Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA178232015

THE IMMIGRATION ACTS

Heard at Bradford Phoenix House	**Decision & Reasons Promulgated**
On 6 June 2016	**On 9th June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MANOJ KUMAR
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mrs Peterson a Home Office Presenting Officer
For the Respondent: Mr Lynch of Counsel

DECISION AND REASONS

Background

1. For the sake of consistency with the First-tier Tribunal I shall hereinafter referred to the Secretary of State as the Respondent and Mr Kumar as the Appellant.

2. The Respondent refused the Appellant's application for leave to remain on 20 April 2015. His appeal was dismissed by First-tier Tribunal Judge Kelly ("the Judge") following a hearing on 23 October 2015.

The grant of permission

3. First-tier Tribunal Judge Ransley granted permission to appeal (15 April 2016) stating that it is arguable that:

   (1) the Judge erred in law by stating that the term partner is not defined in the Immigration Rules,
   (2) the Judge might have misconstrued the length of the cohabitation and might have failed to give cogent reasons for accepting the Appellant's evidence, and
   (3) failed to apply Agyarko v SSHD [2015] EWCA Civ 440.

Discussion

4. Mrs Peterson accepted that in finding that the couple had cohabited since September 2011 [21], it was immaterial whether the Judge was right or not regarding whether a partner was defined within the Immigration Rules. That was because even by the definition provided within appendix FM Gen 1.2 (iv) of the Immigration Rules the cohabitation period of 2 years was met as the application was not submitted until 11 August 2014 which was almost 3 years after the couple commenced cohabitation. Ground 1 was a complete red herring.

5. The Judge found [20] that the documentation clearly showed that the couple had cohabited since at least June 2013 [20] which [21/28] was well over 2 years before the date of hearing. He found [21] that they had absolutely no reason to give false testimony about the matter, they had on any view been cohabited more than 2 years at the date of the hearing of the appeal, and [22] because of the sponsor's unhesitating frankness in informing the Tribunal that her children had no contact with their father. These were findings the Judge was entitled to make on the evidence and the submission from the Respondent is nothing more than a disagreement with this. There is accordingly no merit in ground 2.

6. Regarding ground 3, the Judge did not identify Agyarko. He did identify the correct test within Ex (1) (a) (ii) of Appendix FM of the Immigration Rules as being one of reasonableness as explained in EV (Philippines) [2014] EWCA Civ 874. He was entitled to find that it was plainly unreasonable for the children of the Sponsor to follow the Appellant to India if their mother remained here.

7. He identified the correct test in relation to the Sponsor within Ex (1) (b) of Appendix FM of the Immigration Rules as to whether there were insurmountable obstacles or very serious hardship in her following the

Appellant to India. He identified [33] the factors as supporting that contention as being that she had never lived outside the United Kingdom, had never spoken to or met the Appellant's family, would be relocating to a country she had never previously visited, had no knowledge of the language customer or culture of India, would be leaving settled employment, would be isolated from everything she knew apart from the Appellant and her children, and would also have to cope with the inevitable tension that would arise in her relationship with her children resulting from their more rapid assimilation of Indian language and culture. The Judge was, in my judgement having considered those factors, entitled to be satisfied that there were very serious difficulties and a consequent level of hardship which amounted to an insurmountable obstacle to family life being enjoyed in India. I was therefore satisfied that ground 3 amounted to nothing more than a disagreement with the Judges factual analysis which on the evidence he was entitled to reach.

8. There was no material error of law. I do not set the decision aside.

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 of the First-tier Tribunal.

Signed:
Deputy Upper Tribunal Judge Saffer
7 June 2016