



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

Appeal Numbers: HU/13551/2016
HU/13552/2016
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THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 31 October 2018

**Decision & Reasons
Promulgated
On 16 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

Secretary of State for the Home Department

Appellant

And

**HARINDER [S]
DHARMINDER [K]
[A S]
(ANONYMITY DIRECTION NOT MADE)**

Claimants

Representation:

For the Claimants: Mr M Brooks, counsel, instructed by Super
Immigration Service Limited
For the Secretary of State: Mr D Mills, Senior Presenting Officer

DECISION AND REASONS

1. The Claimants, nationals of India, made applications in April 2015 and appealed against the refusal of those applications for leave to remain

based around human rights based grounds on 3 August 2015. Their appeals against that decision came before the First-tier Tribunal on 4 July 2017 in which their appeals were allowed by First-tier Tribunal Judge S D Lloyd (the Judge). Permission to appeal those decisions was given by the Upper Tribunal on 30 April 2018.

2. The basis on which Upper Tribunal Judge Rimington gave permission was that all the grounds were arguable and as she put it:

“The Judge appears at [38] to find that the threshold of Articles 2 and 3 are not reached but allows the appeal on Article 8 grounds because of the problems with inter-caste marriages in India. There would appear to be an equation of very significant obstacles with ‘societal issues’ and discrimination and lack of family support, but there is no consideration of the ability to relocate or any available health provision in India for the husband’s mental health condition. As part of that assessment the Judge also factors in the child, as apparently having resided in the UK for seven years. This contradicts the finding at [19].”

3. The realities of the grounds are slightly different because they are, it seemed to me likely, drafted carefully but really derive from an interpretation of the decision itself rather than from any access to the information that had been pressed on the Judge for and on behalf of the Claimants. Thus as Mr Mills correctly, it seemed to me, accepted and identified, the issue of whether or not the child was 7 years of age and had been in the United Kingdom for that period of time was simply not in consideration because in any event, as acknowledged, the child was only 3 but more importantly the Judge accepted that the child had been born in the UK at a time when he could not have acquired seven years let alone any greater consideration under Section 117B(6) of the NIAA 2002 as amended. Similarly the issue of the first Claimant’s mental health was really of nothing to the matter because the case was not being run on the basis that his mental health was a justification for not removing him back to India but rather that that was a factor which had come about through the later circumstances and certainly would not get any better as a result

of a return to India. Ultimately therefore it did not seem to me the Judge was ever trying to justify the issue of return of the Claimants by reference to Articles 3 and 8 on the grounds of health.

4. The principal ground of challenge really was the first one in the grounds which essentially asserted that the Judge in considering this matter simply failed to address the possibility that the Claimants could relocate elsewhere in India where the impact of societal discrimination, ostracism and the like arising from their inter-caste marriage: She being a Jat (higher caste) and he being a untouchable (lowest caste), was simply not engaged with by the evidence before the Judge.

5. The fact is, as the Secretary of State no doubt rightly pointed out, India has a population of over 1.2 billion individuals. As Mr Mills helpfully put it, there was no evidence to show that there was no place, no village, no town, no city in the whole of India given the population where someone would not encounter the problems of societal discrimination arising from an inter-caste marriage and with the drawbacks it might give in terms of preventing employment and so forth. With him I agree on that point but it did not seem to me that was the issue. In terms of proportionality, as reflected through the prism of the Rules, the Secretary of State had identified that there need to be, albeit it is put in different ways in different parts of the Rules, significant obstacles to a return and an integration into India. The issue is not that there is absolutely nowhere in the country that a person could not live and/or a period of time do so without any adverse attention arising or enquiries into his or her background and caste. The problems of associating not least with persons who are still, despite the legislation, regarded by many as untouchable and treated accordingly. It therefore seemed to me that consideration that the Judge was having to address with reference to Article 8 ECHR and the provisions under the Rules are somewhat different from the somewhat absolutist position that the Secretary of State chose to take in terms of the availability of somewhere to go and live.

6. Having considered the bundle and the skeleton argument and the issues raised before the Judge insofar as I can, it did not appear to me that the issue of internal relocation was actually particularly pressed by the Secretary of State. Nor was there any evidence before me as to whether or not the issue was even raised and challenged in the conduct of the hearing before the Judge. Be that as it may what the Judge did have, for good or ill, was both adult Appellants' evidence as to the fact of their marriage, the significance of caste generally and both of them described to the Judge their belief that simply wherever they went the issue of their castes would be discovered, it would be effectively revealed, they would face the discrimination, stigma so associated with it and it would have the effect of forcing them to be "outcasts".
7. It was clearly said to the Judge by the Claimants that societal opposition to inter-caste marriages was nationwide and its consequences would be inescapable wherever they went in India.
8. At worst the Claimants said they were in fear of their lives but also of the difficulties that there would be in employment and making a life for themselves. It is fair to note that the Judge did not make adverse credibility findings on the Claimants' claims and the Judge expressed himself, as I have been taken, in his decision in a number of places in generally favourable terms to the basis of their claims and fears. It was clear that from D26 to D31, combined with some background evidence on social ostracism, the human rights material which I take to be background material and some newspaper article or reports, that the Judge was alive to such material. There also was, particularly the Human Rights Watch material, as to the consequences of inter-caste marriages, how difficult life may become not just within villages but generally. It was fair to say, within villages the discovery of relationships and their caste basis would be more readily discernible but there was no evidence provided to the Judge on that issue. I was therefore satisfied that the Judge had before

him evidence, he had some background evidence, and he was able to form a view about the risks of discrimination and exclusion.

9. Whilst I might not have reached the same decision as the Judge that is not the basis on which an error of law is established. It seemed to me [D42] the Judge, albeit fairly tersely, succinctly set out why he thought there would be risks to the Claimants in terms of the life they could have and why those amounted to difficulties in return and integration in India.
10. For those reasons he therefore applied his findings to the wider issues of Article 8 ECHR in terms of the impact on their family and private life and took the view, as he was entitled to, that the effects of the Secretary of States' decisions were not proportionate. He therefore allowed the appeals under Article 8 ECHR. Whilst I might not have reached that same conclusion by any means it did not seem to me that my doubts about the decisions when I did not hear the evidence or the opportunity to assess the arguments in the light of the evidence, it would be wrong for me to interfere in the decisions. More importantly it did not seem to me that it necessarily followed in all likelihood that a different Tribunal hearing the same evidence and receiving the same documentation would have reached a different conclusion come what may.
11. For those reasons, I conclude that the Secretary of State's challenge to the decisions of the First-tier Tribunal Judge fails. The Secretary of State's appeal is dismissed. The Original Tribunal's decisions allowing the appeals on Article 8 ECHR grounds stand.

ANONYMITY

No anonymity order was made and none is sought.

Signed

Date 4 January 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The Original Tribunal's fee award stands.

Signed

Date 4 January 2019

Deputy Upper Tribunal Judge Davey

P.S. The delay in promulgation has been caused by the case file being miss-located