



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

Appeal Number: IA/10406/2013

THE IMMIGRATION ACTS

Heard at Field House

On 15th November 2013

**Determination
Promulgated**

On 25th November 2013

Before

**UPPER TRIBUNAL JUDGE RENTON
(ANONYMITY DIRECTION NOT MADE)**

Between

RAJANIKANT SOMABHAI PATEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Jones, Counsel instructed by Chetty & Patel Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of India born on 2nd October 1951. The Appellant first arrived in the UK on 30th July 2006 when he was granted limited leave to enter as the spouse of a British citizen, the Sponsor Priyabara Patel. Thereafter he was granted successive periods of further

limited leave to remain on the same basis until 2nd September 2012. On 30th August 2012 the Appellant applied for further limited leave to remain as a spouse. Apparently he did not seek indefinite leave to remain because of his inability to provide an English Language Test Certificate sufficient to satisfy the Immigration Rules. The application was refused for the reasons given in the Notice of Decision dated 25th March 2013. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Sangha (the Judge) sitting at Birmingham on 4th September 2013. He decided to dismiss the appeal under the Immigration Rules but to allow it on human rights grounds for the reasons given in his Determination dated 16th September 2013. The Respondent sought leave to appeal that decision, and on 7th October 2013 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge allowed the appeal on human rights grounds because he found that the Appellant had a family life with his wife with whom he had cohabited since his arrival in the UK in July 2006. The Appellant's wife was a British citizen, and both she and the Appellant worked and were able to maintain and accommodate themselves without any recourse to public funds. The decision of the Respondent amounted to an interference with that family life of such gravity as to engage Article 8 rights, and was disproportionate. The only bar to the Appellant obtaining indefinite leave to remain was his inability to produce an English Language Test Certificate which met the requirements of the Immigration Rules. The Appellant had produced an English Language Test Certificate issued to the Appellant on 17th August 2013, but this was from a body not on the list of English language test providers.
4. At the hearing, Mr Saunders referred to the grounds of application and argued that the Judge had erred in law in coming to this conclusion. Mr Saunders informed me that he did not rely upon the argument made in paragraph 1 of ground 2, but otherwise submitted that the Judge had erred in law by attaching insufficient weight to the public interest in the balancing exercise as represented by the Immigration Rules. Further, the Judge had failed to explain why it was not possible for the Appellant and his wife to return to India together and continue their family life there. The Judge had given the wrong interpretation to the test of insurmountable obstacles given in the Immigration Rules.
5. In response, Mr Jones referred to his Rule 24 response and submitted that there was no such error of law in the Judge's decision. The Judge had found a genuine and subsisting relationship between the Appellant and his wife, and had taken into account all other pertinent factors including the time the Appellant had spent in the UK. The Appellant's wife was a British citizen originally from Kenya who had a large extended family in the UK and no family abroad. The Appellant satisfied all the relevant

requirements of Appendix FM of HC 395, including the financial test, except for the English language test. The Judge had given appropriate weight to all the relevant factors and had concluded that the Respondent's decision was disproportionate.

6. At the hearing I found no error of law in the Judge's decision so that it should be set aside. I now give my reasons for that decision.
7. I am satisfied that the Judge came to a conclusion which was open to him on the evidence before him. His explanation for his decision is adequate. The Judge demonstrated that he had carried out the balancing exercising necessary for any assessment of proportionality. The Judge was entitled to attach little weight to the public interest as the Appellant met all the requirements of Appendix FM relating to spouses except for that mentioned in paragraph E-ECPT.4.1(b). The Appellant's failure to satisfy the English language test was something of a technicality in that although he had provided an ESOL certificate showing his English language speaking and listening to be at a minimum of level A1 of the CEFR, this was not from a specified provider.
8. The Judge considered at paragraph 22 of the Determination the ability of the Appellant's wife to go to India and settle with the Appellant there. The Judge did not find this to be possible, and the reasons he gave for that decision are harmonious with the provisions of paragraph EX.1(b) of Appendix FM.
9. For these reasons, I find no error of law in the decision of the judge.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton

