



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

Appeal Number: IA/24228/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke on Trent
On 5 June 2017**

**Decision Promulgated
On 12 June 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

**Surjit Singh
[No anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr M Nadeem, instructed by City Immigration Law Ltd
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Surjit Singh, date of birth 11.4.88, is a citizen of India.
2. This is his appeal against the decision of First-tier Tribunal Judge Swinnerton promulgated 9.11.16, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 15.5.15, to refuse his application made for LTR as the partner of a person settled in the UK.
3. The Judge heard the appeal on 26.10.16.
4. First-tier Tribunal Judge Campbell granted permission to appeal on 5.4.17.

5. Thus the matter came before me on 5.6.17 as an appeal in the Upper Tribunal.

Error of Law

6. For the reasons summarised below, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Swinnerton to be set aside.
7. The appellant entered the UK in 2010 as a Tier 4 student migrant with leave until 31.7.14. However, that leave was subsequently curtailed to 27.8.12.
8. He applied for LTR as the partner of Ranjeet Kaur. As the length relationship did not meet the eligibility requirements of 2 years, the appellant could not qualify under Appendix FM. The application was also refused under paragraph 276ADE, on the basis that there were no very significant obstacles to his integration in India.
9. The Secretary of State took into account that the appellant's partner has a child from a previous relationship, then aged 8, who is an Indian citizen with ILR, but the appellant does not meet the definition of parent within the Rules.
10. The grounds of appeal complain that the First-tier Tribunal Judge erred in failing to assess the position as at the date of the hearing. It was submitted that had this been done, it would have been found that by then the relationship has lasted for more than 2 years. However, as Judge Campbell noted, there was little merit in this ground as by the Rules the judge was required to assess the relationship as at the date of application.
11. The grounds also contend that the First-tier Tribunal Judge failed to apply s117B(6) of the 2002 Act, which provides that the public interest does not require the removal of a person with a genuine and subsisting parental relationship with a qualifying child, where it would not be reasonable to expect that child to leave the UK. Judge Campbell considered it arguable that the judge erred in this respect, as there were no clear findings as to whether the child would be a qualifying child, or whether the appellant had a genuine parental relationship with her, or any consideration of reasonableness of expecting the child to leave the UK.
12. The Rule 24 reply, dated 20.4.17, submits that the onus was on the appellant to show that 117B(6) was met, but it does not appear to have been pursued at the First-tier Tribunal appeal. There is nothing to suggest that the child is a qualifying child. On the partner's immigration history and status, it would be difficult to see how any different outcome could have been reached.
13. At the hearing before me, Mr Nadeem accepted that consideration of the relationship with the partner had to be made as at the date of application.

14. However, whilst it was not raised with the Tribunal at the First-tier Tribunal appeal hearing, Mr Nadeem submitted that the child is a qualifying child as she is a British citizen.
15. I was informed that the child was born in India in 2008 and came to the UK in 2012. She has not been in the UK for a period of 7 years. Mr McVeety accepted that the child has ILR, but this is not settled status in the UK. It was not accepted that the child is a British citizen and no evidence to prove that assertion was submitted to the Tribunal. Mr McVeety pointed out that it would be peculiar for the child to be granted ILR if a British citizen, as a British citizen does not require leave to remain.
16. None of this was raised with the First-tier Tribunal and even now there is no evidence to demonstrate that the child is a qualifying child under 117B(6).
17. In the circumstances, there was no error of law in the alleged failure of the First-tier Tribunal to consider 117B(6) outside the Rules. The outcome of the appeal was inevitably a dismissal.

Conclusions:

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

28 July 2017

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.

A handwritten signature in black ink, appearing to read 'James', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

28 July 2017