Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/37845/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 8th July 2016	**On 19th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAAZ UGHRADAR
(Anonymity Direction not made)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr T Gaisford (Counsel) Instructed by Farani Javed Taylor, solictiors

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. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Freer, promulgated on 20 May 2015

which allowed the Appellant's appeal under Article 8 of the European Convention on Human Rights.

Background

3. The Appellant was born in 1984 and is a national of India.

4. The appellant entered the UK on 25 May 2004 for a family visit. He has remained in the UK since then. On both 27 October 2010 and 5 April 2012 the appellant applied for leave to remain in the UK. Both applications were refused by the respondent. On 22 January 2014 the respondent served form ISI 151A on the appellant.

5. On 15 September 2014 the respondent refused the appellant's renewed claim for leave to remain in the UK on article 8 ECHR grounds, focusing on paragraph 276ADE(1)(vi) of the rules.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Freer ("the Judge") allowed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 23 May 2016 Judge Shimmin gave permission to appeal stating inter alia

> 6. It is arguable that the judge has misapplied the burden of proof, particularly at paragraph 53.
>
> 7. It is arguable that the judge has made an error of law in the approach to paragraph 276ADE(1)(vi) in respect of the very significant obstacles the appellant might encounter on return to India.
>
> 8. I grant permission on the above grounds.

The Hearing

7. (a) Mr Walker moved the grounds of appeal for the respondent. There are two grounds of appeal; the first is that at [53] of the decision the Judge reversed the burden of proof. It is argued that it is for the appellant to establish that there are very significant obstacles to his reintegration in Indian society before he can benefit from section 276 ADE(1)(vi) of the immigration rules

(b) The second ground of appeal is that at [54] the Judge sets out the factors which he finds amount to very significant obstacles. It is argued that the Judge takes too narrow a view of the medical evidence and, in effect, strays into a comparison of medical treatments available in India with those available in the UK.

(c) Mr Walker told me that the decision contains material errors of law because an incorrect approach is taken to paragraph 276 ADE(1)(vi) of the rules. He urged me to set the decision aside.

8. (a) Mr Gaisford, counsel for the appellant, told me that the decision does not contain any errors of law, material or otherwise. He adopted the terms of appellant's rule 24 response. He then took me to [53] of the decision and told me that the Judge has not reversed the burden of proof there, instead (at [53]) the Judge levels the criticism at the respondent's reasons for refusal letter. He urged me not to look at [53] in isolation, but to consider the entire decision as a whole.

(b) Mr Gaisford told me that the Judge manifestly applied the correct test in considering paragraph 276 ADE(1)(vi) of the rules. He told me that at [50] the Judge sets out clear findings to support his conclusion that there are very significant obstacles to reintegration into Indian society. He took me to [46] of the decision, where the Judge clearly understands this case does not proceed on an argument that the appellant's medical conditions engage the 1950 convention. He told me that the Judge's fact finding is beyond criticism & that the Judge clearly directed himself correctly in law.

(c) Mr Gaisford referred to the bundle of evidence produced for this hearing, and relied on the respondent's own guidance. He then asked me to dismiss the appeal and allow the Judge's decision to stand.

Analysis

9. Although the Judge litters the decision references to articles 3, 5 & 8 of the 1950 convention, the Judge's unambiguous decision is that the appellant succeeds under the immigration rules. A fair reading the decision makes it clear that the Judge sets to one side consideration of the 1950 convention out-with the immigration rules, and reminds himself that a comparison of available medical treatment is an irrelevant consideration.

10. At [14] the Judge clearly states "*the burden of proof is on the appellant…".* The Judge then goes on to set out the respondent's decision, and the appellant's position at appeal, before setting out his findings of fact between [36] and [59]. It is clear that the Judge's findings are based on the evidence placed before him. At [53] the Judge is perhaps unnecessarily critical of the logic employed in the reasons for refusal letter, but that criticism does not amount to a reversal of the burden of proof. At [50] the judge makes 11 separate findings of fact drawn from the evidence placed before him.

11. A fair reading of the decision makes it clear that having correctly reminded himself of the burden of proof the Judge makes evidence-based findings of fact which direct him to his conclusion. The respondent has

taken [53] out of context, and perhaps even misinterpreted what is said there. The Judge manifestly applies the correct burden of proof.

12. The second ground of appeal is that the Judge's approach to the "very significant obstacles" test amounts to a misdirection in law. There is no merit in that ground of appeal. At [50] the Judge makes clear findings of fact before concluding that those evidence-based findings, when taken cumulatively, create very significant obstacles to reintegration into Indian society.

13. That is a conclusion which was open to the Judge on the basis of the evidence placed before him & on the facts as he found them to be. In this case there is no criticism of the Judge's fact-finding exercise. In reality the criticism the respondent brings amounts to an attack on what the Judge does with the facts as he found them to be. It is manifestly clear from the decision that the Judge takes correct guidance in law before reaching a conclusion which was well within the range of reasonable conclusions open to the Judge.

14. 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.

15. There is no flaw in the Judge's fact finding. The correct test in law is applied. The conclusion which he reached is well within the range of conclusions reasonably open to the Judge. In reality, the respondent's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. There is nothing wrong with the Judge's fact finding exercise. The correct test in law has been applied. The decision does not contain a material error of law.

16. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

17. No errors of law have been established. The Judge's decision stands.

DECISION

18. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed Date 14 July 2016

Deputy Upper Tribunal Judge Doyle