



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

Appeal Number: OA/14409/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 August 2014

Determination

Promulgated

On 4 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**MR JIBIN PAULOSE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Heller of Counsel

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Although this is an appeal by the Secretary of State I have, for the sake of consistency, retained the original designations of appellant and respondent as in the First-tier Tribunal.
2. The respondent Secretary of State has appealed, with permission, against the decision of First-tier Tribunal Judge Owens who, in a determination promulgated on 1st May 2014, allowed the appellant's appeal against the

respondent's refusal to grant him entry clearance as the spouse of a British wife who is resident and settled in the UK. His wife, Mrs Leigh Samantha Warren is his sponsor.

3. The First-tier Tribunal Judge allowed the appeal both under the Immigration Rules and under Article 8 of the ECHR. In respect of the Rules, she found, firstly, that there were no aggravating features which entitled the respondent to refuse the application under paragraph 320(11) of the Immigration Rules. In that respect she applied the decision of the Upper Tribunal in **PS (paragraph 320(11) discretion: care needed) India [2010] UKUT 440** and found specifically, with reasons, that the respondent had failed to discharge the burden of proof in asserting that the appellant had used deception and that there were aggravating features. The judge also found that the sponsor, having submitted evidence of her employment and of her earnings met the minimum financial requirements as laid down in the Immigration Rules.
4. In relation to Article 8 and in finding that it would be disproportionate to refuse entry clearance, the judge at paragraph 44 of her determination said this:

“I find that it is not reasonable for family life to take place in India since the sponsor's British citizen 13 year old daughter is seriously disabled. She suffers from inter alia profound developmental delay, four limb motor disorder and seizure disorder. She requires extensive input from the NHS and an enormous amount of personal care which is provided by the sponsor who also to her credit works full-time as a manager in a care home. A substantial amount of documentation was provided in relation to the stepdaughter's health and care needs. I find that it would not be in the best interests for this British citizen child to relocate to India interrupting her medical treatment, care arrangements in the UK and her schooling. I find that her mother the sponsor is her main carer and that her natural father has nothing to do with her. I also accept the sponsor's evidence that the appellant assisted her with caring for her stepdaughter in particular helping her to move her as well as interacting with her. I also find that given that the sponsor is a British citizen, has lived her entire life in the UK, works full-time and has no connection with India apart from her husband that it would not be reasonable to expect her to relocate.”

5. It should also be stated that no issues arises as to the genuineness of this marriage. The genuineness of the marriage has been accepted by the respondent.
6. The grounds submitted by the respondent argue that paragraph 320(11) applies because the appellant, it was argued, had used deception in order to obtain employment in the UK. Having heard submissions from Mr Kandola on this point and having considered the very detailed reasons for rejecting the argument given by the First-tier Tribunal Judge, I am satisfied that there is no merit in the ground. I can identify no error of law by the First-tier Tribunal in her decision rejecting the argument that the appellant

should be precluded from entering the UK under paragraph 320(11). The judge correctly identified that the burden of proof in such a case was on the respondent and the judge's decision was plainly open to her on the evidence.

7. The second ground argues, simply, in relation to Article 8 that the judge did not consider Article 8 under the Rules but undertook a freestanding Article 8 assessment. It is fair to say that the judge could and should have dealt briefly with the requirements of the Rules under Article 8 before considering whether to proceed with an assessment of Article 8 outside the Rules. Whilst the judge would have been wise to have made reference to the Article 8 provisions of the Immigration Rules, it is clear from the facts of this case that the appellant could not meet them. The judge would then have had to show exceptional circumstances for considering Article 8 outside the Rules but, in my judgment, she has done so with great clarity. Her reference to the needs of the severely disabled daughter of the sponsor and her findings as to the role that the appellant plays in his stepdaughter's life are such that the judge would, in any event, have proceeded to consider the question of proportionality. If there was such an error of law in the determination it was not such that it was material or that the ultimate decision of the First-tier Tribunal would have been different.
8. At the hearing before me I heard submissions from Mr Kandola on behalf of the Secretary of State. In essence, he said no more than to repeat the matters set out in the grounds. Having read the entire file before commencement of the hearing, I did not call upon Ms Heller but indicated that I was satisfied that there was no material error of law in the First-tier Tribunal decision.
9. I indicated that I would give my reasons in a written determination and I have done so as set out above.

Decision

There was no error of law in the determination of the First-tier Tribunal in this case. The decision shall stand.

Deputy Upper Tribunal Judge David Taylor
3 September 2014