Upper Tribunal
(Immigration and Asylum Chamber) HU/14345/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 1 March 2019

Decision & Reasons Promulgated
On 6 March 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

LABH SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision promulgated on 18 September 2018, FtT Judge MacKenzie dismissed the appellant's appeal against refusal of his application for leave to remain in the UK on family and private life grounds.

2. The grounds of appeal are:

> 1 - error when assessing insurmountable obstacles:
>
> The FtT erred … at [42] … the finding that the appellant's wife would not face very significant difficulty is not adequately supported … the country information demonstrated there would be very significant difficulties in

terms of violence, harassment and discrimination faced by women in India … the appellant is prejudiced as he does not know why the FtT reached such a finding.

2 - errors in assessing proportionality:

(i) the FtT erred at [52-53] by failing to recognize that insurmountable obstacles is a test under the immigration rules but only a factor when assessing proportionality … and that simply because it has found … no insurmountable obstacles that is not determinative of the proportionality assessment … the FtT failed to step back and consider whether the decision is nevertheless disproportionate where the appellant's wife will be separated from her family; the parties have accommodation; the appellant's wife is suffering from mental health issues; the prognosis is that her mental health will deteriorate if she has to move to India (notwithstanding it was accepted there were facilities for her to be treated); she has limited ties with India; and the country conditions she would face …;

(ii) the FtT erred … at [48] and [52] by failing to recognize that although little weight can be given to the appellant's family life, that can be overridden where there is a sufficiently strong case …;

(iii) the FtT erred … at [51] as there was no evidence … that the appellant was a burden on the state.

3. Mr Winter submitted further to ground 1 along those lines. There had been a previous tribunal decision adverse to the appellant. However, the principal matter on which he later relied was the fragile state of his wife's mental and emotional health, the couple's child having died shortly after birth. This occurred after the previous proceedings. Her distress was spoken to by her mother and sister and was the subject of reports from a psychologist and a psychiatrist. The references provided in ground 1 showed the difficulties and discrimination faced by women in India. There was a lacuna at [42] of the decision, which stated a conclusion but no reasons. The decision also paid inadequate regard to the evidence of the potential impact of moving to India on the sponsor's mental health, in the context of her relative unfamiliarity with India and her extensive reliance on family support in the UK. The FtT had not grappled with the impact of separating the sponsor from her family and requiring her to move to a new environment.

4. Turning to ground 2, Mr Winter said that even if the case did not reach the insurmountable obstacles test, there were additional matters relevant to proportionality, outside the rules. He referred to the respondent's delay in removing the appellant.

5. Mr Govan submitted that general discrimination against women in India had not been the focus of the appeal in the FtT and was not highly relevant in a human rights case. Gender violence might be a significant problem, but there was nothing to suggest that the appellant was likely to become a victim. The judge referred to the previous tribunal decision, and took the matter for her consideration as the change of circumstances. That was the correct focus, and everything relevant was taken into account, including the mental health diagnosis. The judge noted the

appellant's family support, but also that by the date of the hearing there had been a degree of improvement in her mental health. Treatment was not ongoing, and it was acknowledged for the appellant that medical treatment (although not direct family support) would be available in India. Ground 1 disclosed no error.

6. I did not need to hear from the respondent on ground 2.

7. In reply, Mr Winter said that the country information was relevant to the human rights grounds in this case; although the judge referred to that information, she failed to explain what she made of it; and on the principal issue, which was the separation of the appellant from her family and her environment, the decision was unreasoned.

8. I reserved my decision.

9. The general difficulties for women in India which were in evidence were not difficulties which were likely to be acute for the appellant, as an educated woman relocating there with her husband. There is no deficiency in [42], which makes it clear to the appellant why the judge resolved that point as she did.

10. There were difficulties in the way of the sponsor relocating to India, but those were recognised by the judge at [39] in terms of her mental health, at [40] in terms of her close relationship with her mother and three sisters in the Glasgow area, and at [41] in terms of inconvenience and a period of adjustment. Rather than showing that the judge failed to deal with such matters, the appellant's complaint is that they did not yield a different result. The sponsor has had a hard time in recent years, and it is understandable that she does not wish to move to India. The difficulties in her way might be termed significant. The judge concluded at [41] and [43] that they were not "very significant difficulties that could not be overcome or that would involve very serious hardship". That conclusion was open to her, and it has not been shown that the reaching of it involved the making of any error on a point of law.

11. There was nothing in the case by which it might have succeeded, other than by showing insurmountable obstacles. Ground 2 (i) repeats matters relevant to that issue, and (ii) and (iii) are not matters which might come close to tipping the balance. Mr Winter founded also on delay, but there has been no delay by the respondent which might contribute to the appellant having a right to remain. He entered and remained unlawfully, has never established a right to be here, and his immigration history (although not among the worst) is poor.

12. The decision of the First-tier Tribunal shall stand.

13. No anonymity direction has been requested or made.

5 March 2019
UT Judge Macleman