence before him that were open to him and which he was entitled to reach. It might be that another judge would not have reached the same conclusion on those facts; however those findings are neither perverse nor irrational in a *Wednesbury* sense for that reason. In that respect, we remind ourselves of the dicta of Baroness Hale in *Secretary of State for the Home Department v AH (Sudan) & Ors* [2007] UKHL 49, wherein the following was stated inter alia [at 30]:

> "…This is an expert tribunal charged with administering a complex area of law in challenging circumstances… and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently".

12. Given the above, it is clear that the judge applied the correct test from the Immigration Rules, and made findings based upon the evidence before him. It was for the judge to assess the sponsor's ability to relocate and whether that would entail very serious hardship, and that is what he did. Against that backdrop, it appears that the Appellant's appeal is one of disagreement with the outcome and does not reveal an error on a point of law such that the decision should be set aside.

13. We consequently find that the decision does not reveal inadequate reasoning and we find that the judge explained the reasons for the findings that he made. The reasons are proper, intelligible and adequate to sustain the conclusions drawn.

14. The grounds do not reveal an error of law such that the decision should be set aside.

Decision

15. The appeal to the Upper Tribunal is dismissed.

16. The decision of the First-tier Tribunal is affirmed.

Deputy Upper Tribunal Judge Saini
19/11/15