



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000848

First-tier Tribunal Nos: HU/54638/2022
IA/06869/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE METZER

Between

Sohan Singh
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Chohan of Counsel, instructed by Temple Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 27 October 2023

DECISION AND REASONS

1. The appellant, a citizen of India, appeals against the decision of the respondent to refuse his application for leave to remain on human rights grounds, his appeal was heard in the First-tier Tribunal before First Tier Tribunal Judge Hanbury ("the FtT"). The decision was promulgated on 5 February 2022. The appellant has permission to appeal from that decision to the Upper Tribunal (Immigration and Asylum Chamber) by permission of Judge Barker, Judge of the First-tier Tribunal dated 22 March 2023.
2. There are various grounds of appeal submitted, for which permission was granted on all grounds. Judge Barker indicated there are two primary bases for which permission to appeal was granted although the others were also given permission. In my view, rightly he indicated that the other grounds beyond the

primary two grounds were less persuasive. In those circumstances again rightly in my judgment, Mr Chohan pursued only those two grounds.

3. Those two grounds can be neatly summarised as follows. First, that the FtT's findings were inadequate when considering the issue of whether there were insurmountable obstacles to the appellant's family life continuing from outside the UK and whether there was very significant obstacles to his reintegration to India. The question in the first ground was whether the FtT failed to make clear findings on the credibility of the appellant and sponsor and whether he properly considered the background material in support of these claims and if so, whether he provided adequate findings in relation to that.
4. The second main ground is whether the FtT failed to carry out a careful analysis of all the issues relevant to the required balancing exercise outside the Immigration Rules and in the assessment of proportionality.
5. Mr Parvar, on behalf of the respondent, having initially sought to make representations to support the findings of the FtT on reflection conceded there were errors of law contained within the decision. In those circumstances, I am able to deal with this matter shortly.
6. In the decision, the FtT made, I am sorry to record, numerous errors in relation to important aspects in the case. Those errors are primarily those contained at paragraph 30, in which he made reference to family life continuing in Nepal. It is unclear why Nepal has any relevance other than being where the sponsor, who is a British citizen, was of Nepalese heritage. I find every reference thereafter in the decision to have no relevance to the issues requiring determination. The FtT also made reference to the question as to whether there should have been an application to live in India as an engaged couple. They are not engaged. They may well have a plan to marry one day but they are a cohabiting couple. Although he did say in paragraph 30 "or otherwise", he then returned again to the issue of an impediment to an engaged couple in relation to living in India. Paragraph 30 therefore contained two significant factual errors which were conceded by Mr Parvar.
7. At paragraph 31, the FtT indicated he was not satisfied that the document pertaining to the High Court of Punjab and Haryana was indicative of widespread discrimination against cohabiting couples of mixed race and also indicated that the other documents did not satisfy him as to that question. It is unclear as to what, if any, relevance he considered in relation to that or any of the other documents and certainly there was no explanation as to why, essentially, he dismissed those documents from being at least of some relevance to the appeal. Again, in relation to paragraph 31 that amounts, in my judgment, to an error of law.
8. We then turn to the matters relating to the issue as to the basis of appeal outside the Immigration Rules. Again, the FtT fell into error in relation to reference to the extent of family support network in Nepal, which as I have already indicated was irrelevant. He compounded this error by making reference to "the respondent" having a strong family support network in Nepal. Clearly that was a typographical error and he should clearly have said the sponsor. Although the fact a sponsor having family support network in Nepal is in itself irrelevant, the reference to the "respondent" does suggest a lack of care in relation to the necessary preparation for this decision. The FtT further made

reference, at paragraph 39, to the support network in Nepal of the sponsor, but then indicated that the sponsor could remain in the UK whilst the appellant returned to Nepal. I do not understand that observation. There is no basis for which the appellant would be able to have permission to go to Nepal alone and it seems completely outside any sensible reading of what would be required for the sponsor to remain in the UK as a British citizen and the appellant to “return” to Nepal, where he is an Indian citizen. That amounts to a further error of law.

9. As was rightly conceded, in my judgment, these errors of law both individually and cumulatively are material to the decision.

Notice of Decision

10. In light of the material errors of law, the decision of the FtT cannot stand.

Disposal

11. On the basis of the material errors of law, the decision does not stand.
12. The appeal will now be remitted to the First-tier Tribunal *de novo* with no preserved findings of fact to be heard by any First-tier Tribunal, except FtT Judge Hanbury.

4 November 2023

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Anthony Metzger KC