



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

Appeal Number: HU/09728/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22 March 2019
Judgment given orally**

**Decision & Reasons Promulgated
On 10 April 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SARITHA RAMANCHA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer

For the Respondent: Mr Y Din, counsel instructed by Charles Simmons
Immigration Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Cockrill promulgated on 19 July 2018. The Honourable Lady Rae, sitting as a Judge of the Upper Tribunal, in a panel on 2 October 2018 gave her reasons why the decision of the First-tier Tribunal was not sustainable, having regard to the issues at stake which are fully set out in that decision annexed to this.

2. The re-making of the decision in the Upper Tribunal was deferred pending the outcome of the decision by the Supreme Court *in KO (Nigeria) v Secretary of State for the Home Department UKSC 2016/0107*.
3. The respondent relies on an expert report by a Mr Puri who describes himself as an Advocate in the Indian Judicial System at Chandigarh. The report addresses the difficulties which it is contended the respondent's husband would face were he to accompany her to India. The production of that report however is predicated on this case falling for consideration under paragraph 399 of the Immigration Rules by reference to the relationship. Para 399 provides:

'399 (b) The person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

- (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
- (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
- (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.'

(My emphasis)

4. The difficulty arises in that it is accepted the respondent married in India after she returned there in November 2011. The First-tier Tribunal Judge observed at paragraph 6 of his decision, and I quote:

"The Appellant returned to India in November 2011 with some fifteen months left on the visa which she had gained improperly. Her marriage to the husband Mr Srinath Reddy Bejjenki, was an arranged one. As will be plain from what occurred subsequently, the couple have an extremely strong and loving relationship."

5. The question therefore is the location where that relationship was formed. That enquiry had not been raised previously and will require evidence. In the light of Mr Bejjenki's evidence that he has been in the United Kingdom since 2004 this may be an important matter because if the respondent is unable to come within the exception in paragraph 399, the closing provision of paragraph 338 will apply which is in the following terms:

'The Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and if it does not the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.'

6. This will require consideration not only of the conclusions of the Supreme Court in *KO (Nigeria)* as to the test for “unduly harsh” but also consideration of the approach to the elevated threshold described in *NA (Pakistan)*.
7. As the nature of the case has changed the parties are in agreement that in the light of the substantial further fact-finding that is required, in accordance with the combined Practice Statement this case is remitted with the consent of the parties to the First-tier Tribunal for its further consideration by a differently constituted panel.

Signed

Dated: 8 April 2019

UTJ Dawson
Upper Tribunal Judge Dawson