



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

Appeal Number: HU/06251/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 April 2018**

**Decision &
Promulgated
On 20 April 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**BHAJAN SINGH
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bukhari a Solicitor

For the Respondent: Miss Z Ahmed a Home Office Presenting Officer

DECISION AND REASONS

1. The brevity of this decision is due to the commendable focus of the Representatives and narrowness of the issue. It is not necessary to go into the detail of the case. In summary it concerned an elderly man with “ailments of age” who had family here and said he had no family or adequate support available to him should he have to return to India, such that there were very significant obstacles to him doing so.

Background

2. The Respondent refused the Appellant's application for leave to remain on 19 February 2016. His appeal against this was dismissed by First-tier Tribunal Judge Obhi ("the Judge") following a hearing on 13 October 2017.

The grant of permission

3. Upper Tribunal Judge Lindsley granted permission to appeal (16 January 2018) as it is arguable that the Judge materially erred in;
 - (1) Misrepresenting the Appellant's daughter's evidence regarding when the family decided he should stay here,
 - (2) Speculating as to the support he would have from the community and extended family in India,
 - (3) Failing to consider evidence of his deteriorating health,
 - (4) Failing to consider evidence of him having a safer quality of life here, and accordingly
 - (5) Failing to adequately assess issues of insurmountable or very significant obstacles on return, the proportionality of removal, and whether he qualified under [276ADE (1) (vi)] of the Immigration Rules.

Respondent's position

4. No rule 24 notice was filed.
5. Miss Z Ahmed conceded (after at her request I read out the oral evidence of the Appellant's daughter that it was not the intention he should remain here when he applied to come) that ground 1 was made out. However, it was not material to the decision.
6. She also conceded that she had difficulties regarding ground 2 where the Judge stated at [27]

"I also know from my experience of dealing with cases of this type that village life in India is based around community and that members of the community rally round and assist older people - particularly those who are left on their own if indeed the appellant is left alone as he claims."
7. This was plainly speculation and had not been put to the Appellant or his daughter for their comments.
8. She also conceded that she had difficulties regarding ground 3 as there was evidence of deteriorating health after he arrived here which fed into the issue of his safety on return in ground 4.

Discussion

9. Given the concessions made by the Respondent, and having considered it myself, I am satisfied that a material error of law occurred with regards grounds 2, 3, and 4 as referred to above. They go to the heart of the assessment of the difficulties the Appellant may have on his return to India in ground 5, and it cannot be said that a different Judge would inevitably reach the same conclusion as did Judge Obhi.
10. I do not accept the error in ground 1 materially affects the decision.
11. Given these findings, I am also satisfied having heard from the representatives that it is appropriate to remit the matter for a new hearing, as the errors of fact and speculation, go beyond those contained within the Presidential Guidance for retention in the Upper Tribunal.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a new hearing with no findings being preserved, but not before Judge Obhi.

Deputy Upper Tribunal Judge Saffier
19 April 2018

