Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21297/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th September 2017	**On 27th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR AMANPREET SINGH
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Proudman, Counsel instructed by Sriharans Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India whose appeal was dismissed by First-tier Tribunal Judge Herlihy in a decision promulgated on 7th January 2017.

2. Grounds of application were lodged. In terms of ground 1 it was said that the judge had failed to consider whether the appellant's wife and daughter's Article 8 rights would be engaged if the appellant was returned to India. She did not mention the Article 8 rights of the appellant's wife and the appellant's stepdaughter, both of whom are British nationals. The judge's error in law reflected an earlier observation of Charles George QC sitting as a Deputy High Court Judge on 27th November 2013 in a judicial review application where the effects on her Article 8 rights seemed to have been "completely ignored".

3. This was in the context that the appellant was his wife's chief carer as found by the judge. The grounds make reference to well-known case law.

4. The second ground was that the judge was irrational in concluding that there were not insurmountable obstacles to the appellant continuing his marriage in India because his wife could relocate and the family in India could support the reintegration. There was extensive medical evidence before the judge which set out the wife's severe medical health problems. The judge had concluded that the appellant's wife could receive medical support in India with no evidential basis. The judge had said that the appellant had submitted no evidence that medical treatment for his wife would be unavailable in India and it was clear that the appellant and his wife would be able to rely upon support from the appellant's family, but no evidence was given that the appellant's family would be in a position to support the severe health needs of the appellant's wife. It was said that the judge had made a sweeping assumption without any evidence. The judge had failed to consider whether the appellant's wife relocating to India would constitute an interference with her Article 8 rights, particularly as a British citizen. In the light of these failures it was said that the decision should be set aside in its entirety.

5. Permission to appeal was granted and thus the matter came before me on the above date.

6. For the Appellant Ms Proudman relied on her grounds. The judge needed to spell out that in Article 8 terms she was taking the Article 8 rights of the appellant's wife into account, and not having said that was a fatal error to the findings. As such the appeal should be remitted back to the First-tier Tribunal for a fresh hearing.

7. In terms of paragraph 42 of the decision the judge had been wrong to conclude that physical care would be provided by the NHS. There was no evidence for that. It was clear the judge accepted that she would lose his emotional support which his physical presence provided. The loss of emotional support to the appellant's wife had not been considered by the judge.

8. In response to observations from Mr Clarke, Ms Proudman repeated that it was fatal to the decision not to consider the Article 8 rights of the appellant's wife. She required daily care. It was unclear whether there

was medical treatment available for her in India. There was a material error of law in the decision and thus the matter should be remitted to the First-tier Tribunal.

9. For the Secretary of State Mr Clarke said that there were no errors in the decision. There were no insurmountable obstacles to family life continuing in India and reference was made to **Agyarko v SSHD [2017] UKSC 11** and in particular to paragraph 68 where it was said that the entitlement conferred under Section 1(1) of the 1971 Act for a British citizen to live in the United Kingdom did not entitle a British citizen to insist that their non-national partner should be entitled to live here. The judge had given reasons why the relationship should continue in India. It was noted that the appellant's wife had spent her formative life there where she grew up and was educated. She had not come to the United Kingdom until she was aged 21. The judge had explained why there would not be very significant obstacles to their integration in India where he would have the support of his parents and wider family. On all the evidence presented to the judge that was a reasonable finding to make.

10. In terms of the family situation the judge had dealt very thoroughly with that. The burden was on the appellant to show that there were insurmountable obstacles to integration in India and that had not been established. The judge was also entitled to find, as she did, that the appellant could make an application for entry clearance to the United Kingdom. There were no errors in the decision which should stand.

11. I reserved my decision.

Conclusions

12. The judge did not dispute that the appellant and his wife were living together in a genuine and subsisting relationship (paragraph 35). It was not disputed that the appellant's wife was a British citizen, although she was born in India and came to the UK as an adult.

13. The judge set out, in considerable detail, the appellant's wife's medical condition. She noted that there was no evidence as to the long-term prognosis for her (paragraph 39) noting that she had said in evidence that she was hopeful that once she got her full mobility back she would be able to return to work. The judge also noted that the appellant's daughter indicated her mother may have been over-optimistic and that her mother would need time to recover. In paragraph 40 the judge noted the medical evidence. The judge said that the appellant's wife had shown she was someone who had overcome the loss of her first husband, her illness due to her HIV status and had made a good recovery and had been able to work full-time until about Easter this year. The judge went on to make findings about the appellant's stepdaughter and those findings are not the subject of challenge.

14. The judge went on to say that if the appellant returned to India "no doubt additional physical care would be provided by the NHS to the appellant's wife" (paragraph 42) and this statement was challenged by Ms Proudman as going too far and a matter on which no evidence had been presented to the judge. In my view it is within judicial knowledge that when physical care is shown to be required the NHS will do their best to provide it. The judge's statement that additional physical care would be provided by the NHS is, in my view, not an issue which is capable of any genuine challenge. The judge went on to note that the appellant was in very regular contact with his own family who continue to live in India. He had carried out visits there and the appellant spoke Punjabi and went on to give reasons why there would not be any significant obstacles to their integration in India as he would have the support of his parents and wider family. On the evidence presented to the judge this was a reasonable conclusion to make. The judge was therefore finding that the appellant did not satisfy the Immigration Rules. Clearly the Rules provide a very stringent test for what is very significant obstacles and the judge was finding on the evidence presented to her that those criteria had not been met. In my view there is nothing difficult or challengeable about those findings and no error in law arises.

15. The second ground of appeal really is that, and this was heavily relied on by Ms Proudman, the judge had failed to deal adequately with the Article 8 rights of the appellant's wife. However, what could not really be challenged is what the judge says in paragraph 44, namely that the appellant's wife's evidence was that she hoped to make a full recovery and return to work. She could not presently fly but there was no medical evidence to support the claim, and as the judge noted it was open to the appellant's wife to remain in the United Kingdom while her recovery continues and join the appellant subsequently. Given what the appellant's wife said about her own recovery and absent medical evidence that she would not be likely to recover, this was a finding that was open to the judge on the evidence presented to her.

16. The judge went on to consider paragraph 117B of the 2002 Act. She found that the appellant's presence in the United Kingdom had always been precarious and that he had no legitimate expectation of being allowed to remain and integrate (paragraph 47). His history in terms of immigration was poor and he had remained without leave since 2002, having entered illegally. At the time he and his wife commenced the relationship and ultimately married they knew that they had no expectation of being allowed to remain and continue their relationship unless they could comply with the requirements of the Immigration Rules. The judge was clearly entitled to make these observations having regard to the appellant's poor immigration history. The grounds take no issue with these findings.

17. The main complaint by Ms Proudman is that the judge did not specifically say in terms that she was considering the Article 8 rights of the appellant's wife. The argument for the appellant is that this is a fatal error and without such a statement the decision cannot stand. I disagree. The issue

is one of substance not form. It was quite clear that the judge was considering both the rights of the appellant and the rights of the appellant's wife in the lengthy decision which runs to some twelve pages. The judge spent much time considering the wife's medical position and whether or not she could integrate into life back in India where she had lived for the first 21 years of her life. The judge was correct to say that no medical evidence had been presented to her that medical treatment for the appellant's wife would be unavailable in India and it was a fair inference to conclude that there would be support from the appellant's family. The judge went on to make the observation that she could join him either permanently or for a brief period while he made an application for entry clearance to return to the United Kingdom. The judge went on to repeat that he was satisfied the appellant's wife could rely upon increased care from the NHS in the absence of the appellant and rely on emotional support from her daughter if she elected not to join him.

18. The judge was therefore, in my view, taking into account the appellant's wife's rights under Article 8 and this can be inferred from all the findings made by the judge. In my view her conclusions cannot be said to be perverse or irrational in deciding that under Article 8 the appeal should not succeed and that it was proportionate for the appeal to be dismissed.

19. It therefore seems to me that there is no material error of law in the decision and as such the decision must stand.

Notice of Decision

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

21. I do not set aside the decision.

22. No anonymity order is made.

Signed *J Macdonald* Date 26th September 2017

Deputy Upper Tribunal Judge J G Macdonald

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *J Macdonald* Date 26th September 2017

Deputy Upper Tribunal Judge J G Macdonald