Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/01394/2018**

THE IMMIGRATION ACTS

Heard at Fox Court	**Decision & Reasons Promulgated**
On 13 December 2018	**On 11 December 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ROHIT AGGARWAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M A Hodgson (counsel) instructed by West Ham solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Solly promulgated on 23/07/2018, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 03/10/1986 and is a national of India. On 12/12/2017 the Secretary of State refused the Appellant's application for leave to remain in the UK.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Solly ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 16/10/2018 Judge Shimmin gave permission to appeal stating

> 1. The appellant seeks permission to appeal against the decision of First-tier Tribunal Judge Ms G C Solly promulgated on 23 July 2018, dismissing the appellant's appeal against the Secretary of State's decision to refuse leave to remain as a partner.
>
> 2. It is arguable that the Judge did not give consideration to the best interests and welfare of the child of the couple and this could amount to a material error of law.
>
> 3. It is arguable that the Judge failed to consider that the appellant's partner could not move to live with the appellant in India because he is an Indian national of Hindu religion and she is a Pakistani Muslim.
>
> 4. The appellant alleges that the Judge has not correctly assessed proportionality under article 8 but has not specified how the Judge has erred in this regard.
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> 5. Grounds for permission to appeal are required to *"identify the alleged error or errors of law in the decision"* (rule 33(5)(b), the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014) but in this case they do not do so with any clarity. It is the duty of the appellant to clearly state the grounds of appeal and I find, other than above, the appellant has failed to clearly detail his arguments.
>
> 6. I grant permission on the grounds identify at paragraphs 2 and 3 above.

The Hearing

5. (a) For the appellant, Ms Hodgson moved the grounds of appeal. She argued that the Judge failed to consider the best interests of the appellant's child and that the Judge failed to fully appreciate that the appellant's wife is a Pakistani Muslim who has been granted refugee status in the UK and cannot move to India.

(b) Ms Hodgson took me to [39] of the decision and told me that, there, the Judge's finds that the child will remain in custody of its parents if the appellant is removed. She told me that finding fails to take account of the child's best interests. She reminded me that the child is dependent on his mother, who has been granted refugee status. She drew an analogy between the family reunion policy contained in the immigration rules. She told me that the Judge had failed to consider Chikwamba (FC) v SSHD 2008 UKHL and failed to properly evaluate the ability of the appellant to make an application for entry clearance from India.

(c) Ms Hodgson to me to [37] of the decision and told me that the Judge has failed to take account of background materials. She referred me to EX.1 and Gen3.2 of the immigration rules. She urged me to set the decision aside

6. (a) For the respondent Mr Clarke lodged the Home Office country policy and information note – India: religious minorities, dated May 2018. He told me that the Judge sets out adequate reasons for his decision, and that consideration of the refugee family reunion policy is entirely irrelevant. He reminded me that the appellant's child is not a qualifying child. He told me that the Judge gave full consideration to risk on return. He dwelt on the statistical reports of religious violence in India, and reminded me that India has a population of 1.3 billion, calculating that the incidence of religiously motivated killings amount to 0.0023% of the population.

(b) Mr Clarke took me from [26] to [42] of the decision. He told me that the Judge applied the correct test in law and that the Judge's fact-finding exercise cannot be faulted. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. (a) The facts in this case are that the appellant entered the UK as a tier 4 student in May 2011. Leave was extended until May 2015, but curtailed from 1 August 2014. In June 2015 the appellant's partner was granted refugee status conferring leave to remain until 25 June 2020.

(b) On 12 October 2015 the appellant and his partner were married in an Islamic ceremony. The have been living together since June 2013. They have one child who was born in the UK in May 2016. The child is not a British citizen.

(c) The appellant is an Indian Hindu. His wife is a Pakistani Muslim who cannot return to Pakistan.

(d) In 2014 the appellant applied for leave to remain in the UK to complete his studies. The respondent refused that application in August 2014. The appellant appealed unsuccessfully. His appeal was dismissed in a decision

promulgated on 16 February 2016. His appeal rights were exhausted on 23 November 2016.

8. Between [6] and [11] of the decision the Judge takes correct guidance in law. At [11] of the decision the Judge specifically directs herself to the need to consider the best interests of the appellant's child.

9. Between [12] and [15] the Judge summarises the appellant's immigration history. Between [16] and [25] the Judge rehearses the evidence she heard. Between [26] and [50] the Judge sets out her findings of fact.

10. Between [33] and [36] the Judge correctly applies the Devaseelan principles when considering the appellant's claim that there are insurmountable obstacles to family life continuing outside the UK or that there are very significant obstacles to integration because of his interfaith, mixed race, marriage. At [37] the Judge bemoans the absence of directly relevant background material. At [39] the Judge "specifically considered" the interests of the appellant's child. The Judge's findings at [39] are consistent with what is said by Lord Carnwath at paragraph 18 of KO(Nigeria) v SSHD [2018] WLR 5273

> On the other hand, as the IDI guidance acknowledges, it seems to me inevitably relevant in both contexts to consider where the parents, apart from the relevant provision, are expected to be, since it will normally be reasonable for the child to be with them.

11. What the appellant cannot escape is that between [26] and [36] the Judge rejects the appellant's account (that he has come into conflict with his family of origin because of his marriage), and rejects the appellant's account that his wife cannot accompany him to India. The Judge gives clear reasons for her findings.

12. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

13. The Judge then goes on to consider article 8 ECHR grounds of appeal. After taking guidance in law she summarises her findings at [51] and [52].

14. A fair reading of the decision demonstrates that the Judge had the best interests of the child at the forefront of her mind and that the Judge considered whether or not it is possible for the appellant's wife to accompany him to India. The Judge gives clear reasons for her conclusions. The grounds of appeal are just a disagreement with the adequately reasoned conclusions reached by the Judge and an attempt to re-litigate a case which has been competently Judicially determined.

15. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as she found them to be. The appellant might not like the conclusion that the Judge arrived at, but that

conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

16. **The decision does not contain a material error of law. The Judge's decision stands.**

DECISION

17. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 23 July 2018, stands.

Signed Date 21 December 2018

Deputy Upper Tribunal Judge Doyle