



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

Appeal Number: HU/03626/2016

THE IMMIGRATION ACTS

Heard at Field House

On 30th June 2017

**Decision &
Promulgated
On 11th July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**BABLU DEY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Basith (instructed by Taj Solicitors)

For the Respondent: Mr P Armstrong (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of the First-tier Tribunal, Judge Robson, promulgated on 28th November 2016 following a hearing in Bradford.

2. The Appellant is a citizen of India born in 1979. The case revolved around his application to remain in the United Kingdom with his wife who has a right of abode and their two children. The couple have lived apart for a significant number of years and the Appellant had visited his wife in the UK and his wife had visited him in India. On the final occasion however, he decided to stay and make an application to remain, realising that he could not meet the Immigration Rules because his wife was existing on benefits. It might be considered that this was a pretty hopeless case on the facts, and indeed the judge did dismiss the appeal. However, the judge did not give appropriate or adequate consideration to Article 8. There is no consideration of 276ADE. For some reason the judge found that the Appellant was in a genuine and subsisting relationship with his wife and considered that, but did not consider that he was in a genuine and subsisting relationship with the children, which clearly he is, and did not consider that and did not consider why EX.1. does not apply in relation to that. There is no consideration anywhere of where the best interests of the children lie, no balancing exercise at all and virtually no reference to Section 117 of the Immigration and Asylum Act 2002.
3. It is a wholly inadequate decision which cannot be defended and I therefore set it aside in its entirety. Both the representatives are of the view that considering it has to be heard afresh it should be remitted to the First-tier Tribunal. I agree, given that no findings are preserved that that is the appropriate step.

Notice of Decision

4. Therefore the appeal to the Upper Tribunal is allowed to the extent that the case is remitted to the First-tier Tribunal for a fresh hearing, the appropriate hearing centre being Bradford.
5. No anonymity direction having been requested nor appropriate, none is made.

Signed

Date 10th July 2017

Upper Tribunal Judge Martin