Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/33148/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 September 2019	**On 2 October 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR BHAVESH THAKOR PANCHAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Akhtar of Addison & Khan Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 12 February 2015 of First-tier Tribunal Judge Richards-Clarke which refused the Article 8 ECHR appeal brought by the appellant.

2. The appellant is a national of South Africa, born on 14 October 1974.

3. The appellant's background before coming to the UK is not disputed. Having been born in South Africa in 1974 to a family from India, he returned to India with his parents in 1976. He therefore spent the first two years of his life in South Africa and then lived in India until 1999. The

family sent the appellant to stay with a paternal uncle and his family in South Africa in 1999 as he was having difficulty finding work in India as he was not a legal resident there. His uncle's son, the appellant's cousin, had a business in which the appellant was able to work. In 2001 the appellant came to the UK on a visit visa. He therefore spent approximately two more years in South Africa, the full total of his residence there amounting to four years. He is now 44 years' old.

4. Having come to the UK as visitor, the appellant obtained various grants of leave to remain until 31 January 2010. It was at that point that an appeal against refusal of leave became appeal rights exhausted. The appellant remained in the UK and met his partner, Ms Alkaben Bhaskbhai Panchal. She had leave as a student until 31 May 2014 but then became an overstayer. The couple remained in the UK, and their child, [A] was born in 2013.

5. On 19 December 2013 the appellant made an application for leave to remain on Article 8 ECHR grounds. The respondent refused that application on 5 August 2014. The respondent found that the provisions of Appendix FM concerning a partner or being a parent were not met. This is not disputed by the appellant. The respondent went on to find that the appellant could not meet the provisions of paragraph 276ADE as, following paragraph 276ADE(vi) he could not show that there were "very significant obstacles" to his integration "into the country to which he would have to go if required to leave the UK". Here, it was never disputed that the country to which the appellant would have to go would be South Africa, the only country for which he has citizenship.

6. Before the First-tier Tribunal the appellant maintained that there were very significant obstacles to his reintegration in South Africa. He relied on the fact that he had only spent the first two years of his life there and a period of approximately two years in his twenties. This very limited residence contrasted markedly with his time in the UK. In his witness statement dated 22 December 2014 he maintained that he had lost contact with any friends he made in South Africa having not been there for over fourteen years. He also maintained in paragraph 13 of his witness statement that since coming to the UK there had been a family feud and that "I so cannot rely on the support of those uncles anymore if I were to go to South Africa". The appellant also relied on a witness statement from his father which stated in paragraph 7 that, concerning the relatives in South Africa, "since 2003 due to a family dispute we are no longer on terms with those relatives".

7. The First-tier Tribunal in paragraph 13 of the decision recorded the appellant's evidence on these matters as follows:

> "13. In cross-examination the Appellant confirmed that he did work in South Africa as a salesman. This was in his cousin's business. This cousin was the son of his father's brother. The Appellant stated that his uncle had now passed away and the only family that he had in South Africa was this cousin. When asked what he meant by family members the Appellant stated that his cousin is married and has three children.

When the Appellant was asked about land in South Africa he stated that he did not have any land or property nor was any due to pass to him".

8. In paragraph 24 of the decision the First-tier Tribunal recorded the submissions made on behalf of the appellant including:

> "In 2001 the Appellant spent a tiny fraction of his life in South Africa and from this follows difficulties: the Appellant had not been back to South Africa (sic) thirteen years, there were some family problems, the Appellant had had no contact with anyone for eight or nine years, he had few family members in South Africa – his cousin, his cousin's wife and their children and he had no house property or assets in South Africa".

9. In paragraph 29 of the decision the First-tier Tribunal considered the question of whether the appellant would face very significant obstacles to reintegration in South Africa. The Judge stated:

> "29. The second issue is to be considered is whether the Appellant meets the requirements for leave to remain on the basis of an established private life as set out in paragraph 276ADE of the Immigration Rules. The age of the Appellant and his wife and their respective lengths of residence in the UK mean that neither are able to satisfy the requirements of paragraphs 276ADE(iii), (iv) or (v). This leaves the issue as whether there would be very significant obstacles to the Appellant's integration in the country to which he would have to go if required to leave the UK. On the evidence that I have that country would be South Africa. I am not satisfied that there would be such a significant obstacle. This is because:
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> (a) The Appellant was born in South Africa, is a South African citizen and there is no evidence before me that he would be refused entry to South Africa.
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> (b) The evidence before me is that the Appellant lived in India between the ages of 2 and 25. However, the Appellant then returned to live in South Africa. At this time the Appellant was able to live and work in a country which it is unlikely that he could remember and where he had not lived as an adult. I consider that if the Appellant was able to integrate into South Africa then he would be likely to be able to do so again now. Particularly as he is now assisted by his previous experience and knowledge of South Africa. Further while it may be that the Appellant has lost contact with the family members that assisted him when he went to South Africa in 1999 he does have family members in South Africa and this situation is not the same as in 1999 as he would be returning to a country which that (sic) has been known to him.
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> (c) I do not consider the different nationalities of the Appellant and his wife amount to a very significant obstacle. There was no evidence before me today that the Appellant's wife and son would be unable to join the Appellant in South Africa once they had applied for and obtained the necessary permissions to do so.

(d) I do not agree that being able to integrate in the UK would mean that there would be significant obstacles to the Appellant's integration in South Africa. I consider that the resourcefulnesses that the Appellant has shown in the UK would suggest that he would be likely to be able to integrate in South Africa".

10. The appellant challenged the decision of First-tier Tribunal Judge Richards-Clarke but was refused permission by the First-tier Tribunal in a decision dated 17 April 2015 and by the Upper Tribunal in a decision dated 14 July 2015.

11. The appellant then applied to the Administrative Court by way of judicial review on 21 August 2015. Permission was refused by the High Court on 3 November 2015. The appellant renewed the matter in the Court of Appeal and on 7 October 2016 Lord Justice Vos granted permission on the "very significant obstacles" issue. On 14 February 2018 Master Gidden made an order, where no request for a substantive hearing to the Court of Appeal had been made, quashing the Upper Tribunal decision of 27 July 2015 which refused permission to appeal against the decision of the First-tier Tribunal.

12. The appeal then returned to the Upper Tribunal and in a decision dated 13 August 2019 the Vice-President granted permission to appeal against the decision of First-tier Tribunal Richards-Clarke. The appeal was then listed for 30 September 2019 in order for the Upper Tribunal to decide whether the decision of the First-tier Tribunal disclosed a material error on a point of law as argued in the grounds of challenge dated 5 May 2015. There was no application to amend those grounds.

13. The appellant's grounds maintained, firstly, that the judge's consideration of whether there were very significant obstacles in paragraph 29 of the decision omitted a material consideration, namely the family feud which meant that the appellant no longer had contact with and could not look for support from family members in South Africa. There had been unchallenged and consistent evidence on this in the appellant's witness statement and in his father's statement. The grounds maintained in paragraph 5(ii) that the judge had:

> "… failed to engage with the fact that it is one thing to return to a country in one's mid-twenties and work for a relative, as the Appellant did in 1999, but quite another to do so after another fourteen years when in one's 40s and with a wife and young child and with no friends or family".

14. The grounds also argue that the judge erred in finding that the best interests of the child lay in returning to South Africa with his parents as the evidence showed that the family would be destitute.

15. The second ground of appeal maintained that the First-tier Tribunal failed to make a proper assessment of the best interest of the appellant's son and whether it was in his best interests to go to South Africa where the family were likely to be destitute.

16. The third ground of appeal maintained that the First-tier Tribunal, for the reasons set out in the previous two grounds, made a material error of law in the proportionality assessment.

17. When making my decision as to whether the First-tier Tribunal erred in the very significant obstacles assessment, I referred to the case of SSHD v Kamara [2016] EWCA Civ 813. This case provides guidance on the correct approach to an assessment of whether there are very significant obstacles to reintegration. The learning of the Court of Appeal is set out in paragraph 14 of the judgment:

> "14. In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life".

18. Does the consideration of very significant obstacles in paragraph 29 of the First-tier Tribunal's decision comply with the guidance provided by the Court of Appeal in Kamara? It is my conclusion that it does. The Judge set out in paragraph 8 of the decision that he took into account the witness statements of the appellant and his father. He records the submissions for the appellant in paragraph 24 of the decision which included reference to there being problems with the family in South Africa. In paragraph 29 the judge assesses the difficulties the appellant would face on return on the basis that he "has lost contact with the family members who assisted him "in the past. The decision shows that the judge was aware of the evidence on the changed situation regarding relatives in South Africa and took this into account in the assessment of whether there would be very significant obstacles.

19. It is worth noting the further guidance provided by the Court of Appeal in paragraph 18 of Kamara on the correct approach when there is a submission that a relevant matter was not properly taken into account:

> "18. There is no special rule regarding the reasons to be given by a tribunal deciding an immigration appeal. The conventional approach applies. The Upper Tribunal's decision is to be read looking at the substance of its reasoning and not with a fine-tooth comb or like a statute in an effort to identify errors. In giving its reasons, a tribunal is entitled to focus on the principal issues in dispute between the parties, whilst also making it clear that it has considered other matters set out in the legislative regime being applied".

20. Where the judge was aware of the evidence about the appellant's relatives in South Africa and referred to it in his assessment in paragraph 29, it is not arguable that the decision discloses an error on a point of law. Reading paragraph 29 of the decision fairly, it is clear that the judge placed significant weight on the appellant, by that time, having experience of South Africa as an adult and not going to the country for the first time and no experience. The appellant had voluntarily returned to the country as an adult having lived most of his life in India and had worked there over a period of two years. It is therefore my conclusion that the decision of the First-tier Tribunal on the question of very significant obstacles to reintegration does not disclose an error on a point of law.

21. The second ground of challenge has no force as the First-tier Tribunal found that the appellant could be expected to return to South Africa and find work given his experience of the country as an adult, notwithstanding the lack of contact with his relatives there; see paragraph 29 and 30. The First-tier Tribunal did not accept that the appellant would be destitute or that he and his family could not establish themselves. The assessment in paragraph 33 that the best interests of the child lay in remaining with the appellant and his wife even if that meant going to South Africa or India, is not in error.

22. The third ground of challenge has no force where the First-tier Tribunal conducted an assessment of the circumstances of the family outside the Immigration Rules in paragraphs 31 to 34 of the decision and, given the previous findings, reached a rational conclusion that there were no exceptional circumstances preventing return to either South Africa or, alternatively, India, the appellant having supportive family there and his wife being Indian.

23. For all of these reasons, the decision of the First-tier Tribunal does not disclose an error on a point of law and therefore stands.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:  Date: 30 September 2019

Upper Tribunal Judge Pitt