



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

Appeal Number: IA/44190/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14 July 2015**

**Decision and Reasons
Promulgated
On 25 August 2015**

Before

DEPUTY JUDGE DRABU CBE

Between

MR HARINDER SINGH
ANONYMITY DIRECTION NOT MADE

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop of Counsel instructed by Malik Law Chambers, Solicitors.

For the Respondent: Ms Fujiwala, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India. He was refused leave to remain by the respondent as the partner of British citizen and as father of their British born child. First Tier Judge Horvath upheld that decision for reasons given in his determination promulgated on 19 December 2014. First Tier Tribunal Judge refused the appellant's application for permission to appeal to the Upper Tribunal on 20 February 2015 coming to the conclusion that "the Judge had given full consideration

to the best interests of the child and to Article 8 issues, coming to the findings open to him. The **Zambrano** point does not appear to have been raised by the Appellant's representative at the hearing (paras 10 and 12) so it cannot be a error of law not to have dealt with it." The appellant renewed his application for permission to appeal before the Upper Tribunal. The application was considered and granted by Deputy Upper Tribunal Judge Saini for reasons given in the decision on 1 June 2015. The Judge said, "The grounds before me are a prolix and sporadic elaboration on the previous grounds. Having read those grounds alongside the determination with great care, I find there is *just* sufficient in the grounds at paragraphs 10, 14-15 and 20 collectively to warrant a grant of permission."

2. At the hearing of the appeal, the Counsel for the appellant applied to amend the grounds upon which he wished to argue. After hearing the parties I allowed the amendments and the amendments made to the grounds are on the file.
3. The Counsel argued that the assessment of the requirement regarding insurmountable obstacles made by the First Tier Judge was based on speculation and conjecture drawing attention to the part of the determination where it said, "the appellant's partner must have some awareness of Indian culture ... through her parents". The Counsel pointed out that this matter was not put to the appellant at the hearing as there was no Presenting Officer present and findings made on speculation and conjecture, argued Counsel are impermissible as was held by the Court of Appeal in **HK vs. SSHD** [2006].
4. The Counsel also submitted that in the assessment of paragraph 276 ADE, the First Tier Tribunal Judge had failed to carry out a balanced assessment of the appellant's circumstances. He said that in **Nagre** [2013] EWHC 720 it was held, "adults who do retain some ties to their own country of origin, but the ties developed in the UK manifestly outweigh those ties".
5. Further said the Counsel that the First Tier Judge had as is evident from paragraph 37 of the determination focussed exclusively on the appellant's circumstances in India and had not taken account of the circumstances of his British wife and the child as well as his length of residence.
6. He also argued that the "child of the appellant is British and therefore EC national". He went on to say that whilst the First Tier Judge had taken account of this point he had not done so "properly." He submitted that with reference to paragraph 49, the First Tier Judge was "wrong" to start off with the appellant's overstay. With reference to the contents of paragraph 39 of the determination it was evident, according to Mr Balroop that the Judge had not found the full relevant facts. The parents of the appellant's spouse were born in the UK. as

was the spouse. The Counsel said the purpose of the visits made by the spouse's father to India was not known and yet these had been given weight. The Counsel asked that the determination be set aside as being in material error of law and that it be directed to be re-heard by the First Tier Tribunal.

7. In response Ms Fujiwala argued that the amended grounds were simply a re-formulation of grounds that had already been considered and found to be wanting in merit. She argued that there was nothing wrong with the findings made by the First Tier Judge. The suggestion that the findings of the Judge were based on conjecture was totally wrong as all the material findings were based on hard evidence. She took me through the contents of paragraphs 37 and 38 to reinforce the point. She reminded me that the wife and the child were not being asked to leave the United Kingdom. With reference to paragraph 49 of the determination age of the child, Ms Fujiwala, argued was relevant as was the fact that the child could stay in the UK with her mother. She drew my attention to paragraphs 51, 52, 53, 54, 55, 56 and 57 of the determination and argued that Judge Horvath had carried out a full and proper balancing exercise of private and public interest in deciding the case. The conclusions reached were correct on facts and in law, said Ms Fujiwala. His consideration of the claim under Article 8 was also in accord with the facts and the relevant law. She asked that the decision of Judge Horvath be left undisturbed, as there was no material error of law in the determination.
8. Having given careful consideration to all the grounds in the context of the determination of Judge Horvath, and the arguments advanced before me, I agree with Ms Fujiwala that the determination of Judge Horvath does not disclose any error of law. I have paid particular attention to grounds 10, 14, 15 and 20 in the light of the decision of Deputy Judge who found that "there is *just* sufficient in the grounds to warrant a grant of permission." I am afraid, with great respect, I do not share that view. The grounds have no merit and are misconceived both collectively and otherwise. The contention that the best interests of the child have not been properly considered is obviously bereft of real foundation as can be seen from the relevant parts of the determination. The findings made by Judge Horvath are evidence based and properly reasoned. The Judge has applied the correct legal tests as set out in the relevant jurisprudence and the decision to dismiss the appeal is therefore sustained.

K Drabu CBE

Date: 21 August 2015

Deputy Judge of the Upper Tribunal